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CHIEF EXECUTIVE OFFICER

21 APR 1987

File CPO 31/4

DEPARTMENT OF THE ENVIRONMENT

Room 1417
Tollgate House Houlton Street Bristol BS2 9DJ
Telex 449321
Direct line 0272-218 8927
Switchboard 0272-218811
GTN 2074

PLANNING
DACORUM
Ref
Received 21 APR 1987
Comments

Messrs Pulver & Symondson
Solicitors
Castle Beams
1 Castle Street
AYLESBURY
Bucks HP20 2RE

Your reference
File.
Our reference
T/APP/A1910/A/86/055459/P5
Date
16 APR 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 BY AND APPLICATION FOR COSTS AGAINST MR AND MRS J L PHILLIPS

PLANNING APPLICATION NO: 4/0888/86

1. I have been appointed by the Secretary of State for the Environment to determine the above mentioned appeal. The appeal is against the decision of the Dacorum Borough Council to refuse planning permission for a single storey side extension at "Osmunda" (now "Long Common"), Scatterdells Lane, Chipperfield. I held a local inquiry into the appeal on 17 March 1987. At the inquiry an application for costs was made by the local planning authority against your clients, and I will deal with this separately below.

APPEAL

2. From my inspection of the site and surroundings, and from my consideration of all the representations made, I am of the opinion that the decision in this appeal rests primarily on whether the proposed extension would result in an unduly large dwelling, bearing in mind that the appeal site is in the green belt where the council have planning policies for controlling the size of replacement dwellings to maintain the existing rural character and appearance of the landscape.

3. Your clients' new house, with a curtilage extending to about .4 has, is situated on the south eastern side of Scatterdells Lane, which is a residential road on the northern side of the village of Chipperfield. The area is within the Metropolitan Green Belt, and Scatterdells Lane still has some gaps in the mainly built-up frontages, particularly on the northern side, which help to retain its partly rural appearance. I would thus consider it important to support the council's planning policies to maintain the existing character.

4. In considering the present application, it seems to me that it is necessary to review briefly the history of the site since 1984 when your clients first made an application for the replacement of the original small bungalow, "Osmunda" which extended to only some 60 sq m, excluding a detached garage and some outbuildings as shown on Plans B and E. The application for the replacment bungalow showed it to have a floor area of some 84 sq m (Plan C) which the council approved, subject to a condition removing the "permitted development" rights under the

General Development Order. They accepted that although the new bungalow would be larger, it would not be so out of keeping with the provisions of Policy 6 of the District Plan as to justify refusal so long as it was not extended further.

5. Your clients had apparently only made an application for a small bungalow at that stage because they intend to extend it later. They were thus aggrieved by the loss of the "permitted development" rights and decided to make an application for a bungalow some 15% larger to ensure that before they went ahead with the development, rather than double the size of the existing bungalow which would have complied with the council's guidelines on the extension of small dwellings, they could at least build a dwelling that would be adequate for their long-term needs. The council refused the application, and an appeal was made, which was subsequently allowed. The approved plans (Plan C) on which detailed permission was granted showed a bungalow of some 96 sq m, but in view of the question of size being "of the essence of the decision" - as the inspector put it - the "permitted development" rights were again removed. I understand your clients agreed at the time that this would be acceptable to them. The dwelling as it now exists was then built, but internally it bears little resemblance to the submitted plan as the loft area under the very high profile pitched roof has been used to provide 3 bedrooms, boxroom and 2 bathrooms reached via a permanent stairway from the passage between the hall and the lounge. The latter room in fact occupies all the space shown as 2 of the bedrooms on the approved plan. Windows have been included at first floor level at the front and rear for 2 of the bedrooms, and one of the bathrooms has a roof light.

6. Your clients now find that they need yet further living space for their growing family, and would like to have windows in all the existing upstairs rooms. They therefore made an application that was almost identical to that now before me but included dormer windows at first floor level in the existing structure, as well as the proposed extension. This was refused by the council, and the application subject of the appeal, with the windows deleted, was then made. It is described as being for a single-storey side extension, but of course there would be the loft space available under the high roof which could be used in similar fashion to that above the remainder of the ground floor.

