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Council's ref 4/0196-197/92EN
Your ref PS/JE/90/91

Messrs Raffety Buckland Residential
Land Planning and Development
Division
PO Box 1
1 Crendon Street
HIGH WYCOMBE
Bucks
HP13 6LE

Our ref APP/C/92/A1910/617858-9

Date 12 August 1993

Dear Sirs

SECTION 174 OF THE TOWN AND COUNTRY PLANNING ACT 1990
PLANNING AND COMPENSATION ACT 1991
LAND AT REAR OF 5 & 6 ARDEN CLOSE, BOVINGDON, HERTS
APPEALS BY MR D J SANDELL AND MR I MASH

1. I am directed by the Secretary of State for the Environment to refer to your clients' appeals against the enforcement notices issued by Dacorum Borough Council on 31 December 1991, alleging a material change of use of land at the rear of 5 and 6 Arden Close, Bovingdon, to use as residential garden, without the grant of planning permission.

2. The appeals were made on grounds (a) and (g) in section 174(2) of the 1990 Act before its amendment by the Planning and Compensation Act 1991, now grounds (a) and (f) in section 174(2) as amended.

3. I am also directed to refer to the Order of the Queen's Bench Division of the High Court of Justice given on 12 March 1993, remitting the decision on the above mentioned appeal to the Secretary of State for re-hearing and re-determination following the Borough Council's successful appeal to the High Court, on a point of law, under section 289 of the Town and Country Planning Act 1990, against the decision of an Inspector appointed by the Secretary of State to determine the appeal. In that decision letter, dated 12 June 1992, the Inspector upheld the enforcement notice, subject to the deletion of the first requirement of the notice, dismissed the appeals and refused to grant planning permission on the applications deemed to have been made under section 177(5) of the 1990 Act. The grounds on which the Court made its order were that the Inspector erred in law, by failing to take into account or consider the third requirement of the enforcement notice, namely the cessation of the use of the land as a residential garden, and that such an omission affected the decision to delete the first requirement of the notice, namely the removal of all fences from the land. The Secretary of State now has to re-determine the appeals in the light of the Order of the High Court, the parties' original written representations to the

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Inspector, their further written representations submitted following remission of the appeal to the Secretary of State.

4. In the Department's letter of 20 May 1993, the parties were informed of the procedure the Secretary of State proposed to adopt to re-determine the appeals, and were invited to submit further written representations. Further submissions were made by the Council on 28 May 1993, and on behalf of your clients on 8 June and 16 July 1993.

REASONS FOR THE DECISION

The appeal on ground (a)

5. No additional submissions on the planning merits of the appeals were put forward by the Council, but, on behalf of your clients, you submitted that the appeal land had a clear and undisputed history as an access road to a residential dwelling, and its hard surface still existed below a thin layer of turfing. The land was divided from the adjoining agricultural land by an existing line of trees running alongside the former access drive and its retention as a residential garden area would have an insignificant impact on the adjoining green belt. Your clients would accept conditions requiring the dark staining of the fencing along the south western boundary of the two sites, and a requirement that no further buildings should be erected. These submissions have been carefully considered, and although the whole of the decision letter is at large for re-determination, it is concluded that no significant new facts have been put forward in addition to the material considered by the Inspector in 1992. His comments and conclusions on the planning merits of the appeals are set out in paragraphs 4 to 16 of the decision letter dated 12 June 1992, and are for the most part unaffected by the findings of the High Court. His findings set out in paragraphs 4 to 13 and 15 to 16 of the letter, covering the inappropriateness of the development in the Green Belt, its effects on the appearance of the area, the history of the land and the need to preserve the Green Belt against such developments, are accepted as they stand and adopted for the purposes of this re-determination of the appeals. Paragraph 14, which is affected by the Inspector's misapprehension about the requirements of the notice and has a bearing on his conclusions in respect of the appeals on ground (f), is not accepted. As the enforcement notices do require the use of the land as residential gardens to cease, any justification for the retention of the fences, which must clearly make a contribution to an appearance of a piecemeal urban intrusion into the Green Belt, is substantially reduced. For these reasons, the appeals on ground (a) must fail accordingly.

