



DACORUM BOROUGH COUNCIL

To Chipperfield Homes
Kings Works
Kings Lane
Chipperfield

A E King
Dovecot Barn
Alder Park Meadows
Long Marston
Tring

Three detached houses
at rear of 350 Chambersbury Lane, Hemel Hempstead

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 30.1.89 and received with sufficient particulars on 1.2.89 and shown on the plan(s) accompanying such application.

The reasons for the Council's decision to refuse permission for the development are:-

The density of development proposed is excessive on a limited site and displays a lack of cohesion with surrounding development. For this reason, the proposal would be out of character with the general nature of residential development in the vicinity and injurious to the amenities of immediately adjoining properties.

Dated 8th day of June 1989

Signed *W. B. B. B. B.*

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.



**Planning Inspectorate
Department of the Environment**

Room 1404 Tollgate House Houlton Street Bristol BS2 9DJ
Telex 449321

Direct Line 0272-218 927
Switchboard 0272-218811

A/967X/CO/P

4/0928/90

~~1/2/90~~
~~2/9/90~~

GTN 1374					
PLANNING DEPARTMENT					
DACORUM BOROUGH COUNCIL					
					Your reference
					Ack.
C.P.O.	T.C.P.M.	D.P.	D.C.	B.C.	Other reference
					T/APP/A1910/A/89/131015/P4
Received					Date
					1 JUN 1990
					31 MAY 90
Comments					

Mr A E King BA(Hons) BPL METRI
Dovecot Barn
Alder Park Meadows
Long Marston
TRING
Herts HP23 4RB

Sir

TOWN AND COUNTRY PLANNING ACT 1971, SECTION 36 AND SCHEDULE 9
AS AMENDED BY THE HOUSING AND PLANNING ACT 1986
LOCAL GOVERNMENT ACT 1972, SECTION 250(5)
APPEAL AND APPLICATION FOR COSTS BY CHIPPERFIELD HOMES LTD
APPLICATION NO:- 4/0204/89

1. I have been appointed by the Secretary of State for the Environment to determine the above mentioned appeal. This appeal is against the decision of the Dacorum Borough Council to refuse planning permission for the erection of 3 dwellings and the extension of the estate road on land off Woodfield Drive, Hemel Hempstead. I held a local inquiry into the appeal on 13 March 1990. At the inquiry an application for costs was made against the Council on behalf of your clients, and I deal with that matter separately below.

THE APPEAL

2. From my inspection of the site and its surroundings and consideration of the representations made, I regard the main issues to be the effect of the proposal upon first, the character and appearance of the area and secondly, upon the amenities of neighbouring residents.

3. Woodfield Drive is developed on both sides with substantial detached dwellings that occupy most of the width of each plot. More recently this road has been extended with the erection of a further 11 dwellings that comprise Woodfield Gardens. These new houses are set within narrower plots than those in Woodfield Drive and appear to be more modest in size, but overall I consider that they are similar in character to the earlier development. Most of the Woodfield Gardens houses are set out as a linear extension to Woodfield Drive. However, the houses on plots 7, 8 and 9 are sited at right angles to the remainder of the development, and in my view the orientation of these 3 houses establishes a form to Woodfield Gardens onto which the appeal proposal represents a logical extension.

4. It was submitted by the Council that the density of the proposal was higher than that of the remainder of Woodfield Gardens, and that this resulted in a cramped form of development. From the evidence before me, however, I do not find either that the density of this scheme is materially different from that of the adjoining houses in Woodfield Gardens, or that the space around each dwelling is appreciably less. I accept that the density is higher than that of some of the nearby established development, particularly those houses on the north-west side of Chambersbury Lane. However, the proposed scheme is physically well-removed from



those houses, and I am mindful that permission has recently been granted for the erection of 5 houses at a similar density to this proposed scheme, on the adjoining land formerly occupied by Nos 348 and 350 Chambersbury Lane. In conclusion on the first issue, therefore, I find no substantial evidence to indicate that the proposal would detract from the character or appearance of the locality.

5. Turning to the second issue, the Council expressed concern at the proximity of the proposed houses to those nearly completed in Woodfield Gardens and those recently permitted in Chambersbury Lane. This concern focussed upon the reduction in the sizes of some garden areas to approved houses that was necessitated by this scheme, and the fact that the outlook from some dwellings would be directly onto the flank walls of the proposed houses. There was, however, no dispute that the distances between the permitted and the proposed properties and the lengths of the proposed rear gardens were equal to, or greater than, the minimum distances usually applied by the Council. I am also mindful of the advice contained within Annex A to Circular 22/80 that the functional requirements within a development are for the most part a matter for the developer and his customer. Accordingly, I do not find this aspect of the Council's concern to be of overriding importance.

