

TOWN & COUNTRY PLANNING ACTS, 1971 and 1972



DACORUM BOROUGH COUNCIL

To E Smith Esq
Highbanks
Glendale
Hemel Hempstead
Herts

A E King
Dovecot Barn
Alder Park Meadows
Long Marston

..... Two Dwellings (Outline)
.....
at Land to the rear of Dunedin, Chesham Road,
..... Wigginton, Nr Tring, Herts

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 dated17.2.87..... and received with sufficient particulars on23.2.87..... and shown on the plan(s) accompanying such application.

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

The site is within the Metropolitan Green Belt on the adopted Dacorum District Plan wherein permission will only be given for use of land, the construction of new buildings, changes of use of existing buildings for agricultural or other essential purposes appropriate to a rural area or small scale facilities for participatory sport or recreation. No such need has been proven and the proposed development is unacceptable in the terms of this policy.

- The adopted Dacorum District Plan shows the site to be within the Chilterns Area of Outstanding Natural Beauty wherein the policy of the local planning authority seeks to preserve the appearance of the area, encourage agriculture and conserve wildlife by the restriction of further development having particular regard to the siting, design and external appearance of buildings. The proposed development is unacceptable in the terms of this policy.

Dated Ninth day of April 19 .. 87 ..

Signed

Wim Bamford

SEE NOTES OVERLEAF

P/D.15

Chief Planning Officer

NOTE

1. If the applicant is aggrieved by the decision of the local planning authority to refuse permission or approval for the proposed development, or to grant permission or approval subject to conditions, he may appeal to the Secretary of State for the Environment, in accordance with s.36 of the Town and Country Planning Act 1971, within six months of receipt of this notice. (Appeals must be made on a form obtainable from the Secretary of State for the Environment, Tollgate House, Houlton Street, Bristol, BS2 9DJ). The Secretary of State has power to allow a longer period for the giving of a notice of appeal but he will not normally be prepared to exercise this power unless there are special circumstances which excuse the delay in giving notice of appeal. The Secretary of State is not required to entertain an appeal if it appears to him that permission for the proposed development could not have been granted by the local planning authority, or could not have been so granted otherwise than subject to the conditions imposed by them, having regard to the statutory requirements, to the provisions of the development order, and to any directions given under the order.
2. If permission to develop land is refused, or granted subject to conditions, whether by the local planning authority or by the Secretary of State for the Environment and the owner of the land claims that the land has become incapable of reasonably beneficial use in its existing state and cannot be rendered capable of reasonably beneficial use by the carrying out of any development which has been or would be permitted, he may serve on the Borough Council in which the land is situated, a purchase notice requiring that Council to purchase his interest in the land in accordance with the provisions of Part IX of the Town and Country Planning Act 1971.
3. In certain circumstances, a claim may be made against the local planning authority for compensation, where permission is refused or granted subject to conditions by the Secretary of State on appeal or on a reference of the application to him. The circumstances in which such compensation is payable are set out in s.169 of the Town and Country Planning Act 1971.



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Department of Transport

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PLANNING DEPARTMENT
DACORUM DISTRICT COUNCIL

Your reference

Our reference

T/APP/A1910/A/87/071987/P4

Date

Received 23 DEC 1987

21 DEC 87

Comments

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 E SMITH
APPLICATION FOR COSTS BY DACORUM BOROUGH COUNCIL
PLANNING APPLICATION NO: 4/0262/87

1. As you know 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 2 detached dwellings on land at the rear of 'Dunedin', Chesham Road, Wigginton, near Tring. I held a local inquiry into the appeal on 10 November 1987.

APPEAL

2. The appeal site is a roughly rectangular area of 1,530 sq m on the west side of Chesham Road, about 1½ miles south of the village of Wigginton. It is a rough grassed area with several trees on it, mostly birch. To the north there is an interwoven wooden fence and the blank flank wall of the southernmost of 3 relatively modern houses. These are on the western side of a short private road, which gives access to the site. To the east of the site is a hedge and a pair of older semi-detached houses fronting Chesham Road and backing onto the site. To the south is what appears to be an area of open storage, screened by a line of substantial trees. The post and wire fence on the western boundary separates the site from a large garden area belonging to a bungalow which faces onto the farm road which links the access road to Chesham Road.

