



DEPARTMENT OF THE ENVIRONMENT

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CPD	DP	DC	EC
HP23	5AW		
27 MAR 1987			
Office Ref.			
Notes to			
Checked			

Your reference

Our reference

T/APP/A1910/A/86/048445/P5

Date

17 MAR 87

Comments
Gentlemen

TOWN AND COUNTRY PLANNING ACT 1971, SECTION 36 AND SCHEDULE 9
APPEAL BY MR J F KERN
APPLICATION NO: 4/1532/85

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 District Council to refuse planning permission for the erection of 3 bungalows, with integral garages, and the construction of an estate road at the rear of 38 Rambling Way, Potten End. I held a local inquiry into the appeal on 11 November 1986.
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 on whether the proposed development would be appropriate in the light of the council's planning policies for this part of the green belt, and whether it would be so harmful to the residential amenities of persons living nearby as to necessitate refusing permission.
3. The appeal site, which extends to about .45ha, is a disused plot of land containing some trees, and is situated at the rear of dwellings fronting on to Rambling Way to the north and east and on to The Laurels to the south. It was formerly woodland running with No 38 Rambling Way, and at the western end it adjoins a public footpath running from Water End Road to Hempstead Lane, which has some well-screened, loosely spaced dwellings on the other side.
4. In 1983 the site was the subject of an application for the erection of 5 houses, and this was refused after an appeal in 1984 because it was considered that the development would give rise to overlooking and intrusion into the neighbouring properties and would be of a cramped style out of keeping with the immediate surroundings and the village as a whole. While noting that Potten End was in the green belt where residential development is not normally acceptable, the inspector commented that Policy 5 in the Local Plan identified Potten End as a village where small scale development might be acceptable, subject to various other provisos, and in the light of the contents of the Structure Plan. However his decision did not

hinge on this point, and he did not mention the provisions of Policy 4 on which Policy 5 is dependent as he found other objections to the particular proposal. This has led your client to contend that the proposed development would be in accord with the aims of the development plans. I will consider this aspect below after I have examined whether the present proposal for only 3 bungalows would overcome the objections that the inspector found to the previous proposal.

5. An illustrative layout submitted with the application before me, which is for outline planning permission, indicates that the bungalows would be positioned on the southern side of the site with an access road running along the northern boundary which abuts the rear boundaries of bungalows fronting on to that part of Rambling Way running parallel to Water End Road.

6. The occupiers of these properties not unnaturally object to the proposal as it would increase the noise in their back gardens. They also consider it would result in overlooking and a loss of privacy as the appeal site is at higher level. However I am of the view that if the appeal site were properly enclosed with a close-boarded fence of suitable height the adverse effects would be very limited, and there would be no mutual overlooking between the existing and proposed bungalows. During my site inspection I noted that persons living in the upper part of Rambling Way might use the estate road and the proposed connection with the existing footpath at the western end as a short cut to the centre of the village, thereby adding to the noise and disturbance experienced by persons living adjacent to the new road, but this could of course be avoided by the imposition of a planning condition to prevent any link with the footpath being formed if it was thought necessary. However notwithstanding the fears of one resident that young persons might cause a nuisance by riding motor cycles on the new road, I do not consider the overall increase in noise would be such as to justify refusing permission.

7. Persons living in the recently erected houses at The Laurels on the southern side of the site are also understandably concerned that the proposed development would detract from their amenities, and of course, in common with the persons living on the northern side of the site, they would lose their pleasant outlook over an open area. However this is not a reason for refusal as no one has an automatic right to a view over another person's land. The erection of houses in open spaces adjoining existing dwellings inevitably affects the residents, and it is only when the new building(s) would so dominate or overshadow existing properties, or be badly out of character, that it is justified to refuse permission on planning grounds. Matters controlled by covenants are of course separate and are for legal consideration. In this instance the proposed bungalows would be at a lower level than the houses at The Laurels, and there would be no significant overlooking of the latter. I consider that in the illustrative siting the backs of the proposed bungalows would be undesirably close to the back boundaries of the existing houses, but that problem could be overcome at the detailed planning stage. All the boundaries of the site would require proper enclosure, and additional planting of hedges, trees and

shrubs would be necessary as the existing hedging is somewhat sparse in places. However subject to these provisos, and the conditions proposed by the local highway authority to ensure that the access would be satisfactory, I do not consider there would be sufficient reason for refusing permission for the 3 bungalows, with their own estate road, on account of the effects on surrounding properties.

