



# The Planning Inspectorate

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Miss J Marcsik  
Rochford District Council  
Planning Services Department  
Council Offices  
South Street  
Rochford  
Essex  
SS4 1BW

Your Ref:

Our Ref:

APP/B1550/C/07/2051265

Further appeal references at foot of letter

Date:

14 March 2008

Dear Miss Marcsik

## **Town and Country Planning Act 1990**

### **Appeals by Mr J C Buckfield and Mr Buckfield**

### **Site at Land Adjacent To, 4 London Road, Rawreth, Essex, SS11 8UA**

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](http://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](mailto:complaints@pins.gsi.gov.uk)

Yours sincerely

pp Dave Packer

EDL1(BPR)





## Appeal Decisions

Hearing held on 4 March 2008  
Site visit made on 4 March 2008

by **R J Perrins MA MCMI**

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

The Planning Inspectorate  
4/11 Eagle Wing  
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Decision date:  
**14 MAR 2008**

### Appeal Ref: APP/B1550/C/07/2051265

#### Land adjacent to 4 London Road, Rawreth, Wickford, SS11 8UA

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mr J C Buckfield against an enforcement notice issued by Rochford District Council.
- The Council's reference is EN/03/00288/COU\_C.
- The notice was issued on 27 June 2007.
- The breach of planning control as alleged in the notice is the creation of an access and driveway by the laying of hardcore (shown in the approximate position marked 'A' on the attached plan), the erection of two wooden structures (shown in the approximate positions marked 'B' and 'C' on the attached plan) and the extension of a domestic garden.
- The requirements of the notice are:
  1. To permanently remove from the site the access and driveway (shown in the approximate position marked 'A' on the attached plan) by breaking it up and removing all subsequent materials including but not limited to hardcore and other base material used.
  2. Permanently remove from site the two wooden structures (shown in the approximate positions marked 'B' and 'C' on the attached plan) by breaking them up and removing all subsequent materials.
  3. Re-fill with earth, to a commensurate level with the surrounding land, the area of the site excavated in the creation of the driveway and in the erection of two wooden structures.
  4. Stop using any part of the site as a domestic garden and permanently remove from the site all domestic items, structures and resulting material for the purpose of use as a domestic garden, including but not limited to the fencing and posts indicated in the approximate positions marked x-y-z on the attached plan.
- The period for compliance with the requirements is two months.
- The appeal is proceeding on the grounds set out in section 174(2) (a), (b), (f) and (g) of the Town and Country Planning Act 1990 as amended.

**Summary of Decision: The appeal is allowed, and the enforcement notice is quashed.**

### Appeal Ref: APP/B1550/A/07/2051434

#### Land adjacent to 4 London Road, Rawreth, Wickford, SS11 8UA

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Mr J C Buckfield against the decision of Rochford District Council.
- The application Ref 06/01092/FUL, dated 29 November 2006, was refused by notice dated 5 February 2007.
- The development proposed is a proposed agricultural building and retention of existing access to agricultural land.

**Summary of Decision: The appeal is allowed, and planning permission**

**granted subject to conditions set out below in the Formal Decision.**

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### **Procedural matter**

1. In paragraph 4 of the notice reference is made to Policy LT14 of the Rochford District Replacement Local Plan 2006 (LP). The Council confirmed at the Hearing that this was an administrative error and should have referred to Policy R7 of the LP. For the purposes of clarity if I were to uphold the enforcement notice, I would, and have the power to, correct the notice. To do so would not, in my view, give rise to injustice to the parties.

