



Appeal Decision

The Planning Inspectorate
Tollgate House,
Houlton Street
Bristol BS2 9DJ
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Hearing conducted on 20 June 2000

DOP	ED	DP	DC	BC	SS
Rec'd. 13 JUL 2000					File
Comments : Secretary of State for the Environment, Transport and the					
PLANNING DEPARTMENT DBC					

by Roland Punshon, BSc (Hons), MRTPI

11 JUL 2000

an Inspector appointed by the Secretary of State for the
Environment, Transport and the

Date

Appeal ref: APP/A1910/A/00/1040083/P7

- 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 brought by Mr and Mrs J Salmond against Dacorum Borough Council.
- The site is located at Oakleigh, Shootersway Lane, Berkhamsted.
- The application (ref: 4/00100/00/RES), dated 19 January 2000, was refused on 3 March 2000.
- The development proposed is demolition of Oakleigh, construction of two dwellings.

Decision: The appeal is allowed and planning permission granted for demolition of Oakleigh, construction of two dwellings in accordance with the terms of the application [No: 4/00100/00/RES] dated 19 January 2000, and the plans submitted therewith, subject to the condition set out in the Formal Decision.

Procedural matters

1. Outline planning permission was granted at appeal on 8 April 1999 (appeal ref: T/APP/A1910/A/98/1014806/P4) with all detailed matters reserved for subsequent approval. Approval of the reserved matters was granted by the Local Planning Authority on 10 November 1999 (application ref: 4/0963/99). The application the subject of this appeal was for the approval of revised details of reserved matters. The only difference between the previously approved details and the details the subject of the appeal application is the addition of a single storey extension to the side of Plot 1.
2. I note that the Local Planning Authority's decision notice states that the proposal would be contrary to Policy 8 of the emerging Local Plan. However, I was informed at the Hearing that this was an error and that it should refer to Policy 9 of that document.
3. At the Hearing, an application for the award of costs was made against the Local Planning Authority by the appellants. This will be the subject of a separate decision.

The main issue

4. I consider that the main issue in this case is the effect of the proposal on the character and appearance of the surrounding residential area due to the reduction of space between the dwelling and the garage on Plot 1.

The development plan and other policies

5. The development plan for the area includes the adopted Herfordshire Structure Plan Review 1991-2011 and the Dacorum Borough Local Plan adopted in 1995. At the Hearing it was agreed by the parties that the proposal complied with Structure Plan and Local Plan policies regarding sustainable patterns of development, general development provisions, the

concentration of development in settlements, housing supply and density. Local Plan Policy 7 encourages appropriate residential development in residential areas. Local Plan Policy 8 requires a high standard in development proposals and states that such proposals must be appropriate in terms of site coverage, design and scale and should respect the townscape and general character of the area. Local Plan Policy 9 states that Environmental Guidelines, which amplify the criteria set out in Policy 8, will provide a guide for development proposals. Part 2 of the Guidelines deals with quality of layout and design and Part 10 deals with small scale house extensions.

6. My attention has been drawn to the provisions of the Deposit Draft of the Dacorum Borough Local Plan 1991-2011. An examination in public was underway at the time of the Hearing but I was informed that no objections had been received in respect of the plan provisions which are relevant to this appeal. Given the stage that the plan has reached in the plan preparation procedure, I will give it appropriate weight in my consideration of this appeal in the light of the advice contained in paragraph 48 of Planning Policy Guidance (PPG) 1: General Policy and Principles. The provisions of the relevant emerging Local Plan policies closely follow those of the adopted Local Plan. In addition I have been referred to part BCA12 of the emerging Plan. This provides an analysis of the character of the residential area around the site and states that, in order to retain that character, detached houses with wide spacing will be appropriate.

