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Your reference		PLANNING DEPARTMENT	
DC/MB		DACORUM DISTRICT COUNCIL	
Reference		Act.	
APR/5252/C/82/1745			
Date		APR/5252/6/82/007674 File	
23 JUL		25 JUL 1984	
Comments			
RETURN TO MRS FOR COMMITTEE REPORT			

Gentlemen

TOWN AND COUNTRY PLANNING ACT, 1971 - SECTIONS 36 AND 88

APPEALS BY MRS E. D. THORNHILL

LAND AND BUILDINGS AT 2A BELSWAINS LANE, HENRI, HEMPSTEAD, HERTS

1. I am directed by the Secretary of State for the Environment to refer to your client's appeals against an enforcement notice served by the Dacorum District Council relating to the use of the above mentioned land and buildings for the purpose of a clinic and against the decision of the same Council to refuse planning permission for the use of whole of the dwelling as a clinic.

2. The appeal against the enforcement notice was made on the grounds set out in Section 88(2)(a), (f), (g) and (h) of the Town and Country Planning Act 1971, as amended by the Local Government and Planning (Amendment) Act 1981. At the inquiry held on 23 February 1983 the ground set out in Section 88(2)(f) was withdrawn.

3. On 24 March 1983 a decision on the appeals was issued by an Inspector appointed by the Secretary of State. The enforcement notice was corrected and varied but otherwise upheld and planning permission was not granted on the application deemed to have been made under Section 88(3) of the 1971 Act (as amended by the 1981 Act) or on the appeal under Section 36 of the 1971 Act. This decision was the subject of an appeal to the High Court under Sections 245 and 246 of the 1971 Act and by Order of the Court, given on 2 February 1984, was remitted to the Secretary of State for reconsideration in the light of the judgment of the Court.

4. In the judgment of the Court it was stated that subject to the question of whether or not planning permission should be granted, the decision of the Inspector to uphold the enforcement notice was not challenged. In relation to the decision with regard to planning permission, which was adverse to the appellant, the Court held that the appellant was entitled to succeed in relation to only one of the 3 points which were made to the Court, namely the submission that the Inspector failed to consider or deal with an argument that as a consequence of a refusal of planning permission for the house to be used as a whole for its present purposes, part of the house would be left vacant with undesirable planning consequences.

5. The appeals have now been reconsidered in the light of the judgment, and on the basis of the evidence available at the time of the inquiry and of the further representations of the parties made in response to the Department's letters to them of 26 April 1984.

6. On the planning merits of the appeals it was submitted on behalf of your client, in addition to the representations put forward at the inquiry, which were recorded in the Inspector's letter of 24 March 1983, that there was no substantial difference between the particular user of the property as a diathermic clinic in circumstances where the remainder of the premises will remain vacant (such user being the permitted user) and the taking over of the whole building for the use to the exclusion of any residential occupation. In granting planning permission in 1974 for the change of use of 2 bedrooms of 2A Belswains Lane to diathermic clinic and office the local planning authority would have taken into account all planning considerations including the effect of the use on the neighbourhood. Irrespective of the outcome of the present appeals the front 2 bedrooms of the appeal building will continue in use as a diathermic clinic. The inevitable consequence of there being a clinic on the upper floor would be a mixed use building and the suitability of the building for a mixed use must therefore be considered. The first floor is not self-contained and it would be impossible to self-contain the 2 rooms without providing an external staircase at the front of the building, which would clearly be unacceptable in terms of visual amenity and security. In its present condition the existing building is completely unsuitable for a dual use, in the form of a clinic on the first floor and a separate residential use in the remainder of the building because there cannot be a separation of uses. As the appellant lives elsewhere there would have to be an occupier of the residential accommodation who had no interest in the clinic and this would be totally unacceptable, causing physical, social and security problems for both the clinic and the residents. Residential and clinic uses are of a wholly different nature and the use of the same common parts of the building by patients and by people visiting the residential accommodation would create security problems for both the clinic and the residential accommodation. Both the office floor space and the residential accommodation would be devalued. The residential space would be of less value than if the same accommodation were in a wholly residential building, or a mixed use building in which there was separate access to each part, and the clinic would be reduced in value from both the functional and financial points of view. Money would be required to convert parts of the building to residential use and as it was unlikely that such money would be available in the current financial climate for what might be seen as unprofitable development it would be unreasonable to require adaption of the building to residential purposes. In the appellant's opinion the use of the whole premises as a diathermic clinic fulfils all the criteria set out in Development Control Policy Note No. 2. The car parking space at the front and side of the building would have to be made available in any event for the patients and staff in connection with the use of the 2 upper bedrooms as a clinic and, therefore, the number of cars parked at the premises arriving and leaving the premises would be materially different whether this appeal is allowed or not. It was considered, therefore, that the use of the remainder of the building for a clinic would not materially harm the character of the area or make it a less pleasant place to live in because the uses of the ground floor especially were not concerned with the bringing of more patients to the clinic, but were merely there to add to the treatments available to individual patients. It was submitted that there were special circumstances in the appellant's case which were such that an exception should be made, because the clinic was of great benefit to the general public and provided a medical service which could not be provided elsewhere. If the Secretary of State considered that a temporary change of use was acceptable it was suggested that this could be achieved by a permission limiting the use of the remainder of the building for the benefit of the appellant personally.

7. The Inspector's conclusions on the planning merits were as follows:-

"I accept that permission has already been given for part of No 2a to be used as a diathermic clinic and that the right to that use will continue irrespective of the outcome of these appeals. But I distinguish the use made of 2 front bedrooms, which does not seem to me to carry more significance than other small

scale activities often carried on in dwellings as a first step in setting up an enterprise, to the taking over of the whole building for the use to the exclusion of any residential occupation. In my opinion there is, as a matter of fact and degree, a substantial difference between the 2 uses made of the house as a diathermic clinic. The principal issue on which I assess the appeal is the effect that the continued use of the whole house for the purpose has on the residential character and amenities of the area, and on traffic safety.

In the vicinity of the clinic the road is predominantly residential with houses on either side of and opposite No 2a. The dwellings are of modest size and set close together; a number are older properties and your client's, with its twin No 2, is distinctive as one of the more recent buildings. In this setting I do not think there is enough seclusion between houses for the non-conforming use to operate without attracting some prominence. The open exposure of the whole frontage to the highway contrasts with other houses along the road and the continuing, albeit infrequent, visits by patients attending the clinic until late hours, with attendant car parking in the road and on the forecourt, point to an out of the ordinary use being made of the property. And while outwardly the building would continue to look like a house, it would project a dead and uninvited presence at times when the clinic is closed, particularly on Sundays. The use of the house solely as a clinic would in my view have an adverse effect on the residential character of the locality. As I have noted earlier this use of the whole property differs from the presently permitted use where the building remains in residential occupation and the clinic use ceases at 4.30 pm. Different circumstances also apply to the property quoted at 10 St John's Road which, although in a residential area, does not lie in a row of houses but stands in a larger plot on a corner site next to common land.

In the small scale of the surroundings it seems to me inevitable that noise of car movements, engine startings and door closings are likely to be heard in nearby houses. Notwithstanding the best efforts of your client and her patients I believe this disturbance resulting from the non-conforming use would be a source of aggravation to neighbours, especially in the late evening hours, and would reduce the pleasantness of the residential environment.

With regard to road safety I recognise that the whole forecourt is available for parking and that provision could be made to achieve the council's parking standards without making use of the rear garden. It is likely that most cars would have to be backed out on to the road and such movements would introduce hazards to passing traffic; and are likely to be more difficult when an access opposite is provided for the new houses to be built there. However I do not feel the traffic implications carry sufficient weight to justify permission being withheld on this ground alone.

In the light of these findings I take the view that use of the whole premises as a clinic is neither appropriate or desirable and consider next whether there is overriding reason to justify the continuation of the use at No 2a.