The appeal on ground (f)

6. You do not appear to have sought to argue on your clients' behalf that the second and third requirements of the enforcement notice, namely the removal of all sheds and other domestic paraphernalia from the land, and the cessation of the use of the land as residential garden, were excessive. With regard to the first requirement, namely the removal of the fences from the land, you submitted in 1992 that the erection of the fence was permitted development as defined in Part 2 to Schedule 2 of the Town and Country Planning General

Development Order 1988; and that the fence did not exceed two metres in height, was not adjacent to a highway, and was not within the curtilage of a listed building.

7. In your further representations, you submitted that if the fencing was required to be removed from the appeal sites there would be no physical barrier, except for the hedging along their south-western boundaries, to contain the cattle grazing on the adjoining agricultural land; that the owner of the adjoining farm would almost certainly erect a means of enclosure along the same boundary, to restrict the straying of his cattle onto land he did not own and possibly causing damage thereto; and that such a means of enclosure could include the erection of a two metre high fence under the adjoining landowner's permitted development rights. You further submitted that the details of the Somak Travel case referred to by the Council were totally dissimilar to the present case, as they had involved one use and land ownership and you found it inconceivable that the residential use of the first and second floor maisonette could recommence while an access into that unit was retained from the ground floor. In that case, the removal of the staircase was a logical and reasonable requirement. In the present case, however, it was necessary to define the separate land ownerships, and a fence was required, not only by your clients but by the adjoining landowner to prevent his cattle from straying on to and causing damage to adjoining land. You considered that the erection of the fence was not an integral part of the change of use of the land to residential garden, but was a specific requirement of the adjoining landowner as a part of the sale contract to ensure that his cattle could not stray on to your clients' land. The requirement to remove the fencing was unreasonable and excessive, and was not essential or requisite to secure the cessation of the use of the land. It was suggested that the Secretary of State might consider that the use of the land was acceptable, but that all the domestic paraphernalia should be removed and permitted development rights removed from the land.

8. The Council submitted that, irrespective of any rights under Part 2 Schedule 2 to the Town and Country Planning General Development Order 1988 (GDO), the removal of the fence was requisite for the cessation of the use of the land as residential garden. The enclosure of the land for agricultural use would be both impractical and unnecessary. The fences constituted an inherent element of the change of use, and, as such, could not be considered permitted development under the terms of the GDO. The Council considered their view to be supported by the judgement in the case of Somak Travel v SSE and London Borough of Brent (1987), which held that operational development, although not in itself requiring the benefit of planning permission, was caught by the requirements of the change of use enforcement notice. They submitted that the circumstances in the present case were comparable, and that there was no entitlement to fence the land.

9. The parties' further submissions on the ground (f) appeal have been carefully considered. No representations have been made in respect of the need for the second and third requirements of the notice, namely the removal of sheds and other items from the land, and the cessation of the unauthorised use, and the Secretary of State is satisfied that these requirements are necessary to remedy the breach of planning control. With regard to the first requirement of the notice, namely the removal of all fences from the land, it is

noted that it was found in the Somak Travel case referred to by the parties, that a local planning authority may require the removal of operational developments (whether or not they are "permitted development") as part of a requirement to cease an unauthorised use, if that operational development is part and parcel of, or integral to, that change of use, and necessary to restore the land to its condition before the development took place. The view is taken that the present case has significant similarities with the circumstances of Somak Travel, in that the fencing around the appeal sites has been provided as a direct consequence of the change of use to residential gardens, in order to enclose the separate land ownerships and exclude farm animals, and would not have been required at all had the land been acquired, for example, to preserve the open aspect at the rear of the properties. It is further concluded that the removal of the fences is necessary to restore the land to its condition before the development took place. While it is accepted that fencing may be provided under GDO permitted development provisions, by either your clients or the adjoining landowner, and that it would be possible to require the use of the land for garden purposes to cease (although perhaps difficult to enforce) while allowing the fences to remain in place, it is concluded that the requirement to remove them is not unreasonable, bearing in mind the effects of the development on the Green Belt referred to above, and should not therefore be deleted from the notice. The other requirements of the notices are also unchanged, and the appeals on ground (f) accordingly fail.

