TOWN AND COUNTRY PLANNING ACT 1990

DACORUM BOROUGH COUNCIL

Application Ref. No. 4/0492/93

Mr K Duglan
Broomhill Shooting Grounds
Windmill Road
Markyate
Herts

F A John
Berwick Interior Contracts
6 Lockhart Close
Dunstable
Beds
LU6 3EF

DEVELOPMENT ADDRESS AND DESCRIPTION

adjacent to Broomhills Shooting Ground, Windmill Road, Markyate

SUBMISSION OF DETAILS PURSUANT TO CONDITIONS 3 & 4 OF PLANNING PERMISSION 4/0819/90 (DWELLING & GARAGE)

Your application for *the approval of details or reserved matters* dated 29.03.1993 and received on 02.04.1993 has been *GRANTED*, subject to any conditions set out on the attached sheet(s).

Director of Planning.

Date of Decision: 01.07.1993

(encs. - Conditions and Notes).

CONDITIONS APPLICABLE
TO APPLICATION: 4/0492/93

Date of Decision: 01.07.1993

1. The hedge shown on the approved plan drawing no. DH/LFA shall be planted in accordance with the following specification:-

Privet - Ligustrum vulgare
Portugese laurel - Prunus lusitanica
Common laurel - Prunus laurocerasus

i) Stock plants should be container grown and have an overall height of between 45-60cm.
ii) The stock should be planted in a double staggered row formation. Plants should be 0.5m apart within the row, the rows being 0.5m apart.
iii) Before planting takes place all weeds and other extraneous matter should be removed from the planting area and the soil should be cultivated to a depth of 400mm.

Reason: To ensure an adequate landscaping scheme.

TOWN AND COUNTRY PLANNING ACT 1990

DACORUM BOROUGH COUNCIL

Application Ref. No. 4/0255/93

Mr K Duglan
Broomhill Shooting Grounds
Windmill Road
Markyate
Herts

F A John
6 Lockhart Close
Dunstable
Beds
LU6 3EF

DEVELOPMENT ADDRESS AND DESCRIPTION

adjacent to Broomhills Shooting Ground, Windmill Road, Markyate

SUBMISSION OF MATERIALS PURSUANT TO PLANNING PERMISSION 4/0819/90 (DWELLING & GARAGE)

Your application for *the approval of details or reserved matters* dated 19.02.1993 and received on 23.02.1993 has been *GRANTED*, subject to any conditions set out on the attached sheet(s).

Director of Planning.

Date of Decision: 01.07.1993

(encs. - Conditions and Notes).

CONDITIONS APPLICABLE
TO APPLICATION: 4/0255/93

Date of Decision: 01.07.1993

1. The development shall be constructed in Redland dark mixed brindle clay tiles and Yorkshire Brick Company Flemish Blend.

Reason: For the avoidance of doubt.

C/1151/BR/P

Planning Inspectorate
Department of the Environment
Room 1404 Tollgate House Houlton Street Bristol BS2 9DJ
Telex 449321

Direct Line 0272-218 927
Switchboard 0272-218811
GTN 1374

PLANNING DEPARTMENT
DACORUM BOROUGH COUNCIL

Ref.					Ack.	
C.P.O.	T.C.P.M.	D.P.	D.C.	B.C.	Admin.	File

Received 11 OCT 1991

Comments

E A Powdrill and Associates
Ptolemy House
Lower Wharf
Reading Road
WALLINGFORD
Oxon OX10 9AP

Your reference
8976

Our reference
T/APP/A1910/A/90/173564/P4

Date
-9 OCT 91

Gentlemen

TOWN AND COUNTRY PLANNING ACT 1990, SECTION 78 AND SCHEDULE 6
APPEAL BY MR K DUGLAN
APPLICATION NO: 4/0819/90

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 a detached chalet bungalow and garage at Broomhills Shooting Ground, Windmill Road, Markyate. I held a local inquiry into the appeal on 9 July 1991. At the inquiry, an application was made on behalf of your client for an award of costs against Dacorum Borough Council. This is the subject of a separate letter.

2. The appeal site lies within an attractive woodland setting in Broomhill Leys Wood being situated on the side of a small valley in generally open and undulating countryside north-east of Markyate. It comprises a gently sloping and clear grassed area which is, at present, one of a number of clearings used as firing positions for clay pigeon shooting. The site lies some 75 m to the south-east of the main complex of buildings at the Broomhills Shooting Grounds and to the east of the access drive thereto. Access to the complex is via Hicks Road and Windmill Road, 2 narrow country lanes which run north-east from the A5. There is a scatter of dwellings in the locality as well as a number of agricultural buildings. There are medium distance views of the woodland from public footpaths to the north-east as well as from the roads in the locality.

