

TOWN & COUNTRY PLANNING ACTS, 1971 and 1972

DACORUM BOROUGH COUNCIL

IN THE COUNTY OF HERTFORD.

To British Railways Board
Eastern Region
Kings House
236/240 Pentonville Road
London

Fuller Hall & Foulsham (Hemel Hempstead)
81A Marlowes
Hemel Hempstead
Herts

Residential development for elderly persons
(Outline)
at Land at Station Road, Berkhamsted

Brief description and location of proposed development.

In pursuance of their powers under the above-mentioned Acts and the Orders and Regulations for the time being in force thereunder, the Council hereby refuse the development proposed by you in your application dated 8.1.85. and received with sufficient particulars on 16.1.85. and shown on the plan(s) accompanying such application.

The reasons for the Council's decision to refuse permission for the development are:-

- (1) The site is subject to excessive noise levels and vibration from the adjoining main railway line, and is unsuitable for residential development, in particular specialist housing for the elderly.
(2) The proposed development would result in the loss of the existing use of the site as a builders' merchants, the retention of which is considered to be desirable in the interests of Berkhamsted and the surrounding area.
(3) The proposed development would result in the loss of the existing hedge facility fronting Station Road and of a number of important trees on the site, and would affect adversely the visual amenity of the locality.
(4) The traffic likely to be generated by the proposed development would be a potential hazard on Station Road, which because of inadequate width and on-street parking, is unsuitable for such additional traffic.
(5) The proposed layout of the garage block, parking area and access would result in this part of the development being open to view from Station Road, to the detriment of the appearance of the development and the environment of the locality.

Dated 21st day of February 1985.

Signed [Signature]

Chief Planning Officer

NOTE

- (1) If the applicant wishes to have an explanation of the reasons for this decision it will be given on request and a meeting arranged if necessary.
- (2) If the applicant is aggrieved by the decision of the local planning authority to refuse permission or approval for the proposed development, or to grant permission or approval subject to conditions, he may appeal to the Secretary of State for the Environment, in accordance with section 36 of the Town and Country Planning Act 1971, within six months of receipt of this notice. (Appeals must be made on a form which is obtainable from the Secretary of State for the Environment, Tollgate House, Houlton Street, Bristol, BS2 9DJ). The Secretary of State has power to allow a longer period for the giving of a notice of appeal but he will not normally be prepared to exercise this power unless there are special circumstances which excuse the delay in giving notice of appeal. The Secretary of State is not required to entertain an appeal if it appears to him that permission for the proposed development could not have been granted by the local planning authority, or could not have been so granted otherwise than subject to the conditions imposed by them, having regard to the statutory requirements, to the provisions of the development order, and to any directions given under the order.
- (3) If permission to develop land is refused, or granted subject to conditions, whether by the local planning authority or by the Secretary of State for the Environment and the owner of the land claims that the land has become incapable of reasonably beneficial use in its existing state and cannot be rendered capable of reasonably beneficial use by the carrying out of any development which has been or would be permitted, he may serve on the District Council in which the land is situated, a purchase notice requiring that council to purchase his interest in the land in accordance with the provisions of Part IX of the Town and Country Planning Act 1971.
- (4) In certain circumstances, a claim may be made against the local planning authority for compensation, where permission is refused or granted subject to conditions by the Secretary of State on appeal or on a reference of the application to him. The circumstances in which such compensation is payable are set out in section 169 of the Town and Country Planning Act 1971.

14154



Department of the Environment
Room 15/03
Tollgate House Houlton Street Bristol BS2 9DJ

Telex 449321

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|---------------------------|--|
| CHIEF EXECUTIVE OFFICER | |
| 16 OCT 1985 | |
| File Ref. | |
| Refer to <i>CPA 16/10</i> | |
| Cleared | |

Chief Executive, Dacorum DC
Civic Centre
Hemel Hempstead
Herts. HP1 1HH

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|---------------------|----------------|-------------------------------------------------|-------|
| Your reference | | PLANNING DEPARTMENT DACORUM DISTRICT COUNCIL | |
| Our reference | | | |
| Ref. | APP/A1910/A/85 | Adm. | 34760 |
| C.P.O. Date | 15 Oct 85 | S.C. | |
| | | Admin. | |
| | | File | |
| Received <i>god</i> | | 16 OCT 1985 | |
| Comments | | | |

Dear Sir


TOWN AND COUNTRY PLANNING ACT 1971, SECTION 36
APPEAL BY *British Railways Board*

I enclose copies of a notice giving details of the arrangements for the local inquiry into this appeal.

