



# Department of the Environment and Department of Transport

Common Services

Room 1417 Tollgate House Houlton Street Bristol BS2 9DQ P.

Telex 449321

PLANNING DEPARTMENT  
DACORUM DISTRICT COUNCIL

Ref.

Ack.

BS2 9DQ P.

D.C.

B.C.

Admin.

File

Direct line 0272-218 927

Switchboard 0272-218811

Received

- 7 DEC 1987

Parrott & Coales  
Solicitors  
14 Bourbon Street  
AYLESBURY  
Bucks  
HP2 2RS

CHIEF EXECUTIVE  
OFFICER

- 7 DEC 1987

File Ref.

C.P.O. 2/12

Cleared

Your reference  
Comments

Our reference

T/APP/A1910/A/87/063269/P2

Date

- 3 DEC 87

Gentlemen

23748

1) MB  
2) RB  
3) RB

TOWN AND COUNTRY PLANNING ACT 1971, SECTION 36 AND SCHEDULE 9  
AS AMENDED BY THE HOUSING AND PLANNING ACT 1986  
LOCAL GOVERNMENT ACT 1972 - SECTION 250(5)  
APPEAL AND APPLICATIONS FOR COSTS BY ALATH CONSTRUCTION LTD  
APPLICATION NO: 4/1546/86

1. I have been appointed by the Secretary of State for the Environment to determine your clients' appeal. This appeal is against the decision of Dacorum Borough Council to refuse to grant planning permission for a replacement dwelling on land at The Garden Cottage, Nettleden Road, Little Gaddesden, Hertfordshire. I held a local inquiry into the appeal on Tuesday, 8 September 1987. At the inquiry an application for costs against the council was made on behalf of your clients and I deal with this separately below.
2. From my inspection of the appeal site and surrounding area and from my consideration of the representations made at the inquiry and in the letters received; I have come to the conclusion that the main issue in this appeal is whether or not development as proposed would adversely affect or damage the character of this part of Little Gaddesden bearing in mind its location in a rural area beyond the green belt and in the Chilterns Area of Outstanding Natural Beauty.
3. The existing single-storey cottage of some 86 sq m superficial area with a volume of some 265 cu m is derelict, unused and unusable and the proposal is to replace it with a 1 and 2-storey dwelling some 148 sq m in area and 568 cu m in volume with a detached garage of some 36 sq m and 159 cu m volume.
4. The appeal site is on the north-east side of Nettleden Road being the principal road at the southern end of the village. It shows many signs of having been the kitchen garden to the nearby Victorian mansion known as Lower Gaddesden House and consists of about 0.4 of a hectare arranged in an upside down L-shape with the existing cottage sited towards the centre of the south-eastern half. The re-entrant angle is filled by the curtilage of the 1970's dwelling known as The Bothy. Little Gaddesden House is converted into a number of separate residences and the grounds adjoin the site to the north-west and north-east. The south-east boundary is adjoined by the curtilage of a 20th century bungalow and extensive outbuildings together with Nos 1-4 Home Farm Cottages and Home Farm Farmhouse, beyond.
5. Your clients do not question either the suitability of the approved structure plan policies severely restricting residential development in rural areas or the appropriateness of the adopted Dacorum District Plan where the policies permit replacement dwellings as long as they are of a similar size to that which is replaced. However they rely on the circumstances of the case which are said to be special with

the proposals, although larger than the existing dwelling, being of lesser superficial area than a replacement dwelling permitted by the council in 1986.

6. In the view of the council the proposal must be measured against the existing structure and it is one with which I find no reason to disagree. Plainly a valid comparison can only be made on the like-for-like basis of an existing against a proposed. Nonetheless, the existence of an extant permission for a replacement cannot be ignored and I shall take it into account in my consideration. The permission shows both the principle of replacement and because of the setting and high quality design of the permitted dwelling, development larger than the "guideline" figure established by the existing dwelling; the detail to also be acceptable.

7. The proposal follows the permitted application in being larger than the existing structure. Although I agree with those objectors who find the permitted scheme attractive and the appeal proposal, in my opinion, neither as well designed nor as inconspicuous in conformation, it is however, not without design merit. The existing structure is very small. The appeal proposal is about, by my calculation, 72% greater in floor area and 114% greater in volume and to this extent is considerably larger. Nonetheless, the site is large with the proposed dwelling in a similar location to the existing structure. Bearing in mind the relatively concealed setting mitigating much of the impact of the proposal and the character of the residential surroundings it does not seem to me that the project would be more intrusive than the existing dwelling or that it would cause any demonstrable harm to the rural qualities of this part of this part of the village or to the Area of Outstanding Natural Beauty.

8. Your clients' project is designed to resemble a barn with a 2-storey midstorey and many of the representations give concern to the opportunity for the insertion of another floor over most of the ground plan that such a conformation provides. Creation of an extra floor in this fashion would increase the floor space to a total of some 195 sq m and while I accept that this figure might well be objectionable in policy terms, in physical planning terms the objection is not so clear-cut. Little Gaddesden is an attractive village formed by a wide variety of houses and buildings. The appeal site has a history of development of the land on which the development is proposed and it is part of the village where dwellings as large as 195 sq m are, I observed at my inspection, not unusual or unexpected. In these circumstances of a limited effect I do not think that the proposed dwelling, if extended, would unreasonably add to the population of people in the countryside and nor therefore that the appeal proposal should be refused. I have considered the precedent that approval might create, including the prospect of further residential floorspace within the built form, but believe that the combination of circumstances and the physical conditions set out earlier in this paragraph are so uncommon as to preclude repetition elsewhere or to put the general policies of restraint at any undesirable risk.