8. Turning to the objections on planning policy grounds, the development would not of course be directly prejudicial to the aims of the green belt, given in paragraph 3 of Circular 42/55, as the site is completely surrounded by housing. The general policies applicable to rural areas within the Metropolitan Green Belt, where Potten End is located, are contained in the County Structure Plan, and they preclude further residential development in the open countryside, or generally in the villages therein, except in special circumstances. Proposed Alterations to the Structure Plan are now before the Secretary of State, and they recently underwent an examination in public, but the green belt policies are broadly re-affirmed, and there do not seem to be any changes proposed that would affect this particular proposal as Potten End is not a village that is specifically mentioned.

9. The first relevant policy in the District Plan is No 1 which reiterates the aim of the Structure Plan to prevent residential development in the green belt, except where it is essential in connection with appropriate uses of the land. Policy 3 refers to the villages of Bovington and Kings Langley, which in addition to the towns of Berkhamsted, Hemel Hempstead and Tring, are specified as the only settlements in the district excluded from the green belt where residential development may be permitted within their confines. Other settlements are covered by Policy 4 which is divided into 2 parts. The first deals with villages in the green belt, and the second with those outside it. Development in settlements in the green belt will normally only be permitted for essential needs (as defined).

10. However the District Plan contains another policy, No 5, that applies to 6 named villages, 4 of which are in the green belt. Potten End is one of them. It might thus be expected that some additional development would be allowed in these particular settlements as the wording of Policy 5 begins by indicating that "planning permission may be granted for small-scale residential development within the main core of the (named) villages". But this does not seem to be so as it is then stated that any development under Policy 5 must comply with Policy 4, even though various criteria are given which restrict any development to infilling, as normally defined, of comparable character to the surroundings. From the second reason for refusal of this proposal, which states that the proposed development does not meet the criteria for infilling, it might be assumed that if it had, the council would have found it acceptable. But this would clearly not have been in accordance with their plan as Policy 4 is stated to be overriding, ie the fact that a development would be infilling is not on its own sufficient; it must be for the purposes described in sub-paras (1) and (2) of Policy 4. Except for the proviso about Policy 4 being applicable, it seems to me that development such as that now being proposed might have been

acceptable, but the council state that it has never been their intention to allow infilling for unrestricted residential use in the named villages, notwithstanding their second reason for refusal, or the contents of paragraph 2.15 of the Local Plan which refers to a limited amount of infilling being possible in larger villages without seriously harmful effects on their characters or the surrounding countryside.

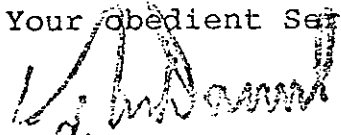
11. Your client argues very strongly that if small scale development at Potten End would be acceptable to meet the defined needs under Policy 4, there is no reason why it should not be equally acceptable for normal residential use, especially as Circular 1/85 precludes the imposition of any planning condition that would tie a dwelling to a particular user, or group of users, and would be necessary to make such a policy meaningful. Circular 14/85 states that development plans are only one of the considerations to be taken into account in determining planning applications, and in the absence of what I regard as any serious effects on the residential amenities of persons living nearby, or to the purposes of the green belt, it might be considered that there are sufficient reasons to justify allowing the appeal. However the council's policy was specifically considered in determining the application, and the proposed development was refused to preserve the existing character of Potten End. I do not consider permission should be granted as a result of a Section 36 planning appeal for development that is directly contrary to the provisions of a statutory development plan which is not out of date, unless there is a special reason for making an exception in the particular circumstances pertaining, eg an overriding housing need in accordance with advice in Circulars 22/80 and 15/84. I would regard a direct conflict with a material development plan policy that is not out of date and had been written with a genuine planning purpose in mind as a clear-cut reason for refusal in the sense implied in Circular 16/84 (to which you referred), and as constituting demonstrable harm to interests of acknowledged importance as stated in Circular 14/85.

