

TOWN & COUNTRY PLANNING ACTS, 1971 and 1972



DACORUM BOROUGH COUNCIL

To Mr W E Norman
The Lodge
Shootersway Lane
Berkhamsted
Herts

Stephen J Blandamer
4 Red Lion Street
Chesham
Bucks

	Two Detached Dwellings
at	Rear of The Lodge, Shootersway Lane, 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 18 January 1989 and received with sufficient particulars on 20 January 1989 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 established layout of residential development to the north and south of the application site is distinguished by detached dwellinghouses set within spacious plots. The proposed subdivision of the residential curtilage of 'The Lodge' would form two relatively narrow elongated plots which would result in a cramped form of development in comparison with the existing residential pattern. The proposal would, therefore, be incompatible with and detrimental to the character of the locality.
- (2) To permit this scheme would encourage other proposals for the subdivision of the residential curtilages of dwellinghouses to the south of the application site involving two tier backland development on areas of land similar to the proposal which would be to the detriment of the established spacious layout and character of the locality.

Dated day of 19

Signed..... *Wm Blandamer*

Chief Planning Officer

NOTE

1. 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 s.36 of the Town and Country Planning Act 1971, within six months of receipt of this notice. (Appeals must be made on a form 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.

2. 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 Borough 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.

3. 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 s.169 of the Town and Country Planning Act 1971.

- (3) The close proximity of the proposed dwellinghouse located on Plot 2 to the row of Douglas Fir trees which are the subject of Dacorum Borough Council ('The Lodge', Shootersway Lane, Berkhamsted) Tree Preservation Order 1986 would be prejudicial to the future survival of two of these trees and there would not be adequate space for the planting of a replacement for one of the other trees which may need to be felled.
- (4) No provision has been made for the provision of a refuse collection point to serve the two proposed dwellinghouses within 30 metres of the highway.

Dated.....28th.....day of.....April..... 1989

Signed.....*Colin Bannard*.....

Chief Planning Officer



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PLANNING DEPARTMENT DACORUM BOROUGH COUNCIL						
Ref.					Ack.	
C.P.O.	T.C.P.M.	D.P.	D.C.	B.C.	Admin.	File
3 OCT 1990						
Received					Date	
					2 October 1990	
Comments						

our reference 88/AL/169
our reference APP/A1910/A/89/138764
Date 2 October 1990

Gentlemen

TOWN AND COUNTRY PLANNING ACT 1971 - SECTION 36
APPEALS BY MR W E NORMAN
APPLICATION NOS 4/0134/89; AND TPO/154 DATED 8.12.1989

1. I am directed by the Secretary of State for the Environment to say that consideration has been given to the report of the Inspector, Mr P F Burley, MA(Oxon), B Phil, DipTP, AL1, who held an informal hearing into your client's appeals under Section 36 of the Town and Country Planning Act 1971 against the decisions of Dacorum Borough Council to:

- (a) refuse planning permission for the construction of two detached dwellings on land at the rear of The Lodge, Shootersway Lane, Berkhamsted, Herts; and
- (b) allow the felling of a large Norway spruce tree, with conditions; and to refuse to allow the felling of a smaller Norway spruce tree in the group at the rear of The Lodge, Shootersway Lane, Berkhamsted, Herts.

2. A copy of the Inspector's report is enclosed and his conclusions are reproduced in the annex to this letter. He recommended the appeals be dismissed.

3. The Secretary of State has given careful consideration to all the arguments for and against the appeals proposals and to the Inspector's report. Dealing first with the appeal against the refusal of planning permission, he agrees with the officer that the main issues in this appeal are the effect of the proposals both on the character of the area and on the protected trees. He notes the spacious character of this part of Shootersway Lane, which he accepts has been reduced a little by the construction of the extension to Whitelea. He agrees with the Inspector that, whilst they would have little visual impact, the proposals would result in a contrast with the plots to the south and north and reduce further the spacious character of the area.

4. The Secretary of State notes that the line of protected Norway spruce trees make a significant contribution to the pleasant character of Shootersway Lane, and, whilst not dominant, they are visible from a number of surrounding roads as well as from adjacent properties. He also notes that the removal of tree B, in addition to tree A, which has already been felled, would create a sub-stantial visual gap. He further notes the doubts over the viable retention of tree C, which is one of the



best specimens of the group and whose removal would further enlarge the gap. He agrees with the Inspector that the amenity the trees provide could be even further reduced by future requests for felling or lopping and that these impacts could not be avoided by amending the siting of the house on Plot 2. He concludes that the adverse impact on the character of the area and on the protected trees represents a valid objection to the proposals. He takes the view that there could be problems of overlooking, though not on a scale which would on its own mean that planning permission should be refused and he agrees with the Inspector that there are no objections to the refuse collection and access arrangements.

