

the notice, planning permission ought to be granted;

- (c) that the matters stated in the notice, if they occurred, do not constitute a breach of planning control.

THE APPEAL UNDER S.78

4. The development for which the Council has refused planning permission is the construction of a new accessway from Little Gaddesden Road to the house known as Cedar View.

5. The appeal site is an irregular-shaped area of land near the junction of Little Gaddesden Road with the B4506 road, to both of which it has a frontage. At the junction itself is Deer Leap Garage. Near the middle of the appeal site an open-air swimming pool with associated buildings is enclosed by a close-boarded fence. The area around that enclosure is mainly neatly mown grass, where you say the public park informally when they come to swim. On the eastern part of the site, in a sloping area of light woodland behind the adjoining dwellings known as Silver Birches and Gaywood is your bungalow.

6. The frontage to Little Gaddesden Road is open, but near the road boundary is a line of low brick pillars, some of them linked by a chain. The entrance to the site is midway along this frontage; it serves both the pool and your bungalow. To reach the latter vehicles turn eastward at the pool enclosure and continue across the grass to the eastern boundary, which they follow alongside the rear garden of Silver Birches. The proposed new access for the bungalow would follow more of the boundary of Silver Birches then pass in an S-bend between a cedar and a beech tree to meet the carriageway 21.3m from the eastern boundary.

7. The frontage to the B4506 you have recently enclosed by a close-boarded fence, about 2m in height, the subject of the enforcement notice. I shall deal with that first.

The appeal on ground (c)

8. A guidance booklet from the Council led you to think that you did not need planning permission for this fence because it was not on the boundary: between it and the carriageway edge you have kept part of an older chestnut fence, about 1m high. That, you say, not the new one, is "next to the highway".

10. The Council's guidance is not itself the law on the matter; that is found in the Town and Country Planning General Development Order 1988 (SI No.1813), the GDO, to which you referred in your grounds of appeal. Article 3 of that Order grants planning permission for several classes of development (known as "permitted development") set out in Schedule 2 of the Order. As you know Class A of Part 2 of that Schedule stipulates that development is not permitted by it if the height of any fence constructed adjacent to a highway used by

fences. These cottages appear to have been built in the 19th century as part of the Ashridge Estate, much of it now owned by the National Trust, which extends southward of the site towards Berkhamsted. One of the former stone lodges of the Estate stands within the curtilage of the garage.

15. Section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 places a duty on the Council, and on me in determining your appeal, to pay special attention to the desirability of preserving or enhancing the character or appearance of conservation areas. I agree with the Council that your fence, in a familiar modern style, strikes a jarring note which contrasts intrusively with the park-like character of the AONB in this area, and with the mellow appearance of the cottages opposite. Nowhere in the vicinity did I see any other fences of this modern style, though I saw several examples of the type the Council call "Ashridge" fencing. It is somewhat lower and incorporates a row of square apertures, about 30cm high, along the top, giving it a lighter and more interesting appearance. Some fencing of this type adjoins the appeal fence, on the boundary of the garage site, and there are about half-a-dozen panels of it along the Little Gaddesden Road frontage of your property, next to the garage. I am not convinced that a taller fence than that is justified, since although it deters intrusion from the main road, anyone can enter the appeal site from Little Gaddesden Road and gain access to the area behind the new fence without difficulty.

16. You pointed out to me the metal railings round a small sewage pumping station which has recently been built just to the south of the site. They are tall with claw-like spikes. This kind of railing has long been used to enclose public facilities like this; its open texture and ochre colour make it much less conspicuous than your fence. I do not find it justifies the latter, which I find unacceptably detrimental to the character and appearance of the AONB and the Conservation Area. The appeal on ground (a) therefore fails and I shall not grant planning permission on the deemed application.

The appeal concerning the access

17. I consider from the written representations and my site inspection that this appeal raises 2 main issues. The first is whether the proposed access would create an unacceptable road safety hazard; the second whether it would threaten the survival of 2 large trees protected by a Preservation Order.

