



The Planning Inspectorate

An Executive Agency in the Department of the Environment and the Welsh Office

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Your Ref:
21491P

Our Ref:

T/APP/A1910/A/95/250119/P7

T/APP/A1910/E/95/811753/P7

Date:

11 DEC 1995 4/0699/94

DEPARTMENT OF THE ENVIRONMENT			
DACORUM BOROUGH COUNCIL			
11 DEC 1995 4/0699/94		Ack.	
Mr		C	Adm
			File
Received		20 DEC 1995	
Comments			

Dear Sirs

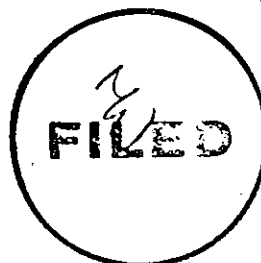
TOWN AND COUNTRY PLANNING ACT 1990 SECTION 78 SCHEDULE 6 AND
PLANNING (LISTED BUILDINGS AND CONSERVATION AREAS) ACT 1990
SECTION 20 AND SCHEDULE 3
APPEALS BY CALA HOMES (SOUTH) LTD.
APPLICATION NOS: 4/0699/94FL & 4/0310/95LB

1. I have been appointed by the Secretary of State for the Environment to determine the following appeals:

APPEAL REF - A/95/250119, APPEAL A: against the failure of the Dacorum Borough Council to give within the prescribed period notice of their decision on an application for planning permission for the change of use of the Mansion House, Lodge buildings and Coach House to residential use, demolition of remaining buildings associated with former animal research station, erection of 17 detached houses with double garages, new model farm containing 7 dwellings plus car parking and roads and external works, at the site of the Mansion House, Berkhamsted Hill, Berkhamsted,

APPEAL REF - E/95/811753, APPEAL B: this appeal is against the same Council to refuse an application for listed building consent for the demolition of walls, a fire escape and a switch room with the construction of a double garage at the Mansion House, Berkhamsted Hill, Berkhamsted.

I held an inquiry into the appeals on 11, 12, 13 October 1995 and 13 November 1995, followed by a site visit on the last day of the inquiry. At the inquiry, an application was made on behalf of the appellant for an award of costs against the Council. This is the subject of a separate letter.



SITE DESCRIPTION

2. The Mansion House is a substantial Grade II listed building; it was designed in the Queen Anne style for Sir John Evans and built in 1906-8, with a substantial extension in 1920. Contemporary with the main house is the 2 storey Coach House to the north west, and 2 dwellings - North Lodge and South Lodge. The smaller buildings fall within the curtilage of the Mansion House, and are recognised by the parties as enjoying the status of curtilage listed buildings. To the north of the Lodges is 'Goreside', originally a farmhouse which, it is agreed, falls outside the curtilage of the listed building, as does the Model Farm that your clients are proposing to demolish and replace.
3. In 1946 the Mansion House was inherited by Sir William Cooper, and in 1949 it became the base of the Cooper Research Station. Then came several years of extensive alterations and building work to accommodate the needs of the research base and to allow for changes in the Company. The organisation was a major employer in the area until 1992 when the operations were moved to Harefield; since that time the site has remained unoccupied.
4. The most prominent feature of the appeal site is the Mansion House; its immediate setting comprises a sunken garden to the west, a paddock to the south west and a lawn to the south leading to a Japanese garden. The site is well screened with mature trees and hedgerows on its southern boundary; the western boundary is, by comparison, open.
5. The appeal site extends to an area of some 8.75 hectares; the buildings described earlier occupy much of the eastern part of the site, and were used mainly as offices. Beyond that, the site takes on a functional appearance, with a variety of industrial style buildings and structures that were used in connection with the animal research station.
6. A public footpath (FP2), running along the western boundary of the site, marks the boundary of the Chiltern Area of Outstanding Natural Beauty (AONB); the AONB surrounds the appeal site on 3 sides. To the south is an open field which separates the site from the built-up edge of Berkhamsted, and denotes the start of the Metropolitan Green Belt, within which the appeal site is located.
7. Immediately to the north of the site is a scattering of buildings associated with a Golf Club, with 4 detached houses to the west of the club house. There is also 1 pair of semi-detached dwellings and a detached dwelling that face the highway; these follow the sequence of buildings set on the eastern frontage of the site. To the east are wooded areas, part of which fall within the extent of the appeal site.
8. In 1992 outline approval was granted for the reorganisation and redevelopment of the site to form buildings for office, industrial and research development. That scheme would result in office space up to a maximum of 9,940 sq m, and there would be 432 parking spaces. At the time of the inquiry a renewal application, dated 31 July 1995, was under consideration by the Council. In 1984 permission was granted for the erection of a 3 storey office block in the paddock adjacent to the Mansion House; that development is said to have commenced.

