



Appeal Decisions

Inquiry held on 8, 9, 10, 11 & 24 July 2008

Site visit made on 11 July 2008

by **John Papworth** DipArch(Glos) RIBA

an Inspector appointed by the Secretary of State
for Communities and Local Government

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Decision date:
26th August ,2008.

Appeal A: APP/U1430/A/08/2064297

Former Mill Site, Northbridge Street, Robertsbridge, E Sussex TN32 5NY

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for outline planning permission.
- The appeal is made by PREM (Rooster) Limited against Rother District Council.
- The application Ref RR/2007/2576/P is dated 31 August 2007.
- The development proposed is construction of up to 1,301 square metres of Class B1 business buildings, construction of up to 66 residential units, construction of surgery premises of up to 557.4 square metres, construction of café of up to 92.6 square metres, associated landscaping, infrastructure, access roads and revised junction with Northbridge Street.

Appeal B: APP/U1430/E/08/2064309

Former Mill Site, Northbridge Street, Robertsbridge, E Sussex TN32 5NY

- The appeal is made under section 20 of the Planning (Listed Buildings and Conservation Areas) Act 1990 against a failure to give notice within the prescribed period of a decision on an application for listed building consent.
- The appeal is made by PREM (Rooster) Limited against Rother District Council.
- The application Ref RR/2007/2560/L is dated 31 August 2007.
- The works proposed are conversion and works to existing listed building and adjoining building into two residential units.

Appeal C: APP/U1430/A/08/2064322

Former Mill Site, Northbridge Street, Robertsbridge, E Sussex TN32 5NY

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
- The appeal is made by PREM (Rooster) Limited against Rother District Council.
- The application Ref RR/2007/2696/P is dated 21 September 2007.
- The development proposed is change of use and conversion of redundant mill building, listed building and abutting building to form 13 residential units including alteration to an existing vehicular access, construction of new road and provision of parking spaces.

Decisions

1. I dismiss Appeal A and refuse outline planning permission for construction of up to 1,301 square metres of Class B1 business buildings, construction of up to 66 residential units, construction of surgery premises of up to 557.4 square metres, construction of café of up to 92.6 square metres, associated landscaping, infrastructure, access roads and revised junction with Northbridge Street.
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2. I allow Appeal B, and grant listed building consent for conversion and works to existing listed building and adjoining building into two residential units at Former Mill Site, Northbridge Street, Robertsbridge, E Sussex TN32 5NY in accordance with the terms of the application Ref RR/2007/2560/L dated 31 August 2007 and the plans submitted with it subject to the following conditions:
- 1) The works hereby authorised shall begin not later than 3 years from the date of this consent.
 - 2) No works shall take place until samples of the materials to be used in the construction of the external surfaces of the conversion of the building hereby permitted have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
 - 3) Before commencement of the works hereby approved, details of all new joinery, including windows, doors and partitions, at a scale of 1:10 elevations with full size sections through cills, frames and opening lights, including glazing bars and mullions and showing their position and the relationship to the existing structure, shall be submitted to and approved in writing by the local planning authority and only those approved details shall be employed within the works and thereafter retained.
 - 4) Before commencement of any external building works/alterations or repairs as hereby approved, details of all rainwater goods and other external pipework, (to be of cast metal and painted black), drawn to a scale of 1:5, indicating section sizes and profiles shall be submitted to and approved in writing by the local planning authority. Such goods and pipes shall be completed and retained in accordance with the approved details only.
3. I dismiss Appeal C and refuse planning permission for change of use and conversion of redundant mill building, listed building and abutting building to form 13 residential units including alteration to an existing vehicular access, construction of new road and provision of parking spaces.

Main Issues

4. I consider the main issues to be as follows:

In the case of Appeal A;

- The effect of the development on the provision of industrial and commercial sites and the supply of housing
- The effect of the development on the setting of a listed building and on the High Weald Area of Outstanding Natural Beauty
- The effect of the development on the control of flood risk

and in the case of Appeals B and C;

- The effect of the proposals on the listed building and its setting within the High Weald Area of Outstanding Natural Beauty