Inspector's reasons

7. The appeal decision in 1999 which granted outline planning permission followed three earlier appeals which had been dismissed (refs: T/APP/A1910/A/87/079199/P5, T/APP/A1910/A/95/260660/P4 and T/APP/A1910/A/97/281917/P2). These earlier proposals involved the retention of Oakleigh and the erection of a dwelling in the garden. In making his decision to allow the 1999 appeal and to grant planning permission, the Inspector noted that demolition of the original house allowed a more spacious layout to be utilised. He observed that the illustrative layout showed a dwelling on Plot 1 with a frontage that was narrower than had previously been proposed together with a detached garage some distance from the house. In making these comments I do not consider that the Inspector was being prescriptive in stating that those features of the illustrative layout needed to be embodied in any detailed scheme for it to be acceptable. I consider that he was simply indicating that this was the way in which the more spacious layout manifested itself on the illustrative plans. Other layouts could equally achieve the desired objectives.
8. The proposed development of the appeal site needs to achieve a balance between, on one hand, the need to construct houses which are not so small that they would appear out of keeping with the large houses in the surrounding area, and, on the other, the need to achieve a spacious layout which does not result in the buildings appearing cramped. In my opinion, the details approved by the Local Planning Authority in 1999 achieve this balance. The buildings would be substantial yet they would be well spaced on the site in accordance with the guidance contained in part BCA12 of the emerging Local Plan.
9. The extension to the side of Plot 1 would partially close the gap between the house and its detached garage. However, both the garage and the extension would be set back behind the front elevation of the house which would reduce the apparent mass of the group. From the private road leading to the site, the proposal would be largely screened by a tall, evergreen hedge along the site frontage. The front corner of the extension would be visible from the part of the turning area. The extension would also be visible from the bedroom windows of

some of the adjacent houses and from the front of the property to be built on Plot 2. Given the limited extent to which the extension would be visible from the surrounding area, I do not consider that it would add so significantly to the bulk of the structure on Plot 1 or that it would appear cramped or that it would affect the character and appearance of the area.

10. The way in which the proposed dwellings would fill their respective plots would not be materially different to the way in which plots in the surrounding area are filled by existing dwellings. The proposal would, therefore, be appropriate in terms of site coverage and I do not consider that it would appear out of keeping with its surroundings.
11. On the main issue, therefore, I conclude that the proposal would not have a harmful effect on the character and appearance of surrounding residential area by reason of the reduction in space between the dwelling and the garage on Plot 1. It would, therefore, comply with Policies 7 and 8 and the Environmental Guidelines of the Local Plan and Policies 7 and 9 and part BCA12 of the emerging Local Plan.
12. I have taken into account all the other matters raised but none are sufficient to outweigh my conclusions on the main issue which have led to my decision on this appeal.

Consideration of Conditions

13. I have considered the condition suggested by the Local Planning Authority in the light of the advice contained in Circular 11/95. Following discussion at the Hearing regarding the status of certain plans, I have amended the wording of the condition suggested by the Local Planning Authority in order to clarify the drawings referred to in this decision.

Conclusions

14. I have concluded that the proposal would not be harmful to the character and appearance of the surrounding residential area. For this reason I conclude that the appeal should succeed and I shall exercise the powers transferred to me accordingly by allowing the appeal and granting planning permission.

Formal Decision

15. The appeal is allowed and planning permission granted for demolition of Oakleigh, construction of two dwellings in accordance with the terms of the application [No:4/00100/00/RES] dated 19 January 2000, and the plans submitted therewith, subject to the following condition:
 - (i) The development hereby permitted shall be carried out fully in accordance with the details shown on drawings JPS 102D AUG99, JSP 100C JAN00, and JSP 101C AUG99 and the submitted 1:1250 scale location plan.
16. This document only grants planning permission under Section 57 of the Town and Country Planning Act 1990. It does not give any other approval or consent that may be required.
17. Attention is drawn to the enclosed note relating to the requirements of the Chronically Sick and Disabled Persons Act 1970, as amended.



Inspector

APPEARANCES

FOR THE APPELLANTS

Mr A King BA(Hons), BPl, MRTPI Andrew King and Associates

Mr J M Salmond Appellant

FOR THE LOCAL PLANNING AUTHORITY

Mrs J Ambrose BA(Hons), BTP, MRTPI Senior Planning Officer

DOCUMENTS

Document 1	List of those attending the hearing
Document 2	Notification letter and 3 responses
Document 3	Statement and appendices by Mr A King
Document 4	Statement and annexes by Mrs J Ambrose

PLANS

Plan A	1:1250 scale location plan
Plan B	Drawing JPS 102D AUG99
Plan C	Drawing JSP 101C AUG99
Plan D	Drawing JSP 100C JAN00



Costs Decision

Hearing conducted on 20 June 2000

by **Roland Punshon** BSc(Hons), MRTPI

an Inspector appointed by the Secretary of State for the
Environment, Transport and the Regions

The Planning Inspectorate
Tollgate House,
Houlton Street
Bristol BS2 9DJ
☎ 0117 987 8927

11 JUL 2000

Date

4/00100/00 RES

Application Ref: APP/A1910/A/00/1040083/P7

- The application is made under the Town and Country Planning Act 1990, Sections 78 & 322 and the Local Government Act 1972, Section 250(5).
- The application is made for a full award of costs by Mr and Mrs J Salmond against Dacorum Borough Council.
- The site is located at Oakleigh, Shootersway Lane, Berkhamsted.
- The hearing was in connection with an appeal against the refusal of an application for planning permission for demolition of Oakleigh, construction of two dwellings.

