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17 JUN 1987

File: C.P.O. m/b

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Handwritten signatures and initials: JMS, JES, 3/28 (J. CORNELL)

Your reference PRF/LJK/2/10910 Our reference DACORUM DISTRICT COUNCIL T/APP/A1910/A/86/56442/P4

Table with columns: C.P.O., Date, B.C., Admin., File. Date: 16 JUN 87

Gentlemen

TOWN AND COUNTRY PLANNING ACT 1971, SECTION 36 AND SCHEDULE 9 AS AMENDED BY THE HOUSING AND PLANNING ACT 1986 LOCAL GOVERNMENT ACT 1972 - SECTION 250(5) APPEAL AND APPLICATION FOR COSTS BY MR J W CORNELL, APPLICATION NO: 4/0494/86

Received 17 JUN 1987 Comments

1. I have been appointed by the Secretary of State for the Environment to determine this appeal, which is against the decision of Dacorum Borough Council to refuse outline planning permission for erection of a dwelling on land to the east of the driveway leading to "Lodge Aruhna" and fronting Water End Road, Potten End, Hertfordshire. I held a local inquiry into the appeal on 28 April 1984. During the inquiry an application for costs against the council was made on behalf of your client, and I shall deal with this separately below.

THE APPEAL

2. The site is within the Green Belt according to the approved Structure Plan (incorporating the approved Alterations No 1, 1984), the boundary having been determined by the Dacorum District Plan adopted in 1984. That Green Belt notation covers also the whole of Potten End village. The site lies outside the Chilterns Area of Outstanding Natural Beauty. I have disregarded the objections of neighbours to the extent that they are based on a mistaken belief that the site is within the AONB.

3. Policy 2 of the Structure Plan says that (other than in Green Belt settlements referred to in Policy 15) permission will not be given, except in very special circumstances, for development other than that required for mineral extraction, agriculture, and certain other uses, none relevant to this case.

4. Policy 15 now says that in settlements within the Green Belt, development will not (unless within the above exception) normally be permitted unless it is for the housing and employment needs of agriculture, forestry etc (none relevant to this case) or for the local facilities and service needs of the settlement in which the development is proposed.

5. Policy 5 of the District Plan says that permission may be granted for small-scale residential development within the main core of Potten End "provided it is also in accordance with Policy 4" and having regard to 4 listed criteria. Policy 4 concerns unnamed rural settlements, where development will not normally be permitted other than for essential uses appropriate to a rural area. Taken literally, those Policies would inhibit any residential development even in a named "Policy 5" village such as Potten End, except for essential uses appropriate to a rural area. Paradoxically, it would be more difficult to obtain permission to build

in a named "Policy 5" village than in a smaller un-named "Policy 4" rural settlement, where those 4 listed criteria are not stated to apply. You questioned the council's witness at some length about this apparent anomaly. I have considered his replies, but I find there to be no logical explanation of the need for a proposal to have to satisfy Policy 4 if the appropriate Policy is No 5. It is not my function to suggest how a Local Plan should be drafted, in the course of a Section 36 planning appeal. In the decision of this appeal I have had regard more to the underlying aims of the District Plan as to the hierarchy of settlements, villages and towns, and have therefore given no weight to the apparent subordination of Policy 5 to Policy 4.

6. In my view, however, the first issue is whether the appeal site is within the main core of Potten End, so as to bring the project within the scope of Policy 5 at all. Secondly, if so, I must consider to what extent the project would satisfy the 4 criteria, a, b, c and d, listed in that Policy. Lastly, if I find that the project should not be within the exception provided by Policy 5, I must consider whether there are any other special circumstances sufficient to outweigh the strong presumption against residential development in the Green Belt.

7. As to the extent here of the main core of the village, your case depended to a great extent on a comparison with 3 cases nearby that were decided on appeal in 1979, 1981 and 1983. I have examined each decision letter (Appendices 2, 3 and 4 of your evidence; Document 5D) and I was able to see each site during my inspection of the surroundings.

8. The earliest decision that you produced, of 1979, allowed in outline the building of the house now known as "Sugar Lodge", to the east of "Brackens" and to the west of "Hollybush Wood". The Inspector disagreed with the council's view of the extent of the village core, finding that the site was within the overall village residential envelope, and that the project before him was an acceptable means of filling a gap between existing dwellings on the fringe of a village built-up area. He held there to be no indication that the extended Metropolitan Green Belt would encompass this area, and therefore declined to follow a precedent of a 1975 appeal decision that had (as I understand) applied rigorous Green Belt policy. He had before him an appeal decision of 1960 that had allowed erection of a service cottage, that had not been implemented. He regarded the principal issue to be the effect of the proposal upon its surroundings, bearing in mind the planning history of that site and the recent consents in its vicinity.