6. The Council and local residents also referred to potential overlooking from the dwellings on plots 12 and 13 into the gardens and rooms of No. 12 Woodfield Drive and No. 352 Chambersbury Lane; and an anticipated loss of light to the latter house was also referred to. The boundary between these 2 existing houses and the appeal site is defined by a tall, dense beech hedge. Consequently, overlooking would only arise from the upstairs windows of the proposed houses which, as you stated at the inquiry, would be between 13 and 14 m from their rear boundaries. In any urban development a degree of mutual overlooking is inevitable, and I consider that this length of back garden is sufficient to ensure that such overlooking as might occur would not materially detract from the privacy that the occupiers of both the existing and the proposed houses might reasonably expect. I accept that the dwellings on plots 12 and 13 would be situated due south of No. 352 Chambersbury Lane. But again I consider that there would be a sufficient distance between the existing and the proposed houses to ensure that there would not be a significant reduction in the amount of either daylight or sunlight reaching the rooms or garden of No. 352.

7. Concern was expressed with regard to the effect of the traffic likely to be generated by these 3 dwellings upon highway safety on Woodfield Gardens, Woodfield Drive, and at its junction with Bedmond Road. I note, however, that no objection to this proposal was raised by the highway authority, and from the evidence before me I regard the traffic arising from these 3 dwellings as unlikely to affect materially highway safety in the locality.

8. In summary, therefore, I consider that this scheme should be allowed. In reaching this decision I have had regard to the conditions that should be attached to a permission. The Council has suggested 5 conditions, but at the inquiry it became evident that the condition requiring improvements to the highway was not relevant to this scheme. The other conditions relate to the approval of materials, the retention of the existing boundary hedges and landscaping of the site; and in the interests of the visual amenities of the area I regard each of these conditions to be necessary. I propose, however, to amend the condition requiring the retention of the hedges, to include the existing hedge between plot 12 and plots 10 and 11 in Woodfield Gardens.

9. I have taken account of all other matters raised including the several letters submitted by local residents. Their planning objections to the scheme have,

however, been covered in the preceding paragraphs of this letter and I do not find that these objections alter my conclusions on the main planning issues.

10. 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 3 dwellings and the extension of the estate road on land off Woodfield Drive, Hemel Hempstead in accordance with the terms of the application (No. 4/0204/89) dated 30 January 1989 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. Prior to the commencement of development details of the materials to be used externally shall have been submitted to, and approved by, the local planning authority, and the development hereby permitted shall be carried out in the materials so approved.

3. No part of the existing hedgerows on the north-east boundary of plots 12 and 13, the south-east boundary of plot 12 and the south-west boundary of plot 14, shall be removed without the written consent of the local planning authority. During construction works these hedges shall be protected by a fence, that has been approved in writing by the local planning authority prior to the commencement of development.

4. All planting, seeding or turfing shown on Drawing No. BW102 shall be carried out in the first planting and seeding seasons following the occupation of the buildings or the completion of the development, whichever is the sooner; and any trees or plants which within a period of 5 years from the completion of the development die, 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.

11. 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 decision within the prescribed period.

12. This letter does not convey any approval or consent which may be required under any enactment, byelaw, order or regulation other than section 23 of the Town and Country Planning Act 1971.

THE APPLICATION FOR COSTS

13. In support of the application for costs, counsel for your clients referred to Circulars 2/87 and 14/85, and Planning Policy Guidance: General Policy and Principles (PPG1), and stated that the behaviour of the Council had been unreasonable. It was submitted that if Government guidelines had been followed that this appeal would never have taken place. On 2 occasions the Council's Development Control Committee had been advised by officers that a refusal of permission would be unsustainable, and this advice had been ignored. It was accepted that planning authorities are not bound to follow the advice of their officers, but where they are then not able to produce reasonable planning grounds for their decision, then Government guidance makes it quite clear that costs may be awarded against them. It was explicitly admitted by the Council's witness that Government advice and Circulars were not specifically considered by the Committee and that these matters

were not brought to its attention. As recently as 27 February 1990 the Council had been offered a third opportunity to reconsider the scheme on its planning merits, or request an adjournment of the inquiry, but this it had declined to do.

14. In reply the Council submitted that members are entitled to disregard officers' advice so long as there are good planning grounds for so doing. In this instance the reason for refusal was complete, precise, specific and relevant to the application. If the claim for costs was to succeed it must be shown that the Council had failed to substantiate the reason for refusal and this had not been the case. Government Circulars and advice are at the back of every member's mind in making a decision, so there is no need for these documents to be precisely referred to with every application. With regard to the letter of 27 February 1990, this had raised no new facts so it was considered that there was no need to refer the scheme back to Committee. It was also submitted that your proof of evidence had been received only 2 weeks before the inquiry, rather than the 3 weeks specified in the regulations.

CONCLUSIONS

15. In determining this application for costs, I have borne in mind that in planning appeals the parties are normally expected to meet their own expenses irrespective of the outcome of the appeal, and that costs are awarded only on the grounds of unreasonable behaviour. Accordingly I have considered the application for costs in the light of Circular 2/87, the appeal papers, the evidence submitted by the parties and all the relevant circumstances in the appeal.