18. The Council's description of Little Gaddesden Road (which they called Nettleden Road) as a classified road seems to have puzzled you. Section 12 of the Highways Act 1980 defines a classified road; besides roads with an A- or B-prefix, it includes others, the reference numbers of which are rarely shown on maps or signposts. Part 2 of Schedule 2 to the GDO permits the formation of an access only to an unclassified road from any development permitted by that Schedule. Since the road is classified and your bungalow is not a development

vehicular traffic would exceed one metre above ground level. The Order does not define the words "adjacent to". They replaced the word "abutting" used in the corresponding Class of the previous (1977) GDO, the meaning of which was the subject of a High Court case (Simmonds v Secretary of State for the Environment and Rochdale Metropolitan District Council, 1981, JPL 509) to which the Council have referred. It concerned a fence more than a metre high which was set back from a highway behind a stone wall and some poplar trees. The Court held that "abutting" was a matter of fact and degree, and did not find the Secretary of State's decision that that fence abutted the highway was wrong.

11. Your new fence is similarly set back behind a length of shorter chestnut fencing which is not continuous, and behind a kind of wooden guard rail where double gates are incorporated in the fence. The latter is less than 2m from the edge of the carriageway. In my opinion it looks and functions like a boundary fence intended to keep people off that part of your land. I consider that its appearance and effectiveness would not be altered if the chestnut fence were removed, and I conclude as a matter of fact and degree that the new fence is adjacent to the highway. Being more than a metre high it is not "permitted development"; your appeal on ground (c) fails.

The appeal on ground (a)

12. From the written representations I received and my inspection of the site and surrounding area I consider that this appeal turns on the effect of the fence on the character and appearance of the Chilterns Area of Outstanding Natural Beauty (AONB) and the Ringshall Conservation Area.

13. The appeal site lies in the AONB, where Policy 2 of the approved Hertfordshire County Structure Plan states that the preservation of the beauty of the area will be the prime consideration, and Policy 23 of the adopted Dacorum District Plan states that the Council will be concerned to preserve the natural beauty of the land. That Plan will be replaced by Dacorum Borough Local Plan, which is already at an advanced stage of the statutory process. In Policy 8 it says that development will not be permitted unless it is appropriate in various respects, including height and materials, and relates to adjoining property and harmonises with the general character of the area. Policy 89 sets out guidelines for development in the AONB. New buildings and other development must not be intrusive in appearance and the materials should fit in with the traditional character of the area.

14. The southern part of the appeal site, containing the fence, is also within the Ringshall Conservation Area, which is characterised particularly by the semi-detached and terraced cottages that stand well back on the opposite side of the B4506. They are separated from the road, and from the flint and brick wall marking their boundary, by a long garden. That extends across the whole terrace, undivided by paths or

which would be permitted by the GDO, the access you propose does not fall within the definition of permitted development.

19. Little Gaddesden Road is very straight. Traffic on it was very light during my visit. It is flanked by well-spaced detached dwellings and leads to the settlement of Little Gaddesden about 1km away, and to Nettleden beyond. I have no doubt that at times it is busier than when I saw it, and I accept that the straightness of the road, which is subject only to the 60mph national limit for single carriageways, may encourage drivers to travel fairly fast. Visibility south-eastwards from the proposed access is restricted by the boundary fence of Silver Birches, and by a telegraph pole. However from a point 2.4m back from the carriageway one can see approaching traffic about 70m away. That is much less than the 215m recommended in Planning Policy Guidance Note 13 but I note that the County Surveyor regarded it as acceptable in the circumstances, and welcomed the improvement it would afford to visibility from the existing access.

20. The PPG13 figures are not prescriptive, they are for guidance to be related to the circumstances of each case. I conclude that in your case the visibility available from the proposed access should not give rise to an unacceptable hazard to people using Little Gaddesden Road.