Reasons

Supply of Commercial Sites

5. The site was last occupied by a commercial firm as a feed mill with storage, offices and workshops. Local Plan Policy EM2 seeks to resist proposals to change the use of buildings or redevelop sites last in employment creating use, unless it is demonstrated that there is no prospect of its continued use for business purposes or that it would perpetuate serious harm to residential amenities. In the event of these qualifications being met, first consideration will be given to mixed-use development in accordance with Policy EM1 and the criteria in Policies DS1 and GD1 which contain general development strategies and principles. Policy EM1 is in two parts the first relating to large sites being focussed on established and allocated business areas, and the reference to business being part of a residential use falls within the second section on smaller-scale business activities. It is this second part therefore that is the link from Policy EM2. The draft South East Plan contains Policy RE2 which states that accessible and well-located industrial and commercial sites should be retained where there is a good prospect of employment use and promotes mixed use development where appropriate and subject to replacement of land and premises lost to non-employment uses. Planning Policy Statement 3 "*Housing*" provides for consideration to be given to whether sites that are currently allocated for industrial or commercial use could be more appropriately re-allocated for housing development.
6. I acknowledge the history of commercial use on the site, which is long and particular to the agricultural setting and more recently the needs of the owners in servicing a variety of poultry rearing premises. I accept that this is not a traditional industrial estate or business park. I also acknowledge the findings of the Local Plan Inspector whose report was received in winter 2005 from an Inquiry in autumn 2004, being relatively up-to-date findings. These were that the site should remain for employment but if this was shown to be not feasible, there should be a preference for mixed use including employment. There has been acceptance of the prospect of mixed use within the site through the proposed conversion of the listed building and Hodson's Mill to residential use and having regard to the characteristics of the buildings and their location, I do not differ from that view.
7. There are two Local Plan sites within Robertsbridge that are relevant in my view. Land at Grove Farm, Policy VL7, is held in reserve for development of at least 30 houses if the 'Mill Site' or other development on previously developed land does not meet housing need. There appears therefore an acceptance of at least the possibility of housing on the appeal site, the 'Mill Site'. I consider the VL7 site more strongly related to the village centre, shops and transport than the appeal site and to appear in plan form as a rounding off of the development boundary. Against those advantages is the greenfield nature of the site.
8. The other is land to the rear of Culverwells on Station Road, Policy VL8, where previous versions of the plan had put forward business uses but this has not been implemented. The site is stated to be the most suitable for employment use in the village and mixed employment and residential use is now envisaged with a limited amount of residential development to take place to enable employment use development on the remainder of the site. I consider the VL8

site is less well related to the A21, as a commercial location, being on a minor road leading to the narrow, busy High Street by way of a difficult junction.

9. From this preamble I attach significant weight to the reference at VL8 to 'limited amount' of residential and 'enabling' which reinforces my view on the appeal site that as a next step from full employment use, the aim should be to maximise employment. This concurs with the view of the Council that once some residential use is accepted, that does not mean that the employment is lost entirely and I do not consider that employment should be arbitrarily reduced. I acknowledge that there is no explicit policy requiring balancing calculations to justify the split, as there might be in a listed building enabling development context, but a marketing exercise is accepted as a way of gauging demand.
10. Looking now at the location of Robertsbridge in the market and geographically, before considering comparator sites. I heard of a buoyant commercial market to the north, nearer London with access to employees and markets, and nearer the M25 with access to the rest of the country, resulting in higher values and demand for commercial land and buildings. This compares with a more depressed market to the south end of the A21 at Hastings and along the coast, being relatively remote, having a single-sided catchment area and a resulting lower demand for land and buildings and lower values. Clearly Robertsbridge lies somewhere between the two, the question being where. Allied to this is the higher residential values, and hence the attractiveness of such development, on sites towards the north of the Council's area, with more ready access to London and the areas of stronger economic activity.
11. Geographically I consider Robertsbridge to be well on the way to these stronger areas to the north, compared with Bexhill, Rye and Hastings, or even Battle. The A21 from the Northbridge Street roundabout passes only through Hurst Green as a real settlement, shortly after leaving the town. After that there appear to be slowings at traffic lights at Flimwell, the downgraded dual carriageway soon after and then intermittent reasonable road and modern two-lane dual carriageways until the main motorway network is reached near Sevenoaks. This route also gives access to Tunbridge Wells, Tonbridge and links to Paddock Wood, Maidstone and further. More locally, the appeal site is very close to the A21 and this link would have been used by lorries from the site when in use distributing feedstuffs to the rearing locations.
12. I do not find most of the commercial areas to the south to be so well placed. Sites referred to in Hastings, Bexhill and Rye appear to be predominantly within urban areas that would need to be travelled through to access the main road network, and the A259 and A21 nearby are mainly single carriageway roads and somewhat constricted. The site near Battle Station is closer to Robertsbridge but requires negotiation of Battle High Street which appears congested. Those on Marley Lane appear more readily accessible to the A21, but just that few miles further away.
13. These considerations lead me to the view that the appeal site should be compared more favourably with the sites to the north than with those to the south. Whilst attaching limited weight to the stated value of the former Little Chef site just up the road, as this might be a false indication, I consider the location of the site to be one that I would have expected to suit investors and

employers seeking lower costs without unduly sacrificing accessibility. Added to these locational factors is the former commercial character and appearance of the site and the existence of large terraced and clear plots, a rarity in my opinion in an area of either flat land on flood plains or the higher ground being often sloping and wooded. There is a marked degree of support in representation, for its continued commercial use. I attach significant weight to the Council's later evidence on development costs and returns, based on an allowance for an upgraded version of the sketch scheme put forward by the Council, removing some of the flaws exposed in the earlier version. Whilst work would be required and there is doubt over the significance of the amount paid for the site, I am of the view that there could be a viable scheme for more commercial and less new-build residential.

