

TOWN & COUNTRY PLANNING ACTS, 1971 and 1972

Other

Ref. No.

THE DISTRICT COUNCIL OF

Hertford

IN THE COUNTY OF HERTFORD

To Thrushmore Properties Ltd
 11 Alphage House
 Park Street
 London WC2

Agent: A. Bloofield

c/o Thrushmore Properties Ltd
 11 Alphage House
 Park Street
 London WC2

Residential development.

at Sectors 3 and 4, Tunnel Fields, Northhamstead.

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 25 March 1982 and received with sufficient particulars on 31 March 1982 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 north-west part of Sector 3 is within an area without notation on the approved County Development Plan and in an area referred to as being within the extension of the Metropolitan Green Belt in the approved County Structure Plan (1979) and the Macclesfield District Plan, wherein permission will only be given for use of land, the construction of new buildings, change of use or extension 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.
2. The proposed development would generate a significant increase in vehicular traffic, appreciably increasing the volume of traffic along adjacent roads particularly at peak commuting periods, the result of which would aggravate an already acute situation on Bridgeover Road and the trunk road A41.

Dated 27 day of May 1982.

Signed



Cont/...

Designation

Chief Planning Officer

3. With the exception of the north-west part of Sector G, this site is included in the Proposed Modifications to the District Plan for development for residential purposes in the period 1986-1991, and development will not be permitted in advance of the construction of the Berkhamsted By-Pass. Sufficient land is included in the Proposed Modifications to the District Plan for residential development in the period 1981-1986 to meet the housing control levels set out in the Approved Hertfordshire County Structure Plan.

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, Whitehall, London, S.W.1.) 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.



Departments of the Environment and Transport

Eastern Regional Office

Charles House 375 Kensington High Street London W14 8QH

Telephone 01-603 3444 ext 73

CHIEF EXECUTIVE
OFFICER

25 MAR 1985

File Ref. *CFO 293*
Refer to
Clearance

Messrs Breeze and Wyles
37 Bullsmoor Lane
Enfield
EN3 6TF

12181

Your reference G H/PT.61

Our reference (a) NAPP/5252/MAR/82/7576 and
DACORUM DISTRICT COUNCIL (b) APP/R1010/H/83/9100

Date	Ack.
22 MAR 1985	

Received *25 MAR 1985*
Comments *Return to MB for Committee*

Gentlemen

TOWN AND COUNTRY PLANNING ACT 1971 - SECTION 36
APPEALS BY THRUSHMERE PROPERTIES LTD
APPLICATION NOS. (a) 4/0369/82 AND (b) 4/0382/83

1. I am directed by the Secretary of State for the Environment to say that consideration has been given to the report of the Inspector Mr P G Tyler OBE who held a local inquiry into your clients' appeals against the decisions of Dacorum District Council, to refuse planning permission for residential development on:

(a) Sectors G and H, comprising 8.63 acres, of Tunnel Fields, Berkhamstead, Hertfordshire; and

(b) Sectors D, F and G, comprising 17.8 acres, of Tunnel Fields, Berkhamstead, Hertfordshire.

A copy of the report is enclosed.

2. The Inspector said in his conclusions:

"76. Bearing in mind the above facts I am of the opinion that the development proposed in the first application (Sectors G and H) is undesirable because it would increase the traffic using the substandard junction of New Road and the A41 trunk road. My further conclusions are in respect of the second application only (Sectors D, F and G).

77. The principle of further residential development of Tunnel Fields is established, only the question of timing is in dispute and this concerns the erection of more dwellings, first, before the start of the 1986-1991 plan period and, secondly, before there is at least a firm timetable for the construction of the Berkhamstead Bypass.

78. In opposing the bringing forward of dwellings scheduled for the 1986-1991 period the local planning authority is acting in accordance with the Structure and District Plan policies. However, it seems to me that the history of Tunnel Fields justifies treating the appellants' proposal as an exception; it was the opinion of the Local Plan Inspector that a more flexible approach should be adopted and, although the District Council did not accept that recommendation, nearly 2 years have since passed and the suggested phased development would now entail the premature erection of only some 30 of over 2,000 units still remaining from the District's allocation for the plan period. I consider this to be acceptable in the circumstances of this case.