FORMAL DECISION

10. For the reasons given in paragraphs 5 and 9 above, the Secretary of State hereby upholds the enforcement notices, dismisses the appeals and refuses to grant planning permission on the applications deemed to have been made under section 177(5) of the 1990 Act.

RIGHT OF APPEAL AGAINST THE DECISION

11. This letter is issued as the Secretary of State's re-determination of the appeals. Leaflet C, enclosed for those concerned, sets out the right of appeal to the High Court against decision.

Yours faithfully

A J WRIGHT
Authorised by the Secretary of State
to sign in that behalf

Dacorum Borough Council
Planning Department
Civic Centre Marlowes
Hemel Hempstead
Herts HP1 1HH

Rafferty Buckland
PO Box 1
30 High Street
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APPELLANT:D J Sandell
5 Arden Close
Bovingdon

HP3 OQS

TOWN AND COUNTRY PLANNING ACT 1990

APPLICATION - 4/00196/92/ENA

R/O 5 ARDEN CLOSE BOVINGDON
APPEAL AGAINST ENFORCEMENT-CHANGE OF USE FROM AGRICULTURE TO GARDEN LAND

Your application for Enforcement Notice Appeal dated and received on 21 February 1992 has been **REFUSED**, for the reasons set out overleaf.

Development Control Manager Date of Decision: 12 June 1992

REASONS FOR REFUSAL APPLICABLE TO APPLICATION: 4/00196/92/ENA

Date of Decision: 12 June 1992

The Planning Inspectorate

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

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Your Reference:
90/91
Council Reference:
4/0196/92; 4/0197/92
Our References:
T/APP/C/92/A1910/617858/P6
T/APP/C/92/A1910/617859/P6
Date
12 JUN 92

Gentlemen

TOWN AND COUNTRY PLANNING ACT 1990, SECTION 174 AND SCHEDULE 6
PLANNING AND COMPENSATION ACT 1991
APPEALS BY MR D J SANDELL AND MR I MASH
LAND R/O 5 ARDEN CLOSE, BOVINGDON, HERTS AND AT 6 ARDEN CLOSE, BOVINGDON, HERTS

1. I have been appointed by the Secretary of State for the Environment to determine the above-mentioned appeals. These appeals are against enforcement notices issued by the Dacorum Borough Council concerning the above-mentioned lands. I have considered the written representations made by you, by the Council and by Bovingdon Parish Council. I inspected the site on 1 June 1992.

Notice A - 5 Arden Close, Bovingdon

Notice B - 6 Arden Close, Bovingdon

2. The terms of the two notices are the same, other than that they relate to different, albeit adjoining, sites. The details of both notices are as follows:-

a. The date of the notices is 11 February 1992.

b. The breach of planning control alleged in the notices is the material change of use of the land from agriculture to use as a residential garden.

c. The requirements of the notices are (1) the removal of all fences from the land and (2) the removal of all sheds and other domestic paraphernalia from the land.

d. The period for compliance with the notices is six months.

3. Your clients' appeals were made on grounds (a) and (g) as set out at s.174(2) of the 1990 Act prior to its amendment by the Planning and Compensa-

tion Act 1991. As the appeals were made subsequent to the commencement of s.6(1) of the 1991 Act, they are proceeding on the equivalent grounds of s.174(2) as now amended. These are:

> (a) that, in respect of any breach of planning control which may be constituted by the matters stated in the notice, planning permission ought to be granted;
>
> (f) that the steps required by the notice to be taken, or the activities required by the notice to cease, exceed what is necessary to remedy any breach of planning control which may be constituted by those matters or, as the case may be, to remedy any injury to amenity which has been caused by any such breach.