Decision: The application for an award of costs is refused.

The case for Mr and Mrs J Salmond

1. The application for full costs is made in the light of the guidance contained in Circular 8/93 and, in particular, Annex 3. The application is in two parts relating to the two parts of the Local Planning Authority's reason for refusal.
2. The Local Planning Authority is wrong in objecting on the grounds that the extension would be detrimental to the character and appearance of the area. This is completely out of step with all valid site specific and policy considerations. Paragraph 8 of Annex 3 makes it clear that, where the planning issues are finely balanced, an award of costs in respect of substantive matters is unlikely to be made. This cannot be the case in this appeal. A modest side extension, for the most part hidden from view, well sited, not prominent and in all respects designed to match the existing house, could not possibly detract from the character and appearance of the area. It would comply with all relevant development plan provisions.
3. Paragraph 7 of the Annex requires that a Local Planning Authority should not prevent, inhibit or delay development which could reasonably be permitted having taken into account the development plan and other material considerations. There could not be a clearer case where an application could and should have been permitted at local level.
4. Paragraph 8 of the Annex requires the Local Planning Authority to produce evidence to support its reason for refusal. The Local Planning Authority gave its reasons why it refused permission and its representative was questioned on the effect of the proposal on character and appearance in the Hearing. The evidence related to fear of an incremental increase in the scale of the buildings and concern about the erosion of a visual break shown on an approved illustrative plan and little else. Had the additional structure been submitted as an extension, the Local Planning Authority representative stated that it would still have been refused for the same reasons. This would have ignored the advice on extensions in the Local Planning Authority's own guidance and the principles contained in part BCA12 of the emerging Local Plan. It is accepted that the extension will close the gap between the house and garage but this is not, in itself, a valid planning objection or evidence.

COSTS DECISION

5. Paragraphs 16 and 17 of the Annex state that a Local Planning Authority is likely to have behaved unreasonably if it is clear from an earlier appeal decision that there would be no objection to the proposal or if it refuses to approve details of reserved matters, raising objections more appropriate to the outline stage. The Inspector's decision at the outline stage makes it clear that he would not have objected to this proposal. The issue of size was addressed at the outline stage and the Inspector concluded that the dwellings would not need to be so small as those illustrated.
6. The Local Planning Authority states that the Inspector at the outline stage made his decision on the basis that a detached garage some distance from the house would not appear cramped. This is plainly incorrect. The Inspector could not and did not allow the appeal on that basis, as the drawing was illustrative only. For its own reasons and as a good negotiating tactic the Local Planning Authority has unreasonably elevated the status of the outline, illustrative plan in order to give it more weight. This represents unreasonable behaviour in that the Local Planning Authority was seeking to inhibit development which could reasonably have been permitted.
7. Unnecessary costs have been incurred by the appellant in bringing this matter to appeal.

The case for the Local Planning Authority

8. In determining the appeal application the Local Planning Authority did not act unreasonably. It took the comments made in the Inspector's decision at the outline stage and interpreted them correctly in assessing the appeal proposal. Its approach to the consideration of the reserved matters has been consistent. The appellants' agent reduced the form and footprint of the reserved matters proposal to conform to the Local Planning Authority's interpretation of the Inspector's decision. Had the Local Planning Authority's suggestions been considered unreasonable, the appellants could have appealed at that earlier stage. They did not do so. The only reason that this matter has needed to be taken to appeal is that the appellants have gone back on an agreement that had been reached.
9. The proposal is not for an extension to Plot 1 only. It is a proposal for two houses and the Local Planning Authority is applying its arguments consistently to achieve a satisfactory level of site coverage.
10. The Local Planning Authority's reason for refusal is based on sound evidence. The proposal is contrary to the criteria contained in the relevant planning policies. The Local Planning Authority has not inhibited development as it has already granted an approval of reserved matters.