THE APPEAL PROPOSALS

9. The application for planning permission would result in residential use of much of the appeal site; the existing buildings of interest would revert to the residential use for which they were originally built. The model farm would comprise a new courtyard development of single storey buildings, and the 17 new detached dwellings are shown to be laid out mainly around 2 cul-de-sacs to the west and north west of the Mansion House.

10. In all, there would be 28 residential units on the appeal site. An undeveloped area of open space would be created and retained on the western side of the site; it is proposed to reinforce the belt of planting on the western boundary and for an additional belt to be created on the eastern side of the open area. Your clients also intend to prevent future development of the fields to the west and south of the appeal site; this would be done by way of a legal agreement, a copy of which was submitted to the inquiry. Further implementation of the 3 storey office block could be precluded by the imposition of a condition, as suggested.

11. The proposal forming the subject of the listed building application is self-explanatory.

APPEAL A

12. From my inspection of the appeal site and its surroundings, and having considered the submissions made to me at the inquiry, and in writing, I view the main issues as follows:

1. whether the proposal would be contrary to national planning guidance and to the provisions of the development plan; if so, whether there is any justification that warrants a departure from approved policies and overrides any harm identified, and
2. the effect the proposed development would have on the special architectural interest and setting of the Mansion House, and on its curtilage listed buildings.

13. The development plan for the area comprises the Hertfordshire County Structure Plan, incorporating approved Alterations and the Dacorum Borough Local Plan, which was adopted in April 1995. At a national level the following Planning Policy Guidance (PPG) notes are relevant to this appeal: PPG1, PPG2, PPG3, PPG4, PPG7, PPG13 and PPG15.

FIRST MAIN ISSUE

14. Policy 1 of the Structure Plan states that, except in very special circumstances, within the Green Belt permission will not be given other than for the purposes cited in that policy. Equally, Policy 3 of the Local Plan applies a presumption against development in the Green Belt, other than those listed as being appropriate.

15. Policy 8 of the Local Plan was not raised by the Council in their putative reasons for refusal or in early consideration of your client's application; however, I must have regard to the policy, in so far as it seeks to achieve high standards of development. Thus, in the Green Belt development will not be permitted unless it is located in a suitable landscape setting, or is well related to an existing group of buildings.

16. Under Policy 3 of the Local Plan, appropriate re-use of some redundant buildings in the Green Belt is acceptable. It seems to me that residential uses of the existing buildings would be likely to involve little outward alterations to their fabric, and few external changes would be necessary to accommodate the new uses. That particular aspect of the development would have minimal impact on the openness of the area and, it follows, would not conflict with the policy objective of safeguarding the Green Belt.
17. However, within the confines of local policies, the proposal to re-develop the remainder of the appeal site for housing purposes would not fall to be considered as appropriate development in the Green Belt. But the development plan for the area has been overtaken by PPG2; this deviates from local policies, in so far as it cites the redevelopment of major existing developed sites in the Green Belt as appropriate development. In view of the size of the appeal site, its coverage by existing buildings and its previous intensive use, I see this as a major developed site. Therefore, its redevelopment would fall to be considered as appropriate development in the Green Belt, provided the criteria set out in Annex C to PPG2 are met.
18. I can see that the housing proposal would meet the criteria set out in sub-sections (b), (c) and (d), of paragraph C4 of the Annex. Sub-section (a), requires a redevelopment proposal to have no greater impact than the existing development on the openness of the Green Belt and the purposes of including land in it.
19. One of the purposes of the Green Belt is to assist in safeguarding the countryside from encroachment. The Green Belt extends to the south of the site and effectively contains the built-up fringe of Berkhamsted. Despite the proposed areas of increased planting on boundaries, and regardless of the buffering of the new houses from FP2, I am inclined to the view that the residential nature of the development would be apparent; that would have the effect of extending housing beyond the built-up part of Berkhamsted.
20. My concern then is for the future of the fragile strip of agricultural open land that currently separates the site from the recently erected housing development at Byways to the south. Notwithstanding the submitted legal agreement, I consider that the proposed housing could lead to pressure for that land to be developed, for the Green Belt boundary to be redrawn, with the consequential loss of an area of countryside. In this way, the purpose of including land in the Green Belt cited earlier would be undermined.
21. On the matter of openness, you refer to the informal pattern of layout and the low density of development proposed. These, combined with the new planting and the open space to the west, lead you to conclude that the proposal offers an opportunity for a comprehensive redevelopment of the site, in a manner that would be less intrusive than a Class B1 scheme, and one that would blend in with the residential and developed nature of the area.
22. To me, the few houses in the vicinity of the site do not constitute a residential environment. On the whole, the characteristics of the locality are derived from the openness of the undulating fields to the west and north, and woodlands to the east. This cannot be described as a developed area; save for the appeal site, development in the wider area of the Green Belt is generally sparse.
23. Therefore, any redevelopment of the site should be viewed in that context. That said, I accept that, in numerical terms, site coverage by buildings and the amount of hardstanding