12. The issue in this appeal thus narrows down to whether or not there is any special reason in this particular case to justify overriding the provisions of the District Plan. I have already stated that I do not consider the proposed development would cause serious harm in itself, but I find no reason to question the policy of general restraint on residential development in the area, as contained in the County Structure Plan and the District Local plan. That policy has been accepted in principle by the Secretary of State and supported in the various appeals mentioned by the council at the inquiry. While the sites in these appeals were not in any sense identical to the appeal site, they were within the built-up confines - and in one case the defined core - of villages. There are doubtless a number of other such sites in the 4 villages in the green belt subject to Policy 5, and if permission were granted for your client's proposal without taking into account Policy 4, I can see no reason for treating other applications to which Policy 5 applied in the same way. The council's policy for control of development in the specified villages would thus be seriously undermined, contrary to their stated intentions.

13. I have considered all the various other matters raised in the representations, but there is nothing of sufficient substance to outweigh those points that have led me to my decision that there is nothing, at least for the present, sufficient to justify making an exception to the council's planning policy, and that it is therefore necessary to refuse permission for the proposed development.

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

I am Gentlemen
Your obedient Servant

A handwritten signature in dark ink, appearing to read 'J M Daniel', is written over the typed name.

J M DANIEL DFC FBIM
Inspector

APPEARANCES

FOR THE APPELLANT

Mr J Harper

of Counsel, instructed by
Messrs Harrowell & Atkins,
16/17 High Street, Tring,
Herts HP23 5AW.

He called:

Mr A J N Warner FRICS
Dip TP

of The Warner Partnership,
Town Planning Consultants,
116 Long Acre, London
WC2E 9PA.

FOR THE PLANNING AUTHORITY

Miss A M Burton

Solicitor with Dacorum
District Council.

She called:

Mr D P Noble BA(Hons)
MRTPI MIAS MRSH

Principal Assistant
Planner, Dacorum Borough
Council.

INTERESTED PERSONS

Mr R T Hodder

Partner of Messrs
Smeathmans, Solicitors,
10 Queensway, Hemel
Hempstead, Herts HP1 1LU,
representing the Nettleden
with Potten End Parish
Council.

Mr J Seddon

Local Resident, Hillcrest,
Rambling Way, Potten End
Herts. HP4 2SE.

Mr N Travis

Local Resident, 18 The
Laurels, Potten End, Herts
HP4 2SP

Mrs P Seddon

Local Resident, Hillcrest,
Potten End, Herts HP4 2SE.

Mr A Hynes

Local Resident, 16 The
Laurels, Potten End, Herts
HP4 2SP.

DOCUMENTS

- Document 1 - List of persons present at the inquiry.
- Document 2 - Copy of a letter sent by Dacorum Borough Council to interested persons informing them of the appeal and the inquiry.
- Document 3 - Copies of of 2 letters from interested persons handed in at the inquiry, in addition to 6 received previously.
- Document 4 - Copies of 2 decision letters from the Department of the Environment relating to appeals for residential development at Potten End.
- Document 5 - Bundle of documents handed in by the Appellant's witness.
- Document 6 - Bundle of documents handed in by the local planning authority's witness.
- Document 7 - Extract from draft Dacorum District Plan - 1981.

PLANS

- Plan A - 2 plans accompanying the application subject of the appeal.
- Plan B - Plan of the appeal site showing adjacent residential development.
- Plan C - Plan of Potten End showing residential development permitted in recent years.
- Plan D - Plan of Potten End showing village core.

TOWN & COUNTRY PLANNING ACTS, 1971 and 1972

DACORUM BOROUGH COUNCIL

To Mr J F Keen Mr J Studley
 Lower End Garage 254 High Street
 Marsworth Berkhamsted
 Tring

Three dwellings and access road

at Rear of 38 Rambling Way

..... Potten End

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 5.12.85 and received with sufficient particulars on 6.12.85 and shown on the plan(s) accompanying such application..

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

- (1) Policy 4 of the adopted Dacorum District Plan seeks to restrict development in villages within the Metropolitan Green Belt, including Potten End, to that which is for an essential use appropriate to the rural area. The proposal is not supported by any evidence of local need to satisfy the requirements of this Policy
- (2) The proposed development does not meet the criteria for infill development set out in District Plan Policy 5
- (3) Insufficient regard has been paid to the requirements of District Plan Policies 18 and 66 in terms of suitability of the site for the development proposed, which would have a seriously detrimental effect on the amenities and privacy at present enjoyed by occupants of nearby properties

Dated 30th day of January 19 86...

Signed.....

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.