3. Mr Duglan established a limited clay pigeon shooting facility within the woodland in 1974 and, following the grant of planning permission for the use and his acquisition of the site in 1983, has undertaken various developments and improvements with the support of the Council. The premises were subject to theft and vandalism and given the necessity to store ammunition and fire arms he sited a mobile home in the vicinity of the buildings to act as a deterrent. This proved successful and the Council subsequently granted an outline planning permission in February 1990 for the erection of a dwelling at the appeal site subject to conditions, inter alia, restricting occupancy, limiting the floor area of the dwelling to 120 sq m, restricting its height to single-storey and withdrawing permitted development rights. In reaching this decision the Council acknowledged that the need for security at the shooting grounds constituted justification for a permanent ancillary dwelling under the terms of the restraint policies applying to this rural area. The Council's reasons for the imposition of the restrictive conditions related to visual amenity and policy considerations.

4. The appeal proposal is a full submission for the erection of a 4-bedroom chalet style property of some 210 sq m floor area and a detached double garage. While

the Council continue to accept the principle of ancillary residential accommodation at the site it nevertheless contends that the proposed dwelling would be excessive in size and would have harmful impacts on the woodland setting and visual amenity.

5. From the evidence given at the inquiry and from my inspection of the site and its surroundings I consider that the main issue in this appeal is whether or not the proposed development would harm the character and appearance of this rural area having regard to prevailing planning policies.

6. The appeal site lies within a Rural Area beyond the Green Belt where strategic policy seeks to protect and enhance the character of the county's rural areas. It also lies within a Landscape Development Area to which Policy 7 of the Hertfordshire Structure Plan 1986 Review applies and which seeks to promote and support landscape improvement measures. The Dacorum District Plan (adopted 1984) and its Review impose development restraint in the rural areas, seek the protection of important views and skylines and the preservation of trees or woodlands for their landscape and amenity value. It was confirmed at the inquiry that Broomhill Leys Wood is not subject to any Tree or Woodland Preservation Orders.

7. The Council argued that the size of the proposed dwelling would be excessive and unnecessary to serve its security function for the shooting grounds. While Mr Duglan accepted in cross-examination that it was not essential for him personally to reside at the grounds I noted your submission that this leisure enterprise is his sole business interest and that he has a personal commitment and responsibility for its success. Accordingly I do not consider it unreasonable to expect the owner/ operator to wish to live with his family in close proximity to the facilities. The leisure use is in line with national guidance in PPG7 that the best protection for the countryside is a healthy rural economy where enterprise and initiative are permitted and encouraged to thrive. It also accords with Policy 2 of the adopted Dacorum Local Plan and Policy 5 of the emerging Review. I find no justification for the specific floor space limitation imposed upon the outline permission in any of the approved or adopted policies although I accept that the Council quite properly seek to exercise careful control over development in terms of its landscape and environmental impact. However I have not been convinced by the Council's evidence that the size of the proposed dwelling, per se, is excessive or unnecessary in terms of prevailing or proposed rural policies nor that it would offend the integrity of these policies.

8. Turning to the physical impact of the proposed dwelling and garage I note from your evidence that while the siting differs to that indicated in the outline application the site coverage is similar. The dwelling would have a height to ridge of some 8 m which you argued would only be in the order of 1.5 m higher than that of a conventional bungalow. The Council argued that the scale, mass and bulk of the dwelling would be seriously at variance with the generally undeveloped character of the woodland and adversely affect visual amenities. In my view its impact would be restricted to the immediate environs within the woodland and I noted that the Council's planning witness accepted that it would not be seen from any public vantage point. The important views of the woodland would, therefore, be safeguarded. I also note that the Council's arboricultural adviser in his advice to the Council's Planning Committee commented that he did not consider that the proposal would detrimentally affect the woodland. The Council submitted that the cumulative impact of the attendant domestic paraphernalia and the provision of access to the dwelling would be detrimental to the appearance of the woodland although in this regard I find it difficult to distinguish any material differences that would result from this scheme as opposed to the smaller unit sought by the Council.

9. Your client has clearly developed a successful rural leisure enterprise which has had the support of the Council and as is evidenced by the investment in new buildings and facilities. I conclude that you have demonstrated a justification for an ancillary dwelling in terms of security need and that such development is acceptable under prevailing planning policies. While I acknowledge the Council's concern to protect the character of this woodland environment I have not been convinced by its submissions and evidence that the proposed dwelling and garage would be so intrusive in its setting to be seriously harmful to the character and appearance of this rural area. For these reasons I propose to allow this appeal and impose conditions on the planning permission suggested by the Council and accepted by you amended, where necessary, in the light of the advice in Circular 1/85.