There is ample evidence, at the inquiry, in the letters received and in the petition, that the clinic is much valued both because of the professional standards achieved by your client and, more importantly in the context in which I am considering the appeal, because of its location in this residential street. I respect the reason for your client seeking an unobtrusive setting for her clinic but the evidence does not suggest that her client's would not be prepared to come to her if she operated the clinic in a suitable location elsewhere in the town or even in the general area. She already runs 2 other health and beauty clinics in nearby towns and her overall enterprise is not entirely dependent on the diathermic clinic operation. I do not think it is

reasonable to claim sanction in a residential area without taking the individual merits of the chosen location into account. In my opinion this particular house is not suited for use solely as a clinic for the reasons I have explained. I do not therefore propose to grant planning permission in either appeal."

8. The Secretary of State has given very careful consideration to these conclusions and to the further representations of the parties made in response to the Department's letters to them of 26 April 1984. On all the evidence before the Secretary of State, the Inspector's view is accepted that the use of the appeal property solely as a diathermic clinic would have an adverse effect on the residential character of the locality. Whilst it is agreed that the use as a diathermic clinic may be appropriate to a residential area, it is considered that regard must be had to the individual merits of the chosen location in deciding whether a particular proposal is acceptable. The dwellings in the vicinity of the appeal property are of modest size and set together and the view is taken that the use of the whole of the appeal property as a diathermic clinic is not acceptable because of its closeness to the neighbouring dwellings. The 1974 personal permission authorised the use of the 2 front bedrooms as a diathermic clinic and office with a condition limiting the opening hours to 9.30 am to 4.30 pm on weekdays only. The submission made on behalf of your client that there is no substantial difference between the present use of the whole building for use as a clinic and the permitted use of the 2 front bedrooms in circumstances where the remainder of the premises remain vacant is not accepted. The present use of the whole building as a clinic, with opening hours extending into the late evening, is considered to be, as a matter of fact and degree, substantially different to a use of 2 rooms only as a clinic, with opening hours restricted to 9.30 am to 4.30 pm.

9. The Inspector's view is also accepted that notwithstanding the best efforts of your client and her patients, the disturbance resulting from the noise of car movements, engine startings and door closings would be a source of aggravation to neighbours, especially in the late evening hours, and would reduce the pleasantness of the residential environment.

10. With regard to the submission that the building is unsuitable for a mixed clinic and residential use, and therefore would be left vacant with undesirable planning consequences if planning permission were refused for the use of the whole building as a clinic, it is noted that the development for which planning permission was sought in 1974 was described on the application form as "change of use of two front bedrooms of four-bedroomed house, to form treatment room and office of a diathermic clinic" and that planning permission was granted more or less in those terms. Although it is now claimed that in its present condition the building is completely unsuitable for a clinic/residential dual use, it is true that such a use was acceptable from 1974 until 1978 when your client decided to live elsewhere. It is accepted that there may be difficulties in using the remainder of the house for residential purposes but it is not considered that it would be impossible. Your client was granted planning permission for such a dual use and the fact that she decided to live elsewhere after four years is not seen as a barrier to the residential use continuing in that part of the building. Even if it were accepted that such partial residential use was not possible the consequences would be much the same as would result from any other house-owner deciding to leave a building empty. If a house-owner decides to leave residential accommodation vacant it is considered that this is not in itself a sufficient reason for permitting a change of use to some other purpose. In this particular case it is considered that it would be preferable to leave part of the building unoccupied rather than to allow the whole building to be used as a diathermic clinic since such a use, as stated above, would be substantially different from the permitted use of 2 rooms only as a clinic and office and which would reduce the pleasantness of the residential environment.

11. After taking account of the above factors and all the other matters raised, including the provisions of the Department's Circular 22/80 which was referred to at the inquiry, the Secretary of State takes the view nonetheless that the use of the whole building as a clinic is open to objection on environmental grounds and that the grant of a planning permission exercisable only by your client would not serve to meet to any acceptable degree the planning objections to the continued use of the whole building for that purpose.

12. The Secretary of State does not therefore propose to grant planning permission in either appeal and the appeal on ground (a) against the enforcement notice and the appeal under Section 36 of the 1971 Act accordingly fail.