14. I turn now to consider the marketing exercise, as a way of finding whether, in the terms of Policy EM2, there is no prospect of its continued use for business purposes. It is easy to criticise an unsuccessful marketing campaign, things might have been done differently, but whether the end result would have changed can only be conjecture. However, I am concerned, having mind to my views on the market to the north, that reliance was placed only on an agent working to the south, whereas for another site nearer Battle, and further to the south, a joint exercise was carried out. The use of a dedicated internet site should have opened the search area, but I find the information captured as to 'hits' sketchy. I therefore do not have a clear picture over whether the lack of firmly expressed interest is due to the information not getting to the right potential firms in the first place rather than any shortcoming of the site or its location.
15. I have the impression also that the appellant has been dismissive of the possibilities in what has been described as the lower end of the market. I understand the risks of operating at this level but it appears to me that this market is not going to cease to exist, but will carry on in a variety of dispersed, possibly rural, sites, some unsuitable for landscape or neighbour reasons. The appeal site is within the AONB, but there again a very high proportion of the Council's rural area is, and the last use was a process-based industry rather than purely offices, warehouses or covered units. The apparent lack of an adverse history relative to neighbours is notable in my view. I am not persuaded that the site is particularly prominent in the AONB or in such proximity to residential use as to preclude the possibility of these other types of commercial use being further investigated. On this section of the main issue I conclude that the full employment possibilities of the site have not been adequately explored such as to justify giving up a site with locational, topographical and economic advantages.
16. The proposal is for a mixed use with housing on the flat terraces to the north, as well as in the retained buildings, an element of commercial to the south, where flood concerns may indicate housing would be inappropriate and the provision of the surgery and ancillary uses referred to in the application. I shall now consider the benefits of these uses and the need.
17. Without rehearsing the Inquiry evidence on a five year supply of housing land, it appears to me that, subject to certain elements such as the land north-east of Bexhill coming forward, there is an adequate supply of housing land. I acknowledge the advice to seek increased housing production and the

Secretary of State's proposed changes to the South East Plan, as well as the need to look critically at allocations of employment land but in the balance between the need for places to live and places to work, I do not consider that the figures indicate an overriding need for the amount of housing proposed in the outline application at the expense of employment. The terraced formations suit employment whereas this attribute would not be essential for housing.

18. However, the ability of a proposal of this size to yield affordable housing of the numbers put forward is a significant consideration in my judgement. There is a clear need for more affordable housing, and evidence I heard on the increase in housing costs towards the north of the council district adds weight to there being such provision in this locality. I do not however consider it essential that this provision be on the appeal site and am of the view that the Local Plan policy is robust enough with a requirement of 40% to continue to deliver affordable housing in locations that are suitable.
19. There is evidence also of the need and willingness to relocate the local surgery to this site, and I attach weight to this also. However, I am not persuaded that this use could not be provided elsewhere in the settlement or even on the site in conjunction with some other mix of residential and commercial.
20. In conclusion on this issue, here is a site with a previous commercial use which does not appear to have caused problems, with terraced plots, located close to a trunk road with easier access to higher performing areas of the south-east than sites in the coastal area and where there has been insufficient investigation of demand or the feasibility of a full range of employment uses and configurations of accommodation. Set chiefly against this is a need for affordable housing, but in the balancing exercise required I find that the attributes of the site, accessible and well-located in the words on the draft South East Plan policy, outweigh the provision of the total number of houses proposed, or even the numbers of affordable housing resulting. I am of the opinion that a lesser number of dwellings, and thus affordable ones, could be made-up for elsewhere on land unsuited to commercial use, whilst maintaining a higher level of employment use on this site. Hence I conclude that the proposals fail to accord with the aims of Local Plan Policies EM1 and EM2 to foster an appropriate scale of business development in order to meet the employment land and premises requirements of the district.

Listed Building Setting and the High Weald Area of Outstanding Natural Beauty

21. There are two buildings on the site that are proposed to be retained and re-used, the listed building and Hodson's Mill. Both are to be put into residential use. Whilst the disposition and precise quantity of the remainder of the built form is in outline at this stage, I consider it likely that the proposed residential new-build element would be on the upper parts, the surgery near the entrance but also on the higher ground, and the new-build commercial block on the lower ground south of Hodson's Mill as shown on drawing 0566/SK04E. On that basis, I am of the view that sufficient buffer space could be provided to preserve the setting of the listed building with regard to the new-build residential and that the space retained between the building and Hodson's Mill would preserve the setting relative to this other significant building.