79. As regards the highway objections the Ministry of Transport are, of course, concerned to prevent further increases of traffic using the A41 trunk road or development which could interfere with the free flow of traffic along it, before the situation is eased by the bypass due to open in 1988. However:-

1. The stretch of the A41 affected by the proposed development has, in my opinion, the characteristics of an urban road and I do not consider it reasonable to assess its capacity otherwise. Accordingly I support the appellants' view that it could carry the relatively small volume of traffic likely to be generated before the completion of the bypass without significantly exacerbating the present situation.
2. The Billet Lane/A41 junction appears to me to be operating satisfactorily at present in spite of being theoretically overloaded during the morning peak period. The proposed development would increase the volume of traffic using the junction only marginally and I do not consider that the queueing at the lights would be noticeably increased.
3. Reduction of traffic using the New Road/A41 junction would be a planning gain.

It is my opinion that, provided plans for the bypass go through as expected, it would be unreasonable to withhold permission for phased development on highway grounds.

80. Bridgewater Road seems destined to remain a "rat run" until it loses its attractiveness as such. Even construction of the bypass will not, in my opinion, necessarily achieve that as it will still provide a short cut to the railway station etc. I do not consider that the residents would be noticeably worse affected if the proposed development were permitted.

81. It is for the Secretary of State to decide, if he allows the second appeal, what agreements should be required and what conditions should be imposed. However, my comments below will, I hope, be of assistance (references are to paragraph 67 of this report).

1. Paragraph 67.1(a). The break in St Katherine's Way only applies to the first application.
2. Paragraph 67.1(b). These matters concerning landscaping and open spaces are covered in the Development Brief and it is for consideration whether the District Council's requirements can better be met by a legal agreement or by imposition of conditions; it should not, in my opinion, be necessary to have both. The Development Brief is very detailed, some aspects of it are not accepted by the appellants and I do not consider that it would be reasonable to impose a condition requiring complete conformity with it; on the other hand a condition requiring the appellants to conform "in general terms" with the brief would be imprecise. Bearing in mind that the application is in outline form it appears to me that the best course of action would be to invite the parties to negotiate a Section 52 agreement based on the Development Brief.
3. Paragraph 67.1(c). I am doubtful whether it would be appropriate to restrict the occupation of completed dwellings and suggest that phasing should be related to the rate of completion instead. It seems to me that a programme as below would meet the developers' wishes, would go a long way to satisfying the local planning authority's desire to prevent, or at least limit, encroachment into the 1986-1991 plan period and would

ensure that traffic increased only gradually:-

<u>Period</u>	<u>Completions</u>
To 30 September 1986	up to 30
1 October 1986 to 30 September 1987	up to 40
1 October 1987 to 30 September 1988	up to 40

The exact number of dwellings would depend on the agreement of detailed layout plans. Such a programme would permit occupation of dwellings even before the end of 1985 if they were ready but would bring forward only 30 from the 1986-1991 plan period; it would leave some 150 units for completion during 1988-1991.

4. Paragraph 67.2. Most of the suggested conditions could be included in the Section 52 agreement and some are covered in the Development Brief; thus:-

- (a) would be in the Section 52 agreement;
- (b) see paragraphs 4.18 and 4.36 of the brief;
- (c) is partly covered by paragraphs 4.17 and 4.35 of the brief;
- (d) would normally be subject to agreement at the detailed stage (paragraph 4.35 of the brief) but could be included in the Section 52 agreement;
- (e) would normally be subject to agreement at the detailed stage (paragraph 4.35 of the brief) but could be included in the Section 52 agreement;
- (f) would normally be subject to agreement at the detailed stage (paragraph 4.35 of the brief) but could be included in the Section 52 agreement (although I would have thought the reference to maintenance of sight-lines to be unnecessary);
- (g) would normally be subject to agreement at the detailed stage (paragraph 4.35 of the brief) but could be included in the Section 52 agreement;
- (h) the use of the word "development" is perhaps imprecise and and this condition might be rephrased as follows:-

"no dwelling shall be occupied until access and vehicle parking spaces have been provided as may be agreed with the local planning authority;"

the reference to maintenance is perhaps inappropriate and unnecessary;

- (j) I doubt the need for this condition;

- (k) "adequate precautions" seems to me imprecise; the Section 52 agreement could include a requirement to erect a fence along as much as necessary of the boundary with railway land (which might also be a wise long-term precaution to keep children off the tracks);

(l) see paragraphs 4.30 to 4.32 of the brief;

(m) I doubt the necessity to remove General Development Order rights from every owner of a dwelling on the site; it may be desirable for dwellings above the 500 ft contour (Plan 2 in the brief) and perhaps for those in any high density development areas but it might be difficult to frame a precise condition;

(n) the Tree Preservation Order covers the woodland strip referred to in paragraphs 4.10 and 4.19 of the brief and the Tree Preservation Order is cited in paragraph 3.4; if this area was transferred to the District Council (see paragraph 12 above and paragraph 4.11 of the brief) this condition would be unnecessary."