- At least two weeks before the date of the inquiry, one copy of the notice should be firmly fixed to some object on the appeal site, where the public may see and read it easily. The Inquiries Procedure Rules* require the appellant not to remove the notice, or permit it to be removed, before the inquiry takes place. However, if the land is not under the appellant's control, the Rules provide for the local planning authority to post notices in a conspicuous place near to the site. Please let me know if it is necessary to ask them to do this.
- I have asked the Council to give notice of the inquiry to those owners and occupiers of property near the site, and any others who they consider are affected. They should also send you a statement of the submissions they propose to put forward, at least 28 days before the inquiry.
- The appellant is expected to appear or to be represented at the inquiry in order to provide a statement of case, and may invite other people to attend if this is considered necessary to present the case adequately. The Inspector holding the inquiry will usually inspect the site or premises.
- Your attention is drawn to Sections 7.7 to 7.9 of the booklet "Planning Appeals - A Guide" about awards of costs. These awards are based on unreasonable behaviour, and it should normally be clear by the time of the inquiry whether there are grounds for alleging this. If you are intending to make an application for awards of costs you are strongly urged to do so at the inquiry itself, although for the present post-inquiry applications will continue to be entertained. The Inspector will then record the arguments for and against an award, and his or her comments and recommendations will be an important element in the Secretary of State's decision. If you do apply after the inquiry there is normally no opportunity for the Inspector's advice to be sought. The decision on an award then has to be taken on the basis of an exchange of written representations, which can both complicate and delay resolution of the claim. The Inspector will, of course, treat any claim for costs as an entirely separate matter; it will have no effect on his assessment of the planning merits of the proposal.

6. I must remind you, if the appeal is to be withdrawn, to contact the Department at once by telephone, and then to confirm in writing, quoting the appeal reference number. You should also tell the local planning authority immediately. The appeal process is costly to all the parties involved, and also to ratepayers and taxpayers generally. If an appeal is withdrawn quickly it will save public money and allow other appeals to be decided earlier. But we can only cancel inquiry arrangements on receipt of written confirmation that the appeal is withdrawn; and if you leave this too late, the inquiry may have to go ahead. If so you may be liable for the costs incurred by others, as well as the Secretary of State's own costs in arranging the inquiry.

Yours faithfully


D. MILNE

*If the appeal has been transferred to an Inspector for decision the appropriate rules are the Town and Country Planning Appeals (Determination by Appointed Persons) (Inquiries Procedure) Rules 1974 - Statutory Instrument 1974 No. 420 (11p).

If the appeal has not been transferred the appropriate rules are the Town and Country Planning (Inquiries Procedure) Rules 1974 - Statutory Instrument 1974 No. 419 (11p).

Copies of the Rules are obtainable from Her Majesty's Stationery Office.

Encs

TCP 207B/84



DEPARTMENT OF THE ENVIRONMENT

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OPERATIVE OFFICE

11 JUN 1986

File: CPO 11/6

16674

British Railways Board
Melbury House
Melbury Terrace
LONDON
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PLANNING DEPARTMENT
Your reference PLAN 85/65/DBC
CORNUM DISTRICT COUNCIL
T/APP/A1910/A/85/034760/P5
Date 6 JUN 86
Received 11 JUN 1986
Comments