7. This application was also refused because the council regarded the size of dwelling proposed as seriously out of keeping with the provisions of their policies for replacement dwellings in the green belt, and contrary to the decision after the last appeal which, in the council's view, indicated that a dwelling larger than that approved would not be acceptable. The size of the proposed extension is stated to be 36.75 sq m but, as with the previous mesurements quoted, this covers only the ground floor area. On this basis the bungalow as extended would then have a floor area of nearly 133 sq m, but the extension would also have what your clients call "usable loft space" of some 19 sq m. The existing dwelling is stated to have some 50 sq m of such space, and the total floor space of the bungalow, if now extended as intended would have a total floor area of more than 200 sq m. It can hardly be claimed that a dwelling such as that would conform with Policy 6 of the District Plan which indicates that replacement dwellings should be of similar size and should not be more intrusive in the landscape.

8. It was argued on behalf of your clients that the proposed

extension would in fact comply with the council's guidleines for extensions if the present proposal were regarded, as you think it should be, as an extension to an existing dwelling. Under the council's adopted guidelines (Document 3(7)) extensions up to some 56 sq m (600 sq ft) are acceptable for all dwellings regardless of size in accordance with the graph attached to the council's guidelines on extensions. The extension being proposed only has a ground floor area of 36.75 sq m, and even with an allowance of 19 sq m for usable loft space, as indicated in the guidelines, the provisions would still be met.

9. Your clients do not consider that after the last appeal the inspector meant that the dwelling should never be extended further, but only that the council should be given an opportunity to consider any proposal. The proposed extension would not be detrimental in any way to the environment in Scatterdells Lane, nor would it be larger than a number of other dwellings permitted as replacements or resulting from extensions. In relation to the size of the curtilage, the dwelling would perfectly satisfactory, and in relation to the provisions of Circular 14/85, it would not cause any demonstrable harm.

10. I do not disagree with your clients' contention that if the size of the present dwelling were taken as the baseline for considering any further extension, the proposal would come within the council's guidelines. However as the dwelling is a recent replacement, this would not, in my opinion, be a reasonable interpretation of the aims of the council's planning policy for such dwellings. In my view, there is substance in the council's opinion that if the house were extended as shown, it would appear over-large and dominating in relation to its frontage, and be noticeably prominent in a country lane where many of the dwellings are small and have spacious surroundings. It would therefore affect the character. Even allowing for the fact that the former bungalow itself could have been roughly doubled in size without exceeding the council's guidelines, the existing dwelling as permitted after the last appeal has a comparable - albeit somewhat larger - floor area. If some account is taken of the living accommodation provided on the first floor (as so-called usable loft space) the size of the present dwelling is some 20% greater. This overall 'bulk' was clearly considered acceptable by the inspector after the last appeal, but there is little doubt in my mind that if even a modest further enlargement had been regarded as acceptable he would not have removed the "permitted development" rights under the General Development Order, and in practice it would hardly have been likely that the council would have regarded any further extension appropriate in view of their previous decision.

11. Your clients are now requesting another increase that would enlarge the floor area permitted after the last appeal by a further 38%. Such an extension would clearly be way out of line with anything that might be considered reasonable as part of the redevelopment of a site of a small bungalow under the council's adopted planning policies for the green belt. I consider due regard must be paid to these policies, and in this instance they should be upheld as a matter of demonstrable public interest. As I do not find any special reasons in this case that might be regarded as sufficient to justify making an exception, I am of the opinion that to reach any other conclusion would seriously prejudice the council's policy for controlling development in the green belt, which I consider quite reasonable.

12. I have examined all the other matters raised in the

representations, but there is nothing of sufficient substance to outweigh those considerations that have led me to my decision that it is necessary to refuse planning permission for the proposed development.