13. On grounds (g) and (h) of the enforcement appeal no reason is seen to disagree with the views expressed in paragraphs 28 and 29 of the Inspector's letter of 24 March 1983. The requirement in the notice to restore the land and buildings to their former condition will therefore be deleted and the period for compliance with the notice will be extended to one year. The appeals on grounds (g) and (h) succeed to this extent. For the reasons given in paragraph 9 of the Inspector's letter the view is taken that the notice is valid as it stands, but for the removal of doubt it will be corrected to refer to the more particular use as a diathermic clinic.

FORMAL DECISION

14. For the reasons given above the Secretary of State, in the exercise of his powers under Section 88A of the 1971 Act (as amended by the 1981 Act), hereby directs that the enforcement notice be corrected and varied as follows:-

(a) in paragraph 1 (iii), by the insertion of the word "diathermic" before the word "clinic";

(b) in paragraph 2, by the deletion of the word "TWO" and the substitution therefor of the word "TWELVE";

(c) in paragraph 2, by the insertion of the word "diathermic" before the word "clinic" in each place where that word occurs; and

(d) in paragraph 2, by the deletion of the words ", and to restore the said land and the buildings situated thereon to their condition before the said development took place".

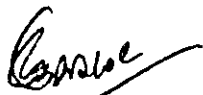
Subject thereto the Secretary of State upholds the enforcement notice as corrected and varied, dismisses both appeals and refuses to grant planning permission in the Section 36 appeal and on the application deemed to have been made under Section 88B(3) of the 1971 Act (as amended by the 1981 Act).

RIGHT OF APPEAL AGAINST DECISION

15. This letter is issued as the Secretary of State's redetermination of the appeal in pursuance of the Order of the Court. Leaflet C, which is enclosed for those concerned, sets out the rights of appeal to the High Court against the decision.

16. A further letter on the subject of costs will be sent to you in due course.

I am Gentlemen
Your obedient Servant



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

IMPORTANT - THIS COMMUNICATION AFFECTS YOUR PROPERTY

TOWN AND COUNTRY PLANNING ACT 1971

ENFORCEMENT NOTICE

To: Elaine Thornhill

of: 2a Belswains Lane, Hemel Hempstead, Hertfordshire

1. WHEREAS

(i) You are the owner and occupier of the land situate at and known as 2a Belswains Lane, Hemel Hempstead, Hertfordshire which is more particularly delineated on the attached plan and thereon edged red (hereinafter called 'the said land').

(ii) The Dacorum District Council (hereinafter called 'the Council') are the Local Planning Authority (inter alia for the purposes of the provisions of section 87 of the Town and Country Planning Act 1971 as amended by the Local Government and Planning (Amendment) Act 1981) (hereinafter called 'the Act of 1971').

(iii) It appears to the Council that after the 31st day of December 1963 there has been a breach of planning control in that the said land has been developed by the making of a material change in the use thereof of the buildings situate thereon to a use for the purpose of a clinic without the grant of permission required in that behalf under Part III of the Town and Country Planning Act 1962 or Part III of the Act of 1971.

(iv) The Council consider it expedient having regard to the provisions of the development plan and to all other material considerations to issue this notice.

2. NOW THEREFORE TAKE NOTICE that in exercise of the powers contained in the said section 87 of the Act of 1971 the Council HEREBY REQUIRE YOU within the period of ~~the~~ calendar months beginning with the date on which this notice takes effect to discontinue the use of the said land and of the buildings situate on the said land for the purpose of a clinic except in so far as the use of two bedrooms as a clinic is permitted under the terms of the conditional planning permission granted therefor in March 1974, ~~and to restore the said land and the buildings situated thereon to their condition before the said development took place.~~

3. THIS NOTICE SHALL TAKE EFFECT, subject to the provisions of section 88(10) of the Town and Country Planning Act 1971, on 21st July 1982.