The appeals on ground (a)

4. The appeal sites lie in the Metropolitan Green Belt as defined in the Council's adopted District Plan of 1984. The current draft local plan proposes no change to the green belt boundary in this locality. The green belt boundary here follows the south west edge of the Grange Farm estate, of which No's 5 and 6 Arden Close form part. The green belt boundary runs along the north east boundaries of the appeal sites. The gardens of No's 5 and 6 Arden Close have been extended, across the green belt boundary, incorporating the appeal sites into the domestic gardens. I gather from your representations that the appeal sites had at one time formed a section of a long driveway serving Bovingdon Grange, a driveway which is no longer in use.

5. With regard to the appeals on ground (a) I consider that there are three main issues. These concern: first, whether the use of the appeal sites as residential gardens can be regarded as a use appropriate to the green belt; second, the effects of the developments on the appearance of the sites and adjoining land, bearing in mind the green belt policies; and third, whether there are very special circumstances in these cases to justify the grant of planning permission in the green belt, where there is a general presumption against inappropriate development.

6. With regard to the first issue paragraph 13 of PPG2 indicates that inside a green belt planning permission wil not be given, except in very special circumstances, for development other than for the purposes of agriculture and forestry, outdoor sport, cemeteries, institutions standing in extensive grounds or other uses appropriate to a rural area. Having regard to this advice, and to the planning policies specific to this particular area, I take the view that the use of the appeal sites as residential gardens cannot be regarded as a use appropriate to a green belt or rural area.

7. Turning to the second issue I noted at my inspection that both appeal sites have been laid to grass and have sheds and items of garden play equipment upon them. They have both been fenced on three sides by close boarded fencing just under two metres in height. The appeal sites have the appearance of domestic gardens and of forming part of the built up area of Bovingdon. I take the view, as a matter of fact and degree, that if planning permission were granted in these cases, the appeal sites could be regarded thereafter as part of the curtilages of the dwellinghouses concerned. The sites could then be used for a range of purposes incidental to the enjoyment of the dwellings, and substantial structures could be built upon them, without the need for express planning permission, under the provisions of the General Development Order (the GDO). Such developments would reinforce the appearance of the appeal sites as forming part of the built up area of the village.

8. By contrast I noted at my inspection that the long lengths of the former driveway which have not been incorporated in domestic gardens have the appearance of a tract of land comprising two hedges (in places a single hedge), with many hedgerow trees, separated by a central strip of grassland, and have an undeveloped, rural atmosphere.

9. In the circumstances it seems to me that both appeal developments represent an intrusion of urban development into undeveloped, rural, land, severely harmful to the open and rural appearance of the land itself and of the adjoining countryside. The imposition of conditions on a planning permission, and other means of planning control, would not overcome this weighty objection. I accept that the sites are screened to some extent by the hedgerows and fencing, and no doubt more landscaping and camouflaging could be undertaken. But the fact that a development can be screened is not a good reason for granting permission in the countryside. That is a line of thinking which could be repeated too often, and could result in the loss of the character of the countryside. Bearing in mind the planning policies for the area, which seek to protect the countryside and to prevent encroachment, I conclude that the grant of planning permission in this case would cause demonstrable harm to the appearance of the sites and of the adjoining area, an interest of acknowledged importance.

10. I turn to the third issue. You say that the sites had been used for residential purposes, as a driveway, for many years, and that the gravel driveway had constituted an urban feature. I do not attach great weight to these contentions. Before the Grange Farm estate had been built the driveway would have been located in open countryside. I take the view, on the balance of probability, and as a matter of fact and degree, that at that time, and more recently, the greater part of the long drive, including the lengths now forming the appeal sites, would not have had an urban appearance and would not have formed part of a residential curtilage. It would simply have formed a rural driveway. Moreover the driveway ceased to be used as such at least twenty years ago. I do not regard these as very special circumstances justifying inappropriate development in the green belt.