9. The decision of 1981 dismissed your client's appeal to build a house on a plot to the west of his driveway; but dismissal was only on account of the small plot size. That unsuccessful appeal was followed by another, to build a house on an enlarged plot to the west of the driveway. The council refused permission. You appealed on his behalf, and after a local inquiry the Inspector agreed with the 1981 opinion that the site was within the village envelope, which in his view extended to the east to include Hollybush Close. He regarded the main issues to be whether the proposal was contrary to proposals to extend the Green Belt, and whether it was an acceptable form of development in this part of the village. He considered that one additional dwelling there would not detract significantly from the character of the wooded area, and that there were no other sites in Potten End that exhibited the particular circumstances of the case before him, so he was not too concerned about the effect of precedent. He therefore regarded that project as allowable infilling and on 11 July 1983 gave outline permission for the dwelling now known as "Beechwood House".

10. Those decisions are a persuasive factor in favour of the present project, but they do not remove from me the duty of determining this appeal on its own merits and in the light of all relevant policies, including policies that have been formally approved or adopted since 1983. I respect the decisions of my colleagues, but all were issued at times when this area had not been defined in any statutory development plan as forming part of the Green Belt, which it now does.

11. I regard Hollybush Close as a cluster of housing which is compact in itself but which is comparatively isolated from the main core of the village of Potten End.

12. I consider that the appeal site is within a loose-knit area of low density housing in large grounds and wooded gardens, outside the main core of Potten End and forming part of the mainly rural surroundings of the village. I attach great importance to the need to treat those surroundings as part of the Green Belt, and not as any part of the core of the village. I reach this conclusion in spite of the decision letters of 1979, 1981 and 1983 as to the extent of the village envelope.

13. I fear that your client will be disappointed by my adverse finding. It is desirable that there should be consistency in appeal decisions, especially when planning circumstances remain unchanged. Here, there have been significant changes since the previous appeals. The old Policy 15 of the Structure Plan (Document 5E) has been superseded by the new and stricter Policy 15 of 1984 (Document 5A, page 2). The District Plan is now adopted and part of the statutory development plan, having previously been a material consideration carrying lesser weight (see Circular 22/84, Memorandum on Structure and Local Plans, paragraph 1.12). The Green Belt boundary has finally been confirmed. All these factors fully justify my looking at the character of the site afresh. I have taken into account the effect on that character of the building of the new houses, and the existence of the established ones, but I remain of opinion that the appeal site is outside the main core of the village, so that the appropriate Policy is not No 5 of the District Plan.

14. In spite of that finding, I shall also consider the 4 listed criteria of Policy 5 of the District Plan. I find that the site is not within an otherwise built-up frontage sufficient to satisfy the first. As to the second, I consider that the character of Potten End would be damaged by consolidation of the loose-knit housing hereabouts, resulting in an extension of the village in an undesirable form of ribbon development in what ought, so far as possible, to remain part of the rural surroundings of the settlement. If the site had been within the main village core, I would have found no conflict with items (c) and (d). As it is, however, the failure (as I find) to satisfy items (a) and (b) re-inforces my opinion that the project ought not to be allowed in the absence of any special justification.

15. As to special circumstances, you pointed out that the level of local objection was unusually low, in comparison with the outcry that often meets development proposals hereabouts (eg the Rambling Way appeal: Document 5C, pages 19-22). You submitted that the council's objections were based entirely on policy rather than on practical considerations, contrary to Circular 14/85. You showed me examples of new housing in Potten End that had been allowed in spite of Green Belt policy, and urged that your client was entitled to equal treatment. There are no highway objections to the proposed access, shared with "Lodge Aruhna" and "Beechwood House". The indicated siting would cause no loss of important trees.

16. I agree that there is little local opposition, some of it ill-informed. Circular 14/85 mentions the government's firm commitment to protect the Green Belts, preservation of which from unnecessary or obtrusive development is an interest of acknowledged importance. The appeal site does make a contribution to the aims of the local Green Belt, in checking the further growth of Hemel Hempstead, preventing its merging with Berkhamsted and preserving its special character. To allow this project in the face of the District Plan and Structure Plan Alteration would in the absence of convincing special justification tend to undermine Green Belt policy, making it hard for the council to resist similar proposals for ribbon development along Water End Road, the cumulative effect of which could be even more damaging to the special and pleasant character of Potten End. No other example that you

showed me within what I regard as the village core had a similar effect. There is nothing unusual in a rural site being free of constraints as to access etc.

17. I have based my decision on the merits of this site, not on decisions elsewhere (eg Document 5C). I have carefully considered all other factors favourable to the project, but they are outweighed by the need to protect this part of the Green Belt from development unconnected with agriculture etc and not providing the local facilities or service needs of those living or working hereabouts.

