

TOWN & COUNTRY PLANNING ACTS, 1971 and 1972

THE DISTRICT COUNCIL OF DACORUM

IN THE COUNTY OF HERTFORD

To P.J. Pearce, Esq.,
Blantyre,
Tenement Farm Lane,
Chipperfield, Herts.

Richard I. Onslow, Esq.,
Architect,
29 Park Road,
Tring, Herts.

2 Dwellings (Outline)

at Tylers Close, rear of Oakcroft and Round Hale

Love Lane, Kings Langley, Herts.

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 permit, in accordance with the provisions of Article 5(2) of the Town and Country Planning General Development Order 1977, the development proposed by you in your outline application dated 13th September 1982 and received with sufficient particulars on 14th September 1982 as amended 17th November 1982 and shown on the plan(s) accompanying such application, subject to the following conditions:-

The development hereby permitted shall not be carried out otherwise than in accordance with detailed plans and drawings showing the siting, layout, design, landscaping and external appearance of the building(s) and the means of access thereto which shall have been approved by the local planning authority, before any development is commenced:

2. (a) Application for approval in respect of all matters reserved in Condition 1 above shall be made to the local planning authority within a period of 3 years commencing on the date of this notice.
(b) The development to which this permission relates shall be begun by not later than whichever is the later of the following dates:-
 - (i) the expiration of a period of 5 years, commencing on the date of this notice.
 - (ii) the expiration of a period of 2 years commencing on the date upon which final approval is given by the local planning authority or by the Secretary of State or, in the case of approval given on different dates, the final approval of the last such matter to be approved by the local planning authority or by the Secretary of State.
3. The landscaping details submitted in accordance with condition (1) hereof shall be implemented in accordance with the approved details in the first planting season following the first rateable occupation of the development hereby permitted and maintained at all times thereafter to the reasonable satisfaction of the local planning authority.
4. The details submitted in accordance with condition (1) hereof shall include
 - (a) a survey of the site including trees, hedges and natural features;
 - (b) treatment of boundaries including curtilages of dwellings;
5. The existing natural hedges on the western and eastern and line of trees on part of the northern boundary shall be retained and thickened where necessary and

adequate arrangements made to the reasonable satisfaction of the local planning authority to prevent damage during construction works.

6. The road hereby permitted shall be constructed in accordance with details submitted in accordance with condition (1) hereof before any other work is commenced on site.

The reasons for the local planning authority's decision to grant permission for the development subject to the above conditions are:-

1. To comply with the provisions of Regulation 5(2) of the Town and Country Planning General Development Orders 1977-81.
2. To comply with the requirements of Section 42 of the Town and Country Planning Act, 1971.
3. To maintain and enhance visual amenity.
4. To ensure proper development of the site.
5. To maintain and enhance visual amenity.
6. To ensure the proper and satisfactory layout and development of the site.

Dated 23rd ... day of ... November ... 19 82

Signed
Designation ... CHIEF PLANNING OFFICER .

NOTE

(1) If the applicant wishes to have an explanation of the reasons for this decision it will be given on request and a meeting arranged if necessary.

(2) 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 section 36 of the Town and Country Planning Act 1971 within six months of receipt of this notice. (Appeals must be made on a form which is obtainable from the Department of the Environment, Caxton House, Tothill Street, London SW1H 9LZ.) 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 (a), to the provisions of the development order, and to any directions given under the order. He does not in practice refuse to entertain appeals solely because the decision of the local planning authority was based on a direction given by him.

(3) 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 Common Council, or on the Council of the county borough, London borough or county district in which the land is situated, as the case may be, 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.

(4) 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 section 169 of the Town and Country Planning Act 1971.

(a) The statutory requirements are those set out in section 36(7) of the Town and Country Planning Act 1971, namely sections 29(1), 30(1), 67 and 74 of the Act.

CJ



Department of the Environment and 17210
Department of Transport

Common Services

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4/1575/85E

Council's ref: GPB/DD

Messrs Pickworth & Co
 Solicitors
 37 Marlowes
 HEMEL HEMPSTEAD
 Hertfordshire
 HP1 1LQ

Your reference		MENT	
DSF/PEARCE		COUNCIL	
Our reference			
Ref.	T/APP/A1910/C/85/4407/P6	Ack.	
C.P.O.	Date 21 JUL 86	Admin.	File

Received

23 JUL 86

Comments

Gentlemen

TOWN AND COUNTRY PLANNING ACT 1971, SECTION 88 AND SCHEDULE 9
 LOCAL GOVERNMENT AND PLANNING (AMENDMENT) ACT 1981
 APPEAL BY YOUR CLIENTS P AND K PEARCE (BUILDERS) LTD
 LAND AT TYLERS CLOSE, KINGS LANGLEY, HERTFORDSHIRE

1. I have been appointed by the Secretary of State for the Environment to determine your clients' appeal against an enforcement notice issued by Dacorum Borough Council relating to the above land. I have considered the representations made by you and the council and I inspected the site and the surrounding area on 14 May 1986.