11. You say that the hedgerow on the south west sides of the appeal sites and of the former driveway forms a clear and defensible green belt boundary. But the adopted local plan has already defined the edge of the green belt here, in a manner which I regard as clear and defensible. Government advice in PPG2 is that green belt boundaries should be established on a long term basis and should be altered only in exceptional circumstances. Bearing in mind that the adoption of the boundary you suggest would involve the loss of a sizeable amount of green belt land I do not regard your arguments on this point as forming very special circumstances justifying the grant of planning permission.

12. You say that the hard surface of the former driveway makes the land unsuitable for agriculture. I do not agree. Other sections of the former driveway appeared to me to have been used for grazing in association with the field to the west. In any event unsuitability for agriculture is not a good reason for allowing green belt land to be used for residential purposes.

13. You say that the appeal developments represent a suitable use of land which would otherwise be neglected and unsightly. But PPG2 makes clear that the quality of the rural landscape is not a material factor in the designation or continued protection of green belts.

14. You point out that the notices do not require the use of the sites as residential gardens to cease and note that the erection of fences less than two metres high, in the present circumstances, is permitted development under

the provisions of the GDO. I do not accept the suggestion implicit in your representations that the dismissal of the appeals on ground (a) would achieve nothing in terms of protecting the appearance of the area and safeguarding green belt land. If the present notices were upheld it would be open to the Council, if necessary, to issue further notices, formally requiring the use of the appeal sites as residential gardens to cease. Even if the boundary fences on the appeal sites were to stay in place the removal of the sheds and other items from the land, as formally required by the notices, would give the land a much less urbanised appearance than it has now. The refusal of planning consent on the deemed applications would also serve to protect green belt land, for the reasons given above.

15. I have considered your contentions about the development at Darley Ash, but the circumstances of that case are plainly different from those of the appeal sites. There are no special circumstances in that case to justify the grant of consents in the cases before me.

16. Having considered all of the evidence I conclude that there are no special circumstances of sufficient weight to justify setting aside the specific and convincing objections to the appeal developments set out above. The appeals on ground (a) fail.

The appeals on ground (f)

17. You say that the erection of the fences on the appeal sites is permitted development by virtue of the provisions of Part 2 of Schedule 2 to the GDO 1988. I agree with that, as the fences are less than two metres high and meet the other conditions specified in the GDO.

18. The Council say that the removal of the fences is requisite for the cessation of the use of the land as residential gardens. In my opinion that contention does not undermine your point set out above. In the first place the notices before me do not formally require the uses to cease. Secondly, while it might be desirable, in securing the cessation of the unauthorised uses, that the fences be removed, I do not regard it as essential or requisite. Thirdly I take the view that the removal of the fences would be excessive, given that such a step is not essential to secure the cessation of the unauthorised uses, and that, were the fences to be taken down, they could be re-erected at once without the need for express planning permission, under the provisions of the GDO. The Appellants are entitled, under the provisions of that Order, to enclose land by fencing or other means of enclosure, within the conditions laid down in the Order. However they are not entitled, of course, to use the land so enclosed for the purposes of residential gardens without express planning permission. I have already made clear that such planning permissions will not be granted in these cases.

19. The appeals on ground (f) succeed, therefore, to the extent that requirement (1) will be deleted from Schedule 3 to the notices. Requirement (2) will stand, as I regard that as reasonably necessary to remedy the breach of planning control.

Other matters

20. Although the Council refer in their representations to the cessation of the unauthorised uses their notices do not formally require such cessation. In my opinion it would cause injustice to the Appellants were I to extend the requirements of the notices at this stage to include that requirement. However it would be open to the Council, if they considered it necessary, to issue further notices explicitly requiring the cessation of the uses.

21. I have examined all of the other matters raised but find nothing to change my decisions.

FORMAL DECISIONS

Notice A The appeal by Mr D J Sandell, reference T/APP/C/92/A1910/617858

22. For the above reasons and in exercise of the powers transferred to me I hereby direct that Schedule 3 to the notice be varied by the deletion of Step 1 in its entirety. Subject thereto I dismiss your client's appeal, uphold the notice and decline to grant planning permission on the application deemed to have been made under Section 177(5) of the 1990 Act.