21. However I noted above that the drive would make an S-bend between the 2 protected trees. The distance between them, measured for me at the site visit, is 12.7m. The drawing shows a drive 3m wide passing obliquely within 4.5m of the cedar and 5.5m of the beech. Since the diagonal width of the drive would be about 4.3m clearance from the trees would be less than you have shown. Moreover it is clear from the drawing that the 4.5m does not refer to the minimum distance between the drive and the cedar. You have not specified its construction, but the churned-up state of the track you use at present indicates that the drive would need a satisfactory foundation. Such works, carried out so close to these large old trees can cause fatal damage to their root system, as the Council's Woodlands Officer pointed out by reference to British Standard 5837; 1991.

22. Both trees are the subject of a Tree Preservation Order and I conclude that forming the proposed driveway between them would unacceptably threaten their survival; the development should therefore not be permitted.

23. I have considered all other matters raised in the written representations but have found nothing which leads me to different conclusions on the main issues.

FORMAL DECISION

24. For the above reasons and in exercise of the powers transferred to me I hereby determine these appeals as follows:-

Section 174 Appeal, ref APP/C/92/A1910/625038/P6

I dismiss this appeal, uphold the enforcement notice and refuse to grant planning permission on the application deemed to have been made under Section 177(5) of the 1990 Act.

Section 78 Appeal, ref APP/A1910/A/92/212473/P6

I dismiss this appeal.

RIGHT OF APPEAL AGAINST DECISION

25. This letter is issued as the determination of the appeals before me. Particulars of the rights of appeal against the decision to the High Court are enclosed for those concerned.

I am Sir
Your obedient Servant

A handwritten signature in dark ink, appearing to read 'H J Blanks', with a horizontal line underneath the name.

H J BLANKS BA(Oxon)
INSPECTOR

**APPEAL TO THE HIGH COURT AGAINST
AN INSPECTOR'S DECISION ON AN ENFORCEMENT
NOTICE APPEAL OR ASSOCIATED PLANNING APPEAL**

An Inspector's decision on an enforcement appeal is final, unless it is successfully challenged in the High Court. Neither the Inspector nor the Secretary of State can amend or interpret the decision. It may only be reviewed if it is remitted to the Secretary of State, by the Court, for re-determination or re-consideration.

Anyone thinking of challenging an Inspector's decision is strongly advised first to seek legal advice. The following notes are intended as general guidance only.

An appeal may be made to the High Court under either or both sections 288 and 289 of the Town and Country Planning Act 1990. Different time-limits, which are explained below, apply to each type of appeal.

a) Appeals under section 288 of the 1990 Act

Section 288 provides that a person who is aggrieved by any decision to grant planning permission on the deemed application in an enforcement notice appeal, or by the decision on an associated appeal under section 78 of the Act, may question the validity of that decision by an application to the High Court on the grounds that:-

1. the decision is not within the powers of the Act;
or
2. any of the "relevant requirements" has not been complied with.

A challenge on either of these grounds must be made within six weeks of the date of the accompanying decision letter. "Leave" of the High Court is not required for this type of appeal.

The "relevant requirements" are defined in section 288 of the 1990 Act and are the requirements of:

- a) the Town and Country Planning Act 1990
- b) the Tribunals and Inquiries Act 1971 (or any other enactment replaced thereby), and

the requirements of any order, regulations or rules made under those Acts or under any of the Acts repealed by those Acts. These include:

- i) the Town and Country Planning (Inquiries Procedure) Rules 1988 (SI. 1988 No. 944);
- ii) the Town and Country Planning (Appeals) (Written Representations Procedure) Regulations 1987 (SI. 1987 No 701);
- iii) the Town and Country Planning (Enforcement) (Inquiries Procedure) Rules 1992 (SI. 1992 No 1903); and
- iv) the Town and Country Planning (Enforcement Notices and Appeals) Regulations 1991 (SI. 1991 No 2804, as amended by SI 1992 No 1904).