22. I consider the main part of the residential uses and the surgery would be acceptably sited as shown, with housing screened from much of the wider AONB and set behind the substantial bulk of the Hodson's Mill building. The surgery could be an attractive public building at the frontage of the site, clearly visible from Northbridge Street and providing a suitable public face to the site. I have no reason to consider that detailed design and layout of these elements of the proposal would fail to preserve the setting of the listed building or the character and appearance of the area including the High Weald AONB.
23. Hodson's Mill is not listed and I acknowledge the rationale of this decision, but nevertheless consider it an attractive building worthy of retention as proposed, and with residential use as a suitable way of retaining the character and appearance of the building. However, the likely placing of the commercial building as indicated would, in my opinion, harm the setting and appreciation of the mill, divorcing it from the land to the south and eroding the impact of its appearance from the recreation ground to the detriment of that open space between the two parts of the village. The likely size and bulk of the new building would risk competing with the mill, reducing the pleasing impact of the building.
24. On this main issue I conclude that whilst much of the proposed development would accord with Local Plan Policy GD1(v) in the conservation of the natural beauty of the High Weald Area of Outstanding Natural Beauty, and with Policy GD1(viii) on the setting of a listed building, the indicative siting and likely size of the commercial block to the south of Hodson's Mill would harm the character and appearance of the area and hence would not accord with the Local Plan policy.

Flood Risk

25. It is common ground, among other things, that the proposed new-build residential and the listed building would be in flood zone 1, that Hodson's Mill, the new-build commercial, the café and the surgery would be in flood zone 3a, but that there would be no risk of internal flooding due to usable floor levels being higher and pedestrian access to these buildings in zone 3a would be provided to the higher parts of the site. The main concern appears to be with regard to the commercial use in zone 3a. Table D.2 in the annex to Planning Policy Statement 25 "*Development and Flood Risk*" identifies uses that include that proposed in this case as being in the category of 'less vulnerable' and Table D.1 states that these are acceptable in this zone. The highly vulnerable uses in Table D.2 should not be permitted in this zone and the more vulnerable uses should only be permitted in this zone if the exception test is passed.
26. Were all else acceptable I am of the view that conditions could secure the implementation of the measures put forward to ensure that a safe access is provided for emergency vehicles and that pedestrians could gain access to the development or away from it if need be. Whilst not accepting that life should go on as normal, during the limited time period assumed, it does seem reasonable to me that families should be re-united, especially children away at school when an event occurs. With those conditions I consider the development capable of satisfying the aims of Local Plan Policies DS1(xi) and GD1(xv) that development be safe from flooding, minimising and managing the risk.

Listed Building Conversion

27. My considerations here refer to only the listed building consent application (now Appeal B) which concerns works of conversion to form 2 residential units. That therefore excludes the proposals for the unlisted Hodson's Mill, although both buildings are covered by the accompanying full planning application (now Appeal C).
28. The Council raised no objection to this proposed conversion at the Inquiry and had refused consent on the basis that this should be determined in the context of an acceptable and comprehensive scheme for the whole of the site. Whilst I concur with the view with regard to the accompanying full planning application, as it includes questions of access and the use of the Hodson's Mill building, it appears to me that the need for listed building consent relates specifically to the building and its curtilage. In terms of Section 16(2) of the Planning (Listed Buildings and Conservation Areas) Act 1990 which requires special regard to be had to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses, I consider the proposed conversion does preserve that which is of interest in the building and would provide a long term secure use that would ensure the continued preservation of the building. There are new openings, and some ambiguity over exactly where rooflights would be placed, but this could be dealt with by condition. Generally I find the proposed intervention and changes limited and acceptable and that the essential character and details of the building would be conserved. Hence it is my view that the proposals accord with advice in Planning Policy Guidance Note 15 "*Planning and the Historic Environment*" on works to a listed building and with Structure Plan Policy S1(m) and Local Plan Policy GD1(viii) which seek to protect listed buildings.
29. Conditions would be required concerning materials and further constructional details for approval. However, the suggested change to the period for commencement of the work to five years was in relation to a likely longest period allowable under an outline consent, that being three years for the submission of reserved matters and two years from the approval of the last of the reserved matters. I do not consider it appropriate or necessary to make this change if this were to be the only one of the three applications allowed.

Undertaking

30. A signed and dated Section 106 undertaking was presented covering the affordable housing referred to previously as well as provisions for local sustainability contributions including schools and household waste, and highways/travel plan. I consider this undertaking satisfies the tests in Circular 5/05 "*Planning Obligations*"; it is relevant to planning, necessary to make the proposal acceptable in planning terms, directly related to the development, fairly and reasonably related in scale and kind to the development proposed, and reasonable in all other respects. I therefore attach full weight to it in my considerations and conclusions.