2. a. The notice was issued on 23 October 1985.

b. The breach of planning control alleged in the notice is failure to comply with a condition subject to which planning permission was granted for 2 dwellings to be erected on land at Tyllers Close, Kings Langley, Hertfordshire.

c. The condition alleged to have been breached is Condition No. 3 attached to outline planning permission No. 4/1100/82 dated 23 November 1982 namely "The landscaping details submitted in accordance with Condition (1) hereof shall be implemented in accordance with the approved details in the first planting season following the first rateable occupation of the development hereby permitted and maintained at all times thereafter to the reasonable satisfaction of the local planning authority".

d. The notice alleges that the landscaping details that were approved on 31 March 1983 were not implemented during the September 1984 to March 1985 planting season which was the first planting season following the first rateable occupation of the development on 16 July 1984.

e. The requirements of the notice are:

- i. New climbing shrubs to be planted against new wall on north side of site.
- ii. Planting of 2 new flowering cherry trees.
- iii. Area to be grass seeded.

f. Compliance with the notice is required by 31 March 1986.

g. The appeal has been made on grounds (a) and (g) of Section 88(2) of the Town and Country Planning Act 1971. There is also before me a deemed application for permission to retain the 2 dwellings without complying with the condition.

3. The appeal site is a small, irregularly shaped piece of land at the end of a cul-de-sac. It was under rough grass with a few broad leaved weeds when I saw it. It was unkempt but relatively tidy and not unsightly. The only offensive feature I saw was a heap of grass cuttings that someone appeared to have dumped there.

4. With this background, I am bound to say I entertain serious doubts about the validity of the landscaping condition. It is generally accepted that in order to be valid a condition must have a planning purpose, it must relate to the permitted development and it must be reasonable. In addition Circular 1/85 suggests that it must be necessary, enforceable and precise. Against these criteria I consider that Condition 3 is defective for vagueness and unenforceability. The number of climbing shrubs required to be planted in the approved scheme is not specified. The period during which the scheme is to be carried out is described as the first planting season after the dwellings have been occupied. The planting season however is not defined and it is by no means certain that the definition in the enforcement notice of September to March would be universally accepted. Furthermore the landscaping works are required to be maintained in perpetuity. I consider that such a requirement is self evidently unenforceable especially with the lapse of time and paragraph 62 of Circular 1/85 clearly advises against such a condition when permitting the erection of buildings. Finally, the standard to which the landscaping is to be maintained is dependent upon the reasonable satisfaction of the local planning authority which I consider to be a most uncertain yardstick and therefore unreasonable.

5. Having considered all the evidence I am of the opinion that your appeal under ground 88(2)(a) should succeed. I therefore propose to quash the enforcement notice. The deemed application for planning permission under Section 88B(3) now falls to be considered. Under these provisions I propose to grant planning permission for the retention of the development without compliance with the condition enforced against. Ground (g) does not therefore fall to be considered. I have considered all the other matters contained in the representations but do not find them sufficient to affect my decision.

FORMAL DECISION

6. For the above reasons and in exercise of the powers transferred to me I hereby:

i. Allow this appeal and direct that the notice be quashed.

ii. Grant planning permission for the retention of the development to which planning permission 4/1100/82 dated 23 November 1982 relates without compliance with Condition No. 3.

c.c. Messrs Pickworth & Co
DX 8809,
Hemel Hempstead

The Department of the Environment
Room 907
Tollgate House
Houlton Street
Bristol BS2 9DJ

2577

Mr G Bailey

APP/A1910/C/85/4407

4/1575/85E GPB/DD

25 March 1986

Dear Sirs

TOWN & COUNTRY PLANNING ACT 1971 - SECTION 88
APPEAL BY P. & K. PEARCE (BUILDERS) LTD
LAND AT TYLERS CLOSE, KINGS LANGLEY

I refer to your letter dated 6 March 1986 in respect of the above appeal enclosing a copy of the appellant's counter-representations dated 3 March 1986.

In my opinion, it is not open to the Inspector to modify the condition of the outline planning permission in the manner suggested by the appellant. This is not an appeal against the condition of that outline planning permission and that permission cannot now be modified in such a way.

A copy of the Decision Notice of the planning permission referred to by the appellant in line 4 granted in respect of development which includes the appeals site is enclosed, *together with an extract from the approved plan as requested on 24th March 1986.*
A copy of this letter has been sent direct to Pickworth & Company.

Yours faithfully

CHIEF PLANNING OFFICER

enc: