

BW



# Department of the Environment and Department of Transport

Common Services

Room 1417 Tollgate House Houlton Street Bristol BS2 9DJ

Telex 449321

Direct Line 0272-218

Switchboard 0272-218811

CHIEF EXECUTIVE  
OFFICER

24 FEB 1988

File no.

Refer to

C927

GTN 2074

D Y Davies Projects Ltd  
1 Church Terrace  
RICHMOND  
Surrey  
TW10 6SE

PLANNING DEPARTMENT DACORUM DISTRICT COUNCIL						GTN 2074
Ref.			Ack.			Your reference
G.P.O.	D.P.	D.C.	B.C.	Admin.	File	Our reference
						T/APP/A1910/A/87/072655/P3
Received						Date
25 FEB 1988						23 FEB 88
Comments						

Gentlemen

TOWN AND COUNTRY PLANNING ACT 1971, SECTION 36 AND SCHEDULE 9  
APPEAL BY ALEC A WHITE AND CO LTD  
APPLICATION NO: 4/0368/87

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 six 2 bedroom flats and car parking (outline) and re-routing of a river at land between Nos 46/50 Lower Kings Road and Broadwater Lock, Berkhamsted. I held a local inquiry into the appeal on 15 December 1987.

2. Following the opening of the inquiry I was informed that your clients' proposal no longer involved the re-routing of the River Bulbourne and that the Local Planning Authority had been informed accordingly. Consequently I am dealing with this appeal as one against a refusal to allow the erection of six 2 bedroom flats and car parking only.

3. From the evidence, the written representations and what I saw on my visit to the site and surroundings, I take the view that the main issue in this appeal is whether the proposal is acceptable in relation to formal and informal policies.

4. The appeal site has an area of approximately .12 ha and is located to the north of Berkhamsted town centre in a wedge of land between the Grand Union Canal and Lower Kings Road. It is an unused overgrown plot which at the time of my visit was largely waterlogged some rubbish had been deposited upon it. There is a variety of vegetation on and around the site including ash, elder, sycamores and willows. A large mature ash tree grows at the southernmost corner of the site on a bend adjacent to the highway. The site stands at a lower level than its surroundings and an arm of the River Bulbourne runs along the southern boundary.

5. Immediately to the north is the Grand Union Canal with its towpaths. Beyond this a recently constructed group of 2 and 3 storey flats. West of this is a large area of playing fields and sport facilities. On the other side of Lower Kings Road to the east is another area of playing fields together with an open space known as The Moor. Adjacent to the south is a group of buildings which include shops, offices and residential development.

6. There are a number of plans and policies which affect the appeal site. The approved Hertfordshire Structure Plan aims to concentrate new development in urban areas including Berkhamsted and the adopted Dacorum District Plan echoes this policy. The latter includes policies which indicate that proposals for new residential development should take into account various factors relating to design, access, car parking and residential amenity. It also states that there will be a

presumption in favour of residential development unless urban form dictates otherwise or land is specifically allocated for other uses. The site is included in a Conservation Area.

7. There are also informal policy documents relevant to this case. The Grand Union Canal Policy Statement of 1976 which derives from Policy 84 of the District Plan and seeks to enhance the appearance of the canal side environment. A Planning Brief for the town centre notes that parts of the appeal site are derelict and unsightly and it is proposed that it could either be included in development proposals or a landscaping strategy. The site is included in a "Landscaped Area" in the proposals associated with the Brief.

8. It was drawn to my attention that the Town Centre Planning Brief is not only non-statutory but was also subjected to limited public consultation. I accept that this was the case and have also noted that in the Planning Officers report to the Development Control Sub Committee of 25 May 1987 it was stated that the Brief stops short of specifically restricting development of this site. Your planning witness pointed out that in an earlier version of the Brief produced in 1983 the appeal site was referred to as being suitable for residential development.

9. A summary of the planning history of the appeal site was provided and I have read that there have been a number of planning applications in respect of the land and although the reasons varied, the Planning Authority has consistently refused proposals for its development.