Gentlemen

TOWN AND COUNTRY PLANNING ACT 1971, SECTION 36 AND SCHEDULE 9
APPLICATION NO: 4/0051/85

- 1. I have been appointed by the Secretary of State for the Environment to determine the appeal made by your Eastern Region. The appeal is against the decision of the Dacorum District Council to refuse planning permission for residential development for elderly persons on land at Station Road, Berkhamsted. I held an inquiry into the appeal on 25 Febraury 1986.
2. From my inspection of the site and surroundings, and from my consideration of all the representations made, I am of the opinion that the decision in this appeal rests primarily on whether the site is suitable for residential development bearing in mind the noise and vibration to which the proposed dwellings and the land about them would be subjected.
3. The appeal site, which extends to about .52ha, has a frontage of some 200m to the north east side of Station Road within the country town of Berkhamsted. The site has a maximum depth of about 32m, and the rear boundary abuts the main railway line (overhead electric) between London (Euston) and the north. The nearest line is the fast down from London and it is only about 3m from the site boundary, which is open at present as there is only a post and wire fence.
4. The site contains a single old brick building - originally a railway shed but apparently not used as such since the turn of the century. There is also a small pre-fabricated office building which, together with the brick building and a large part of the land, is at present being used by a builders' merchant. Permission for this type of use was originally granted back in 1952, although the present business did not start until 1981. The site has a single vehicular access from Station Road at an acute angle which makes it impossible to turn in directly from a south easterly direction. The site is partially screened on the Station Road frontage from the older dwellings on the other side by some trees and hedging, but it is clearly visible from the north east side of the railway line where there is also housing (modern) fairly close by. However only one resident has objected to the existing use, although many living in Station Road have complained about traffic congestion (not connected with the business) as with cars parked on the road in front of the houses - very few of which have any off-street parking - there is

insufficient space remaining on the carriageway for other vehicles to pass. There are a pair of old houses, with very small gardens, on the north east side of Station road roughly in the middle of the appeal site frontage, and close to the point where it is intended to position the new access to the site if the proposed development were permitted, but these dwellings would not otherwise be disturbed. The character of the surrounding area is mainly residential, but the Grand Union Canal runs along the backs of the houses fronting on to the south west side of Station road, and there are some industrial premises beyond it.

5. In the adopted Dacorum Local Plan, the appeal site is not identified as being allocated for residential purposes - or in fact for any specific use - but the local planning authority stated at the inquiry that they would not have any objection in principle to residential development so long as their criteria for ensuring that such development was satisfactory, given in Policy Nos 18,19 and 66, were complied with. However they gave as the second reason for refusal the need they consider exists for the retention of the present use of the land in the best interests of Berkhamsted and the surroundings as it is the only builder's merchants in the town. The present tenants fully support this reason for refusal. They in fact consider the proposed use would be contrary to the provisions of both the Approved County Structure Plan and the adopted District Plan. The former provides, under Policy No 4, that sufficient land to support industry will be made available, and they consider this underlines the desirability of retaining all existing industrial sites in use. Policy No 5 deals with the use of vacant buildings to provide for the industrial needs of small firms, which is how the business on the appeal site started. The proposed revisions to the Structure Plan seek to encourage small industrial firms, and the District Plan makes it clear that there is only a limited amount of land available for such use bearing in mind the constraints imposed by the green belt on any expansion of built-up areas in the district, and the need for more land for housing. The tenants and the council both point out that recent circulars issued by the Department of the Environment have stressed the government's keenness to do everything possible to encourage small business enterprises in order to create jobs. The present business on the appeal site employs 9/10 persons, and it has not been possible to find any alternative premises since the present intentions of the British Railways Board with regard to the land, which led to negotiations that had been taking place regarding a long lease being broken off, became known. This would mean that if permission were granted for residential development the business would have to close with the direct loss of the jobs involved, and also the likely damage to many small businesses who rely on the firm for supplies and the credit that is provided. The council are unable to offer any help in the provision of alternative accommodation, and the Directors of the business are thus very keen to sign a long lease for the site (at present it is only for 6 months periods) if the appellants would agree. If they could obtain the use of the southern part of the site they would be willing to provide parking space for use of residents in Station Road. The tenants thus consider their needs and those of local residents should take priority over housing in this instance, especially in view of what they regard as the unsuitability of the site for the proposed use. They also point

out that the existing brick building is a rare example of a 19th century railway shed worthy of preservation, and it should be 'Listed' rather than demolished as would happen if the proposed development were allowed. I agree that the old building is in good condition, but it is not scheduled for special protection, and I do not consider permission should be refused for this reason.