are greater now than would be as a result of the new houses. However, the assortment of utilitarian buildings associated with the previous business are, for the most part, confined to the central area of the site. Although structures do extend to the western boundary of part of the site, these are interspersed with larger undeveloped areas. In the main, I find that the buildings and structures are low in scale and unremarkable in appearance; they impart a unique and unified characteristic to the site, but the overall appearance is not one that detracts from the openness of this rural setting. Equally, it is possible that one or more large office buildings, set in a comprehensively designed and landscaped layout, would have no greater impact on openness and, just as importantly, would maintain the distinctiveness of the site.

24. The same cannot be said for a collection of individual houses, albeit located in what is now the most intensely developed part of the site. With a residential scheme, the site would inevitably take on a fragmented appearance and domestic characteristics; those effects would be emphasised by the sub-division of plots, and the creation of separate, generally enclosed, residential curtilages.

25. Howsoever low in density, and even with reinforced belts of planting, a residential layout would have a discernible impact on openness that would be apparent from within the site and from wider views across FP2 and beyond. It follows, therefore, that the proposal to redevelop part of the site for new housing would not meet the PPG2 criterion; that part of the proposal would not amount to appropriate development in the Green Belt.

26. Inappropriate development in the Green Belt by definition causes harm; while the proposed additional landscaping may soften the appearance of the site, it would not disguise its residential nature. Inconsistency with, and infringement of, the rural surroundings would be distinctly perceptible, with the added loss of the unique characteristics of the site. There would therefore be the added harm to the visual amenities of the area, and increased conflict with policies seeking to safeguard the Green Belt, and those that are designed to preserve the natural beauty of the AONB.

27. Moving on to another aspect of the development plan. Policy 29 of the Local Plan covers employment areas in the Green Belt; the appeal site is identified as one of 3 employment areas where employment generating uses will be retained. It sets out explicit planning requirements for the appeal site; in the main, these relate to the physical characteristics of the site, most of which can be achieved by the appeal proposal. However, loss of the site as an employment generating use amounts to a distinct departure from that particular policy.

28. Policy 29 recognises that the 3 selected, large, well-established areas make substantial contributions to employment. Your evidence suggests that, despite extensive marketing, little interest has been shown for such a use. The evidence also indicates that loss of the appeal site for employment purposes would not undermine the Council's quantitative requirements, as there is sufficient capacity to meet their needs; this is acknowledged by the Council's witness. In that respect, Policy 29 could be said to have been overtaken by events. Moreover, you say that the remote location of the appeal site, poor access to major road networks and limited public transport to the area, all combine to deter potential occupiers.

29. While the reclusive nature of the site may have benefitted the previous occupiers, you say it would not work to the advantage of most businesses; this is borne out by the lack of interest shown in the site. Furthermore, an Update of Technical Reports, submitted to the

Local Plan inquiry in 1994, recognises that little interest has been shown in the permitted outline development for Class B1 use.

