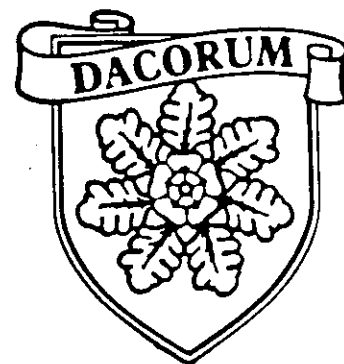


TOWN AND COUNTRY PLANNING ACT 1990

DACORUM BOROUGH COUNCIL



Application Ref No. 4/0136/95

Messrs Denton and Cornes  
25 Oakwood  
Berkhamsted  
Herts

Mr A King  
Folly Bridge House  
Bulbourne  
Tring, Herts  
HP23 5QG

DEVELOPMENT ADDRESS AND DESCRIPTION

=====

25 & 26 Oakwood (land r/o), Berkhamsted, Herts

DETACHED DWELLING

Your application for *full planning permission* dated 08.02.1995 and received on 09.02.1995 has been *REFUSED*, for the reasons set out on the attached sheet(s).

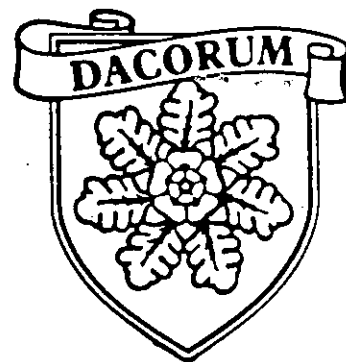
Director of Planning

Date of Decision: 31.03.1995

(ENC Reasons and Notes)

REASONS FOR REFUSAL  
OF APPLICATION: 4/0136/95

Date of Decision: 31.03.1995



1. The character of the locality is derived from detached dwellinghouses occupying spacious plots with particular regard to those to the east of the application site fronting Shootersway. These plots feature an established belt of preserved trees which make a valuable contribution to the visual amenity of the locality. The proposal would represent the undesirable sub-division of the residential curtilage of Nos. 25 and 26 which would both detract from the existing character of the area and be detrimental to the residential amenity of the locality, and would prejudice the retention of trees within the site.
2. If this development were to be repeated on similar plots fronting directly onto Shootersway to the east of the application site, the sub-division of such plots would prejudice the future of the established belt of preserved trees to the detriment of the character and visual amenity of the locality.



# The Planning Inspectorate

An Executive Agency in the Department of the Environment and the Welsh Office

Room 1404  
Tollgate House  
Houlton Street  
Bristol BS2 9DJ

Direct Line 0117-987-8927  
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Fax No 0117-987-8769  
GTN 1374-8927

A E King & Associates  
Folly Bridge House  
Bulborne  
TRING  
Herts  
HP23 5QG

Your Ref: 4/0136/95

Our Ref: T/APP/A1910/A/95/251604/P5

Date: 16 JAN 1996

Dear Sir

TOWN AND COUNTRY PLANNING ACT 1990, SECTIONS 78 AND 322 AND SCHEDULE 6  
LOCAL GOVERNMENT ACT 1972, SECTION 250(5)  
APPEAL BY MESSRS DENTON & CORNES  
APPLICATION FOR COSTS BY MESSRS DENTON & CORNES

1. I refer to your application for an award of costs against the Dacorum Borough Council which was made at the hearing held at the Civic Centre, High Street, Berkhamsted on 5 December 1995. The hearing was in connection with an appeal by Messrs Denton & Cornes against a refusal of planning permission on an application for a detached house on land at the rear of 25 & 26 Oakwood, Shootersway, Berkhamsted. A copy of my appeal decision letter is enclosed.
2. In support of your application you stated that the Council had not dealt with your clients' application on its merits. The second reason for refusal did not even mention the appeal site but simply made a statement about adjoining land to the east. The first 2 sentences of the first reason for refusal were again statements and the only reason put forward was that the development would be detrimental to the character of the area. The Council had not put forward substantial evidence to justify this view either in its statement or at the hearing.
3. In response, the Dacorum Borough Council stated that costs should only be awarded if the Council had been unreasonable and the appellant had been put to unnecessary expense as a result of the Council's actions. The application had been considered on its merits and the refusal, based on the effect the development would have on the character of the area was a sound planning reason. The point had been fully argued in the statement and at the hearing. Whilst the second reason did not contain the word precedent, it was clear from the statement and arguments made what was intended by the reason in the decision notice.
4. The application for costs falls to be determined in accordance with the advice contained in Circular 8/93 and all the relevant circumstances of the appeal, irrespective of its outcome, and costs may only be awarded against a party who has behaved unreasonably.