10. I have taken into account all other matters raised at the inquiry including the County Council's proposal in its Stucture Plan Alterations to include the site and surrounding land within an extended Green Belt and the Council's housing strategy and policies. Neither of these matters nor any other matters are of such weight as to alter the balance of the considerations that have led to my conclusion.

11. For the above reasons and in exercise of powers transferred to me I hereby allow this appeal and grant planning permission for the erection of a detached chalet bungalow and garage at Broomhills Shooting Ground, Windmill Road, Markyate in accordance with the terms of the application No 4/0819/90 dated 25 May 1990 and the plans submitted therewith, subject to the following conditions:

1. the development hereby permitted shall be begun before the expiration of 5 years from the date of this letter;

2. the occupation of the dwelling shall be limited to Mr K Duglan of Broomhills Shooting Ground, Windmill Road, Markyate and his immediate family or a person employed in the day-to-day running of Broomhills Shooting Ground, or any subsequent owner, operator or worker associated in the day-to-day running of the said shooting ground;

3. notwithstanding the provisions of the Town and Country Planning General Development Order 1988 (or any order revoking and re-enacting that Order) no development within Classes A to F of Part 1 of Schedule 2 to Article 3 of that Order shall be undertaken without the prior planning permission of the local planning authority;

4. no development shall take place until there has been submitted to and approved by the local planning authority details showing:

a. materials for the construction of the access drive;

b. boundary treatment; and

c. external materials for the dwelling and garage;

the development shall be carried out as so approved;

5. no development shall take place until there has been submitted to and approved by the local planning authority a scheme of landscaping, which shall include indications of all existing trees and hedgerows on the land, and details of any to be retained, together with measures for their protection in the course of development;

6. all planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first planting season following the

occupation of the building or the completion of the development, whichever is the sooner; and any trees or plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species, unless the local planning authority gives written consent to any variation;

7. the dwelling shall not be occupied until the garage has been provided which shall not thereafter be used for any purpose other than the parking of vehicles.

12. An applicant for any consent, agreement or approval required by a condition of 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.

13. This letter does not convey any approval or consent which may be required under any enactment, byelaw, order or regulation other than section 57 of the Town and Country Planning Act 1990.

I am Gentlemen
Your obedient Servant

D W HOWARD BA(Hons) DipTP MRTPI
Inspector

D.C.4

MAB

Town Planning
Ref. No. 4/0819/90

TOWN & COUNTRY PLANNING ACTS, 1971 and 1972

DACORUM BOROUGH COUNCIL

To

Mr K Duglan
14 - 16 Church Street
Dunstable
Beds

Dwelling and garage
at Land adjacent to Broomhills Shooting Ground, Windmill Road, 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 25/05/1990 and received with sufficient particulars on 01/06/1990 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 a rural area beyond the 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.

In the opinion of the local planning authority, the size of the proposed dwelling is excessive on this rural site. It is considered that a dwelling of such size is not necessary for the purpose of adding to the security of the adjacent shooting ground and consequently the proposal is unacceptable in the terms of this policy.

2) The proposed dwelling and garage, given their cumulative bulk, height and mass will, in the opinion of the local planning authority, be detrimental to the rural, wooded character of the area.

Dated 15 day of August 1990

Signed

~~Chief Planning Officer~~
Director of Planning

SEE NOTES OVERLEAF

P/D.15

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 the date 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.

DC.4 NOTES

cvmk

Department of the Environment

Room TX103
Tollgate House
Houlton Street
Bristol BS2 9DJ

Direct Line 0272 218573
Divisional Enquiries 0272
Fax Number 0272 218639
GTN Code 1374

Messrs Frere Cholmeley Bischoff
4 John Carpenter Street
LONDON
EC4Y 0NH

Your ref
SE/EAD
Our ref
APP/C/93/A1910/627880
Date & 627881 (COSTS)

- 8 APR 1994

Dear Sir

LOCAL GOVERNMENT ACT 1972 - SECTION 250 (5)
TOWN AND COUNTRY PLANNING ACT 1990 - SECTIONS 174 AND 322A
PLANNING AND COMPENSATION ACT 1991
APPEALS BY DR J L KANE AND MRS V A KANE
LAND AT KEEPERS COTTAGE, THE GREEN, LITTLE GADDESDEN, HERTS
APPLICATION FOR COSTS

1. I am directed by the Secretary of State for the Environment to refer to the appeals by Dr J L and Mrs V A Kane against an enforcement notice issued by Dacorum Borough Council on 12 February 1993. The notice alleged a breach of planning control at Keepers Cottage, The Green, Little Gaddesden, Hertfordshire, by the erection without planning permission of a brick boundary wall approximately 1.4m in height and a wooden panelled fence approximately 1.8m in height, such fence being attached to the brick wall. The notice was withdrawn by the Council in their letters of 13 August 1993, addressed to the Planning Inspectorate and to yourselves. The public inquiry into the appeals, which had been postponed in anticipation of a withdrawal, was accordingly cancelled.