30. My own view is that this site could provide an opportunity for an extensive and comprehensive employment scheme. Major road networks and public transport systems may not be readily accessible from Berkhamsted Hill, though I understand the situation has improved since the completion of the Berkhamsted by-pass in 1992; however, the rural surroundings, attractive landscape and its extensive size gives the site a qualitative appeal that is not found in other employment sites in the area; it has the added advantage of an impressive listed building and other attractive buildings. In this way, it contributes to the range and variety of employment sites available in the Borough. PPG4 advocates the availability of choice of suitable sites; that choice would be undermined as a result of the proposed development.

31. As to marketing, the exercise was undertaken over a period of 6 months, and during a time when economic recession could well have influenced the sale of this site. There is no denying the blunt acceptance of events in the Technical Update; however, the information in that Report was submitted to the Local Plan inquiry but did not lead to the deletion of the appeal site from Policy 29. Under all these circumstances, I am inclined to the view that the appeal site, in its entirety, should continue to provide an employment opportunity for the duration of the life of the Local Plan, or until such time as it has been unequivocally demonstrated that an employment generating use on this site is not forthcoming.

32. I shall now look at whether the benefits that are said to flow from the proposal would amount to the sort of circumstances that warrant a departure from Green Belt and other policies, or override the harm I have identified.

33. The amount of traffic generated by the appeal scheme would be in the order of 22 peak hour movements. When compared to the 130 and 180 peak hour journeys generated by the former research station, and the peak time figure of 200 vehicles per hour that would be engendered by the consented Class B1 scheme, there is little doubt that the impact on the road network would be considerably less. Indeed, for that reason, amongst other, there is support for the appeal scheme from local residents.

34. That said, the highways authority raised no objection to the consented 1992 scheme and came to the conclusion that the increase in traffic would be insignificant. While they have requested a traffic impact study in response to the renewal application, there is no suggestion from the authority that the highway implications of such a use would cause significant harm. I accept that the proposed development would have a clear traffic and highway advantage over an employment generating use, but that in itself is not sufficient to allow the appeal, and the matter needs to be balanced against other factors.

35. You say that residential use of the Mansion House and its curtilage listed buildings would be an improvement over the existing authorised office uses. PPG15 advises the reinstatement of the original use of a listed building when its future is considered; but inspection of the listed buildings demonstrates that office uses can also be accommodated without undue harm to their special characteristics and interest.

36. Indeed, to retain the buildings in office use is desirable, in view of the importance of the buildings to the site as a whole. While inclusion of the listed buildings into a

comprehensive scheme is desirable, I am not convinced that your client's proposal is the only way by which the existing buildings would be put to effective use, as part of a complete development.

37. I accept that extensive redevelopment of the site could improve its appearance; bearing in mind the permission already granted for the Class B1 redevelopment scheme, I am not persuaded that a housing proposal is the only option by which such improvements can be achieved. Equally, I take the view that redevelopment of the site for employment purposes could be just as likely to have regard for the existing protected trees on the site, as would the proposal before me.

38. To end on the first issue, I have found the proposed development, in its entirety, to conflict with the objective of retaining the site for employment purposes; while PPG2 allows for redevelopment of major developed sites in the Green Belt, the proposal for new housing does not meet its fundamental requirements and cannot therefore be said to be appropriate. The evidence does not convince me that the circumstances are of sufficient weight to justify inappropriate development in the Green Belt or to warrant a departure from approved policies; nor am I convinced that the benefits alleged would override the harm I have identified.

SECOND MAIN ISSUE

39. Policy 56 of the Structure Plan advances support to District Councils in the protection of listed buildings and their settings, with the objective of ensuring their continued existence. Policy 109 of the Local Plan sets out measures to ensure the retention of listed buildings. These policies reflect the key aims of Sections 16(2) and 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990, which require me to have special regard to the desirability of preserving a listed building or its setting or any features of special architectural or historic interest which it possesses.

40. Although unoccupied, the listed buildings are all in good condition with little sign of deterioration of fabric or structures. In view of the original use for which the Mansion House and the Lodges were built, reversion to residential use would be acceptable in terms of the effects on the special architectural and historic interest of these buildings.

41. While the Coach House was not intended for just residential use, the plans demonstrate that the building could be satisfactorily converted without loss of its essential flavour and characteristics. That said, in view of the value of these properties to the site as a whole, the principle of residential conversions would not be acceptable, and therefore cannot be supported.