### **The appeal on ground (b)**

2. This ground of appeal is that the matters alleged in the notice have not occurred. The appellant contends that the site is not being used for a domestic garden, is separate in use from the adjacent gardens, and is being used for agricultural purposes, therefore, the matters alleged have not occurred. In addition, the notice requires that the use of any part of the site as a domestic garden cease, along with the removal of domestic items and structures which the appellant states do not exist.
3. The Council contend that the domestic use referred to in the notice was aimed at the construction of the access way, fencing and two wooden structures which has resulted in a visual extension of the adjacent domestic garden into the Green Belt. In my opinion, the issue of domesticity and agricultural use goes to the heart of both appeals.
4. Planning Policy Guidance 2 (PPG2) *Green Belts*, to which I give significant weight, states that the construction of new buildings inside a Green Belt is inappropriate unless it is for purposes including, amongst other things, agriculture. The Council contend that the current use amounts to nothing more than a hobby for the appellant and no evidence was produced, prior to the hearing, to substantiate the claims that it was a viable business.
5. I was able to see on site that the land was being used for the keeping of chickens and sheep. The two wooden structures on site were chicken sheds with laying boxes and raised perches. The site was well fenced and automated drinking troughs for the sheep were evident. There were six ewes and seven lambs on site and I have no reason to doubt the appellant's figure of 150 chickens. A van was positioned on site and was being used for the storage of feed, egg boxes and other related items.
6. I accept that the evidence submitted by the appellant prior to the hearing was insufficient for the Council to assess an agricultural livelihood and whether or not the current use was viable in agricultural terms. However, at the hearing further financial information was submitted including a financial statement for the period of August 2007 to January 2008 inclusive. It was also confirmed that there are no mortgage or loan payments on the land, equipment or stock. In my opinion, given the gross profit for the period submitted, the current operation offers reasonable returns and is financially viable.
7. I have to consider if the current use is agricultural as a matter of fact and degree. In this instance there is no specific guidance, unlike that offered in

PPS 7 *Sustainable Development in Rural Areas* which sets out various tests that need to be met for permanent agricultural dwellings. The policies of the Local Plan are also unhelpful in that regard. However, given the number of chickens and sheep on site, the infrastructure in place, the current storage requirements and the submitted financial detail, the current use, in my opinion and as a matter of fact and degree falls within agriculture as defined in Section 336 of the Town & Country Planning Act 1990.

8. Therefore, for the reasons given above and having regard to all other matters raised, I conclude that, as there is no domestic use on the site, the appeal should succeed on ground (b). Accordingly the enforcement notice will be quashed. In these circumstances the appeal under the various grounds set out in section 174(2) to the 1990 Act as amended and the application for planning permission deemed to have been made under section 177(5) of the 1990 Act as amended do not need to be considered.

### **The S78 appeal**

9. I consider the main issues in this case are whether the scheme constitutes inappropriate development within the Green Belt, and if so, whether there are other material considerations sufficient to clearly outweigh the harm to the Green Belt thus justifying the development on the basis of very special circumstances. Also, whether the proposal would harm the character and appearance of the locality
10. The purposes of Green Belt designation are set out in paragraph 1.5 of PPG2 and, in my view and given my deliberations above, the development does not conflict with any of these. Paragraphs 3.1 and 3.2 set out Government policy for the control of development within Green Belts and this is reflected in the Policy RT1 of the LP. Since the building that is the subject of this appeal would be for the purposes of agriculture, in accordance with paragraph 3.4 of PPG2, it is not inappropriate development in the Green Belt. It is left for me to consider whether the proposed building is fit for the purposes of agriculture and what its visual impact would be.
11. The proposed building would provide a food and tool store, lambing parlour and rearing shed open on two sides. It would be positioned beyond the rear boundary of No 4 London Road with an access road to the side of the same property. Policy R8 of the LP states that permission will be refused for agricultural buildings that fail to respect the landscape and nearby buildings.
12. I accept that a shelter is not an essential requirement for the keeping of sheep. However, the appellant has submitted evidence from the RSPCA in the form of an *Animal Welfare Assessment* which recommends a field shelter. In addition, DEFRA's Code of Recommendation of the Welfare of Livestock, *Sheep*, encourages the use and provision of lambing areas, pens and shelter. To my mind, the proposed building, would do no more than, provide adequate facilities for the welfare of sheep and be fit for that purpose. Moreover, there is an undisputed need for storage on site as evidenced by the existing van.
13. I now turn to the issue of visual impact and I accept that the access is wider and more formal than would normally be expected for a field access. However, set against the adjoining boundary, it does not interrupt the rhythm of the street scene or draw the eye and the three-bar fencing alongside it does not

look out of place in the rural landscape. The Council stated at the hearing that there are no objections to the design of the building and it would reflect that found nearby.