DATED this

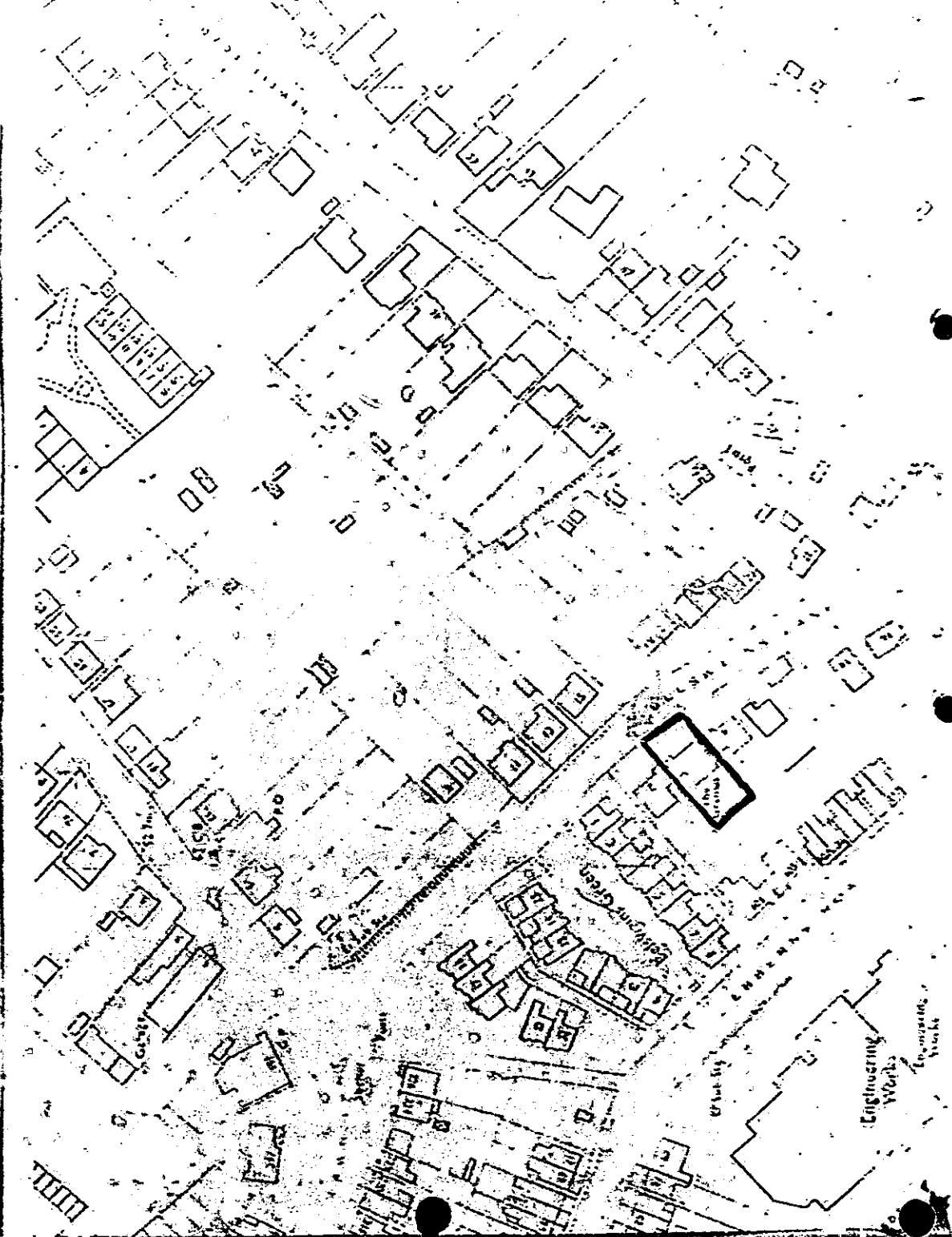
9th day of June. 1982.

Signed

Keith Hunt

(The officer appointed for this purpose)

District Secretary
Dacorum District Council
Civic Centre
Hemel Hempstead, Herts



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disallowed
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DATED this 9th day of June. 1982.

Signed Keith Hunt

(The officer appointed for this purpose)

District Secretary
Dacorum District Council
Civic Centre
Hemel Hempstead, Herts