Inspector's reasoning

11. I have dealt with the application for costs in accordance with the policy guidance in Circular 8/93 and all the relevant circumstances. Irrespective of the appeal outcome, costs may only be awarded against a party who has behaved unreasonably and thereby caused another party to incur or waste expense unnecessarily.
12. As I made clear in my appeal decision, the achievement of a satisfactory development of the appeal site involves a balance being drawn between the need for dwellings that are large enough to be in keeping with surrounding properties and the need to secure a spacious layout. In my opinion the details already approved by the Local Planning Authority leave this balance finely poised. At the outline stage the appeal Inspector considered that the

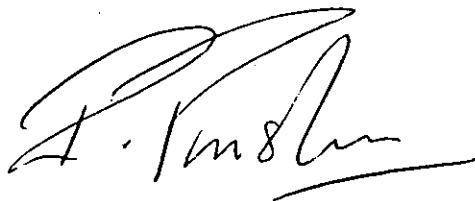
COSTS DECISION

illustrative layout achieved this objective but he did not prescribe that the objective could only be achieved by that layout. The approved reserved matters follow the general layout shown on the illustrative plan. In these circumstances, I do not consider that it was unreasonable for the Local Planning Authority to take into account the detailed aspects of the illustrative layout which the Inspector drew particular attention to in reaching his decision that the layout was spacious.

13. The approved buildings are larger than those shown on the illustrative layout which indicates that the Local Planning Authority was not slavishly following the illustrative details. However, it considered that the closure of the gap between the garage and the dwelling would upset the balance which had been achieved. I consider that the proposed extension of Plot 1 would not be prominent. Nonetheless, it would be visible from some locations. Its effect on the character and appearance of the area is a matter of judgement and, although I have decided that its effect would not be harmful, I do not consider that it is unreasonable for the Local Planning Authority to take a different view. The policies of the development plan require a similar degree of judgement to be applied and I do not consider that it was unreasonable for the Local Planning Authority to conclude that the proposal was contrary to those policies.
14. I do not consider that the Inspector's comments at the outline stage can be interpreted as indicating that the development now proposed would be acceptable. He simply indicated that houses on the site, whether those shown on the illustrative plan or others, would not need to be so much smaller than their neighbours that they would appear to be out of character. This does not prescribe what size of dwelling would be acceptable. In my opinion the acceptability of particular designs and layouts could only be properly addressed at the reserved matters stage. I do not, therefore, consider that the Inspector's decision at the outline stage gave such a clear indication that the appeal proposal would be acceptable that the Local Planning Authority acted unreasonably in deciding to refuse permission.
15. I note that paragraph (ii)(c) of Part 10 of the Local Planning Authority's Environmental Guidelines states that small scale house extensions should not alter the character of the area by the reduction of space leading to a cramped appearance. In these circumstances, had the Local Planning Authority considered a proposal submitted as an extension to Plot 1 and refused permission for similar reasons, I do not consider that it would necessarily have been acting contrary to its own guidance and policies.
16. In these circumstances, I do not consider that the Local Planning Authority acted unreasonably in seeking to prevent development which, having regard to development plan policies and other material considerations, it considered to be unacceptable.

Conclusions

17. I do not consider that unreasonable behaviour, as described in Circular 8/93, has been demonstrated and I, therefore, conclude that an award of costs is not justified. I shall exercise the powers transferred to me accordingly by refusing this application for an award of costs.



Inspector

**Dacorum Borough Council
Planning Department**

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TOWN AND COUNTRY PLANNING ACT 1990

APPLICATION - 4/00100/00/RES

OAKLEIGH, SHOOTERSWAY LANE, BERKHAMSTED, HERTS, HP4 3NW
DEMOLITION AND CONSTRUCTION OF TWO DWELLINGS (AMENDED SCHEME
RELATING TO PLOT 1)

Your application for the approval of details or reserved matters dated 19 January 2000 and received on 21 January 2000 has been **REFUSED**, for the reasons set out overleaf.

A handwritten signature in black ink, appearing to read 'A. King'.

Director of Planning

Date of Decision: 03 March 2000

REASONS FOR REFUSAL APPLICABLE TO APPLICATION: 4/00100/00/RES

Date of Decision: 03 March 2000

1. The proposed development would increase the size and footprint of the dwelling on Plot 1 thereby bringing the built form of the house significantly closer to the detached garage. This would detract from the appearance and character of the area to an extent that would be unacceptable and contrary to local plan policy aims and objectives found in Policy 8 of the Dacorum Borough Local Plan and Policy 8 and Residential Character Area BCA12 in the Dacorum Borough Local Plan 1991-2011 Deposit Draft. This approach is also consistent with that of the Inspector who granted outline planning permission for the two detached dwellings; he concluded that the demolition of Oakleigh allowed for "a more spacious layout (to) be utilised," and reached his decision on the basis that "a detached garage some distance from the house" did "not appear cramped at all" so that "the spacious character at the end of this cul-de-sac ... need not be unduly diminished".