42. As to settings, although not in themselves attractive, the assortment of existing functional buildings and structure are low key and do not diminish the importance or interest of the listed buildings. While the Council's criticisms centre mainly on the viability of the listed buildings as marketable propositions, and on detailed design points, my apprehensions are based on broader considerations.

43. To my mind, the wider settings of the listed buildings are derived from the unified characteristics of the site and its relationship with the surrounding countryside. In as much

as a new housing development would alter the distinctive nature of the site, and reduce the effect of openness, so too would it impact adversely on the wider settings of the Mansion House and of the curtilage listed buildings. The immediate curtilage of these buildings would be little altered, but that would not overcome the overall harm to the settings, and there would be conflict with policies seeking to resist such harm.

OTHER MATTERS

44. There is a difference of opinion as to whether the Mansion House would be a marketable proposition without the Coach House and the North Lodge; such a matter gives rise to the concerns for the future of the house. Although a marketing exercise to that effect has not been undertaken, the Mansion House and the South Lodge together appear to me to be workable as a self-sufficient entity, and one that would not necessarily give rise to demand for additional accommodation.

45. It is true that the 4 main buildings are closely related, but that is part of the attraction. Even if the levels of amenity or privacy normally associated with a dwelling are not achieved, I see no reason to object to the residential uses of each of the buildings on those grounds alone.

46. On the matter of exploring alternative uses for the site, evidence suggests that, despite Policy 29, the Council are not unfavourably disposed to considering other uses. My views on the retention of an employment generating use are clear; however, that need not preclude the consideration of other proposals for redevelopment of the site, provided that possible departure from approved policies are properly assessed against harm, against potential benefits and looked at in the light of circumstances at that time.

APPEAL B

47. The principal issue in this case is the effect of the proposed development on the special architectural interest of the Mansion House.

48. The size and position of the proposed garage are dictated by the footings of the existing switch room that is situated at the south western corner of the Mansion House. The switch room would be demolished, together with the external escape stair leading out from the first floor of the building. In your view, the addition of a sympathetically designed garage linked to the house would be a more appropriate and satisfactory solution than one that would stand independent of the house.

49. There is little to commend the design of either the existing switch room or the escape stair, other than recognising them as functional structures that are necessary for the effective operation of the office use of this listed building. The ordinary appearance of the switch room reflects that functional use; while its demolition would improve the appearance of that corner of the listed building, replacement with the proposed garage would not, in my view, be an acceptable proposition.

50. I say this because the scale of the garage would bear little relation to the lofty proportions of the building to which it would be attached; the intricate detailing intended to

reflect those of the Mansion House would further emphasise the disparate scale of the garage. Like the switch room, it would impinge upon the symmetry of the southern facade, but, because of its more elaborate appearance, the garage would unacceptably compete with the Mansion House, to the detriment of its special characteristics.

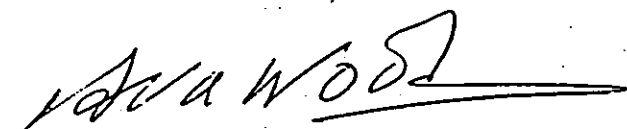
51. To allow the proposed extension would not be in the interest of the listed building, and the development would not comply with policies that aim to prevent harm to such buildings. As demolition of the switch room and escape stair are linked with the proposed garage, I do not consider that allowing only that part of the proposal would be appropriate.

CONCLUSIONS AND DECISIONS

52. I have taken account of all other matters raised but have found nothing so compelling as to alter those considerations that have led to my decisions.

53. For the above reasons, and in exercise of the powers transferred to me, I hereby dismiss Appeal A, and refuse planning permission for the development described in paragraph 1, and also dismiss Appeal B.

Yours faithfully

A handwritten signature in dark ink, appearing to read 'A.J. Wood', with a horizontal line extending from the end of the signature.