Notice B The appeal by Mr I Mash, reference T/APP/C/92/A1910/617859

23. For the above reasons and in exercise of the powers transferred to me I hereby direct that Schedule 3 to the notice be varied by the deletion of Step 1 in its entirety. Subject thereto I dismiss your client's appeal, uphold the notice and decline to grant planning permission on the application deemed to have been made under Section 177(5) of the 1990 Act.

RIGHT OF APPEAL AGAINST DECISIONS

24. This letter is issued as the determination of the appeals before me. Particulars of the rights of appeal against the decisions to the High Court are enclosed for those concerned.

I am Gentlemen
Your obedient Servant

A J J STREET MA(Oxon) DipTP MRTPI
Inspector

ENC

TOWN AND COUNTRY PLANNING ACT 1990
AS AMENDED BY PLANNING AND COMPENSATION
ACT 1991) - SECTION 174.

Comments on a statement by Dacorum Borough Council in respect of an appeal by Mr. D.J. Sandell against an enforcement notice requiring the cessation of the use of land at 5 Arden Close Bovingdon as a residential garden, the removal of all fences, sheds and all other domestic paraphernalia from the land.

L.A. ref: 4/0196/92/EN and 4/0197/92 EN.

D.O.E. ref: APP/C/92/A1910/617858 - 60.

April 1992.

Raffety Buckland,
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HP11 2AQ.

1. **SITE AND SURROUNDINGS.**

1.1 The description of the site and surroundings clearly confirms that the appeal site formed the driveway to Bovingdon Grange, a residential dwelling, and as such has a history of residential usage.

1.2 As indicated in the grounds of appeal, a part of the hard surfaced drive that existed previously to the land being enclosed for garden purposes will be available for the appointed Inspector to view at the site visit.

1.3 The plan accompanying the enforcement notice clearly defines the fence line that existed when the driveway served Bovingdon Grange, and clearly the same situation exists today with the exception of the side boundary fences erected to divide the gardens.

2. **POLICIES.**

2.1 It is accepted that the appeal site lies within the Metropolitan Green Belt, but it is submitted that the relevant special circumstances set out in the grounds of appeal justify an exception being made to normal policy in this particular case.

2.2 The Council themselves have, as recently as November 1991, recognised that there are exceptions to normal policy by granting permission for the change of use of agricultural land to residential land at Darley Ash, Chipperfield Road, Bovingdon under reference 4/1428/91. A copy of that permission is attached hereto.

2.3 Whilst it is accepted that different special circumstances applied in the quoted case, an area of land measuring approximately 100 metres x 27 metres at its widest point, was involved and a loss of agricultural land resulted on the basis that it would enhance the appearance of a building which itself had only recently been granted planning permission for its change of use from a redundant agricultural building of some merit to a dwelling house. A copy of the officer's report is attached.

2.4 In this case we have a situation where planning permission has been granted in the Green Belt for a development in the Green Belt as very special circumstances pertained, and this in turn has resulted in a further planning permission being granted because the fact that the first planning permission was granted has itself generated special circumstances justifying a further grant of planning permission for a development that normally would not be permitted in the Green Belt.

2.5 It is contended that the particular merits of this case, although different from those forming part of the Darley Ash proposal, are sufficient to justify planning permission being granted for the continued use of the land as a residential garden and the retention of the 2 metre high fence.

3. PLANNING CONSIDERATIONS.

3.1 Whilst the boundary of the Green Belt is tightly drawn around the edge of villages, there are, as can be seen from the information contained in the foregoing section, cases where exceptions should be made to normal policy.

3.2 A natural tree-lined boundary forms the south western boundary of the appeal site and it provides an obvious clear definition for the edge of the Green Belt whilst, at the same time, softening the appearance of the boundary fence when viewed across the open farm land to the west.

3.3 If the local authority are concerned that the appearance of the fence should be further softened by dark staining, the appellants are prepared to accept a condition requiring that such staining be carried out.

