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OFFICER**

29 OCT 1986

File Ref. ....  
C.P.O. 29/10.

Your reference: DACTON DISTRICT COUNCIL  
SJB/JER

Our reference:

Ref.	C.P.O.	D.P.	T/APP/A1910/A/86/049049/P2	Date	B.C.	Adm.	File
				28 OCT 86			

Received 29 OCT 1986

Comments:

Gentlemen

TOWN AND COUNTRY PLANNING ACT 1971, SECTION 36 AND SCHEDULE 9  
APPEAL BY E J WATERHOUSE & SONS LTD  
APPLICATION NO:- 4/1421/85

1. I have been appointed by the Secretary of State for the Environment to determine the above-mentioned appeal. This appeal is against the decision of the Dacorum Borough Council to grant outline planning permission subject to conditions for a residential development of 4 dwellings, and access, on land at the rear of 97, 69b and 67 Langley Hill, Kings Langley. I have considered the written representations made by you, by the council and by the Kings Langley Parish Council, together with those made by interested persons. I inspected the site on 3 September 1986.
2. The condition in dispute is No 5 which provides that details submitted in accordance with condition 1 of this permission shall illustrate the provision of single-storey dwellings, and notwithstanding the provisions of the Town and Country Planning General Development Order 1977 or any amendments thereto, there shall be no residential accommodation above ground floor level.
3. The terms of Section 36(3) of the Town and Country Planning Act 1971 enable me to vary any part of the decision of the council and to deal with the application as if it had been made to me in the first instance. I have accordingly, and in view of the circumstances of the case discussed below, considered not only the condition in dispute, but also the other conditions imposed by the council.
4. I deal first with the nature of the application. The application was made in outline form but was accompanied by a plan showing the siting of the proposed dwellings and access. As none of these details were indicated as being for illustrative purposes only, they must, in accordance with the advice given in paragraph 37 of Departmental Circular 1/85, be treated as part of the development in respect of which the application is being made. They cannot be reserved for subsequent approval, as condition 1, and condition 3 in part, purport to reserve them. It follows that I must consider siting and access as part of this application. Although design is a reserved matter, it is proper to consider at this stage the need for conditions arising from the nature of the development as submitted, and from its effect on its surroundings.
5. Turning to the planning merits of the case, your clients wish to erect 2-storey houses. From my consideration of the written representations, and my inspection of the site and its surroundings, it seems to me that the main issue is

the effect of the 2-storey residential development proposed on the amenities of the occupants of neighbouring houses, in terms of outlook and dominance.

6. The location of the 4 dwellings proposed would be in backland, with the nearest dwelling being sited about 44 m from the rear elevation of 97 Langley Hill to the west. The presence of 2-storey houses, at such a distance, would not materially affect the amenities of the occupants of houses west of the appeal site, in planning terms, although they would be visible to some degree through screening vegetation. The southernmost house would be about 17.5 m north of the rear elevation of 69b Langley Hill. A 2-storey house, about 9 m wide and set back slightly from the direct line of vision from the rear windows of 69b, would not be an over-dominant feature at such a distance; the house would extend across only part of the overall view seen from the rear of No 69b. Views of this southernmost proposed house, from existing dwellings on either side of 69b, would be oblique.

7. I have also considered the question of overlooking. In general terms distances and screening would again prevent any problems. Any main room first floor windows in the south elevation of the southernmost house would be less than 20 m from the facing first floor window of 69b, and would over look the rear garden of that house. There is no development at present overlooking the rear elevation of No 69b. However, whether overlooking were to occur would depend on design details, which should therefore provide for the outlook from first floor main rooms of the southernmost house to be in other directions. In no other respect would the amenities of neighbouring occupants be materially harmed by your clients' proposal.

8. The southern part of this overgrown site forms part of the Kings Langley Conservation Area, but is difficult to see from any public place because of the screen of houses, on Langley Hill, which are a prominent part of the conservation area. Some backland development has also been permitted north of the appeal site, one dwelling not being restricted to a single storey.

9. Although the council's committee decided to impose condition 5 after having earlier resolved to grant a planning permission which did not include this condition, the condition itself is not unduly restrictive or unreasonable in the terms of Circular 1/85, and effects on neighbouring occupant's amenities or on the character of an area are matters relevant to planning. However, in view of my conclusions on the main and subsidiary issues, I agree that there is no need for condition 5, especially bearing in mind the presumption against limiting the application of development orders, contained in Circular 1/85. The facts that a condition similar to condition 5 was imposed on the grant of planning permission for the development north of the site, and that no objection was raised, carry far less weight than the tests for conditions set out in Circular 1/85.

10. I have also carefully considered whether condition 4 is sufficiently precise and as a result have concluded that the wording "to the satisfaction of the local planning authority", as explained at paragraph 27 of Circular 1/85, is unreasonably vague. I therefore propose to substitute a replacement condition.

11. I therefore intend to discharge condition 5, and also, under the terms of Section 36(3) of the Town and Country Planning Act 1971, to replace conditions 1 and 3 with new conditions omitting reference to matters which cannot be reserved.

12. I have taken into account the other matters raised, including allegations of delay, but all of these matters are outweighed by the material considerations leading to my decision.

13. For the above reasons, and in exercise of powers transferred to me, I hereby allow this appeal and discharge conditions 1, 3 and 5 of the planning permission No 4/1421/85 dated 13 March 1986, and impose the following conditions on that planning permission:-

1. Approval of the details of the design and external appearance of the buildings, and the landscaping of the site shall be obtained from the local planning authority.
2. The details to be submitted in accordance with condition 1 shall include details of boundary treatment and a survey of the site including levels, natural features, trees and hedges.
3. No development shall take place until the landscaping details reserved under the terms of condition 1 have been submitted to and approved by the local planning authority. These details shall include indications of all existing trees and hedgerows on the land, and details of any to be retained, together with measures for their protection in the course of development. All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding seasons following the occupation of the buildings or the completion of the development, whichever is the sooner, and any trees or plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species, unless the local planning authority gives written consent to any variation.

14. Attention is drawn to the fact that an applicant for any consent, agreement or approval required by a condition of this permission and for approval of the reserved matters referred to in this permission has a statutory right of appeal to the Secretary of State if approval is refused or granted conditionally or if the authority fail to give notice of their decision within the prescribed period.

I am Gentlemen  
Your obedient Servant

*C. Hughes*

C HUGHES BA(Hons) DipTP MRTPI  
Inspector