5. I consider that the Council did produce evidence as to the character of the area and how they considered that the proposed plot would be different and detract from that character. In my opinion the size and shape of plots and the loss of trees are all elements to be considered in determining the character and how the development would affect it; the Council put forward its view regarding these elements. Clearly the appeal was determined mainly by what I saw on site but I am satisfied that the Council was reasonable in putting forward the arguments it did even though it is clear from my decision on the appeal that I did not accept those arguments.

6. Whilst it would have been clearer had the word precedent been included somewhere in the wording of the second reason for refusal, I am satisfied that it was implied and it was certainly made clear in the written statement. The Council explained which piece of land it was referring to and again, whilst I do not agree with its conclusion, I do not consider that the Council was unreasonable in pursuing the argument at appeal. I therefore conclude that your application for an award of costs is not justified.

#### FORMAL DECISION

7. For the above reasons, and in exercise of the powers transferred to me, I hereby refuse the application by Messrs Denton & Cornes for an award of costs against the Dacorum Borough Council.

Yours faithfully

  
D E MORDEN MRTPI  
Inspector

ENC



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A E King & Associates  
Folly Bridge House  
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Your Ref:

Our Ref:

T/APP/A1910/A/95/251604/P5

Date	16 JAN 1996	PLANNING DEPARTMENT
		DACORUM BOROUGH COUNCIL
Ref		ACK.
DISPATCHED		FILE
	18 JAN 1996	

Dear Sir

TOWN AND COUNTRY PLANNING ACT 1990, SECTION 78 AND SCHEDULE 6  
APPEAL BY MESSRS A DENTON & D CORNES  
APPLICATION NO: 4/0136/95

1. I have been appointed by the Secretary of State for the Environment to determine this appeal against the decision of the Dacorum Borough Council to refuse planning permission in respect of an application for a detached house on land at the rear of 25 - 26 Oakwood, Shootersway, Berkhamsted. I conducted a hearing into the appeal on 5 December 1995. At the hearing, an application was made by Messrs Denton and Cornes for an award of costs against Dacorum Borough Council. This is the subject of a separate letter.
2. From my inspection of the site and its surroundings and from the written representations made, I consider that the main issues in this case, having regard to the prevailing policies, are whether the proposal would materially harm firstly, the character and appearance of the area and secondly, road safety along Shootersway.
3. Looking firstly at the policy background, the appeal site is located within the built up area of Berkhamsted where the relevant policies of the Hertfordshire County Structure Plan Review (HCSP), approved in June 1992, encourage development within settlements in order to protect the surrounding Green Belt. New development, however, should enhance the quality of the urban environment and should relate well to the special character of particular neighbourhoods.
4. These policies are generally re-iterated in the Dacorum Borough Local Plan (DBLP) adopted in April 1995 and further policies in that plan state that a high priority should be given to tree retention and that proposals resulting in an increase in density in an area will be assessed with particular regard to their effect on the amenity and character of the surrounding area. These policies are up to date and in my opinion, should be afforded considerable weight in the determination of this appeal.
5. Dealing with the first issue, the appeal site lies within the built up area of Berkhamsted (one of 3 towns in the Council's area identified in the development plan where development will be directed), but close to the southern edge of the town. Development



along Shootersway is at a low density in a tree lined street scene in contrast to the more recent development in Oakwood on the south side and the small culs de sac on the north side which are all at a much higher density. These developments are still well screened from Shootersway, however, and not generally apparent in the street scene.

6. The trees on the appeal site and the surrounding land are covered by a tree preservation order and the mature trees standing along most of the Shootersway frontage are an important element in forming the overall character of the area. The Council did not dispute that just a dead cherry tree and one pine tree that is not a particularly good specimen would have to be removed to allow the development to take place and I note that the proposal includes a number of new trees to be planted.

7. The Council agreed that the house would not be seen from public land within Oakwood and that the character of that development was a secondary consideration. From what I saw on site and heard in evidence, I consider that the proposed plot would be similar in size, width and depth to many others in Oakwood. Regarding Shootersway, the proposed frontage lies where there is a small gap in the trees and, in my opinion, the development, which includes new planting along the frontage, would integrate well into the character along that road.

8. I have considered the Council's view that the development would result in the loss of further preserved trees but in my view there is sufficient space around the house and there would not be a great loss of light to it bearing in mind its proposed location. I have also considered the possible precedent that might be created by allowing this appeal but, taking into account that the Council were only concerned with the 3 adjoining rear gardens to the east, I am satisfied that no precedent would be created; the situation regarding preserved trees in those adjoining gardens and the effect development would have on them is different from this appeal.

9. Taking all these factors into account I am satisfied that, subject to appropriate conditions regarding landscaping and the protection of trees, the proposed development would be acceptable.

10. Turning to the second issue, the access would be located on the outside of a fairly shallow bend in Shootersway and whilst I acknowledge that the road is fairly heavily trafficked, there would be good visibility for drivers emerging from the site provided reasonable sight line areas were kept clear of obstructions. The road is level and forward visibility for drivers approaching from the west to see traffic waiting in the centre of the road to turn right into the site would also be satisfactory. In these circumstances I conclude that, subject to the imposition of a condition requiring the provision and retention of adequate sight lines, the proposal would be acceptable and should be approved.