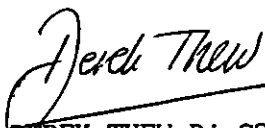
16. In this instance I consider that the Council's reason for refusal and the evidence submitted in support of it had a number of shortcomings. The reason for refusal refers to the density of development being excessive and out of character with what is surrounding, but in my view the evidence submitted failed to demonstrate either any material difference between the density of this scheme and that of the adjoining permitted schemes, or to quantify precisely in what way the proposal was out of character with the area. In addition the evidence in respect of the effect upon the amenities of neighbouring properties referred to specific variations between, and alterations to, plot sizes but did not offer any substantial evidence of harm. I am mindful of the number of objections received from local residents. PPG1, however, makes it clear that local opposition is not a ground for refusing permission unless it is founded upon valid planning reasons which are supported by substantial evidence. In this instance I do not consider that either the objections of local residents or the evidence of the Council had sufficient substance reasonably to support the reason for refusal. With regard to the late issue of your proof of evidence it is not apparent that this put the Council to any unnecessary expense or disadvantage at the inquiry. Consequently, I consider that the appellants were put to unnecessary expense in having these matters brought before the Secretary of State. Therefore I conclude that a full award of costs is justified.

FORMAL DECISION ON COSTS

17. Accordingly, a formal order which I have made in exercise of my powers under Section 250(5) of the Local Government Act 1972 and Section 36 and Schedule 9 of the Town and Country Planning Act 1971 as amended by the Housing and Planning Act 1986

is enclosed with this letter. You are now invited to submit to the Chief Executive of the Council, to whom a copy of this letter and order have been sent, details of the costs referred to with the view to reaching agreement on the amount.

I am Sir
Your obedient Servant



~~DEREK THEW DipGS ARICS~~
Inspector

ENCS

APPEARANCES

FOR THE APPELLANT

Mr Barrington Myers

- of Counsel, instructed by
Messrs Kelly, Nichols & Blayney,
Solicitors, 6 Station Road, Watford
WD1 1EQ.

He called:

Mr Andrew Edward King BA(Hons)
BPL MRTPI

- Planning Consultant of Dovecot
Barn, Alder Park Meadows, Long
Marston, Tring, Herts.

FOR THE PLANNING AUTHORITY

Mrs Amanda Walker

- Senior Solicitor with the Council.

She called:

Mrs Hazel Diana Bassadone

- Borough Councillor for the
Leverstock Green Ward.

INTERESTED PERSONS

Mr John Engledew

- Secretary of the Leverstock Green
Village Association,
360 Chambersbury Lane, Hemel
Hempstead HP3 8LW.

Mr David Hill

- 352 Chambersbury Lane, Hemel
Hempstead HP3 8LW.

DOCUMENTS

Document 1 - List of persons present at the inquiry.

Document 2 - Letter of notification of the inquiry and distribution list.

Document 3 - Ten letters of response to the notification.

Document 4 - Council's Development Control Committee report - 8 June 1989
(extract).

Document 5 - Council's Development Control Committee report - 7 September 1989
(extract).

Document 6 - Letters from Kelly, Nichols & Blayney to the Council - 27 February
1990 and 2 March 1990.

Document 7 - Letter from the Council to Kelly, Nichols & Blayney - 2 March 1990.

DOCUMENTS (CONTD)

Document 8 - Planning Decision Certificate 4/0578/86.

Document 9 - Planning Decision Certificate 4/0531/88.

Document 10 - Planning Decision Certificate 4/0203/89.

PLANS

Plan A - Application Location Plan - scale 1:1250.

Plan B - Application Site Layout (drawing BW102) - scale 1:200.

Plan C - Application House Type A - scales 1:50, 1:100.

Plan D - Application House Type B - scales 1:50, 1:100.

Plan E - Tracing of application site layout - scale 1:200.

Plan F - Bundle of plans - application 4/0578/86.

Plan G - Bundle of plans - application 4/0531/88.

Plan H - Bundle of plans - application 4/0203/89.

LOCAL GOVERNMENT ACT 1972
TOWN AND COUNTRY PLANNING ACT 1971 AS AMENDED BY THE HOUSING AND PLANNING ACT 1986

ORDER AS TO COSTS
THE BOROUGH OF DACORUM

I, Derek John Thew, in exercise of my powers under section 250(5) of the Local Government Act 1972 and Section 36 of and paragraph 5 of Schedule 9 to the Town and Country Planning Act 1971, as amended by Section 49 of and paragraph 8 of Schedule 11 to the Housing and Planning Act 1986, and of all other enabling powers, HEREBY ORDER that the Council of the Borough of Dacorum (hereinafter called "the Council") shall pay to Chipperfield Homes Ltd their costs of the inquiry, such costs to be taxed in default of agreement as to the amount thereof.

Subject of the inquiry

An appeal under section 36 of the said Act of 1971 against the decision of the Council to refuse planning permission for the erection of 3 dwellings and the extension of the estate road on land off Woodfield Drive, Hemel Hempstead, Hertfordshire.

Inquiry date

13 March 1990

Signed.

Derek Thew

INSPECTOR

Date:

31 MAY 90