3.4 It is understood that Dacorum Borough Council have served further enforcement notices where gardens of properties in Pembridge Close have been extended to include the former driveway to Bovingdon Grange, and obviously a 'dog-toothed' effect would not result if all the home owners backing onto this strip of land were to carry out a similar exercise. In any event it is unreasonable to argue that The result would be most unsatisfactory and visually intrusive for reasons already set out.

4. **COMMENTS.**

4.1 Clearly the local authority accept that the land the subject of the appeal has previously been used for residential purposes ancillary to Bovingdon Grange. The subject land, prior to the top soil being spread by the appellant, consisted of a hard surfaced drive which could not reasonably be used for agricultural purposes and the presence of that hard surface is very material to the circumstances of the appeal proposal and in terms of land use.

4.2 The enclosure line indicated on the Ordnance Survey extract indicates the clear previous presence of an artificial means of enclosure forming the south western boundary of the appeal site and, in addition to the other material factors submitted in support of this appeal, provides another compelling argument in favour of permission being granted.

4.3 From the comment in paragraph 1.5 contained in the grounds of appeal it appears that the local authority's main objection to the appeal proposal is the close boarded fence which can clearly be softened in appearance if required.

4.4 The local authority appear to accept that the original driveway to Bovingdon Grange may well have provided a reasonable boundary to the Green Belt where commenting on paragraphs 1.6 and 1.7 of the grounds of appeal, and it is submitted that as individual residents have been including the relevant strip of land within their gardens at different times should not alter that consideration. In any event it appears as though, subject to receiving planning permission, all the relevant

gardens will be extended in the near future and the piecemeal intrusion, which is not accepted, will not materialise.

4.5 A clear and defensible boundary to the Green Belt will result.

5. **CONCLUSIONS.**

5.1 The factors which strongly support the request that planning permission be granted for the use of the land as a residential garden including the retention of the boundary fence can be summarised as follows:-

(i) The appeal site has previously been used for many years for residential purposes.

(ii) The land consists of a hard surfaced drive not suitable for agricultural use.

(iii) An artificial means of enclosure is clearly shown on the Ordnance Survey extract accompanying the enforcement notice and that means of enclosure has been replaced with the present 2 metre high fence.

(iv) The presence of an existing well established tree line along the south western boundary of the appeal site prevents the appeal proposal creating any adverse visual impact and the tree line, in itself, provides an obvious and defensible Green Belt boundary.

5.2 From the conclusion presented by the local authority, again it comes forward that their main concern is the boundary fence and the removal of structures from the land, whilst allowing the continuance of use of the land does not seem to be of importance. If the use is to be permitted to continue, the replacement of the close boarded fence with a post and rail construction seems to achieve nothing and the appellant would suggest that, if necessary, a condition requiring the fence to be dark stained would be far more appropriate.

5.3 The Secretary of State is accordingly urged to grant planning permission for the use of the land for residential garden purposes.

28 NOV 1991

4/1428/91FL. CHANGE OF USE FROM AGRICULTURAL LAND TO RESIDENTIAL GARDEN.
'DARLEY ASH', CHIPPERFIELD ROAD, BOVINGDON.
APPLICANT: MR AND MRS SCACCO

DESCRIPTION - The application site is located off the Chipperfield Road, to the south of 'Darley Ash Lodge' which adjoins this section of highway. In September 1983 planning permission (Ref 4/1012/83) was granted for the use of 'Darley Ash' for residential purposes, and, in August this year, planning permission (Ref 4/1007/91FM) was granted for the provision of a double garage and access road to serve the building.

The present proposal involves the incorporation within the residential curtilage of the dwellinghouse of a wedge of existing agricultural land to the north of the approved position of the detached garage. This tapering elongated wedge of land to the front of the dwellinghouse will extend at its widest 27 m beyond the northern flank wall of the garage and will measure just under 100 m in length. An integral part of the proposal involves a comprehensive landscaping scheme encompassing a variety of trees and shrubs. A hedge comprising of hawthorn, field maple and holly supplemented by a range of trees will be planted along the entire length of the wedge of land.