5. Turning to the TPO appeal, the Secretary of State agrees with the Inspector that the appeal against the replanting condition attached to the consent to fell tree A does not fall to be considered by him since, as the tree was felled in accordance with Section 60(6) of the 1971 Act, no formal consent was required and therefore the Council, in his view, were not empowered to issue a consent notice with replanting conditions. If the Council wish to pursue the non-replacement of this tree, the appropriate procedure will be to issue an enforcement notice under Section 103 of the Act. However, with regard to that part of the appeal which relates to the refusal of your application to fell tree B, he notes the Inspector's observations about the condition and apparent health of the tree and agrees with him that, although individually it is of limited amenity value, it does contribute to the amenity value of the group as a whole. He agrees with the Inspector that the removal of this tree would further reduce the amenity the line of trees provide. He notes that the proximity of the extension to Whitelea to other trees in the line has not altered the Inspector's conclusion on this point.

6. The Secretary of State notes that the Inspector proposes certain conditions in the event of planning permission being granted but, in view of the conclusions he has reached on these appeals he does not feel he needs to consider them. He has also noted the Council's letter dated 13 July but this has not altered the conclusions he has reached.

7. All other matters have been taken into account but, for the reasons given above, the Secretary of State agrees with the Inspector's conclusions and accepts his recommendation. Therefore he hereby dismisses your clients' appeals.

8. A separate note is attached to this letter setting out the circumstances in which the validity of the Secretary of State's decision may be challenged by the making of an application to the High Court.

I am Gentlemen
Your obedient Servant

R W HIRST
Authorised by the Secretary of State
to sign in that behalf

PLANNING APPEAL

5.0 Conclusions

5.1 In the following section, references in brackets relate to information contained in the body of the report.

5.2 In my opinion the main considerations in this appeal are the effect of the proposal on the character of the area and on the preserved trees. I have also considered the effect on the amenity of adjacent residents, whether the proposal provides satisfactory provision for servicing by refuse vehicles and whether there would be any hazard to users of Chalet Close.

5.3 Shootersway Lane has clearly changed over the last 20 years (Document 6 Appendix 1 Items 2 and 3) (Para 2.1). There are considerable variations in plot size with some being of similar width to those proposed. However on the west side of Shootersway Lane particularly immediately to the south and north of the appeal site, plot size is generally larger. This gives a more spacious character to this part of the lane. The construction of the extension to Whitelea has, however, partially reduced this spaciousness (Para 1.3). The appearance of Shootersway Lane is attractive and semi-rural. As the proposed houses are situated to the rear of 'The Lodge' they would in my opinion have little direct impact on the visual character of the area as seen from Shootersway Lane. Nevertheless the density would contrast with the plots to the south and north as would the proximity and relationship of the 2 dwellings. This would further reduce the feeling of spaciousness enjoyed by existing residents.

5.4 The line of spruce trees on the southern boundary form an important part of the well-treed fabric of Shootersway Lane, contributing significantly to its pleasant character. While they are not a dominant feature they are visible from a number of the surrounding roads as well as from adjacent properties. Although some of the roads are not adopted they are nevertheless well-used by local residents and as such the trees are, in my opinion, of amenity value. The removal of tree B in addition to tree A would create a substantial visual gap in the line of trees which form an attractive linear feature. The proposal would not allow for their replacement. Any lower level replanting would only be visible to immediate residents and would not provide any amenity to the wider area.

5.5 Tree C is one of the best specimens in the group. (Para 3.4). Since it would only be about 4 m from the proposed house and garage on Plot 2, there is in my mind serious doubt as to whether it could be safely retained. (Para 2.4). Even if it could be retained during development I consider there is a strong probability that future owners would wish to remove it because of needle drop, overshadowing and safety as has happened at 'Tree House'. (Para 3.5). The removal of this tree would make the gap in the line even more significant.

5.6 While sunlight was percolating through the trees at the time of my inspection. I consider future occupiers of the house on Plot 2 would experience a restricted level of light to both the garden and house due to the proximity of the trees. There would also be problems with blocked gutters from needle drop. On the evidence of what I saw and heard I consider the Council are likely to find it difficult to resist requests for further felling or lopping which could further reduce the amenity the trees provide. The proximity of the extension to Whitelea to other trees in the line does not alter my view (Para 1.3).

TPO APPEAL

14.0 Conclusion

14.1 If planning permission were to be granted by the Secretary of State there would be no space for replanting tree A and tree B could be felled by virtue of Article 3(c) of the Second Schedule of the Order.