3. From what I saw of the site and its surroundings, heard in evidence and read in the representations, I believe that the main issue in this case is whether or not your client's proposal would have an adverse effect on the character of the surrounding countryside, bearing in mind its designation as green belt and part of the Chilterns Area of Outstanding Natural Beauty.

4. For your client it was argued that the proposed dwellings would not cause any demonstrable harm to the green belt nor the area of outstanding natural beauty, because the appeal site is not in the open countryside but enclosed by residential development. As a result it makes no material contribution to the purpose of the green belt in this area. The proposed dwellings would be infilling or a rounding-off of a small group of houses, not an extension into the

countryside. It was suggested that in reaching their decision the council had failed to take account of the changes in Government policy which had been set out in various circulars issued since the previous appeal regarding this site had been dismissed in 1983.

5. On the other hand the council and others believe that your client's proposal would be contrary to local planning policies, in particular Policies 2 and 21 in the approved Hertfordshire Structure Plan and Policies 1 and 23 in the Dacorum District Plan. These are aimed at controlling development in the green belt and preserving the appearance of the Area of Outstanding Natural Beauty. The council were of the opinion that recent Government circulars had made no material change to Government policy as it related to the development of the appeal site, and no special reasons had been put forward as to why these dwellings should be allowed in the green belt. They would not be infilling, but an unwarranted extension or consolidation of an area of scattered development. The council had consistently opposed the development of the appeal site when considering previous planning applications.

6. I note that the application is in outline only and that all matters of detail are reserved for decision at a later stage. I understand that the sketches submitted with the application are illustrative only, and the conventional condition on reserved matters would be acceptable to both your client and the council. It is agreed that the site has no agricultural value, and that its development would have little effect on local wildlife. Also I am aware that the area of green belt which includes the appeal site was designated when the Hertfordshire Structure Plan was approved in 1979. However green belt policies have been applied in this area since an extension to the Metropolitan Green Belt was mooted in 1968.

7. As regards Government policy, it seems to me that although Circular 14/85 says that there is a presumption that development should be allowed unless it causes demonstrable harm to interests of acknowledged importance, it is clear that the Government have been to some pains to point out that they still attach great importance to the protection of green belts, and that one of their aims in doing so is to safeguard the countryside against further encroachment. Furthermore I do not think that the presumption against inappropriate development in the green belt, reiterated in Circular 14/84, has been diminished by the more recent circular. In addition, as I understand it, one of the main aims of designating the Chilterns Area of Outstanding Natural Beauty is to preserve the landscape by controlling the appearance and siting of buildings. It seems to me that these philosophies have been taken on board in the relevant policies in the structure plan and district plan.

8. The area south of Wigginton is a plateau of generally open countryside, which is well wooded with a good many broad-leaved trees and hedges. As a result the buildings which are scattered across it, generally on large sites, have relatively little impact on its overall rural character, as they are well-screened and often isolated from each other among the fields and woods. The small group of houses near the appeal site is an exception to this pattern. It is centred on the 6 pairs of semi-detached older houses on the western side of Chesham Road south of the appeal site. There are some modern houses associated with them and a caravan site on the eastern side of the road as well. Even the houses in this group are spread out, in contrast to the 3 modern houses immediately north of the appeal site which appear to be much closer together than is usual in this area. I believe that by and large this group of houses is small enough and dispersed enough to be regarded as part of the countryside, rather than an identifiable built-up settlement within it. Even if the group were to be seen as a hamlet, it seems to me that your client's proposal does not meet the conventional definition of infilling, ie the filling of a gap in an otherwise built-up frontage, because it is at the rear of a property and at the end of a short line of others.