2. This letter deals with your application for an award of costs against the Council, made in your letters of 18 August, 27 September and 18 November 1993. The Council replied in their letters of 6 September, 22 October and 8 December 1993. Since the full text of these representations has been made available to the parties, it is not proposed to summarise them.

BASIS FOR DETERMINING COSTS APPLICATION

3. On 2 January 1992, section 322A of the 1990 Act came into force (inserted by section 30 of the Planning and Compensation Act 1991). The provision enables costs to be awarded against any party whose "unreasonable" behaviour directly results in the late cancellation of an inquiry or hearing, so that expense incurred by any of the other parties is wasted. Specific guidance for dealing with such cases, current at the time of these proceedings, is in Annex 1 to DOE Circular 23/91.

(That guidance, and the more general guidance on costs in DOE Circular 2/87, has now been consolidated in DOE Circular 8/93, issued on 29 March 1993.) Since the appeals in this case were received on 24 March 1993, and an inquiry had been arranged, section 322A of the 1990 Act is applicable. The application for costs has thus been considered in the light of the then-current policy guidance in DOE Circular 23/91, the appeal papers, the parties' correspondence on costs and all relevant circumstances.

REASONS FOR DECISION

4. All the available evidence in this case has been carefully considered. Particular regard has been paid to paragraphs 7 and 8 of Annex 1, and paragraph 14 of Annex 3, to DOE Circular 23/91.

5. It is noted that the withdrawal of the enforcement notice occurred after the Planning Inspectorate wrote to the parties, on 22 June 1993, formally notifying the arrangements for an inquiry to take place on 1 September 1993. The circumstances of this case thus appear to fall within the scope of the policy guidance in paragraph 7 of Annex 1 to Circular 23/91, on the risk of an award of costs against a planning authority if they withdraw the basis of their case in proceedings, resulting in late cancellation of an inquiry or hearing. Accordingly, and in the light of the representations made, it is considered that the decisive issue in this case is whether the late withdrawal of the enforcement notice has been satisfactorily explained by reference to a material change in circumstances relevant to the planning issues arising on the appeal, or to any other exceptional circumstances.

6. It is noted that the principal point of contention between the parties was whether or not the erection of the wall and attached fence constituted permitted development under Class A, Part 2 of Schedule 2 to The Town and Country Planning General Development Order 1988. You suggested that the withdrawal of the enforcement notice implied that the Council had subsequently conceded that your clients' property was not adjacent to a highway used by vehicular traffic, as your clients had maintained from the outset. The Council did not specifically refute that suggestion, nor did they offer any other explanation to account for the withdrawal of the notice. More particularly, no evidence was presented by the Council to suggest any material change in the relevant planning circumstances. It is noted, moreover, that the withdrawal followed soon after the Council had sought their Counsel's advice having previously received a copy of your clients' Counsel's opinion. It is concluded, therefore, that the enforcement notice was withdrawn because the Council were no longer confident that they could sustain the allegation that the specified breaches of planning control had occurred.

7. As to the question of exceptional circumstances, it is acknowledged that the situation was one of some complexity. It is also evident from the representations that both parties were agreed that whether a means of enclosure is adjacent to a highway used by vehicular traffic is a matter of fact and degree. This latter consideration obviously allows scope for different views to be reached in any particular case. Nevertheless, and as advised in paragraph 14 of Annex 3 to DOE Circular 23/91, local planning authorities are expected to exercise care to ensure that enforcement notices take full account of relevant case law

and of planning policy and advice stated in Circulars. In this case, the view is taken that, because the Council subsequently felt it proper to withdraw the notice after considering legal opinion, it follows that the Council themselves took insufficient account of relevant case law before serving the notice. It is concluded, therefore, that no exceptional circumstances justifying the late withdrawal of the enforcement notice have been demonstrated.

8. For these reasons, it is concluded that the Council acted "unreasonably" within the scope of paragraphs 7 and 8 of Annex 1, and paragraph 14 of Annex 3, to DOE Circular 23/91. The Secretary of State is also satisfied that the appellants were thereby put to wasted expense. He has therefore decided to make a full award of costs against the Council.