Conclusions

31. I consider residential conversion of the listed building acceptable and that there is no reason to withhold listed building consent for this work. However, I do not consider the case has been made for the loss of employment-providing
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commercial land, contrary to the aims of Development Plan policies which seek to meet the employment land and premises requirements of the district. There is not an overriding need for housing land and the need for affordable housing does not outweigh the advantages of retaining commercial use on this site due to its locational, topographical and economic advantages, the lack of a history of complaints over a long commercial use and the representation in favour of the retention. Though indicative only at this stage, the proposals would be likely to place the remaining commercial use to the south of Hodson's Mill, causing harm to the character and appearance of the area. For those reasons I consider that the outline application should be refused and that the full application for the residential use of the mill and the listed building should also be refused due to the uncertainties over the use and configuration of the rest of the site. Whilst an undertaking would provide benefits in addition to affordable housing, these mainly address the need for facilities as a result of the introduction of housing and do not, in my judgement, outweigh my conclusions. For the reasons given above I conclude that Appeals A and C should be dismissed and planning permission refused in each case, but that Appeal B should succeed.

S J Papworth

INSPECTOR

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

R Humphreys	of Queens Counsel instructed by D Edwards, Legal Services Manager, Rother District Council
he called C Wojtulewski BA(Hons) MTP MRTPI	Partner Parker Dann LLP, Suite S10, The Waterside Centre, North Street, Lewes, E Sussex BN7 2PE
P Waring BSc MSc C.Geol FGS	Development Control Engineer Environment Agency, Orchard House, Endeavour Park, London Road, West Malling, Kent ME19 5SH
D Marriott BSc FRICS	Managing Director Core Commercial Limited, Nettlestead House, Maidstone Road, Paddock Wood, Kent TN12 6DA
S Phillips	Managing Director Westridge Construction Ltd, Ruskin House, Junction Road, E Sussex TN32 5UP

FOR THE APPELLANT:

M Lowe	of Queens Counsel instructed by Berwin Leighton Paisner LLP
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G Dyer FRICS	Principal Dyer Commercial, 25 Russell Street, Hastings, E Sussex TN34 1QU
D Lawson BSc(Hons) DipTP MRTPI	Partner Montagu Evans LLP, Clarge's House, 6-12 Clarge's Street, London W1J 8HB

INTERESTED PERSONS

T Strapp	Robertsbridge Enterprise Group, Russet Farm, Robertsbridge, E Sussex TN32 5NG
R Clymo	49 High Street, Robertsbridge, E Sussex TN23 5AL

DOCUMENTS SUBMITTED DURING INQUIRY

Joint Council/Appellant Documents

Document	J/1	Statement of Common Ground 4 July 2008
Document	J/2	Statement Waring/Walton 9 July 2008
Document	J/3	Bundle of Conditions discussed at Inquiry
Document	J/4	Bundle of e-mails to PINS from Council and Appellant re. conditions and Appellant's closing submissions, each copied to other

Council's Documents

Document	C/1	Statement by D Marlow, Principal Planning Officer Re. monitoring practice
Document	C/2	Note by C Wojtulewski 11 June 2008 "Employment Statistics"
Document	C/3	e-mail and details B Hough to Core Commercial 8 July 2008 Horsehoe Filling Station Hurst Green
Document	C/4	Photograph East Farleigh property
Document	C/5	Set of tables "Development Appraisal"
Document	C/6	e-mail D Edwards, Legal Services Manager to G Fifield re. Section 106 – payments in lieu of affordable housing
Document	C/7	D Marriott statement 10 July 2008 re. base cost £2m
Document	C/8	"Five Year Land Supply Position Update"
Document	C/9	Note by C Wojtulewski on the Secretary of State's Proposed Changes to the Draft Regional Spatial Strategy for the South East (July 2008)
Document	C/10	Environment Agency extract from FD2321/TR2
Document	C/11	Environment Agency letter to Council 2 July 2008
Document	C/12	Council's Closing Submissions

Appellant's Documents

Document	A/1	Dataset: Employment by Industry, 1995 to 2006 – Districts
Document	A/2	Economy profile for Rother
Document	A/3	OS extract of escape route and Culverwells Site VL8
Document	A/4	Travel distances and road type Hastings to M25
Document	A/5	Clarification of C Wojtulewski Supplementary Proof, Appendix 9, Table 1
Document	A/6	Signed Unilateral Undertaking dated 8 July 2008
Document	A/7	Extract "Manual for Streets"
Document	A/8	Extract ESCC "Design Standards for Industrial Roads"
Document	A/9	Council Cabinet 21 February 2005 "Hastings and Rother Joint Housing Delivery Action Plan"
Document	A/10	Note by D Lawson on the Secretary of State's Proposed Changes to the Draft Regional Spatial Strategy for the South East (July 2008)
Document	A/11	Note by D Lawson re. 276 Turkey Road
Document	A/12	Note on "Direction of Travel" in Housing Requirements
Document	A/13	Business case re. Provision of Oldwood Surgery
Document	A/14	Use of 1,000m ² Threshold for Monitoring Employment

Floorspace Completions in AMRs
Document A/15 Note by D Lawson re. Five Year Housing Requirement
Document A/16 Appellant's Closing Submissions