14. Given the proposed location of the building and the current views across the site which are interrupted by a golf driving range and the boundary treatment of, and a building in, the rear garden of No 4, the proposed barn would not draw the eye. Moreover, its simple fenestrations and agricultural style would not look out of place in the rural setting. It is for these reasons that I find the proposal would not harm the character and appearance of the locality and not be contrary to Policy R8 of the LP.
15. For the reasons given above and having regard to all other matters raised, I conclude that the appeal should be allowed.

### **Formal Decision**

#### **Appeal Ref: APP/B1550/C/07/2051265**

16. I allow the appeal and direct that the enforcement notice be quashed.

#### **Appeal Ref: APP/B1550/A/07/2051434**

17. I allow the appeal, and grant planning permission for an agricultural building and retention of existing access to agricultural land at Land adjacent to 4 London Road, Rawreth, Wickford, SS11 8UA in accordance with the terms of the application, Ref 06/01092/FUL, dated 29 November 2006, and the plans submitted with it, subject to the following condition:
  - 1) The development hereby permitted shall begin before the expiration of three years from the date of this decision.

Richard Perrins

Inspector

## APPEARANCES

### FOR THE APPELLANT:

Mrs Alice Quinn MA BSc Hons  
DipTP MRTPI

Mr John Buckfield  
Miss Pauline Byram

Smart Planning Ltd, Old School House,  
Rettendon Turnpike, Battlesbridge, Essex SS11  
7QL.  
4 London Road Rawreth, Essex SS11 8UA  
The Annexe, Sharon, Pooles Lane, Hullbridge  
SS5 6PZ

### FOR THE LOCAL PLANNING AUTHORITY:

Mr Mike Stranks BA Hons MRTPI Team Leader DC North, Rochford District Council.

## DOCUMENTS

- 1 Undated justification of financial comments
- 2 Financial statement for the period 1 August '07 to 31 January '08



# The Planning Inspectorate

v5.3

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

## 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  
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Phone: 0117 372 8962

## Website

[www.planning-inspectorate.gov.uk](http://www.planning-inspectorate.gov.uk)

## General Enquiries

Phone: 0117 372 6372

E-mail: [enquiries@pins.gsi.gov.uk](mailto:enquiries@pins.gsi.gov.uk)

## Complaints

Phone: 0117 372 8252

E-mail: [complaints@pins.gsi.gov.uk](mailto:complaints@pins.gsi.gov.uk)

## Cardiff Office

The Planning Inspectorate  
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Cathays Park  
Cardiff CF1 3NQ  
Phone: 0292 082 3866  
E-mail: [Wales@pins.gsi.gov.uk](mailto:Wales@pins.gsi.gov.uk)

## The Parliamentary & Health Service Ombudsman

Millbank Tower, Millbank  
London SW1P 4QP

Helpline: 0845 0154033

Website: [www.ombudsman.org.uk](http://www.ombudsman.org.uk)

Email: [phso.enquiries@ombudsman.org.uk](mailto: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.courtservice.gov.uk](http://www.courtservice.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.



INVESTOR IN PEOPLE

## 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](http://www.apos.gov.uk)

## Contacting us

### Complaints & Queries in England

Quality Assurance Unit  
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Bristol BS1 6PN

Phone: 0117 372 8252  
E-mail: [complaints@pins.gsi.gov.uk](mailto:complaints@pins.gsi.gov.uk)

**Website** [www.planning-inspectorate.gov.uk](http://www.planning-inspectorate.gov.uk)

### Enquiries

Phone: 0117 372 6372  
E-mail: [enquiries@pins.gsi.gov.uk](mailto: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](mailto:Wales@pins.gsi.gov.uk)

### The Parliamentary & Health Service Ombudsman

Millbank Tower, Millbank  
London SW1P 4QP

Helpline: 0845 0154033  
Website: [www.ombudsman.org.uk](http://www.ombudsman.org.uk)  
E-mail: [phso.enquiries@ombudsman.org.uk](mailto:phso.enquiries@ombudsman.org.uk)

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