The Inspector recommended that appeal (a) should be dismissed and that appeal (b) be allowed subject to the conclusion of a Section 52 agreement and to appropriate conditions.

3. Some months after the inquiry took place, you wrote to the Department stating that you understood that the line of the Berkhamsted By-Pass had been settled. The Department of Transport subsequently informed the Department of the Environment that on 19 November 1984 it had been decided in principle to accept the recommendation of an Inspector that orders for the By-Pass and the Kings Langley By-Pass should be made, but that a final decision was being delayed pending comments on a proposed modification to the line of the latter route at Bourne End. Subject to satisfactory completion of the remaining statutory procedures, and the availability of funds, the Department of Transport anticipated that construction could start in 1987 with completion in 1989. In response to this information you state that since the Secretaries of State have accepted in principle the recommendations of the Inspector holding the inquiry into objections to the By-Pass proposals, there is no justification for withholding planning permission in respect of your clients' land. The Council's view on this matter is that the latest information regarding the expected start of construction on the By-Pass only serves to strengthen their case that the decision to rephase the development was the correct one, and that as construction is not anticipated earlier than 1987, there can be no doubt that any planning permission at the present time must be regarded as premature.

4. These additional representations have been considered, together with the Inspector's conclusions. As regards Appeal (a) the Secretary of State agrees with the Inspector that the development of Sectors G and H with access only onto New Road would be undesirable bearing in mind the sub-standard nature of the junction of this road with A41. The revised situation regarding the timing of the construction of the By-Pass serves only to reinforce this view and the Secretary of State is not, therefore, as a result of this new issue of fact, minded to disagree with the Inspector's recommendation on this appeal.

5. So far as Appeal (b) is concerned, the Secretary of State is aware that since the inquiry took place, the Structure Plan Alterations have been approved but, so far as dwelling increases are concerned, there has been no significant change in circumstances since the inquiry as the 15 year dwelling increases proposed in the modifications, and discussed at the inquiry, have been included in the approved Alterations. Accordingly, the conclusions the Secretary of State has reached concerning the principle of the development have not been affected by these recent events. He agrees with the Inspector that there is no objection to bringing forward the development of the site in order that the phased development of Tunnel Fields may continue. He also considers that there is no justification on housing grounds for seeking to restrict the timing or the rate of development. However, in view of the changed situation regarding the timing of the construction of the By-Pass,

it is necessary for the Secretary of State to consider whether this justifies refusing permission on the grounds of prematurity or whether the position could be adequately safeguarded by phasing the rate of development so as to restrict the amount of additional traffic using A41 before the By-Pass is operational. At the time of the inquiry in May last year it was anticipated that the By-Pass would be open for traffic in 1988. Bearing this fact in mind, the Inspector concluded that the relatively small volume of traffic likely to be generated before completion of the By-Pass would not significantly exacerbate the present situation on A41 and that provided plans for the By-Pass went through as expected, it would be unreasonable to withhold permission for phased development on highway grounds. On the question of phasing, he concluded that up to 30 dwellings could be completed up to 30 September 1986, up to 40 between 1 October 1986 and 30 September 1987 and up to 40 between 1 October 1987 and 30 September 1988.

6. The Secretary of State accepts the Inspector's conclusions about the capacity of A41 to cope with additional traffic generated by the development before the By-Pass is completed. He therefore considers it would be unreasonable to refuse planning permission on the grounds that the release of the site would be premature pending the opening of the By-Pass. On the other hand, he considers that it is desirable, in the interests of highway safety, to phase the development of the site in order to spread the build-up of the generated traffic over a longer period. In this respect, he notes that your clients were prepared to volunteer such a phasing agreement. Since the date of the completion of the By-Pass cannot be assessed with any degree of certainty, the Secretary of State does not think it would be reasonable, for example, to make occupation of the last phase of dwellings conditional upon the opening of the By-Pass. He recognises that if the scheme of phasing proposed by the Inspector is adopted, there is a distinct possibility that all the dwellings could be built before the By-Pass is completed. Nevertheless, by the time the development is completed, the contract for the road works should have been let and a relief to the existing A41 should be in sight. Accordingly the Secretary of State agrees that the development should be phased in the manner proposed by the Inspector.