10. Having examined the various planning documents and listened to the evidence it is clear to me that the use of the site for residential purposes would not in principle be contrary to policies contained in the approved Structure Plan or the adopted District Plan or Government circulars. However Policies 18 and 19 do provide general environmental guidelines against which new development should be determined. Whilst the application which is the subject of this appeal is in outline only an illustrative scheme was submitted and during the inquiry an illustrative set of landscape proposals were presented. These, in my view, do give a clear indication of the way the site could be developed and of the likely impact of the project which it was maintained represents a positive approach to this sensitive site and which would fulfill the objectives of the 1987 Town Centre Brief.

11. I have taken account of these points but find that I agree with my colleague, the inspector, who in his decision letter in respect of a previous appeal relating to this site was of the opinion that the occupants of flats would be overlooked by persons walking along the towpath (T/APP/839/A/74/1718/G5). Even with the reduced number of flats now proposed and the suggested landscaping I consider that this would be a problem. I do agree with the Council's Planning Officer that there could also be unacceptable overlooking because of the proximity of principal windows in properties immediately adjacent to the south.

12. Although the Council has raised no objections to the proposed access from Lower Kings Road several local residents have written expressing concern of what they regard as an existing dangerous highway situation. From my own observations and experience Lower Kings Road is a busy road and drivers wishing to turn right onto or off the access road may experience difficulties because of the volume of traffic. In addition the visibility of drivers turning right onto the site from the north is restricted because of the bend in the road. To my mind the existence of a minor access, between Nos 40 and 46 Lower Kings Road is also a possible source of danger as is the absence of a proper footway in this vicinity. It seems to me that in these circumstances when the 2 accesses together serve a number of properties any development which generates additional traffic should be resisted.

13. There was a significant difference of opinion about the adequacy of the illustrative landscape scheme. It was agreed that this was a matter reserved for subsequent approval and that 50% of the site appeared to be available for landscaping. The Local Planning Authority consider that the opportunity for landscaping is limited to areas around the buildings and the edges of the access road and that there would be no possibility of planting to soften the impact that the proposed development would have upon views along the canal towpath.

14. I have considered this aspect of the proposal in relation to Policy 18 of the adopted District Plan which states that all proposals for new development should have regard to a number of factors including landscaping and also to the Grand Union Canal Policy Statement and the Town Centre Brief. These are non-statutory policy statements which do not preclude built development on the appeal site. However, although it appears that approximately 50% of the site could be made available for landscaping purposes, I have come to the conclusion that because of the relatively narrow wedge shape of the site and the amount of hard surfaces that would need to be provided for parking and circulation little more than peripheral planting could be achieved. To my mind this is borne out by the illustrative landscape scheme and I find that I do not accept the submission made on behalf of your clients that it would be both possible and practicable to carry out a generous landscaping scheme which would make a significant and positive contribution to both the canal side and the Conservation Area generally.

15. I do, on the other hand, accept the planning officers view that the openness of the site is important in terms of the immediate environment and its potential contribution to the Conservation Area. Some 12 years ago the inspector in coming to his decision on the previous appeal supported policies in a non-statutory Town Centre Map which aimed to maintain the openness of the area. I consider that the Council has been consistent in its policies and its development control decisions in attempting to achieve a satisfactory landscape scheme for the site. Recently it has shown that it is attempting to implement its policies in that it has begun to negotiate with the Waterways Board, the owners of the site, and have reserved monies in the 1987/1988 capital programme as a contingency fund towards the implementation of their policies for Berkhamsted Town Centre. I have noted that the Estate Department of the Board support the present proposal, and do not wish to recommend the sale of the freehold of the land until the outcome of the application is known.

16. Having given the alternatives careful thought I have come to the firm conclusion that it is preferable that this important site should be the subject of comprehensive landscape improvements rather than to be developed as currently proposed which would, I consider, result in over development and inadequate landscaping. This together with the low level of privacy which I consider would be achieved, and the problems of access add up to a substantial set of objections.