Interested Party's Documents

Document I/1 Statement of T Strapp on behalf of Robertsbridge Enterprise Group
Document I/2 Salehurst and Robertsbridge Local Action Plan 2007-8
Document I/3 Speaking Notes R Clymo, resident
Document I/4 Letter 7 July 2008 from H Monro, Chairman East Sussex Economic Partnership



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Mrs B Laibach
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Planning Officer
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TN39 3JX

ROTHER DISTRICT COUNCIL	
PLANNING DEPT.	Your Ref:
REC'D 27 AUG 2008	Our Ref:
REFERRED TO:	Date:
REPLY REQUIRED:	
ACK CARD DATE SENT:	

RR/2007/2560/L

APP/U1430/E/08/2064309/NWF
Further appeal references at foot of letter

26 August 2008

Dear Mrs Laibach

**Planning (Listed Buildings and Conservation Areas) Act 1990 and Town and Country Planning Act 1990
Appeals by Prem (Rooster) Ltd
Site at Northbridge Street, Robertsbridge**

I enclose a copy of our Inspector's decision on the above appeals.

Leaflets explaining the right of appeal to the High Court against the decision, our complaints procedures and how the documents can be inspected are on our website - www.planning-inspectorate.gov.uk/pins/agency_info/complaints/complaints_dealing.htm - and are also enclosed if you have chosen to communicate by post. If you would prefer hard copies of these leaflets, please contact our Customer Services team on 0117 3726372.

If you have any queries relating to the decision please send them to:

Quality Assurance Unit
The Planning Inspectorate
4/11 Eagle Wing
Temple Quay House
2 The Square, Temple Quay
Bristol BS1 6PN

Phone No. 0117 372 8252

Fax No. 0117 372 8139

E-mail: complaints@pins.gsi.gov.uk

Yours sincerely

Kevin Plummer



COVERDL1

Further appeal references:- APP/U1430/A/08/2064322 and APP/U1430/A/08/2064297

You can now use the Internet to submit documents, to see information and to check the progress of this case through the Planning Portal. The address of our search page is -

<http://www.pcs.planningportal.gov.uk/pcportal/casearch.asp>

You can access this case by putting the above reference number into the 'Case Ref' field of the 'Search' page and clicking on the search button



The Planning Inspectorate

v5.3

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Challenging the Decision in the High Court

Challenging the decision

Appeal decisions are legal documents and, with the exception of very minor slips, we cannot amend or change them once they have been issued. Therefore a decision is final and cannot be reconsidered unless it is successfully challenged in the High Court. If a challenge is successful, we will consider the decision afresh.

Grounds for challenging the decision

A decision cannot be challenged merely because someone disagrees with the Inspector's judgement. For a challenge to be successful you would have to show that the Inspector misinterpreted the law or, for instance, that the inquiry, hearing, site visit or other appeal procedures were not carried out properly, leading to, say, unfair treatment. If a mistake has been made and the Court considers it might have affected the outcome of the appeal it will return the case to us for re-consideration.

Different appeal types

High Court challenges proceed under different legislation depending on the type of appeal and the period allowed for making a challenge varies accordingly. Some important differences are explained below:

Challenges to planning appeal decisions

These are normally applications under Section 288 of the Town & Country Planning Act 1990 to quash decisions into appeals for planning permission (including enforcement appeals allowed under ground (a), deemed application decisions or lawful development certificate appeal decisions). For listed building or conservation area consent appeal decisions, challenges are made under Section 63 of the Planning (Listed Buildings and Conservation Areas) Act 1990. **Challenges must be received by the Administrative Court within 42 days (6 weeks) of the date of the decision - this period cannot be extended.**

Challenges to enforcement appeal decisions

Enforcement appeal decisions under all grounds [see our booklet 'Making Your Enforcement Appeal'] can be challenged under Section 289 of the Town & Country Planning Act 1990. Listed building or conservation area enforcement appeal decisions can be challenged under Section 65 of the Planning (Listed Buildings and Conservation Areas) Act 1990. To challenge an enforcement decision under Section 289 or Section 65 you must first get the permission of the Court. However, if the Court does not consider that there is an arguable case, it can refuse permission. **Applications for permission to make a challenge must be received by the Administrative Court within 28 days of the date of the decision, unless the Court extends this period.**

Important Note - This leaflet is intended for guidance only. Because High Court challenges can involve complicated legal proceedings, you may wish to consider taking legal advice from a qualified person such as a solicitor if you intend to proceed or are unsure about any of the guidance in this leaflet. Further information is available from the Administrative Court (see overleaf).

Frequently asked questions

"Who can make a challenge?" - In planning cases, anyone aggrieved by the decision may do so. This can include third parties as well as appellants and councils. In enforcement cases, a challenge can only be made by the appellant, the council or other people with a legal interest in the land - other aggrieved people must apply promptly for judicial review by the Courts (the Administrative Court can tell you more about how to do this - see Further Information).