14.2 Although tree B is in poorer condition than some others in the group it appears healthy in the upper crown and the foliage is denser on the southern side where it is exposed to full sunlight. I take the view therefore that the die back and lack of vigour is largely due to suppression. Removal of tree A has made this die back more obvious. I am strengthened in this view by the condition of the tree to the east of tree C which has suffered die back in a similar manner but to a greater degree. There is insufficient evidence in my view to conclude that the tree is dangerous.

14.3 I consider the trees as a line do form an amenity to the neighbourhood regardless of whether the roads are publicly adopted. The gap left by the removal of tree A is extensive and very prominent from Chalet Close and the surrounding properties. While tree B is individually of limited amenity it contributes to the overall group. The upper crown is visible from Chalet Close and other areas and its removal would further enlarge the present gap.

14.4 No soil surveys have been done by either party. There appears to be no conclusive evidence of any toxic soil conditions. The condition of other vegetation in the area may well be due to fire damage caused by the burning of garden refuse by the owners of Whitelea and Seafields and to the shading caused by the spruce. I consider there is reasonable chance any replanting would succeed especially if the tree pit were backfilled with imported topsoil as suggested by the Council. While replanting may take 30 years to reach a similar stature the trees in the group are of varying heights and sizes and the replacements would not look unduly out of place.

16.0 Recommendation

16.1 I recommend the appeal be dismissed.

I have the honour to be
Sir
Your obedient Servant

P F BURLEY

5.7 I have considered whether the siting of the house could be amended by condition to achieve more space between the house on Plot 2 and the preserved trees. However this would either mean pushing the houses very close together or moving them very close to the boundary with 1 Chalet Close. This would necessitate the lopping of an attractive Hornbeam which overhangs the boundary. Such an alteration would not only alter the impact on the occupier of 1 Chalet Close but would in my opinion make the houses look cramped.

5.8 The layout of the 2 houses is very different to that proposed on the previously dismissed appeal (Plan C) and the design appears to minimise the impact on adjacent properties in respect of overlooking. (Paras 2.5 and 3.6). There may however be some overlooking between the windows in the extension to Seafields and the rear of the house on Plot 2. At present this is largely screened by the spruce trees but could be opened up if there was further felling or lopping. Although the access route is close to the boundary of 1 Chalet Close I do not consider the traffic generated by the additional dwelling would have a significant impact, particularly as a similar location has previously been approved for one house.

5.9 The turning head does not meet the County Council's standards. However there appears to be space either to site a refuse collection point within 30 m of Chalet Close or to redesign the turning head. The development could therefore comply with the standard through a fairly modest alteration to the scheme, without any significant environmental impact.

5.10 Although visibility to the existing access to Chalet Close is limited the proposal would relocate the centre of the new wider access further south. This would improve visibility. Traffic would be fairly limited.

7.0 Recommendation

7.1 I recommend the appeal be dismissed.



DEPARTMENTS OF THE ENVIRONMENT AND TRANSPORT

RIGHT TO CHALLENGE THE DECISION

Under the provisions of Section 245 of the Town and Country Planning Act 1971 a person who is aggrieved by the decision given in the accompanying letter may challenge its validity by an application made to the High Court within 6 weeks from the date when the decision is given.

The grounds upon which an application may be made to the Court are:-

1. that the decision is not within the powers of the Act (that is, the Secretary of State has exceeded his powers); or
2. that any of the relevant requirements have not been complied with, and the applicant's interests have been substantially prejudiced by the failure to comply.

"The relevant requirements" are defined in Section 245 of the Act: they are the requirements of that Act and the Tribunals and Inquiries Act 1971 or any enactment replaced thereby, and the requirements of any order, regulations or rules made under those Acts or under any of the Acts repealed by those Acts. These include The Town and Country Planning (Inquiries Procedure) Rules 1988 (SI 1988 No 944), which relate to the procedure on cases dealt with by the Secretary of State.

A person who thinks he may have grounds for challenging the decision should seek legal advice before taking any action.

RIGHT TO INSPECT DOCUMENTS

Under the provisions of Rule 17(3) of The Town and Country Planning (Inquiries Procedure) Rules 1988 any person entitled to be notified of the decision given in the accompanying letter may apply to the Secretary of State in writing within 6 weeks of the notification to him of the decision, or the supply to him of the Inspector's report, whichever is the later, for an opportunity of inspecting any documents, photographs and plans appended to the report. Such documents etc are listed in an appendix to the report. Any application under this provision should be sent to the address from which the decision was issued, quoting the Department's reference number shown on the decision letter and stating the date and time (in normal office hours) when it is proposed to make the inspection. At least 3 days' notice should be given, if possible.