17. Reference was made to the development at Ravens Lane, known as the Bridge Motors site where the buildings are within 2 m of the canal side. It was submitted that the Council has not been consistent in allowing this development which it was suggested had an overbearing appearance in contrast with the appeal proposal. Whilst not accepting this view it is my opinion that this area is significantly different from that around the appeal site in that development is generally closer to the canal. In contrast the area around the appeal site is open in character and the Council are, rightly in my view, attempting to maintain this openness. In any event the existence of the development at Ravens Lane does not remove the objections to this proposal.

18. I have also taken into account all other matters raised in evidence or in written representations including the Thames Water Authority's comments on drainage and sewerage and residents' comments regarding wildlife. But they do not affect my conclusion on the considerations that have led to my decision.

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

#### APPLICATION FOR COSTS

20. In the application for costs it was submitted that the application which is the subject of this appeal was in outline only and that in law only a completed form and location plan was required. The illustrative drawing formed no part of the application. It was merely sought to establish the principle of residential development upon the site. It was maintained that the conduct of the Council was unreasonable in terms of Circular 2/87 in that the illustrative plan was used as a basis for refusal and that the Planning Authority had produced detailed reasons for refusal which it was not appropriate to enter into at that stage.

21. In reply the Council stated that it did act properly and was well aware that the application was in outline only. It was necessary to see if it was possible to accommodate the proposed development on the site and such matters cannot be left to the detailed stage. The Council has to take all considerations into account and to be satisfied that development can be accommodated. It was submitted that the Council had not behaved unreasonably.

#### CONCLUSIONS

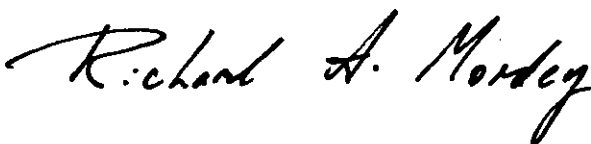
22. In determining the application for costs, I have borne in mind that in planning appeals the parties are normally expected to meet their own expenses, irrespective of the outcome of the appeal, and that costs are only awarded on grounds of unreasonable behaviour. Accordingly I have considered the application for costs in the light of Circular 2/87, the appeal papers, the evidence submitted by the parties and all the relevant circumstances of this appeal. In my view whilst the Council's reason for refusal was not precise and specific in accordance with the advice contained in paragraph 7 of Circular 2/87; it was not unreasonable to take account of the illustrative plan in helping them to come to a decision. I note that it was treated with some caution but regarded as giving some indication of the possible nature of the project.

23. At the inquiry it is my view that the Local Planning Authority fully supported all aspects of its reasons for refusal. I was able to hear evidence and read documents which allowed me to give full consideration to all relevant matters.

24. In all the circumstances, therefore, I consider that the Council did not act unreasonably in refusing to grant planning permission and, consequently an award of costs would not be justified.

25. For the above reasons and in exercise of the powers granted to me, I hereby determine that your application for an award of costs against the local authority be refused.

I am Gentlemen  
Your obedient Servant



RICHARD A MORDEY BA MCD MRTPI  
Inspector

## APPEARANCES

### FOR THE APPELLANTS

Mr M Donovan

- of Counsel, instructed by Harrowell and Atkins, 275 High Street, Berkhamsted, Herts, HP4 1BW.

He called:

Mrs Patricia B Day BA  
DipTP MRTPI

- Director, D Y Davies Projects Limited, 1 Church Terrace, Richmond, Surrey, TW10 6SE.

### FOR THE PLANNING AUTHORITY

Mrs Amanda Burton

- Senior Solicitor, Dacorum Borough Council.

She called:

Mr G P Bailey ARICS

- Senior Assistant Planner, Dacorum Borough Council.