FORMAL DECISION

9. The Secretary of State for the Environment, in exercise of his powers under section 250 (5) of the Local Government Act 1972, and sections 174 and 322A of the Town and Country Planning Act 1990, **HEREBY ORDERS** that Dacorum Borough Council shall pay to Dr J L and Mrs V A Kane their costs of the proceedings before the Secretary of State, such costs to be taxed in default of agreement as to the amount thereof. The subject of the proceedings were appeals against an enforcement notice issued by Dacorum Borough Council on 12 February 1993 and more particularly described at paragraph 1 of this letter.

10. You are now invited to submit details of those costs to the Director of Law and Administration, Dacorum Borough Council, to whom a copy of this letter has been sent, with a view to reaching agreement on the amount. A copy of the guidance note on taxation procedure referred to in paragraph 28 of DOE Circular 2/87 is also enclosed.

Yours faithfully

P PASCOE
Authorised by the Secretary of State
to sign in that behalf

Revised 1992

GUIDANCE NOTE

DEPARTMENT OF THE ENVIRONMENT
WELSH OFFICE

AWARD OF APPEAL COSTS:

LOCAL GOVERNMENT ACT 1972 – SECTION 250(5)

HOW TO APPLY FOR ADJUDICATION WHEN THE AMOUNT OF AN AWARD OF COSTS IS DISPUTED.

1. If you cannot reach agreement with the Council (or other party against whom costs have been awarded) on the amount of your costs to be recovered, you can refer the disagreement to a Taxing Officer or Master of the Supreme Court Taxing Office for decision.

2. Any party named in the Order awarding costs may apply to the Supreme Court Taxing Office* at any time after receipt of the decision letter from the Secretary of State, or his Inspector, incorporating the Order (costs award) or enclosing it separately.

3. Application is in two stages. The first, described in paragraph 4 below, is to apply to have the costs award made a "rule of the High Court". The second stage is to apply to commence taxation proceedings.

4. The procedure for applying to have the costs award made a rule of the High Court, is as follows:-

(a) Write to the Head Clerk, Crown Office, Royal Courts of Justice, Strand, London WC2A 2LL, referring to section 250(5) of the Local Government Act 1972, and enclosing the original of the Order of the Secretary of State, or his Inspector, awarding costs. It is no longer necessary to certify a failure to agree costs in order to have the costs award made a rule of the High Court and establish the right to interest. A prepaid return envelope should be enclosed.

(b) An Order making the costs award a rule of the High Court will be then sent to you.

Your attention is drawn to the fact that no interest may be claimed on the amount of costs until the costs award is first made a rule of the High Court. Interest on the amount of costs is determined by the Taxing Officer, or Master, and will accrue only from the date of the High Court Order, referred to above.

5. Once the costs award is made a rule of the High Court, you then have three months from the date of the High Court Order to commence proceedings for taxation. The procedure for commencing taxation proceedings is as follows:-

(a) Take or send the original of the High Court Order, together with a certified true copy of that Order, to the Chief Clerk, Supreme Court Taxing Office, Cliffords Inn, Fetter Lane, London EC4A 1DQ, together with a bill detailing the costs claimed and any supporting papers.

(b) The original of the High Court Order will be returned together with the name of the Taxing Officer or Master who will deal with the case.

6. This note is for general guidance only. If you are in any doubt about how to proceed in a particular case, you should seek appropriate professional advice.

*Footnotes (F1 to F3)

F1. The procedure for taxation is governed by Order 62 of the Rules of the Supreme Court (as contained in the Schedule to the Rules of the Supreme Court (Amendment) 1986 (Statutory Instrument 1986/632 (L2)) - available from HMSO Bookshops). The correct procedure has been judicially determined in the case of Brackenvale Limited and NFC Properties Limited -v- London Borough of Camden (30.4.92). This case confirmed that either party may seek to have the Order awarding costs made a rule of the High Court at any time, but that proceedings for taxation must be begun within three months of the date of the High Court Order.

F2. Order 62, rule 28(4), provides that the "taxing officer" may allow the party entitled to costs less than the amount he would otherwise have allowed on taxation of the bill or may wholly disallow the costs if the party -

(a) fails without good reason to commence or conduct proceedings for the taxation of those costs in accordance with Order 62 or any direction, or

(b) delays lodging a bill of costs for taxation.

F3. Awards of costs under section 250(5) Local Government Act 1972 are taxed on the "standard basis", defined in Order 62, Rule 12(1).