1306/81

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PLANNING DEPARTMENT
DACORUM DISTRICT COUNCIL
Your reference DC/MB
Our reference APP/5252/C/82/1745
APP/5252/A/82/087674
Date 23 JUL 84
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Ack.
File
Comments RETURN TO MB FOR SUMMARISED 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, HEMEL 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 At the inquiry held on 23 February 1983 the ground set out in Section 88(2)(f) was withdrawn.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 88B(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 that use to the exclusion of any residential occupation. In granting planning permission in 1974 for the change of use of 2 bedrooms of 2A Belsawins 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 unlived in 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 inresponse 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

D.C.4

TOWN & COUNTRY PLANNING ACTS, 1971 and 1972

Town Planning Ref. No. 4/1306/81

Other Ref. No. .....

THE DISTRICT COUNCIL OF DACORUM

IN THE COUNTY OF HERTFORD .....

.....

To Elaine Thornhill
151 Hempstead Road
Watford
Herts

Use of whole of dwelling as clinic.

at 2a Belswains Lane, Hemel Hempstead, 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 refuse the development proposed by you in your application dated 6 August 1981 and received with sufficient particulars on 19 October 1981 and shown on the plan(s) accompanying such application.

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

1. The proposed use would represent an undesirable intensification of a commercial use in a predominantly residential street and would have an injurious effect on the amenities enjoyed by residents in the area.

2. The intensification of use of the premises created by this proposal would be likely to attract additional vehicles to the site and create an unnecessary highway danger on this heavily trafficked road.

3. The creation of a car park to the rear of the property would be likely to create conditions detrimental to the amenities of residents immediately adjoining the site.

Dated 3 day of December 19 81

Signed Colin Barnard

Designation Chief Planning Officer

26/20

SEE NOTES OVERLEAF

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 Secretary of State for the Environment, Whitehall, London, S.W.1.) 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.

(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 District 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.

(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.

COPY FOR C PO

Premises inspected
on 20/1/86 — notice
has been complied
with.

Department of the Environment
2 Marsham Street London SW1

Direct line 01-212 3254
Switchboard 01-212 3434

Messrs Gouldens,
Solicitors,
118 Chancery Lane,
LONDON W.C.2A. 1JJ.

Your reference DC/MB
Our reference /82/007674 PLUP4c
APP/5252/C/82/1745 & 5252/A/
Date 26 SEP 1984

Gentlemen,

TOWN AND COUNTRY PLANNING ACT 1971: SECTIONS 88 AND 36
LAND AND PREMISES AT 2A BELSWAINS LANE, HEMEL HEMPSTEAD, HERTFORDSHIRE
APPEALS BY MRS E. D. THORNHILL.

1. I am directed by the Secretary of State for the Environment to refer to his letter of 23 July, 1984, notifying his decision on the appeals by your client, Mrs E. D. Thornhill, against an enforcement notice served by Dacorum District Council relating to the use of premises at 2A Belswains Lane, Hemel Hempstead, for the purposes of a clinic, and against the refusal of the same Council to refuse planning permission for the use of the whole of the dwelling as a clinic. I am now able to deal with the application for an award of costs against the Council made on behalf of your client at the local inquiry held on 23 February, 1983.

2. The Submissions made in support of your client's application for costs, the reply by the Council, and the Inspector's comments on the matter are set out in the Inspector's costs report, a copy of which was sent to the parties on 21 April, 1983. In planning and enforcement appeals the parties are normally expected to meet their own expenses, and costs are awarded only in exceptional circumstances on grounds of unreasonable behaviour. Accordingly the application for costs has been considered in the light of paragraph 9 of Ministry of Housing and Local Government Circular 73/65, the Secretary of State's decision letter of 23 July, 1984, the Inspector's report on the question of costs, and all the relevant circumstances.

3. The Inspector's comments on the costs application were as follows:

> "I take the view that, although the advice in Annex B in the Circular /i. e. Circular 22/80/ was not taken, it was nevertheless apparent to the appellant that there was a requirement to bring the use under planning control: otherwise there would have been no purpose in making the planning application. The refusal of permission to continue the use carries heavy inference that further action may be taken to require the use to cease. Because the enforcement proceedings should not have been unexpected, I consider the degree to which the Council failed to comply with the Circular is not sufficient to constitute unreasonable behaviour.".

4. Having examined all the evidence and taken note of the planning history of the site, the Secretary of State sees no reason to dissent from the Inspector's comments on the costs application. Bearing in mind the terms of his decision dated 23 July, 1984, to uphold the enforcement notice and to refuse to grant planning permission for the use of the whole of the dwelling as a clinic, the Secretary of State has concluded that it was not unreasonable for the Council to issue an enforcement notice in order to remedy the breach of planning control which they considered had occurred. With regard to your client's contention that the Council had failed to discuss alternative premises as suggested in Circular 22/80, it is seen that the Council were unable to make any suggestions about the relocation of your client's business, and in these circumstances the Secretary of State does not consider that the Council acted "unreasonably" for the purposes of an award of costs, or that your client was put to unnecessary and unreasonable expense in having to appeal and to pursue the matter to inquiry. In all the circumstances, the Secretary of State has decided that an award of costs against the Council would not be justified, and your client's application is accordingly refused.

5. A copy of this letter has been sent to the Chief Executive of Dacorum District Council.

I am, Gentlemen,

Your obedient Servant,

J R J Mair.

J R S MAIR.