



# The Planning Inspectorate

*DAJ* *JF* *RD*

Room 1404  
Tollgate House  
Houlton Street  
Bristol BS2 9DJ

Direct Line 0117-9878927  
Switchboard 0117-987 8000  
Fax No 0117-9878769  
GTN 1374 8927  
E-Mail ENQUIRIES.PINS@GTNET.GOV.UK

(i) Mr G D and Mrs A C Parker  
36 Friars Field  
Northchurch  
BERKHAMSTEAD  
HP4 3XE

(ii) Mr R J Price  
34 Friars Field  
Northchurch  
BERKHAMSTEAD  
HP4 3XE

D.P.				D.C.				S.C.				S.M.				S.P.			
<b>16 JAN 1998</b>																			

Your Ref: \_\_\_\_\_  
 Council Ref: \_\_\_\_\_  
 (i) 4/0588/97ENA  
 (ii) 4/0589/97ENA  
 Our Ref: \_\_\_\_\_  
 (i) T/APP/C/97/A1910/646897-8  
 (ii) T/APP/C/97/A1910/646899  
 Date: \_\_\_\_\_

**15 JAN 1998**

Dear Mr and Mrs Parker and Mr Price

## TOWN AND COUNTRY PLANNING ACT 1990, SECTION 174 AND SCHEDULE 6 PLANNING AND COMPENSATION ACT 1991 LAND AT 34 AND 36 FRIARS FIELD, NORTHCHURCH

1. As you know I have been appointed by the Secretary of State for the Environment to determine your appeals against 2 enforcement notices issued by Dacorum Borough Council concerning the above-mentioned land. I have considered the written representations made by you and the Council and also those made by Northchurch Parish Council. I inspected the site on 16 December 1997.

### The Notice relating to 34 Friars Field

2. (1) The notice was issued on 17 March 1997.
- (2) The breach of planning control as alleged in the notice is, without permission, change of use of land from public amenity space to private residential garden.
- (3) The requirements of the notice are:-
  1. Dismantle the boundary fences, annotated 'A' and 'B,' on the attached plan, which cross the River Bulborne.
  2. Dismantle the boundary fence, annotated 'C' on the attached plan, which is located on the northern bank of the River Bulborne.
  3. Permanently remove the fences referred to in points 1 and 2 above, from the site.
  4. Replace and restore the boundary fencing as detailed on plan number FFN.02 approved as part of planning permission reference 4/0198/85 dated 23 March 1985.

5. Repair and make good any damage to the northern bank of the River Bulborne and the amenity area previously described.
6. Cease the use of the land hatched blue on the attached plan as residential garden.

(4) The period for compliance with these requirements is 3 months.

### **The Notice relating to 36 Friars Field**

3. (1) The notice was issued on 17 March 1997.
- (2) The breach of planning control as alleged in the notice is, without permission, change of use of land from public amenity space to private residential garden.
- (3) The requirements of the notice are:-
  1. Dismantle the boundary fences, annotate 'D' and 'E,' on the attached plan, which cross the River Bulborne.
  2. Dismantle the boundary fence, annotated 'F' on the attached plan, which is located on the northern bank of the River Bulborne.
  3. Permanently remove the fences referred to in points 1 and 2 above, from the site.
  4. Replace and restore the boundary fencing as detailed on plan number FFN.02 approved as part of planning permission reference 4/0198/85 dated 23 March 1995.
  5. Repair and make good any damage to the northern bank of the River Bulborne and the amenity area previously described.
  6. Cease the use of the land hatched blue on the attached plan as residential garden.

### **Validity of the notices and grounds of appeal**

4. In your representations you have questioned the validity of the notices. The notices do however contain all the essential ingredients as required by Section 173 of the 1990 Act as amended by the 1991 Act and they are sufficiently logical and precise for you to know what is required. The points you raise about validity are points that can be dealt with under your various grounds of appeal. I have powers under Section 176 to correct any defect, error or mis-description in the notice and to vary the terms of the notice. I consider that the notices are legally valid.

5. The appeals are proceeding on grounds (a), (b), (c), (d), (e) and (f) as set out in Section 174(2) of the 1990 Act as amended.