6. The arguments put forward by the council and present tenants have substance in relation to recent Circulars regarding the need to encourage small firms in order to create more jobs, and if permission were to be granted for the proposed development, it seems most likely that the existing business would have to close. However this is a somewhat unusual state of affairs in that it must be very rare for a small business such as this not to be able to find suitable alternative premises in a town the size of Berkhamsted. In my view further written proof of the attempts made to relocate the business, and details of all land available for industry in the district to reveal any serious shortage would be required before it would be justified to refuse permission for the proposed development on account of the long term needs of industry in the town, bearing in mind that the site is not actually zoned for industrial use in any development plan. I am accordingly of the view that while there is good reason for the present use continuing in the interest of preserving jobs and stimulating the economy, it would not be justified to refuse permission for this reason alone, at least not in the longer term after the present business had had a further opportunity to relocate.

7. Before considering the first and main reason for refusal (ie the objections on account of noise and vibration caused by the passing trains - other noise in connection with the railway is apparently quite rare), I consider it would be convenient to examine the remaining reasons for refusal given by the council (ie Nos 3-5) as this can be done expeditiously.

8. If permission were granted I understand that you would be willing to make 2 agreements under section 52 of the Town and Country Planning Act 1971, which the council would be prepared to accept. The first would restrict the occupation of the proposed dwellings to elderly persons only, and second would offer various road improvements, including the provision of a small parking layby, at the Board's expense. The council have thus withdrawn the fourth reason for refusal on this basis, and they accept that satisfactory parking arrangements could be made as their full residential parking standards would not have to be met. However their objection given in the fifth reason for refusal remains in that the details shown in the illustrative plan for the provision of garaging and parking are not considered satisfactory. In my view as the application is only for outline planning permission, this does not constitute a strong reason for refusal because the arrangements could be changed.

9. The council's third reason for refusal on the grounds that the development would result in the loss of trees and hedging that largely screen the appeal site and the railway from Station Road has some substance, but none of the trees are subject to a Tree Preservation Order, and if the development were permitted, I consider that, in due course the site could be reasonably well

landscaped (as a result of a suitable planning condition). There is some doubt in my mind whether residents living opposite the southern part of the site might be more affected by noise if the contours of the land were changed as part of the proposed development, but the expert acoustic witnesses did not consider this would be a serious problem as a wall would be provided in lieu. I could thus not conclude that it would be justified to refuse permission on these grounds alone, although there would be an effect on the character of Station Road. I will comment further on these points below.

10. It is also convenient to consider the specific objections on vibration separately, and the conclusions can be summarised fairly simply, although the subject is in fact complex, and there are few agreed guidelines in respect of residential development.

11. There is little doubt from the evidence of the 3 expert witnesses at the inquiry, that any dwellings erected on the site would be subject to noticeable vibration, but the arguments hinge on the extent to which this would cause annoyance to residents. In the view of your expert witness, as stated in the report he submitted at the inquiry (Document 17(2)) which are somewhat different from that enclosed with the grounds of appeal, the effects would not be so bad as to necessitate refusing permission. The detailed arguments in support of the conclusion are in the report, but the council's expert witness and the expert witness appearing for the tenants of the site do not agree with them. The former maintains (Document 17(3) section 3) that Table 3 of British Standard 6472 : 1984 shows that for continuous vibration the curves 2-4 are indicated as acceptable in daytime, and curve 1.4 is appropriate at night. Curve 1.4 is substantially exceeded at the appeal site, and although the vibration is not actually continuous it is so frequent that no correction should be made. Thus rattling of windows, shelves and lightweight objects would be likely. The tenants' expert witness concurs with the council's view, and points out that vibration levels up to 5 times higher than those measured at the foundations have been recorded at first floor level. While amplification cannot be predicted with certainty it has been found that a factor of 4 is not unusual in small rooms.