## DOCUMENTS

- Document 1 - List of persons present at the inquiry.
- Document 2 - Notification of inquiry and circulation list.
- Document 3 - Bundle of letters of objection.
- Document 4 - Copy of decision notice No W/4053/72.
- Document 5 - Copy of decision notice No W/2759/73.
- Document 6 - Copy of decision notice No 4/0905/77.
- Document 7 - Copy of decision notice No 4/0972/78.
- Document 8 - Copy of decision notice No 4/0024/82.
- Document 9 - Copy of decision notice No 4/0412/86.
- Document 10 - Copy of planning application accompanying letter, decision notice No 4/0368/87.
- Document 11 - Berkhamsted Town Centre Planning Brief 1983.
- Document 12 - Report to Council Meeting 22 April 1987.
- Document 13 - Copy of letter from Borough Council to D Y Davies Projects Ltd.
- Document 14 - Copies of correspondence between Borough Council and Alec A White & Co. 19 November 1986.
- Document 15 - Berkhamsted Town Centre Planning Study 1983.

## DOCUMENTS (CONTD)

- Document 16 - Report to Policy Committee and Minutes November 1983.
- Document 17 - Observation of Thames Water Authority.
- Document 18 - Report to Planning Committee and Minutes 28 May 1987.
- Document 19 - Extracts from Approved County Structure Plan (1979) as amended by Approved Alterations No 1 (1984).
- Document 20 - Extracts from Submitted Reviews of Approved County Structure Plan and Secretary of State's Proposed Modifications.
- Document 21 - Extracts from Adopted Dacorum District Plan (1984).
- Document 22 - Berkhamsted Town Centre Planning Brief (April 1987).
- Document 23 - Grand Union Canal Policy Statement (1976).
- Document 24 - Berkhamsted Town Centre Map 1973.
- Document 25 - Bundle of letters of comments from consultees on Town Centre Planning Study Consultation Document.
- Document 26 - Letter from Thames Water to Borough Council. 24 June 1986.
- Document 27 - Minutes and correspondence relating to acquisition of the appeal site.
- Document 28 - Suggested conditions.
- Document 29 - Planning history of appeal site.
- Document 30 - Copy of appeal decision T/APP/839/A/74/1718/G5.
- Document 31 - Report on Landscape Proposals Broadwater Lock, Berkhamsted.

## PLANS

- Plan A - Application plan. Site identification.
- Plan B - Application plan. Illustrative layout drawing No 86/1112/5.
- Plan C - Plan showing location of appeal site. Plan No DYDP1.
- Plan D - Extract from District Plan Proposals Map. Plan No DYDP2.
- Plan E - Plan showing location of Bridge Motors site. Plan No DYDP3.
- Plan F - Landscape survey and analysis. Drawing No 250-101.
- Plan G - Landscape Proposals I. Drawing No 250-102.
- Plan H - Landscape Proposals II. Drawing No 250-103.
- Plan I - Plan showing appeal site in relation to surrounding area. Plan No GB1.

## TOWN &amp; COUNTRY PLANNING ACTS, 1971 and 1972



## DACORUM BOROUGH COUNCIL

To Alec A White & Co Ltd  
White House  
Lower Kings Road  
Berkhamsted

Collett Design  
17 Collett Road  
Hemel Hempstead

.....Erection of six-two bedroom flats and car parking.....  
.....(outline) and re-routing of river.....  
at ..Land between 46/50 Lower Kings Road and Broadwater.....  
... Lock, Berkhamsted .....

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 13.3.87 and received with sufficient particulars on 13.3.87 and shown on the plan(s) accompanying such application.

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

The Berkhamsted Town Centre Planning Brief identifies the application site for landscaping purposes as part of an overall strategy for the future development of land bounded by High Street, St Johns Well Lane, Grand Union Canal and Lower Kings Road. The site is also within the Berkhamsted Conservation Area. In the opinion of the local planning authority, the proposed development is excessive on a site which is inadequate to accommodate satisfactorily the proposed development together with access parking and circulation facilities in relation to adjoining properties and landscaping requirements pursuant to the policy objectives of the Brief. If permitted the proposed development, by reason of the inadequate provision of opportunities for landscaping would detract from the amenities of the canal side location and be contrary to the aims of the local planning authority to preserve and enhance the character and appearance of the Conservation Area.

Dated 28th day of May 1987...

Signed.....

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.