"How much is it likely to cost me?" - An administrative charge is made by the Court for processing your challenge (the Administrative Court should be able to give you advice on current fees - see 'Further information'). The legal costs involved in preparing and presenting your case in Court can be considerable though, and if the challenge fails you will usually have to pay our costs as well as your own. However, if the challenge is successful we will normally meet your reasonable legal costs.

"How long will it take?" - This can vary considerably. Although many challenges are decided within six months, some can take longer.

"Do I need to get legal advice?" - You do not have to be legally represented in Court but it is normal to do so, as you may have to deal with complex points of law made by our own legal representative.

"Will a successful challenge reverse the decision?" - Not necessarily. The Court can only require us to reconsider the case and an Inspector may come to the same decision again but for different or expanded reasons.

"What can I do if my challenge fails?" - The decision is final. Although it may be possible to take the case to the Court of Appeal, a compelling argument would have to be put to the Court for the judge to grant permission for you to do this.

Contacting us

High Court Section
The Planning Inspectorate
4/11 Eagle Wing
Temple Quay House
2 The Square
Temple Quay
Bristol BS1 6PN

Phone: 0117 372 8962

Website

www.planning-inspectorate.gov.uk

General Enquiries

Phone: 0117 372 6372

E-mail: enquiries@pins.gsi.gov.uk

Complaints

Phone: 0117 372 8252

E-mail: complaints@pins.gsi.gov.uk

Cardiff Office

The Planning Inspectorate

Room 1-004

Cathays Park

Cardiff CF1 3NQ

Phone: 0292 082 3866

E-mail: Wales@pins.gsi.gov.uk

The Parliamentary & Health Service Ombudsman

Millbank Tower, Millbank

London SW1P 4QP

Helpline: 0845 0154033

Website: www.ombudsman.org.uk

Email: phso.enquiries@ombudsman.org.uk

Further information about challenging the decision

Further advice about making a High Court challenge can be obtained from the Administrative Court at the Royal Courts of Justice, Queen's Bench Division, Strand, London WC2 2LL, telephone 0207 9476655, Website: www.court-service.gov.uk

Inspection of appeal documents

We normally keep appeal files for one year after the decision is issued, after which they are destroyed. You can inspect appeal documents at our Bristol offices by contacting us on our General Enquiries number to make an appointment (see 'Contacting us'). We will then ensure that the file is obtained from our storage facility and is ready for you to view. Alternatively, if visiting Bristol would involve a long or difficult journey it may be more convenient to arrange to view your local planning authority's copy of the file, which should be similar to our own.

Administrative Justice & Tribunals Council

If you have any comments on appeal procedures you can contact the Administrative Justice & Tribunals Council, 81 Chancery Lane, London WC2A 1BQ. Telephone 0207 855 5200; website: <http://www.ajtc.gov.uk/>. However, it cannot become involved with the merits of individual appeals or change an appeal decision.



INVESTOR IN PEOPLE



The Planning Inspectorate

v7.2

An Executive Agency in the Department for Communities & Local Government and the Welsh Assembly Government

Our Complaints Procedures

Introduction

We can:

- review your complaint and identify any areas where our service has not met the high standards we set ourselves.
- correct some minor slips and errors provided we are notified within the relevant High Court challenge period (see below).

We cannot:

- change the Inspector's decision.
- re-open the appeal once the decision has been issued.
- resolve any issues you may have with the local planning authority about the planning system or the implementation of a planning permission.; we can only deal with planning appeal decisions.

The **High Court** is the only authority that can ask for the Inspector's decision to be reconsidered. Applications to the High Court must be made within 6 weeks from the date of the decision letter for planning appeals, and in most instances 28 days for enforcement appeals.

Complaints

We try hard to ensure that everyone who uses the appeal system is satisfied with the service they receive from us. Planning appeals often raise strong feelings and it is inevitable that there will be at least one party who will be disappointed with the outcome of an appeal. This often leads to a complaint, either about the decision itself or the way in which the appeal was handled.

Sometimes complaints arise due to misunderstandings about how the appeal system works. When this happens we will try to explain things as clearly as possible. Sometimes the appellant, the council or a local resident may have difficulty accepting a decision simply because they disagree with it. Although we cannot re-open an appeal to re-consider its merits or add to what the Inspector has said, we will answer any queries about the decision as fully as we can.

Sometimes a complaint is not one we can deal with (for example, complaints about how the council dealt with another similar application), in which case we will explain why and suggest who may be able to deal with the complaint instead.

How we investigate complaints

Inspectors have no further direct involvement in the case once their decision is issued and it is the job of our Quality Assurance Unit to investigate complaints about decisions or an Inspector's conduct. We appreciate that many of our customers will not be experts on the planning system and for some, it will be their one and only experience of it. We also realise that your opinions are important and may be strongly-held. The Quality Assurance Unit works independently of all of our casework teams. It ensures that all complaints are investigated thoroughly and impartially, and that we reply in clear,

straightforward language, avoiding jargon and complicated legal terms.

