

Q. 19/03/84



**Department of the Environment and
Department of Transport**

Common Services

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Your reference

APB/DH/K.41

Our reference

T/APP/A1910/A/84/016082/P3

Date

19 NOV 84

Gentlemen

TOWN AND COUNTRY PLANNING ACT 1971, SECTION 36 AND SCHEDULE 9
APPEAL BY HEMMARCH LTD
APPLICATION NO: 4/0339/84

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 1 single bedroom starter unit and car parking on land at George Street, Markyate. I held a local inquiry into the appeal on 17 October 1984.

2. From my inspection of the appeal site and its surroundings and from the representations made I am of the opinion that the main issues in this case are (i) whether the proposed development satisfies the requirements of Policy 4 of the Dacorum District Plan, (ii) if not, whether there are special circumstances that outweigh this policy objection, and, (iii) whether the proposal represents an acceptable development of the appeal site.

3. The appeal site is within the village core of Markyate, which is situated in the rural area beyond the Metropolitan Green Belt. Policy 5 of the Dacorum District Plan, adopted earlier this year, allows for small scale residential development in this core area and the Council's representative agreed at the inquiry that the requirements of Policy 5 were largely met by your client's proposal. However, the District Plan states that development acceptable in terms of Policy 5 must also be in accordance with Policy 4, namely that development must be for uses appropriate to the rural area, which includes the housing needs of the rural part of the District.

4. Paragraph 5.7 of the District Plan identifies 5 categories of local needs, though 2 of these, households newly formed wishing to remain in the District and households living in accommodation of the wrong type or size, are applicable so long as the housing control levels have not been exceeded. The Council gave evidence that the District's housing control levels for the period to 1986 have already been met and therefore only developments which satisfy one of the 3 other categories, households in stress, households with needs for specialised types of housing and key worker housing, are permissible at this time.

5. The Council's policies to restrict development within Markyate to meet local needs develop, and accord with, the policies of the County Structure Plan, as amended. These latter policies aim to restrict development in the rural area to a rate sufficient to accommodate the natural increase in population, with net migration being concentrated into the major towns. The Council, quite correctly in my view,

is trying to husband the limited number of opportunities for meeting local needs so as to avoid the need to develop beyond the existing village confines. I do not accept your view that policies in the District Plan, in particular Policies 2, 4 and 5, and parts of the text, such as paragraph 5.21, are inconsistent or anomalous. Rather, these should be read together as an expansion of the broader policies set out in the amended Structure Plan. You have not put forward any evidence that the proposal meets any of the 3 permissible categories of housing need as set out in paragraph 5.7 of the District Plan and it is therefore my opinion that the proposal does not accord with the Council's statutory policies as set in that Plan and advanced by the Council at the inquiry.

6. I turn now to consider whether special circumstances apply to your proposal that might justify an exception being made. You argued at the inquiry that there were such circumstances and that your client had endeavoured to produce a scheme that accorded with the Council's policies. You have identified a special need in Markyate that you suggest is not currently met and your professional witness gave evidence as to the very few opportunities to first time buyers, including newly formed households and to older people in over-large accommodation to purchase small dwellings in the village. Those small properties that are available are almost all Victorian dwellings that require some renovation, the type of properties for which 100% mortgages are difficult to obtain. Most of these older properties are, in any event, out of reach financially to first time buyers. The Council's witness did not dispute the demand for small property in the village, nor that there are few suitable modern properties to meet this demand. However, he drew a particular distinction between the demand for property in this area and what the Council perceives as priority needs in terms of the District Plan policies.

7. I am aware of the permission recently granted at Cowper Rise for 16 small dwellings. I have considered carefully the Inspector's reasons for allowing that appeal, but I do not consider that his conclusions reached about the need for development of that type in Markyate should necessarily provide a precedent for your proposal. Although the Cowper Rise scheme comprises mainly 2 bedroom dwellings I heard evidence that these are aimed for first time buyers and that a Section 52 agreement had been entered into to give priority, for a limited period, to local purchasers. I have had no substantive evidence as to the extent of any local need that might justify further small dwellings. In my opinion the provision of more small units could dilute efforts to provide small units specifically for meeting local needs. The application of a further Section 52 agreement is not, in my view, appropriate or desirable in your client's case, where the scale of need is uncertain.