13. For the above reasons, and in exercise of the powers transferred to me, I hereby dismiss this appeal.

APPLICATION FOR COST

14. In support of their application for costs, the local planning authority referred to Circular 2/87 and stated that, in their view, the appellants' behaviour had been unreasonable. They pointed out that after the last appeal the inspector had made it perfectly clear, by removing "permitted development" rights, that no further extension to the dwelling as approved should be allowed. There was thus no reasonable prospect of this appeal succeeding unless the council's policies were completely ignored or overturned, which is extremely unlikely in view of the fact that they have been supported after a number of appeals in the past as being wholly reasonable and equitab'

15. It is thus considered that the appellants should be required to bear the council's costs of preparing for, and being represented at, the inquiry.

16. In reply the appellants stated that the council's allegation of unreasonable behaviour and application for costs were absurd. The inspector's letter after the last appeal in no way indicated that the absolute maximum size of the dwelling had been reached. Furthermore one of the council's planning officers had stated, prior to the application being made, that the proposed extension was in line the guidelines if the existing dwelling was used as the baseline for the calculations.

17. For the council to contend that the appellants were not entitled to make an appeal on a matter that did not appear to conflict with the council's planning policy and guidleines is not in itself considered a reasonable attitude, and regardless of the outcome of the appeal there are therefore no grounds for the appellants to be accused of unreasonable behaviour or required to bear the council's costs.

CONCLUSIONS

18. In determining the council's 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 grounds of unreasonable behaviour. 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 in this appeal.

19. It seems clear to me, in view of the removal of "permitted development" rights after the last appeal, that the replacement dwelling would not have been allowed if it had been any larger than proposed at that time, and - for the next few years at least, if not for ever - it could not realistically be expected that permission would be granted for any further extension as a result of another appeal. In the light of the fact that the council had refused permission, even for the size of dwelling allowed after that appeal, it is most unlikely that they would be prepared to grant permission, other than in some

very exceptional circumstance, which I do not find in this case, bearing in mind that purely personal requirements are not normally sufficient to affect planning decisions. I can thus understand the council considering that your clients' appeal against their refusal was sufficiently unreasonable to justify a claim for costs.

20. I might have been minded to allow the claim but for the fact that it appears one of the council's planning staff did not clearly indicate to your clients that, in the circumstances, it was most unlikely that Policy 6 of the District Plan would no longer be considered to apply, even though there would be no conflict with the adopted guidelines on extensions if the proposal were assessed as an extension to an existing dwelling. I note the council subsequently warned your clients of their intendion to make an application for costs if the matter came to an inquiry, but it does not seem to me your clients' action in continuing with the appeal was unreasonable at this stage in view of the hope that the proposal might be regarded as being within the guidelines on extensions. I have thus reached the conclusion that your clients' behaviour could not be regarded as being so unreasonable as to justify making an award of costs against them.

FORMAL DECISION ON COST

21. I accordingly dismiss the claim for costs made by the local planning authority against he appellants.

I am Gentlemen
Your obedient Servant

J M DANIEL DFC FBIM
Inspector

D.C.4

Town Planning Ref. No. 4/0888/86

TOWN & COUNTRY PLANNING ACTS, 1971 and 1972

DACORUM BOROUGH COUNCIL

To Mr and Mrs J Phillips
Corner Cottage, Kings Lane
Chipperfield
Herts

Mr A E King
Wetherby House ~~Wetherby House~~ Dovecote Barn
The Hemmings Aldopark Meadow
Shootersway Lay Master.
~~Berkhamsted~~ Herts.

Single storey side extension

at Osmunda, Scatterdells Lane, Chipperfield

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 17.6.86 and received with sufficient particulars on 20.6.86 and shown on the plan(s) accompanying such application.

The reasons for the Council's decision to refuse permission for the development are:–

The proposed development 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 or extension of existing buildings for agricultural or other essential purposes appropriate to a rural area or small-scale facilities for participatory sport or recreation. No such need has been proven and the proposed development is unacceptable in the terms of this policy.

Dated 14th day of August 19 86

Signed [signature]

Chief Planning Officer

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 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.