9. As I saw, the appeal site is surrounded by the grounds of houses, rather than the buildings themselves which stand close to Chesham Road or the farm road. As a result on the southern and western sides of the site there is garden and other open land, and a field close to the south-western corner of the site with other fields beyond. I believe that the site appears clearly to be part of the open area around this group of houses, and as such has a contribution to make to the aims of both the green belt and the area of outstanding natural beauty. To my mind development on the site would be seen as an extension of the housing group and because the group is small the impact of the extra houses would appear that much greater. Therefore my conclusion is that your client's proposal would have an adverse effect on the character of the surrounding area.

10. I have considered all the other points raised. I understand the concern that the proposed dwellings would overlook the rear of Dunedin and Ivy Cottage and also that the proposed access road might be very close to them, because they stand only a few feet from the site boundary. I also note that there is concern that allowing this appeal could lead to further applications on neighbouring land and elsewhere in the green belt. However it was suggested for your client that the particular circumstances of this case were unique and would not create a precedent. I accept your client's assurance that the drainage for the new dwellings would be completely independent. In addition I note the point that permission for 2 of the houses immediately to the north of the appeal site had been granted when green belt policies were already in operation in this area, but each case must be treated on its merits. There was some speculation as to what might happen to the site if planning permission were not granted, but it seems to me that none of these matters is of sufficient weight as to justify over-turning my conclusion on the main issue.

11. For the above reasons, and in exercise of the powers transferred to me, I hereby dismiss this appeal.

APPLICATIONS FOR COSTS

12. In applying for an award of costs against your client the council argued that this application was little different to that which was dismissed on appeal in 1983. In the council's view the circumstances of the case had not changed materially, and in accordance with the advice in Circular 2/87 they had drawn your client's attention to this and the possible implications of proceeding with an appeal. Furthermore, the grounds of appeal had not referred to the alleged change in Government policy, which had taken up a good deal of the inquiry. This created extra work for the council, which should be recognised in the award of costs.

13. For your client it was said that the council had throughout adopted a simplistic and slavish policy approach when considering the proposal, and in its actions since. They had failed to take account of the changes which there had been since the previous appeal, particularly the issue of new Government circulars. Furthermore the Inspector in dismissing the appeal in 1983 had said that there were insufficient grounds to justify a departure from the established green belt policy. Your client was justified in trying to show that now there might be sufficient grounds to lead to a different decision. Contrary to the assertion in the council's letter of 5 August 1987 not all the arguments in the grounds of appeal had been canvassed and dismissed at the earlier appeal. The concept of demonstrable harm to interests of acknowledged importance had been introduced in a circular issued after the previous appeal, and so it could not have been taken into account. The council had not demonstrated that the proposal would do any harm to any interest of acknowledged importance, and the application should be resisted.

14. In applying for an award of costs against the council, it was argued for your client that the way in which the council had handled the application and appeal was unreasonable. In reaching a decision they had slavishly followed their policy and failed to take account of current Government advice. It appeared that the officers, and through them the council, had failed to give any weight to Circular 14/85, which was not simply a re-statement of previous policies, but introduced a new test for judging planning applications. The council had failed to produce any evidence that the proposal would cause demonstrable harm.

15. For the council it was said that a difference of opinion on the merits of a case did not mean necessarily that either party was acting unreasonably. The council members had been made aware of Circular 14/85 when it was issued, and had no doubt been reminded of its existence on occasions since. The decision on the application had not been made without due consideration but in the light of all the relevant information including Government circulars. There was no evidence that the council had slavishly adhered to their policy. It was perfectly reasonable to reach the same conclusion on a second application as on the first, providing that all the relevant circumstances had been considered. This is what had happened in this case and the application for costs should be rejected.

CONCLUSIONS

16. In determining both applications 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 only awarded on the grounds of unreasonable behaviour. Accordingly I have considered both applications for costs in the light of circular 2/87, the appeal papers, the evidence submitted by the parties and all the relevant circumstances of this appeal.