We aim to give a full reply within three weeks wherever possible. To assist our investigations we may need to ask the Inspector or other staff for comments. This helps us to gain as full a picture as possible so that we are better able to decide whether an error has been made. If this is likely to delay our full reply we will quickly let you know.

What we will do if we have made a mistake

Although we aim to give the best service possible, there will unfortunately be times when things go wrong. If a mistake has been made we will write to you explaining what has happened and offer our apologies. The Inspector concerned will be told that the complaint has been upheld.

We also look to see if lessons can be learned from the mistake, such as whether our procedures can be improved upon. Training may also be given so that similar errors can be avoided in future.

Who checks our work?

The Government has said that 99% of our decisions should be free from error. An independent body called the Advisory Panel on Standards (APOS) monitors this and regularly examines the way we deal with complaints. We must satisfy it that our procedures are fair, thorough and prompt.



Taking it further

If you are not satisfied with the way we have dealt with your complaint you can contact the Parliamentary Commissioner for Administration (often referred to as The Ombudsman), who can investigate complaints of maladministration against Government Departments or their Executive Agencies. If you decide to go to the Ombudsman you must do so through an MP. Again, the Ombudsman cannot change the decision.

Frequently asked questions

"Can the decision be reviewed if a mistake has happened?" – Although we can rectify minor slips, we cannot reconsider the evidence the Inspector took into account or the reasoning in the decision or change the decision reached. This can only be done following a successful High Court challenge. The enclosed High Court leaflet explains more about this.

"So what is the point of complaining?" – We are keen to learn from our mistakes and try to make sure they do not happen again. Complaints are therefore one way of helping us improve the appeals system.

"Why did an appeal succeed when local residents were all against it?" – Local views are important but they are likely to be more persuasive if based on planning reasons, rather than a basic like or dislike of the proposal. Inspectors have to make up their own minds on all of the evidence whether these views justify refusing planning permission.

"What do the terms 'Allowed' and 'Dismissed' mean on the decision?" – 'Allowed' means that Planning Permission has been granted, 'Dismissed' means that it has not. In enforcement appeals (s.174), 'Upheld' means that the Inspector has rejected the grounds of appeal and the enforcement notice must be complied with; 'Quashed' means that the Inspector has agreed with the grounds of appeal and cancelled the enforcement notice.

"How can Inspectors know about local feeling or issues if they don't live in the area?" – Using Inspectors who do not live locally ensures that they have no personal interest in any local issues or any ties with the council or its policies. However, Inspectors will be aware of local views from the representations people have made on the appeal.

"I wrote to you with my views, why didn't the Inspector mention this?" – Inspectors must give reasons for their decision and take into account all views submitted but it is not necessary to list every bit of evidence.

"Why did my appeal fail when similar appeals nearby succeeded?" – Although two cases may be similar, there will always be some aspect of a proposal which is unique. Each case must be decided on its own particular merits.

"I've just lost my appeal, is there anything else I can do to get my permission?" – Perhaps you could change some aspect of your proposal to increase its acceptability. For example, if the Inspector thought your extension would look out of place, could it be re-designed to be more in keeping with its surroundings? If so, you can submit a revised application to the council. Talking to its planning officer about this might help you explore your options.

"What can I do if someone is ignoring a planning condition?" – We cannot intervene as it is the council's responsibility to ensure conditions are complied with. You could contact the council as it has discretionary powers to take action if a condition is being ignored.

Further information

Each year we publish our Annual Report and Accounts, setting out details of our performance against the targets set for us by Ministers and how we have spent the funds the Government gives us for our work. We publish full statistics of the number of cases dealt with during the preceding year on our website, together with other useful information (see 'Contacting us'). You can also obtain booklets which give details about the appeal process by telephoning our enquiries number.

You can find the latest Advisory Panel on Standards report either by visiting our website or at www.apos.gov.uk

Contacting us

Complaints & Queries in England

Quality Assurance Unit

The Planning Inspectorate
4/11 Eagle Wing
Temple Quay House
2 The Square, Temple Quay
Bristol BS1 6PN

Phone: 0117 372 8252
E-mail: complaints@pins.gsi.gov.uk

Website: www.planning-inspectorate.gov.uk

Enquiries

Phone: 0117 372 6372
E-mail: enquiries@pins.gsi.gov.uk

Complaints & Queries in Wales

The Planning Inspectorate
Room 1-004
Cathays Park
Cardiff CF1 3NQ

Phone: 0292 082 3866
E-mail: Wales@pins.gsi.gov.uk

The Parliamentary & Health Service Ombudsman

Millbank Tower, Millbank
London SW1P 4QP

Helpline: 0845 0154033
Website: www.ombudsman.org.uk
E-mail: phso.enquiries@ombudsman.org.uk

Please see Wales leaflet for information on how to contact the Wales Public Services Ombudsman.