### **The sites and their surroundings**

6. Numbers 34 and 36 Friars Field are 2 similar detached houses each having an enclosed open space to the rear. The north-eastern part of these open spaces is that shown hatched blue on the plans attached to the notices, (the "blue" land). These end sections contain the dry bed of the River Bulborne and its northern bank which supports various trees.

The fences referred to in the notices as fences 'A' to 'H' are those that enclose the blue land. There are gates under the fences that cross the river bed.

7. To the north-west of the blue land are the rear gardens of dwellings at 10 and 11 Alyngton. These include within them further parts of the bed of the River Bulborne. Further north-west there is an area of open space, private to the north of the river bed and public to the south.

8. To the south-east of the blue land there is an unenclosed section of the bed of the river and its northern bank. This leads to a road called Mandelyns. There is a public footpath that runs from Mandelyns northwestwards along by the side of the north bank of the river bed. The blue land is adjacent to this footpath and fences 'C' and 'F' separate the river bed and its northern bank from the path. When the footpath reaches the curtilage of 10 Alyngton it turns through 90° and travels between houses to a cul-de-sac head.

9. During my site inspection I measured the total length of the plot at 34 Friars Field, from the front (adjacent to Herons Elm) to the rear (fence 'C'). I found this to be some 52.2m.

#### **Ground (e)**

10. You accept that the notices were correctly served on yourselves. You consider, however, that the Council need to demonstrate that the notices have been properly served as required by Section 172 of the Act.

11. There is a difficulty here because there has been a longstanding problem concerning the ownership of some or all of the blue land. At one time it was thought that housing developers had a legal interest in the land but apparently this proved not to be so. In the end the Council's Land and Administrative Department confirmed that it had not been possible to trace who has title to the land. Theoretically therefore there might be someone who should have been served with the notice but who has not.

12. In my view, however, having regard to the history of efforts by yourselves and the Council to establish ownership, it is reasonable to now assume, for practical purposes, that everyone who needs to be served with a notice has been served. The appeal on ground (e) therefore fails.

13. I would also comment that in a situation such as this, involving a degree of uncertainty about ownership, it is not to my mind absolutely certain that you have a right of appeal against the notice. However, your appeals have been accepted and there is a clear, practical need to resolve the matters referred to in the notice.

#### **Ground (b)**

14. You accept that the blue land is used for private residential garden purposes. You say however that the land has never been used as public amenity space.

15. The Council appear to me to accept that the blue land has never been physically used as public amenity space. Rather it was once their intention that it should be part of the public open space system of the area.

16. I shall therefore correct the notices by deleting the words "from public amenity space" from paragraph 3 of the notices. It is not necessary for an enforcement notice to describe the use of the land prior to the alleged material change of use. Subject to this correction I find that the matter referred to in the notices, ie the change of use of land to private residential garden, has occurred as a matter of undisputed fact. The appeals on ground (b) therefore fail.

### **Ground (c)**

17. You maintain that some, or alternatively, all of the blue land has planning permission for use for private residential garden purposes.

18. Numbers 34 and 36 Friars Field were built pursuant to planning permission 4/198/85. The Council say that the approved plan is drawing FFN.02 as referred to in the notices. The plan is rather confusing because its "layout" drawing and its "survey" drawing depict the river Bulborne differently. In the former it and its northern bank could be regarded as being wholly within the development site. In the latter the river appears to be half in the development site. Moreover, although the drawings purport to be at 1:200 scale my copy of plan FFN.02 is not actually at that scale.

19. The Council have forwarded with their appeal statement a further plan which they say is part of FFN.02. It looks to me to be so but with some extra information added. This part-plan is, I believe, close to 1:200 scale. The length of the development site is marked as being "about 141 feet," or 43m, and when measured with a scale-ruler the site is indeed "about" 141 feet. I measure it at 45m (147 feet). I conclude that planning permission 4/198/85 relates to 2 residential curtilages that are each a maximum of 45m long.

20. Comparing this to the total length of plot now enclosed, some 52m, as measured during my site visit, there is a discrepancy of some 7m. The area to which the notices relates (the blue land) is, however, more than 7m in extent (ie north-east-to-south-west). My conclusion is that the Council have identified too much land as being in breach of planning control. In my view the south-west third (roughly) of the blue land has planning permission for private residential garden use by virtue of planning permission 4/198/85 but the larger north-east part, including all the northern bank of the river, does not. This is supported by fence posts on site which tend to suggest that a rear boundary fence used to exist along the mid-line of the river bed. I do therefore accept that the modified enforcement notice plans submitted by you correctly show that part of the blue land does indeed have planning permission for use as private residential garden.