17. It seems to me that it is possible to view the impact of Circular 14/85 in different lights. On the one hand it introduced the principle that development should be allowed generally unless it is demonstrated that it would cause harm to interests of acknowledged importance. On the other it did not appear to alter the Government's policy on development in green belts as set out in Circular 14/84. In the circumstances I think that it was reasonable for your client to believe that the background against which the development of this site should be viewed might have changed and submit an application. Equally I am of the opinion that the council were entitled to take the alternative view that the circumstances of the case had not changed enough to warrant making a different decision on the application.

18. As regards the allegation that the grounds of appeal failed to refer to the change in Government policy, I am satisfied that the phrase "demonstrable harm" is sufficiently well known in this context for it to be taken as a reference to the relevant circular. Similarly although the reasons for refusal make no specific reference to the harm which the development would cause, they refer to the Dacorum District Plan and given the circumstances of this case, it seems to me from the policies quoted that it could only be inferred that they were concerned with the effect on the appearance of the area. Although in both cases a clearer form of words might have been used, and the respective documents might have been quoted more accurately, I do not believe that in either case can this be said to amount to unreasonable behaviour.

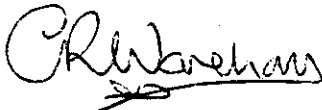
19. While the council's case at the inquiry looked at the policy background in some detail, it did also in part cover the physical impact of the proposal on the surrounding area. I am satisfied that the council did provide adequate evidence of the harm which they thought that the development would cause.

20. As to the question of the way in which the council dealt with the application, it appears to me, from the evidence which I have before me, that the Committee were in possession of all the relevant information before making their decision. They had been made aware of the various Government circulars when they were issued and no evidence has been produced to show that they had not borne them in mind. Furthermore in writing to your client after the appeal had been lodged they were acting logically, as advised by a Government circular, in the light of the situation as they saw it. I conclude that neither the actions of your client, nor those of the council, in dealing with these and other aspects of the appeal could be described as unreasonable.

21. For the above reasons, and in exercise of the powers transferred to me, I hereby determine that both the council's application for an award of costs against your client, and your client's application for an award of costs against the council be refused.

I am Sir

Your obedient Servant

A handwritten signature in dark ink, appearing to read 'C R Wareham', with a stylized flourish underneath.

C R WAREHAM MRTPI
Inspector

APPEARANCES

FOR THE APPELLANT

Mr B Myers

- of Counsel instructed by
Mr T B J Reynolds, 60 Hunters Oak,
Redbourn Road, Hemel Hempstead

He called:

Mr A E King
BA(Hons) BPL MRTPI

- Planning Consultant

FOR THE PLANNING AUTHORITY

Miss A Burton

- Senior Solicitor, Dacorum Borough
Council

She called:

Mr D P Noble
BA(Hons) MRTPI MIAS MRSH

- Principal Assistant Planner,
Dacorum Borough Council

INTERESTED PERSONS

Mr E W Biggins

- Woodridge, Chesham Road, Wigginton
(Local resident)

Mr P A Barfield

- Roundwood, Chesham Road, Wigginton
(Local resident)

DOCUMENTS

- Document 1 - List of persons present at the inquiry.
- Document 2 - Letter of notification and list of people notified.
- Document 3 - Committee report re application 4/0262/87.
- Document 4 - Decision letter on appeal T/APP/5252/A/83/002913/PH3.
- Document 5 - Extract from Journal of Planning Law.
- Document 6 - Extract from Minister's speech to Planning Inspectorate
(Encyclopedia of Planning Law)
- Documents 7A and B - Decision notices on applications W/18/55 and 4/1228/77.
- Document 8 - Draft committee report re application 4/1228/77.
- Document 9 - Decision letter on appeal APP/1743/A/36773.

DOCUMENTS (CONTINUED)

Document 10 - Extract from Hertfordshire County Structure Plan.

Document 11 - Extract from Dacorum District Plan.

PLANS

Plans A1-3 - Plans submitted with the application.

**NORTHGATE
DOCUMENT STAMPED
TO ENSURE DETECTION
BY SCANNER**