8. You argued at the inquiry that the Council's interpretation of its policies is unduly restrictive, making development almost impossible and the Council, under cross-examination acknowledged that only 31 dwellings had received approval over the past 12 months for infill developments of the type referred to in paragraph 5.21 of the District Plan, rather than the 100 units estimated in that paragraph. In my opinion this latter figure is an estimate and not a target and should not be used to justify developments that otherwise do not accord with planning policies.

9. I am also aware of recent housing developments that have taken place in the village some of which, you suggest, indicate that the Council has not applied its policies consistently. I am not aware of all the circumstances appertaining to these developments, but in response to my question regarding the application of these particular policies the Council's witness stated that many of the recent schemes pre-date the establishment and strict application of these policies, which are now rigidly applied through the recently adopted District Plan.

10. Notwithstanding any fundamental policy objection, the Council considers that your client's proposal is a physically unacceptable development of the appeal site. The rear of the dwelling is only 4 m from the rear boundary of the site and with the marked change of levels results in overlooking to the rear gardens of properties in London Road, and will appear overtopping from those properties. On my visit I observed the 2 m plus rise in level from the rear gardens to the appeal site. You explained that the appeal site will be lowered and the development built at approximately the same height as the neighbouring property. Whilst I accept that this will help the situation it will not, in my opinion, totally overcome the prominent impact of the development as viewed from the rear gardens. The proposal extends about 2 m beyond the rear of Ridgewood to the north-west and will in my view appear as an over-dominant feature of the townscape. I am of the opinion, that the overall back to back distance to the London Road properties is acceptable and with suitable rear boundary fencing and with rain living rooms being to the George Street frontage, the degree of overlooking can be reduced to an acceptable level.

11. You acknowledge that the car parking provision does not reach the Borough's standards, although they accord with those of the County Council. Because these properties are purpose designed as small starter homes, unsuitable for any further extension, it is my opinion that they are unlikely to be occupied by households with more than one car. I do not consider that the provision of one space per unit is unacceptable in these circumstances or that the reduction of provision below the Council standard will materially worsen the parking situation in George Street. I have also considered the impact of the loss of garages and the forecourt upon the parking congestion in the street. I note from the evidence presented that none of the garages are let to residents of George Street for car parking and note too that any parking on the forecourt is without the permission of the owner. In these circumstances it is unreasonable to place any weight upon the Council's argument that this proposal should be dismissed because of the contribution the garages and forecourt make to relieving the parking problems. Finally, I am of the view that with careful and sensitive treatment the external areas fronting George Street could be laid out so as not to detract from the visual appearance of the street.

12. In my view, the policy issues raised are the paramount ones in determining this appeal. I consider that sufficient need for the dwellings has not been demonstrated that might justify the development as an exception to the District Plan policies, which have only recently been formally adopted. These policies are very restrictive but in my opinion this reflects the strong pressure for development that exists in villages in the rural areas close to London. Without a strict application of these policies, with exceptions only justified in special circumstances, the broad objectives of the Structure Plan and District Plan to control the level of development in the rural areas would be undermined. Further, by reason of its closeness to the rear boundary of the appeal site, I consider that the proposed development is unacceptable as it would be unduly dominant in the townscape, as viewed from the rear gardens of the London Road properties.

13. I have taken into account all the other matters raised at the inquiry, including the views expressed by local residents, but I do not feel that these considerations affect my conclusions on the planning issues involved.

14. I am submitting a separate report and recommendation on your application for costs which was made at the inquiry.

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

I am Gentlemen
Your obedient Servant

David Fenton

DAVID FENTON BA(HONS) NSC DipTP MRTPI
Inspector



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CHIEF EXECUTIVE
OFFICER

28 JAN 1985

File Ref.
Refer to
Cleared

Messrs A F Barker & Co
Solicitors
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Hemel Hempstead
Herts
HP1 1LE

Your reference

AFB/DW/K.41

Our reference

APP/A1910/A/84/OI6082 (PLUP4C)

Date				Ack.	
28 January 1985					
Ref.	C.P.O.	D.P.	C.	Admin.	File
28 JAN 1985					
Comments					
AND SCHEDULE 9					

Gentlemen

TOWN AND COUNTRY PLANNING ACT 1971 - SECTION 36 AND SCHEDULE 9
LAND AT GEORGE STREET, MARKYATE
APPEAL BY KEENARCH LTD

1. I am directed by the Secretary of State for the Environment to refer to the Inspector's letter of 19 November 1984 notifying his decision on the above-mentioned appeal against the decision of Dacorum District Council to refuse planning permission for the erection of 3 single bedroom starter units and car parking on the above-mentioned land. I am now able to deal with the application for an award of costs made on behalf of your clients, Keenarch Ltd, at the local inquiry held on 17 October 1984.