12. The council's witness considers that if the proposal were to be permitted it would be necessary to impose a condition requiring the dwellings to have "vibration isolation" between them and the foundations. No evidence could be given to me at the inquiry about the likely cost of this, but it would probably be expensive, and quite understandably you would not wish to have such a condition imposed as you have been advised that it is not necessary. I can appreciate this point of view, but it does not seem to me to tie up too well with the observation in the report on vibration submitted with the grounds of appeal that "the site is affected by significant vibration", and with the further comment in the report dated 18 July 1985 that "...as such could be expected to give rise to some complaints if used for residential purposes."

13. The assessments of the likely effects of noise on the site also reveal some considerable differences of opinion in the conclusions of the expert witnesses, and in the absence of generally agreed criteria for acceptable levels of noise on a

site adjacent to a railway line, the various deductions must be considered in some depth to attempt to reach a conclusion about the overall acceptability of the proposed development. It seems to me that there are 3 ways in which noise from a railway may adversely affect persons living very nearby. First the effect on them while they are in the open in the immediate vicinity of their dwellings, eg while gardening or sitting out in the summer, secondly the noise level experienced inside the dwelling during the daytime when the ambient noise is likely to be reasonably high within a built-up area, and lastly the disturbance in the bedrooms at night when the ambient noise level is likely to be less, even in a town. The latter is, in my view, an important period of normal living as loss of sleep can seriously affect health.

14. The assessments by your expert witnesses are fully explained in his 2 reports - the first of which accompanying the grounds of appeal apparently contained a computer error and is thus superseded. In summary he considers the noise level can be reduced to 60-64 dB(A) 24 hour Leq at the rear ground and first floor facades of the dwellings respectively, provided a 2m high acoustic barrier were erected alongside the railway line (24 hour Leq seems to be generally accepted as the most suitable criterion for assessing the overall effects of railway noise). He also considers the gardens of the dwellings would be affected by about this level of noise, and it would be somewhat less nearer the acoustic wall. From these external levels it is claimed that it would be possible to attenuate the noise in the bedrooms down to the range of 25-30 dB(A), which is normally considered a good level for sound sleep, by suitable insulation. The indoor standard of 50 dB(A), which is normally considered good for daytime, would of course easily be met. It is thus considered that noise levels would be satisfactory for residential development.

15. The detailed assumptions leading to these conclusions are of course your expert's own views on how train noise should be assessed, and the views of the witnesses of the council and the tenants are similarly their interpretation of the basic sound measurements on which there is no major disagreement. The greatest difference of opinion is on how effective acoustic screening of the site would be in practice. This depends on the assumptions made about the various components of the noise generated by high speed trains, ie the predominance of the wheel/rail interaction, and the height of other noise sources, bearing in mind that the aerodynamic noise from a train emanates from above track level. The different frequencies of the various components of noise in respect of different types of trains are also considered by the expert witnesses of the council and the tenants to be likely to reduce the effectiveness of any acoustic barrier. There is also the problem of reflection of noise; for example the tenants' expert witness does not accept that the noise level in the gardens of the proposed dwellings would be attenuated to 65 dB(A) 24hour Leq as your witness contends. In his view the noise level from each high speed train would still be likely to be in excess of 90 dB(A), even with the barrier, and the council's witness is also of the opinion that the level would be too high to be satisfactory.

16. In the council's view your expert witness's assessment of

the projected noise levels at the rear of the proposed houses are unacceptably low (by up to 7 dB(A) in respect of about 25% of the proposed dwellings as shown on the illustrative plan) because of the optimistic assumptions about the effects of the barrier. The tenants' witness also considers this to be so. In the latter's view the noise level at the rear first floor facade of the proposed dwellings would more realistically be of the order of 72 dB(A) 24 hour Leq (68 at ground floor level) assuming the 2m acoustic barrier were provided. He considers that to insulate a building subject to this level of noise to meet an internal standard suitable for sleep of 30-35 dB(A) presents problems and would require the double glazing of the dwellings to a very high standard with only small windows incapable of being opened. In the council's view sound pressure levels in the range of 85-95 dB(A), even with the barrier, could be expected to occur a number of times per hour on this site, with some 180 high speed express trains and some 240 various other types and length (ie fast and slow freight and suburban) passing during each 24 hours. When coupled with the sharp 'rise times' resulting in noise levels some 50 dB(A) above ambient, it would tend to produce a startling effect not conducive to relaxation which elderly persons would wish. The council also consider that insulation values of the magnitude required would be difficult to achieve and very costly.