POLICIES

Hertfordshire County Structure Plan 1986 Review

Policies 1, 3, 47, and 56

Dacorum District Plan

Metropolitan Green Belt; Policies 1, 9, and 24

Dacorum Borough Local Plan Deposit Draft

Policies 1, 8, 10, 88, 94, and 99

REPRESENTATIONS

Bovingdon Parish Council

1. Bovingdon Parish Council feels that, without a proper outline of the land which is to be included, it cannot pass comments.

2. The land concerned is Green Belt and by turning it into a garden would lead to the next step of seeking to build on it. There is a need to clarify the actual area of land involved.

3. In principle the Parish Council is against the loss of Green Belt land.

(Note: A further, more detailed plan, has been sent to the Parish Council and comments are awaited).

Director of Technical Services

(Woodlands)

The proposed landscaping scheme will enhance the visual amenity of the locality.

Hertfordshire Building Preservation Trust

No objections

CONSIDERATIONS - The site is located within the Metropolitan Green Belt where there are specific restrictions upon new development. Policy 3 of the Borough Local Plan Deposit Draft, which reinforces the strategy of Hertfordshire County Structure Plan 1986 Review, specifies that only agriculture, forestry, mineral extraction and certain open air recreational uses are appropriate forms of development within the Green Belt. Notwithstanding this, Policy 99 of the Deposit Draft confirms that in the countryside, the reuse of redundant buildings is regarded as an appropriate exception to Green Belt policy, subject to a range of environmental criteria. In this context, it should be noted that it was for environmental reasons that the use of 'Darley Ash' for residential purposes was regarded as acceptable within the Green Belt in 1983. The Committee were advised then that, inter alia, "the buildings, although attractive, are not considered worthy of listing, but would clearly improve in appearance were some use to recommence which would enable some restoration work to be carried out".

With regard to a site featuring redundant buildings within the Green Belt, Policy 99 confirms that buildings worthy of retention are ones which "make a positive contribution to the landscape and rural character of the surrounding area". In view of the quality of the building and its most attractive setting within the rural landscape, the issue in the case of this application is whether the incorporation of the additional land within the curtilage of 'Darley Ash' would further consolidate the valuable contribution that the building makes to its surroundings, whilst being mindful that there would be a small loss of agricultural land as a consequence of the change of use.

The landscaping scheme which is an essential element of the proposal will enhance the setting of this locally important historic building by providing a visual buffer with the open adjoining agricultural land and integrating well with the landscaped access road approved in August this year. The species and type of trees and hedges proposed are appropriate to the rural setting and the landscaping scheme is welcomed by the Woodlands Manager in this somewhat open landscape. In view of the beneficial effects of the proposed landscaping scheme which is in the long term interests of the visual amenity of the Green Belt, these advantages outweigh the consequences of the marginal loss of agricultural land.

In order to safeguard the appearance of the site in the long term, the exercise of normal 'permitted development' rights relating to the erection of buildings and fencing and formation

of hard-surfaced areas for parking within the land to be incorporated should be controlled by condition, in addition to conditions relating to landscaping.

RECOMMENDATION - That planning permission be **GRANTED** subject to the following conditions:

1. The development to which this permission relates shall be begun within a period of five years commencing on the date of this notice.

2. All planting and seeding comprised in the approved details of landscaping shown on Drawing No 10055/015 shall be carried out in the first planting season following the incorporation of the agricultural land within the residential curtilage of 'Darley Ash' as hereby permitted and any trees, hedges, or shrubs which within a period of five years from the incorporation of the land are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species unless the local planning authority gives written consent to any variation, and for the purposes of this condition a planting season shall be deemed to commence in any one year on 1 October and to end on 31 March in the next following year.

3. Notwithstanding the provisions of the Town and Country Planning General Development Order 1988 (Schedule 2 Part 1 Classes E and F and Part 2 Class A) there shall be no development carried out without the express written permission of the local planning authority.

4. Upon the incorporation of the land within the residential curtilage of 'Darley Ash', the local planning authority shall be notified in writing of the carrying out of the development hereby permitted.

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