2. The submissions made by your clients in support of their application for costs, the reply by the Council, and the Inspector's comments and recommendation on the matter are set out in the Inspector's costs report, a copy of which was sent to the parties on 23 November 1984. In planning appeals the parties are normally expected to meet their own expenses and costs are awarded only in exceptional circumstances on grounds of unreasonable behaviour. Accordingly the application for costs has been considered in the light of paragraph 9 of Ministry of Housing and Local Government Circular 73/65, the Inspector's decision letter of 19 November 1984, his separate report on the question of costs, and all the relevant circumstances.

3. The Inspector's comments on the costs application were as follows:

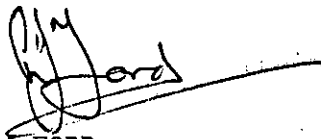
"This case raised policy matters of some complexity, particularly interrelated housing development policies in the Structure Plan and the recently adopted District Plan. A number of related developments were also raised during the inquiry and these, together with the policies, were examined in some detail. In determining the appeal, principally on the policy issues, I had the benefit of hearing and taking part in a thorough examination of all the evidence. In my view the Council acted reasonably in insisting on holding a local inquiry to enable full consideration of issues which it considered very important to their policies for the control of residential development. I do not consider that the Council acted in an unreasonable, vexatious or frivolous manner in this case by insisting on a local inquiry."

The Inspector recommended that no award of costs should be made.

4. It is seen that although you indicated on your appeal form that you agreed to the written procedure for determination of the appeal, the Council considered the matter would be better dealt with by a public local inquiry because in their view the proposed development and the nearby development involved complex issues in the interpretation of District Plan policies. Bearing in mind the fact that each party has a right to ask for an opportunity of being heard by a person appointed by the Secretary of State for that purpose, the Secretary of State, after examining all the evidence, takes the view that the Council acted out of proper concern for the appearance and amenities of the locality and it was reasonable for them to request that a local inquiry be held into your client's appeals. Furthermore in as much as it was the decision of the Secretary of State to hold such an inquiry, he considers that it would be inequitable to require the Council to pay your clients' costs of preparing for and attending that inquiry. In all these circumstances the Secretary of State agrees with the Inspector's comments on your client's application for costs and has therefore decided that an award of costs against the Council on grounds of unreasonable behaviour would not be justified. Your client's application is accordingly refused.

5. A copy of this letter has been sent to the Chief Executive of Dacorum District Council.

I am Gentlemen
Your obedient Servant



P J FORD

TOWN & COUNTRY PLANNING ACTS, 1971 and 1972

THE DISTRICT COUNCIL OF DACORUM

IN THE COUNTY OF HERTFORD

To Keenarch Ltd
114 High Street South
Dunstable

Oakwood Commercial
17 High Street
St Albans

..... One house, two flats

.....

at George Street, Markyate

.....

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 12th March 1984 and received with sufficient particulars on 12th March 1984 and shown on the plan(s) accompanying such application..

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

- (1) The site is within an area beyond the Green Belt on the approved County Structure Plan and the adopted Dacorum District Plan, wherein permission will only be given for use of land, the construction of new buildings, changes of use or extensions to 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 on the terms of this policy.
- (2) The proposal is not supported by evidence of local need sufficient to satisfy Policies 4 and 5 of the dacorum District Plan.
- (3) The rear windows of the proposed flats are within 4.5m of the north east boundary of the site, and the ground level is some 2m above adjoining gardens. The proposed will therefore result in overlooking of private rear gardens and a loss of privacy for the occupants of adjoining houses in London
Dated ... 19th day of April 19 84 Road.

4. See over

Signed..... *W. B. Marshall* P.T.O.

Chief Planning Officer

- (4) Off street car parking is insufficient, and would lead to further parking on adjacent and nearby highways to the detriment of highways safety.

NOTE

- (1) If the applicant wishes to have an explanation of the reasons for this decision it will be given on request and a meeting arranged if necessary.
- (2) 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 section 36 of the Town and Country Planning Act 1971, within six months of receipt of this notice. (Appeals must be made on a form which is 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.
- (3) 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 District 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.
- (4) 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 section 169 of the Town and Country Planning Act 1971.