FORMAL DECISION ON THE APPEAL

18. For the above reasons, and in exercise of the powers transferred to me, I hereby dismiss your client's appeal.

APPLICATION FOR COSTS

19. Your submission on costs was in effect based mainly on paragraph 11 of Circular 2/87: "A planning authority is likely to be regarded as having acted unreasonably in refusing an application if an earlier appeal against the refusal of a similar application in respect of the site has been dismissed but it is clear from the decision on that appeal that no objection would be seen to a revised application (or) if they fail to take into consideration reported judicial authority or well-publicised appeal decisions relevant to their reasons for refusal" etc. The present case raised issues similar to those raised (and determined against the council) in the appeals of 1979, 1981 and 1983. Refusal was, you say, therefore unreasonable, and resulted in your client being put to the unnecessary expense of an inquiry.

20. In reply, Miss Merrett justified her council's attitude mainly by the change in circumstances arising from approved alteration of the Structure Plan, adoption of the District Plan, and consequent definition of the Green Belt boundary as including the appeal site and its surroundings.


CONCLUSIONS ON COSTS

21. In determining the costs application, 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 awarded only on the grounds of unreasonable behaviour causing unnecessary expense. 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. My findings are these. The council did take the 3 previous appeal decisions into consideration, but decided that there was nevertheless good reason for rejecting the proposal in the light of their newly-approved development plans, and definition of the Green Belt. My decision on the merits of the appeal has vindicated the council's stand. Their behaviour was reasonable, in refusing this application in the face even of that series of appeals. Though not part of your formal costs submission, I have also considered whether the council acted unreasonably in relying in the anomalous provisions of the District Plan referred to in my paragraph 5. In fact, not very much time was spent at the inquiry on this matter, as I told you that I understood the point you were making. My decision on the merits of the appeal does not in any way depend on the phrase in Policy 5 to which you properly took exception. In all the circumstances, therefore, I consider that the council acted reasonably in refusing to grant outline planning permission.

FORMAL DECISION ON COSTS

22. For the above reasons, and in exercise of the powers transferred to me, I hereby determine that your client's application for an award of costs against the Local Planning Authority be refused.

I am, Gentlemen
Your obedient Servant



R M MAXTONE GRAHAM MA (Cantab), Advocate, Legal Assoc; Royal Town Planning Inst
Inspector

APPEARANCES

FOR THE APPELLANT

Mr P R Faulkner FRICS

- Partner in Faulkners, Chartered Surveyors, Kings Langley.

He gave evidence himself

FOR THE LOCAL PLANNING AUTHORITY

Miss T Merrett

- Assistant Solicitor, Dacorum Borough Council.

She called:

Mr G P Bailey ARICS

- Senior Assistant Planner.

DOCUMENTS

Document 1 - List of persons present at the inquiry.

" 2 - Notification letter, and circulation list.

" 3 - Letter from Nettledon-with-Potten End Parish Council.

" 4 - Letters from neighbours.

" 5 - Appendices to Mr Bailey's evidence:

A. Structure Plan and District Plan - extracts.

B. Planning history.

C. Appeal decisions at other sites, each with plan.

D. Appeal decisions at Lodge Aruhna and Hollybush Wood; each with plan.

a. T/APP/5252/A/78/11594/C2 (Mr Faulkner's Appendix 2).

b. T/APP/5252/A/81/03198/G7 (Mr Faulkner's Appendix 3).

c. T/APP/5252/A/83/90/PE3 (Mr Faulkner's Appendix 4).

E. Structure Plan 1979 - extract of Policy 15 (superseded by Policy 15 of Approved Alterations, 1984: see Document 5A, page 2).

" 6 - Council Policy Committee Agenda and Minutes, 17 November 1981; and Council Minutes, 2 December 1981.

PLANS

Plan A - Submitted location plan.

Plans B and C - Further location plans.

Plan D - Plan submitted by the Local Planning Authority.

Plan E - Approved Village Core Plan, 1981.

TOWN & COUNTRY PLANNING ACTS, 1971 and 1972

DACORUM BOROUGH COUNCIL

To Mr J W Cornell Faulkners
Lodge Aruhna Chatered Surveyors
Potten End 49 High Street
Herts Kings Langley

Erection of dwellinghouse (Outline)
at Land at "Lodge Aruhna", Water End Road, Potten End

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 8 April 1986 and received with sufficient particulars on 9 April 1986 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 the Metropolitan Green Belt on the County Structure Plan and the 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. No such need has been proven and the proposed development is unacceptable in the terms of this policy.
2. Development in rural areas outside towns and "specified settlements" and in rural settlements within the Metropolitan Green Belt will only be permitted for essential uses appropriate to the rural area in accordance with the housing and employment needs of agriculture, forestry, leisure and local services in the rural part of the Borough that cannot be practically located elsewhere and the local facilities and service needs of individual rural settlements. No such need has been proven and the proposed development is unacceptable in the terms of this policy,
Dated 26 day of June 1986.

Signed [Signature]

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.