7. It remains, therefore, for consideration whether phasing and other matters should be the subject of an agreement or conditions or a mixture of both. The Secretary of State notes that the Council have prepared a Development Brief which is generally, but not wholly, accepted by the appellants. He also notes the Inspector's conclusion that the best course of action in these circumstances would be to invite the parties to negotiate a Section 52 agreement based on the Development Brief. However, bearing in mind that the application is in outline form with all matters reserved, the Secretary of State thinks that, rather than defer his decision pending the completion of an agreement covering many small points of detail, the more appropriate course would be to decide the appeal now with the standard condition requiring the approval of details and subject to other conditions on the lines proposed by the Council. Doubtless both parties will bear in mind the contents of the Development Brief when considering the details. The Secretary of State accepts that there are two matters in the proposed agreement, ie. the dedication of open space and the responsibility for the carrying out of landscaping within plot boundaries which could not readily be made the subject of conditions but he sees no reason why these matters should not be the subject of negotiations, and a possible agreement, at detailed stage. In view of the appellants' willingness not to develop the land within Sector G which is included in the Metropolitan Green Belt, the Secretary of State thinks that a condition to this effect would be appropriate.

8. On the subject of other conditions, many of the points referred to by the Council can be dealt with either as reserved matters or can be made the subject of conditions requiring the approval of the Council before development commences (with the exception of refuse collection arrangements and clothes drying facilities which are not considered to be planning matters). The Secretary of State agrees with the Inspector about the timing of the occupancy of the dwellings in relation to the provision of access and parking, and about the Council's wording of a condition designed to prevent spillage onto the railway track. He also shares the Inspector's view that conditions requiring the removal of General Development Order rights from every dwelling and preventing development in the area covered by the Tree Preservation Order are unnecessary. However, he does not agree with the Inspector that it is unnecessary to require details to be submitted of the means of drainage, and he has imposed a condition accordingly.

9. Subject to what is said above the Secretary of State agrees with the Inspector's conclusions and accepts his recommendation. Therefore he hereby dismisses Appeal (a) and allows Appeal (b). He hereby grants planning permission for residential development on sectors D, F and G comprising 17.8 acres of Tunnel Fields, Berkhamsted, in accordance with application no. 4/0382/83 dated 14 March 1983, subject to the following conditions:

1. a. Approval of the details of the siting, design and external appearance of the building(s), the means of access thereto, and the landscaping of the site (hereinafter called "the reserved matters") shall be obtained from the local planning authority;

b. Application for approval of the reserved matters shall be made to the local planning authority not later than 3 years from the date of this letter;
2. The development hereby permitted shall be begun on or before whichever is the later of the following dates:-
 - i. 5 years from the date of this letter; or
 - ii. The expiration of two years from the final approval of the reserved matters or, in the case of approval on different dates, the final approval of the last such matter to be approved.
3. Details to be submitted in accordance with condition 1(a) above shall include samples of the proposed external materials, floor levels of houses in relation to highways, and arrangements to be made for the protection of existing trees and hedges during building operations.
4. Before the development hereby permitted is commenced, details of the following shall be submitted to and agreed by the local planning authority:
 - (a) garaging and parking arrangements;
 - (b) works to allow the drainage of surface water and arrangements for the disposal of sewage;
 - (c) play areas and open spaces. Such areas shall be retained for these purposes and shall not thereafter be used for any other purpose.
5. No housing development shall take place on that part of Sector G included in the Metropolitan Green Belt.

6. No dwelling shall be occupied until access and vehicle parking spaces have been provided in accordance with details to be agreed in compliance with condition 4(a) above.
7. A fence along the boundary of the site with railway land shall be provided in accordance with details to be agreed with the local planning authority.
8. No trees or hedges on the site shall be felled, lopped, topped or wilfully destroyed until the last of the reserved matters is approved; any such trees or hedges which during that time are removed, die, become severely damaged or seriously diseased shall be replaced with trees or hedges of such sizes and species as may be agreed with the local planning authority, and the details submitted in accordance with condition 1(a) of this permission shall indicate the location of all trees and hedges on the land together with their species.
9. The development hereby permitted shall be carried out in three phases, and shall be completed as follows:
- | | |
|------------------------------------|--------------------|
| to 30 September 1986 | up to 30 dwellings |
| 1 October 1986 - 30 September 1987 | up to 40 dwellings |
| 1 October 1987 - 30 September 1988 | up to 40 dwellings |
- The number of dwellings in each phase shall be agreed with the local planning authority before the development commences and the works comprised in the second and third phases shall not be commenced until all the dwellings in the previous phase have been completed.

10. Attention is drawn to the fact that an applicant for any consent, agreement or approval required by a condition of this permission and for approval of the reserved matters referred to in 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.

11. 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.

I am Gentlemen
Your obedient Servant

MISS A GERRY
Authorised by the Secretary of State
to sign in that behalf