Copies of these may be obtained from HMSO Bookshops.

b) Appeals under section 289 of the 1990 Act

Section 289 provides that the appellant, the local planning authority, or any other person having an interest in the land to which the enforcement notice relates, may appeal to the High Court "on a point of law" against the Inspector's determination of an enforcement notice appeal.

An appeal under section 289 may only proceed with the leave of the Court. An application for leave to appeal must be made to the Court within 28 days of the date of the Inspector's decision, (unless the period is extended by the Court).

The appeal procedure involves the submission of what is called a "Notice of Motion" to the Crown Office in the Royal Courts of Justice. You are strongly recommended to consult a qualified legal adviser about this procedure and its estimated cost to you.

INSPECTION OF INQUIRY DOCUMENTS

Any person entitled to be notified of the decision given in the accompanying letter may apply to the Secretary of State, in writing within 6 weeks of notification, for an opportunity to inspect any documents, photographs or plans appended to the decision. These will be listed at the end of the Inspector's decision letter. Your application should be sent to Room 1404, Collgate House, Houlton Street, Bristol, BS2 9DJ, quoting the Inspectorate's appeal reference number and stating the date and time (in normal office hours) when you would wish to make the inspection. Please give at least 3 days' notice and include a daytime phone number, if possible.

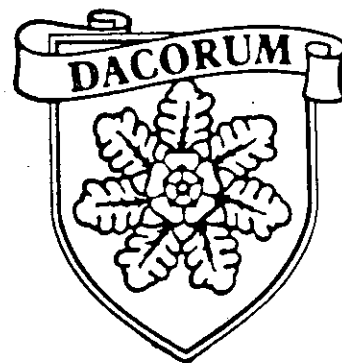
Parties have a right to inspect the documents under the provisions of rule 17(3) of the Town and Country Planning (Inquiries Procedure) Rules 1988, and rule 20(3) of the Town and Country Planning (Enforcement) (Inquiries Procedure) Rules 1992.

PLANNING INSPECTORATE AGENCY
Department of the Environment

August 1992

TOWN AND COUNTRY PLANNING ACT 1990

DACORUM BOROUGH COUNCIL



Application Ref No. 4/0395/92

G J & B M Toth
Cedar View, Deer Leap Drive
Little Gaddesden
Herts
HP4 1PE

DEVELOPMENT ADDRESS AND DESCRIPTION
=====

Deer Leap Swimming Pool, Ringshall, Little Gaddesden.

CONSTRUCTION OF ACCESSWAY FROM HOUSE TO ROAD, NEW ACCESS TO NETTLEDEN ROAD
(REVISED SCHEME)

Your application for *full planning permission* dated 24.03.1992 and received on 01.04.1992 has been **REFUSED**, for the reasons set out on the attached sheet.

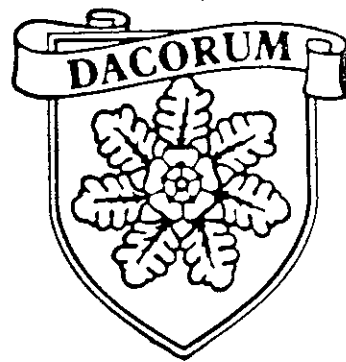
Director of Planning

Date of Decision: 27.05.1992

(ENC Reasons and Notes)

REASONS FOR REFUSAL
OF APPLICATION: 4/0395/92

Date of Decision: 27.05.1992



The proposed accessway from Cedar View to the road and new access onto Nettleden Road, which is outlined in blue on the location plan, would be unacceptable for the following reasons:

1. the access has inadequate sight lines which would result in conditions prejudicial to highway safety;
2. the works associated with forming the accessway would have a detrimental effect on the roots of the two adjacent preserved trees.