17. In reaching a conclusion about whether the overall noise standards achievable in connection with the proposed development could be regarded as satisfactory, I do not consider it likely that the internal noise levels would be so high as to make life intolerable - at least for some persons - bearing in mind that there are already 2 occupied houses in a comparable position to the proposed dwellings, and they do not have the benefit of a noise barrier. It might well be that the internal noise levels postulated by your expert witness could be attained, especially if there were no habitable rooms on the north east side, although there is doubt about this, and it seems to me that it might be at a cost which would be likely to cast some doubt on the financial feasibility of the project, especially if the council's requirements to overcome vibration problems also had to be met, as I consider they really should to be on the safe side as once erected no improvements could be made to the dwellings. Moreover I have serious doubts whether a site for the housing of elderly persons should be subject to such high external levels of noise as retired people would not wish to be confined to their houses on pleasant summer days, nor have their windows closed at all times. I am doubtful about whether the external noise level could be attenuated in the manner proposed to a level considered generally acceptable (ie 60-65 dB(A) 24 hour Leq). It also appears very likely that peak sound levels would exceed 80 dB(A), which seems to me to be about the desirable maximum in this case bearing in mind the frequent intervals at which the trains pass. If the likely effects of vibration are added to this problem, bearing in mind that you would not wish - quite understandably in the light of the views of your expert witness - to undertake vibration isolation of the dwellings from the foundations, I am of the view that the proposal is open to substantial objection. There would also be the effects of the loss of trees and hedge screening on the existing dwellings opposite from the opening up of the site, and possibly some deterioration in living conditions arising from the alteration in contours at the south eastern end.

I consider these changes would almost certainly be necessary to

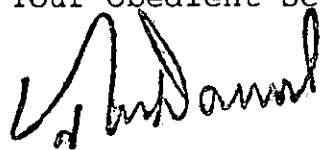
carry out the development, even though the proposal is only in outline, because of the various constraints imposed on the possible layout of the dwellings by the shape of this long site with little depth, and it is therefore unlikely that a proposal significantly different from that shown in your illustrative plan would be possible. There would thus almost certainly be a radical change in the present appearance and character of Station Road, which I would not regard as desirable.

18. I appreciate that the application was made in pursuance of the government's directive to maximise assets, and not in any way directed against the present tenants. However there is a satisfactory alternative use for the land in this instance - at least for the present - albeit perhaps not as cost/effective from the Board's point of view, but I do not consider that any financial consideration should override the planning objections associated with residential development so close to a very busy main railway line. I am thus of the overall view that the proposed development should not be permitted.

19. I have examined all the other matters raised in the representations, but there is nothing of sufficient substance to outweigh those considerations that have led me to my decision that it is necessary to refuse planning permission for the proposed development.

20. For the above reasons, and in exercise of the powers transferred to me, I hereby dismiss this appeal.

I am Gentlemen
Your obedient Servant



J M DANIEL DFC FBIM
Inspector

APPEARANCES

FOR THE APPELLANTS

Mr D B Cooper

Solicitor to Appellants

He called:

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FRSH FRSA

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FOR THE PLANNING AUTHORITY

Miss A M Burton

Assistant Solicitor to
Dacorum District Council.

She called:

Mr D P Noble BA(Hons)
MRTPI MIAS MRSB

Principal Assistant
Planner, Dacorum District
Council.

Mr P A Smith MIEH

Senior Environmental
Health Officer, Dacorum
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INTERESTED PERSONS

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Director of P B Rooksby
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He called

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