11. I have considered what conditions should be imposed on any permission granted and have already dealt with those regarding landscaping, trees and highways matters. Full details of the materials to be used were not included in the application and in this location I agree that they should be subject to the Council's approval. Regarding the removal of permitted development rights for extensions, the formation of hard standings and incidental curtilage buildings, whilst I acknowledge the Council's concern about the trees on the site they are protected through the tree preservation order and there are only 2 other preserved trees of any

significance remaining (centrally located on the proposed rear boundary). In these circumstances I do not consider that the conditions as proposed are necessary.

12. I have taken account of all other matters raised at the hearing and in the written representations, including those made in letters from several nearby occupants but have found nothing of such significance as to outweigh the material planning considerations that have led to my conclusions.

13. For the above reasons and in exercise of powers transferred to me, I hereby allow this appeal and grant planning permission for the erection of a detached house on land at the rear of 25 & 26 Oakwood (with access onto Shootersway), Berkhamsted, in accordance with the terms of the application (No 4/0136/95) dated 8 February 1995 and the plans submitted therewith, subject to the following conditions:

1. the development hereby permitted shall be begun before the expiration of 5 years from the date of this letter;

2. details of the materials to be used on the external surfaces of the development hereby approved shall be submitted to, and approved in writing by, the local planning authority, before the development commences;

3. sight lines of 2.4m by 35m shall be provided at the junction of the proposed access with Shootersway and these shall be retained clear of obstruction between 0.6m and 2m above carriageway level;

4. no works or development shall take place until full details of all proposed landscaping (which shall include details of the access and driveway construction) and the proposed times of planting have been agreed in writing with the local planning authority; all planting shall be carried out in accordance with the approved details and at the approved times;

5. if within a period of 2 years from the date of the planting of any tree or shrub, or of any planted in replacement for it, is removed, uprooted or destroyed or dies, or becomes, in the opinion of the local planning authority, seriously damaged or defective, another tree or shrub of the same size and species as that originally planted shall be planted at the same place, unless the local planning authority gives its written consent to any variation;

6. in this condition 'retained tree' means an existing tree which is to be retained in accordance with the approved plans and particulars and paragraphs (a) and (b) below shall have effect until the expiration of 1 year from the date of the occupation of the dwelling:

(a) no retained tree shall be cut down, uprooted or destroyed, nor shall any retained tree be topped or lopped other than in accordance with the approved plans and particulars, without the prior written approval of the local planning authority. Any topping or lopping shall be carried out in accordance with British Standard 3998 (Tree Work);

(b) if any retained tree is removed, uprooted or destroyed or dies, another tree shall be planted at the same place and that tree shall be of such size and species and shall be planted at such time as may be specified in writing by the local planning authority;

(c) the erection of fencing for the protection of any retained tree shall be undertaken in accordance with the approved plans and particulars before any equipment, machinery or materials are brought on to the site for the purposes of the development and shall be retained until all equipment, machinery and surplus materials have been removed from the site. Nothing shall be stored or placed in any area fenced in accordance with this condition and the ground levels within those areas shall not be altered, nor shall any excavation be made, without the prior written consent of the local planning authority.

14. An applicant for any consent, agreement or approval required by a condition of this permission has a statutory right of appeal to the Secretary of State if consent, agreement or approval is refused or granted conditionally or if the authority fail to give notice of their planning decision within the prescribed period.

15. This letter does not convey any approval or consent which may be required under any enactment, bye-law, order or regulation other than Section 57 of the Town and Country Planning Act 1990.

Yours faithfully



D. E. MORDEN MRTPI  
Inspector



**APPEARANCES**

**FOR THE APPELLANTS**

- Mr A King BA(Hons) BPL MRTPI - Principal, Andrew King & Associates.
- Mrs T A Denton - appellant, 25 Oakwood, Berkhamsted.

**FOR THE LOCAL PLANNING AUTHORITY**

- Miss A Bochnacki - Planning Assistant, Dacorum BC.

**INTERESTED PERSONS**

- Mr B J Norris - Brunswick House, Shootersway, Berkhamsted.
- Mr A Taylor - 1 Shootersway Park, Berkhamsted.

**DOCUMENTS**

- Document 1 - List of persons present at the Hearing.
- Document 2 - Council's letter of notification and list of addressees.
- Document 3 - Letters of representation.

**PLANS**

- Plan A(i)-(ii) - Plans submitted with original planning application.
- Plan B - Plan submitted with 1987 Consent to Fell application.
- Plan C - Plan submitted with 1992 Consent to Fell application.
- Plan D - Location plan of appeal site and surrounding area.