21. You have also argued that as planning permission has been granted for the residential development of Alyngton all of the land included in that development site can be used for residential purposes. None of the approved plans of the Alyngton development, however, show private garden space going right up to the river Bulborne. I do not therefore consider that the northern half of the bed of the Bulborne or its northern bank, within the blue land, have planning permission for use for private residential garden purposes.

22. I shall correct the plans accompanying the enforcement notices to accord with my findings. I attach to this letter my corrected plan for both notices which shows the areas in breach of planning control hatched in black (the 'black' land). These areas do not have planning permission for private residential garden use and that use is, in my view, materially different in character to the previous status of the land which appears to me to have been largely unused river bed and bank. I conclude that in respect of the black land a material change of use has occurred and the appeals on ground (c) fail.

#### **Ground (d)**

23. To succeed on ground (d) you need to show that, on the balance of probability, the black land on the plan accompanying this letter has been used more or less continuously as private residential garden since 17 March 1987 (ie over 10 years prior to the date of issue of the notice). The evidence needs to be precise and unambiguous.

24. You have submitted a statement from Mr D A Palmer, the former owner of No.34, dated 2 July 1997. In it he says "*I confirm that during the period following our purchase of 34 Friars Field in October 1986 I had to clear rubbish and remove debris from the River Bulborne on a number of occasions. I cannot be precise as to dates but this would have been in late 1986 and early 1987. I can be precise in this in that the river was flowing strongly, which it only did prior to the May Bank Holiday. In subsequent months its flow was reduced. The fence at that stage had not been removed since to remove the wheelbarrow load of rubbish..... I had to go around the front of the house and along the road and footpath.*" This suggests to me that the black land was originally outside Mr Palmer's garden, beyond his rear fence, and that it was only enclosed by the re-siting of the fence after March 1987.

25. This is corroborated by Mr Parker's letter to the Council dated 26 May 1987. In this letter Mr Parker says that "*it therefore seems a pity that a small piece of land between the end of my garden and the pathway shown on the attached drawing is unadopted. As a consequence it is uncared for and is already becoming a convenient place where a number of local residents put some of their rubbish .... I would like to offer to acquire the above-mentioned piece of land..... I am also aware that my next door neighbour, Mr D Palmer, 34 Friars Field, has also expressed an interest in acquiring the apparently unadopted land between the end of his garden and the pathway.*"

26. Having regard to the above comments I consider that, on the balance of probability, the areas of land shown hatched black have not been used as private garden space for the whole of the 10 years going back to 17 March 1987. The comments indicate that the use as private garden did not begin until at least several months after March 1987. The appeals on ground (d) therefore fail.

#### **Ground (a)**

27. The breach of planning control is the use of the black land as private garden. That use has been facilitated by the erection of fences enclosing the black land. In the case of *Murfitt v. SSE and E. Cambridgeshire* (1980) JPL598 it was held that where ancillary operational works have been carried out in connection with an unauthorised use of land a notice may, where the works are part and parcel of the use, require the removal of those works even though the allegation does not make specific reference to them. I consider

therefore that I can take into account the impact of the fences when considering the impact of the unauthorised use.

28. Having regard to all the representations made I consider that the main issue raised by these appeals is the impact that the use of the black land and its associated fences has on the pleasant appearance and character of the locality. Part of the pleasantness of this residential area for the public is the presence of the relatively natural, rural bed of the Bulborne between Mandelyns and the black land. I have had regard to all relevant policies in the statutory development plan especially to policies 1, 8, 9 and 105 of the adopted Dacorum Borough Local Plan which seek to ensure that the appearance of residential development is enhanced by the provision of open amenity space.

29. I consider that the unauthorised use has, to date, caused little intrinsic harm to the natural appearance and character of the bed and bank of the River Bulborne. The black land retains a pleasant mainly rural quality. I recognise that you want to retain this natural appearance.

30. However, future occupiers of 34 and 36 Friars Field might have different wishes. If planning permission were granted then the black land could be "domesticated" in various ways, for example, by the erection of sheds or the construction of ornamental bridges. This would, in my view, be a pity because the inherent natural quality of the river bed and its banks could be lost.