A.J Wood Dip Arch Architect
Inspector

APPEARANCES

FOR THE APPELLANT

Mr Martin Kingston QC

Instructed by Mr J Sharpe, Mason
Richards Planning

He called:

Mr J Sharpe BSc(Hons)
MSc(Hons) MRTPI

Mason Richards Planning

Mr G A Collens MLA(Penn.)
DipArch (Leeds) ALI ARIBA

Consultant to Derek Lovejoy Partnership,
8-11 Denbigh Mews, London SW1V 2HQ

Mr S M Atkinson BSc(Hons)
CEng MICE MIHT MAPM

Stuart Michael Associates, 18B Kingfisher
Court, Hambridge Road, Newbury, Berks.
RG14 5SJ

FOR THE LOCAL PLANNING AUTHORITY

Mr Timothy Straker of Counsel

Instructed by Mr K Pugsley, Director of
Law and Administration, Dacorum
Borough Council

He called:

Mr C J Higenbottam BA(Hons)
BArch(Hons)(Newcastle)
Diploma in Building
Conservation(AA) RIBA

Conservation and Design Adviser to
Dacorum Borough Council

Mr J R Doe BSc MRTPI

Senior Planning Officer, Dacorum Borough
Council

Miss F M A Moloney
BA(Hons) DUPI MRTPI

Senior Planning Officer, Dacorum Borough
Council

INTERESTED PERSONS

Mr Shardlow

Thorn Cottage, Byways, Berkhamsted

Mr J Dalton

on behalf of local residents, Linden Court,
Byways, Berkhamsted

Mr T Standen

Trevillic, 36 Bridgewater Road,
Berkhamsted, HP4 1HP

Cllr Mrs Dunbaron

Dacorum Borough Council

DOCUMENTS

- | | |
|--------------------|---|
| Documents 1/3-1/4 | - List of persons present at each day of the Inquiry |
| Document 2 | - Council's letter of notification of the Inquiry and list of persons notified. |
| Documents 3/1-3/17 | - Third party letters |
| Document 4 | - Submission made on behalf of local residents |
| Document 5 | - Mr Grainger's proof of evidence and appendices |
| Document 6 | - Mr Lewis' proof of evidence |
| Document 7 | - Letter from Savills to Cala Homes (South) Ltd., dated 10/10/95 |
| Document 8 | - Letter from Cole Flatt and Partners to Cala Homes (South) Ltd., dated 5/10/95 |
| Documents 9/1-9/2 | - Legal Deed of Undertaking from Cala Homes (South) Ltd. and Mallinckrodt Veterinary Ltd. (signed and sealed but not dated), and amended copy of same |
| Document 10 | - Written agreement over retention of trees, between Mr Grainger and Mr Lewis |
| Document 11 | - Letter from Brown and Merry to Mr Higenbottam, dated 9/10/95 |

- Document 12 - Copy of Planning Obligation made between Dacorum Borough Council and Pitman Moore Ltd., pursuant to grant of permission in 1992
- Document 13 - Application form and plans submitted in connection with the Class B1 development approved in 1992.
- Document 14 - Letter from Mr Higenbottam to Cole Flatt and Partners, dated 12/9/95
- Document 15 - Additional condition suggested by the Council
- Document 16 - Copy of Policy 85, adopted Local Plan
- Document 17 - Letter from Hertfordshire County Council to Director of Planning, Dacorum Borough Council, dated 15/4/91
- Document 18 - Submission to the inquiry from Mr Standen
- Document 19 - Application form submitted to the Council, in connection with renewal of consent of the Class B1 development
- Document 20 - Letter from Mason Richards Planning to Dacorum BC, dated 24/10/95, regarding conditions
- Document 21 - Letter from Miss Moloney to Michael Cox Associates, dated 8/11/95
- Document 22 - Letter from Mr Doe dated 27 January 1995, regarding locations for a short term care centre
- Document 23 - Letter from Brown and Merry to Mr Higenbottam, dated 17/10/95
- Document 24 - Stratford-upon-Avon DC v SSE, JPL (1994) 741, submitted by Mr Kingston in closing
- Documents 25/1-25/2 - Appendices to Mr Sharpe's proof of evidence
- Document 26 - Appendices to Mr Collens' proof of evidence

- Document 27 - Appendices to Mr Atkinson's proof of evidence
- Document 28 - Appendices to Miss Moloney's proof of evidence
- Document 29 - Appendices to Mr Doe's proof of evidence
- Document 30 - Appendix A to Mr Higenbottam's proof of evidence

PLANS

- Plans A/1-A/40 - Application plans: Planning application
- Plans B/1-B/8 - Application plans: Listed Building application
- Plans C/1-C/11 - Copies of original drawings: Mansion House and Coach House
- Plans D/1-D/4 - Possible layout of Mansion House as a dwelling
- Plan E - Plan no: 441/3G, red line indicates subject of suggested condition