31. Of much greater significance, however, is the impact of the associated fences. These have shut off from the public the view of the pleasant river bed and bank at the end of your rear gardens. Instead of the public footpath having a pleasant natural, rural feature along its southern edge it now has a high close-boarded fence hard up against it. With the fence adjacent to the north the path now has a tunnel-like character which, in my view, is far inferior to the pleasant character it could have if the fences were removed. I consider, therefore, that the unauthorised development has caused significant harm to the pleasant appearance and character of the locality and is contrary to the provisions of the local plan.

32. You refer to the situation at 10 and 11 Alyngton where the Council have decided that it is not expedient to take enforcement action against the enclosure of the Bulborne into the rear garden of those dwellings. There is however a significant difference between those properties and yours. The public footpath does not follow the riverside through 10 and 11 Alyngton. The riverbed and bank at the end of those 2 dwellings is consequently much less visible to the public. I do not, therefore, consider that the Alyngton situation establishes a precedent that I have to follow.

33. You also argue that if your fences are removed the black land could be used for tipping. In my view, however, this is speculation and is an insufficient reason to justify the grant of planning permission.

34. The Council have a further concern about the current situation. They believe that the tunnel-like character of the footpath could result in safety problems for pedestrians. I do not, however, agree that this is a matter of any great weight. It seems to me that any safety problems, if they exist, could equally arise if the fences were removed. My conclusion is,

nonetheless, that planning permission ought not to be granted, because of the harmful visual impact of the unauthorised development and the appeals on ground (a) therefore fail.

### **Ground (f)**

35. The requirement to remove fence 'E' which is on the boundary with 10 Alyngton is, in my view, excessive. With fence 'E' in place the black land would still be open to public view. I shall therefore vary the notice by deleting the requirement to dismantle and remove fence 'E.'

36. The requirement to replace and restore fencing as detailed on plan number FFN.02 is, in my view, excessive. Such replacement is not necessary to remedy the breach of planning control. I shall therefore delete that requirement.

37. I could see no evidence of any damage to the northern bank of the Bulborne. I shall therefore delete the requirement to repair the alleged damage.

38. The requirement to cease the use of the relevant land (the black land) as residential garden is not excessive. It is what is necessary for the breach to be remedied.

39. The requirement to dismantle and remove fences 'A', 'C', 'D', and 'F' is necessary and reasonable to remedy the breach of planning control. The Murfitt case referred to above is legal authority for the ability of a notice to require the removal of ancillary operational development intended to facilitate an unlawful use. I shall however re-word the requirement to make it clear that the lengths of fencing involved relate to the black land rather than the slightly larger blue land.

40. I have had regard to the fact that having removed the fencing referred to in the notice you might subsequently erect new fences in similar positions. In addition I recognise that a requirement must not prohibit any activity which the landowner is entitled to carry on. However you are not the owners of the black land. I consider therefore that you have no legal entitlement to erect fences on the black land and that if erected they could be removed.

41. The removal of fences will open up your garden to public view and you will no doubt wish to provide some new fencing or other means of enclosure on your own land for privacy and security. Where and how this is done are matters for you to decide.

42. Arising out of the above your appeals succeed to some extent on ground (f) and I shall vary the notices accordingly.

### **Other Matters**

43. I have considered all other matters referred to in the representations but none lead me to alter my conclusions on your appeals.

**Formal Decision:-**

44. For the above reasons and in exercise of the powers transferred to me I hereby correct and vary the notices by:-

- (i) deleting the words "from public amenity space" from paragraph 3 of the notices.
- (ii) substituting the plan attached to this letter for the plans attached to the notices.
- (iii) deleting all the words in paragraph 5 of the notices and replacing them by these words:-

"A. Cease the use of the land hatched black on the attached plan as residential garden. .

B. Permanently remove all fences within the land hatched black and bordering it on its north-east and south-east sides."

Subject thereto I hereby dismiss these appeals, uphold the enforcement notice and refuse to grant planning permission on the applications deemed to have been made under Section 177(5) of the 1990 Act as amended.

**Rights of Appeal**

45. This letter is issued as determination of the appeals before. Particulars of the rights of appeal against my decision to the High Court are enclosed for those concerned.

Yours faithfully



P A TAYLOR BSc(Hons) DipTP MRTPI  
Inspector