PHOTOGRAPHS

- Photos 1 - Photomontage booklet no.1
- Photos 2 - Photomontage booklet no.2
- Photos 3 - Photographs - Appendix B to Mr Higenbottam's proof of evidence



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An Executive Agency in the Department of the Environment and the Welsh Office

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The Solicitor to the Council
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HEMEL HEMPSTEAD
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Your Ref: 4/0699/94FL 7 4/4/0310/95LB
Our Ref: T/APP/A1910/A/95/250119/P7
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Date: 11 DEC 1995

Dear Sir

TOWN AND COUNTRY PLANNING ACT 1990, SECTION 78 AND SCHEDULE 6
PLANNING (LISTED BUILDINGS AND CONSERVATION AREAS) ACT 1990,
SECTION 20/39 AND SCHEDULE 3
LOCAL GOVERNMENT ACT 1972, SECTION 250(5)
APPEALS BY CALA HOMES (SOUTH) LTD.

1. At the local inquiry into the above mentioned appeals held on 11, 12, 13 October 1995 and 13 November 1995 an application for costs was made on behalf of Cala Homes (South) Ltd.
2. I enclose my decision on this application.

Yours faithfully

A J Wood Dip Arch Architect
Inspector

ENC



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LOCAL GOVERNMENT ACT 1972, SECTION 250(5)
APPEALS BY CALA HOMES (SOUTH) LTD.
APPLICATION FOR COSTS BY CALA HOMES (SOUTH) LTD.**

1. I refer to your application for an award of costs against the Dacorum Borough Council which was made at the inquiry held at Berkhamsted Civic Centre, High Street, Berkhamsted on 11, 12, 13 October 1995 and 13 November 1995. The inquiry was in connection with the following appeals by Cala Homes (South) Ltd.:

APPEAL REF - A/95/250119, APPEAL A: against the failure of the Dacorum Borough Council to give within the prescribed period notice of their decision on an application for planning permission for the change of use of the Mansion House, Lodge buildings and Coach House to residential use, demolition of remaining buildings associated with former animal research station, erection of 17 detached houses with double garages, new model farm containing 7 dwellings plus car parking and roads and external works, at the site of the Mansion House, Berkhamsted Hill, Berkhamsted,

APPEAL REF - E/95/811753, APPEAL B: this appeal is against the same Council to refuse an application for listed building consent for the demolition of walls, a fire escape and a switch room with the construction of a double garage at the Mansion House, Berkhamsted Hill, Berkhamsted.

A copy of my appeal decision letter is enclosed.

2. In support of the application I was referred to Annex 1 paragraph 6 of Circular 8/93 which sets out the conditions that will normally need to be met before an award of costs is made. Your submission is that the proposals would not have come to an inquiry if the Council had dealt with the applications in a reasonable manner.

3. The Council's unreasonable behaviour relate to the notional and real reasons for refusal in the planning application and the application for listed building consent, respectively; it is said the reasons given are not complete, precise, specific or relevant to the applications, and that substantive evidence was not produced to support the said objections.
4. To start with, the objection to the proposal on Green Belt grounds is unreasonable when the Council rely on Policy 29 of the Local Plan which is in favour of redevelopment on the appeal site. This should be contrasted with the Council's willingness to consider other uses on the site, and to negotiate on the scheme for residential development; these demonstrate that there is conflict in their own approach to Policy 29.
5. The Council produced no evidence either in their proofs or in cross-examination which support the objection regarding alternative uses. Nor is there substantive evidence in the form of detailed analysis, landscape assessments, or even identified view points, that would give credence to the objections based on the pattern and density of the proposed housing development.
6. Alleged harm to the Mansion House, arising from the proximity of the Coach House and the Lodges, is demonstrated only by way of a letter from selling agents. The Council have not properly directed themselves to looking at the existing situation, when demonstrating harm to the listed building that would arise from proposed parking arrangements.
7. The dispute over the loss of trees was resolved within hours of the opening of the inquiry and should not have been put forward as a putative reason for refusal. Finally, it is argued that it is unreasonable to advance objections relating to possible pressure for development elsewhere, when the Council are aware that such concerns could be surmounted by way of a legal agreement or a condition.
8. Another example of the Council's unreasonable behaviour is the raising of new issues in the witness's proofs of evidence, with no substantiation by way of supporting evidence. These matters include affordable housing, sustainability, and the relationship of existing buildings.
9. In response, Counsel for the Dacorum Borough Council declared that the application for costs is based on a presumption that the appellant will win the appeals. The application presupposes the result, when in fact the Council did not behave unreasonably and were not bound to grant consents.
10. For instance, while it is alleged that the Green Belt objection is misguided, the appellant's own evidence and the Council's evidence refute that claim. That the proposal conflicts with Policy 29 is accepted by the appellant's planning witness, but the application for costs supposes the result and translates that result into unreasonable behaviour. The same format applies to claims of lack of evidence on the matter of alternative uses.
11. Matters concerning the suburban form of the development, the effect on the listed buildings, and consequences of the garage, require some amount of subjective judgement and the witnesses are there to provide the Inspector with assistance in making those judgements. It is to the benefit of the inquiry that the difference of opinion regarding trees was resolved, and it demonstrates the reasonableness of the Council. Furthermore, evidence advanced by

the Council supports their concerns for future of the surrounding land; to question the long term effectiveness of a legal agreement is not unreasonable.

12. As to late submissions, the matters referred to by the appellant as being late were in fact included in the Council's pre-inquiry statement and in the report to committee. In any case, the raising of such issues in the proofs of evidence did not lead to an adjournment of the inquiry. On the whole, it is said that the Council have properly entered into discussion on all matters and there can be no grounds for alleging unreasonable behaviour.

13. The application for costs falls to be determined in accordance with the advice contained in Circular 8/93 and all the relevant circumstances of the appeal, irrespective of its outcome, and costs may only be awarded against a party who has behaved unreasonably.

14. To start with, the matters said to have been raised late in the proceedings should not have come as a surprise to the appellant. They were all taken account of either in committee reports, in the pre-inquiry statement or in earlier correspondence between the principal parties.

15. The Council's objections to the proposed development in Green Belt terms, and on the basis of loss of an employment generating use are clear, in so far as the wording of the putative reasons for refusal recognises conflict with local policies and declares no justification for exception to the relevant policies.

16. While the evidence in support of the Green Belt objections do not rely on detailed analysis to any great degree, to my mind, what was submitted to the inquiry was adequate; harm to the visual amenities and openness cannot always be demonstrated by way of numerical assessments, but require some subjective judgements. Equally, I do not find the Council's evidence in support of retaining an employment generating use lacking so significantly as to undermine their reason for objecting on those grounds.

17. Bearing in mind the lack of interest shown in the Class B1 development on the site to date, it is not unreasonable of the Council to keep an open mind on alternative uses, and to look at such options in the round. The fact that agreement on the trees was reached prior to the opening of the inquiry also suggests their willingness to enter into negotiations; I am not convinced that reaching an agreement any earlier would have necessarily prevented your client from incurring costs.

18. On matters concerned with the listed buildings, I am satisfied that the Council's objections have been dealt with in a manner that is appropriate. There may be disagreements as to the viability of the Mansion as a single dwelling, but on the whole subjective assessments had to be made and these have been adequately undertaken by both parties, albeit in different ways.

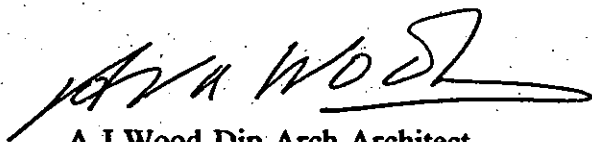
19. Finally, in view of my own comments on the subject, and notwithstanding the submitted legal agreement, I do not consider that it is unreasonable of the Council to object to the proposal on the grounds of long term concern for land adjacent to the appeal site. Taken overall, I am not convinced that the Council's actions have been unreasonable; I therefore conclude that your application for an award of costs is not justified.

FORMAL DECISION

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20. For the above reasons, and in exercise of the powers transferred to me, I hereby refuse the application by Cala Homes (South) Ltd. for an award of costs against the Dacorum Borough Council.

Yours faithfully

A handwritten signature in black ink, appearing to read 'A J Wood', with a long horizontal flourish extending to the right.

A J Wood Dip Arch Architect
Inspector

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