9. By reason of the topography the appeal site is somewhat above the level of The Bothy and Mrs Fentum is concerned with overbearing and overlooking from a dwelling in the form proposed. Undoubtedly development would be visible from the upper floor windows in the south-eastern end of the house but if the 2 dwellings are some 40 m apart and not directly looking one toward the other, then I can understand but do not subscribe to Mrs Fentum's fear and in my opinion, no unacceptable harm would arise. The council point out that the upper floor windows facing north-west as proposed light dressing and bathroom accommodation. They suggest a condition, acceptable to your clients, providing for obscured glass to those windows and given the high levels of privacy obtaining in this part of Lower Gaddesden, such a condition to me seems desirable and I shall so impose it.

10. I note the support from local people and organisations given to the permitted scheme and also note the objections made by the Parish Council and others to the proposal as being less desirable than the permitted development and allowing the

award your clients highlight the advice in paragraph 7 of Circular 22/80 upon unreasonable refusal and go on to indicate their consideration that the reasons for refusal are imprecise. More importantly, the reasons are thought not to be supported by the evidence where for instance, the first reason for refusal is a policy item ignoring the extant permission for a replacement dwelling.

19. In an alternative application for a partial award your clients' view is that the reasons for refusal cannot be justified if permission is given on appeal. It is considered that the officer's report to committee is neither wholly accurate nor is it comprehensive in not putting forward a condition restricting the creation of additional floorspace and thereby overcoming the council's objection to the proposal. Local opposition is believed to be prejudiced and founded on a poor grasp of planning principles.

20. The council's behaviour in abandoning design objections is unreasonable in the terms set out in paragraph 10 of the costs circular as is their failure to provide the support called for in paragraph 13 of the circular upon the imposition of a condition withdrawing permitted development rights. While no additional expense is incurred the council's late introduction of volume calculations for comparison rather than the superficial area criteria normally employed and the equally late withdrawal of design objections is indicative of their general approach.

21. In reply the council dispute the assertion that a grant of permission on appeal is a reason for awarding costs and say that because your clients felt they have a case it does not mean that the council is wrong. It is considered that your clients' costs are their own because they sought the inquiry rather than an informal hearing. The council are thought not to be unreasonable and in a long experience have only ever had one award made against them. It is pointed out that the policies are not strict laws but are open to interpretation, that the interpretation differs does not call for a penalty and the council's reasons for refusal are well supported by the evidence.

#### CONCLUSIONS

22. In determining these applications for costs I have borne in mind that in planning appeals the parties are normally expected to meet their own expenses irrespective of the outcome of the appeal and that costs were awarded only in very exceptional circumstances on grounds of unreasonable behaviour. Accordingly, I have considered the applications for costs in the light of Circular 2/87, the appeal papers, the evidence submitted by the parties and all the relevant circumstances in the appeal. To my mind the crucial issue is whether the council are unable to produce evidence to substantiate their reasons and thus whether they have behaved unreasonably.

23. Dealing with both applications together. The appeal site is in a sensitive rural area and as indicated in the body of this letter there is no dispute between the parties upon the application of the policies nor is there any dispute upon the acceptability of the principle of replacement of the existing structure by a somewhat larger structure. It is agreed that the extant permission received full and proper consideration and if this is so it seems to me and in my opinion the evidence confirms it, that the appeal proposal is unlikely to have been less than properly considered. Whatever the differences in terms of floorspace and volumes the appeal proposal is significantly different in conception, conformation, architectural style and location within the site to the scheme permitted in 1986. Although my assessment of the impact of the proposal does not accord with that of the council I am conscious that the assessment is largely a subjective matter. In this case where there is room for more than one viewpoint I do not think it unreasonable for the council to take the stance that they did and nor therefore that they should be penalised for it.

24. In all the circumstances set out in paragraphs 18-23 above I consider that for awards for costs on the grounds of unreasonable behaviour would not be justified and your clients' applications for either a full or partial awards of costs are accordingly refused.

I am Gentlemen  
Your obedient Servant

William A. Greenoff

WILLIAM A GREENOFF DiplArch RIBA  
Inspector

possibility of further development on the site but I must say that I do not find the differences in location between the 2 proposals so significant as to lead me to a similar conclusion. There is no evidence of a need for small houses in the village as stated by one local objector and in the light of the contents of Development Control Policy Note 4 and the advice in Circulars 22/80 and 14/85 I see no compelling planning objections to the proposed replacement development of the site.

11. In accordance with the Secretary of State's advice the council put forward a list of conditions not dissimilar to those imposed on the permission given, to be attached to any permission given in this case and no objections are raised by your clients. In addition to the statutory time condition and those conditions noted above that proposed with demolition of the existing structure is normal in a case such as this and there is no reason why it should not be applied here. Neither, given the surroundings, is there any objection in my mind to the conditions concerned with access details, materials and landscaping.

12. The council suggest that conditions be imposed restricting any change of use of the proposed garage and any increase in floor area within the structure to prevent a cumulative increase in residential development over and above the increase that approval of this proposal allows. In the light of the policies I agree that such conditions are not uncalled for. Nonetheless, given my assessment of the limited impact of the proposal upon this part of the village I am not convinced that such conditions are either necessary or reasonable. They would not therefore meet the requirements of paragraph 11 of Circular 1/85 and I do not intend to impose them. Notwithstanding this view I am also aware that without a suitably worded condition dormers and other forms of windows could be inserted in the proposed roof planes and unacceptably interrupt the line of the roof and undesirably increase the loss of privacy of the adjoining premises and accordingly I shall impose a condition to avoid such a situation.

13. There is a fence between the appeal site and The Bothy but the drawing shows another fence line as well. For the avoidance of doubt and to follow the example in the existing permission I intend to attach a condition ensuring provision of a fence as proposed. The existing layout of the site is distinguished by the division formed by the extension south-westward of the south-east end of the high north-eastern boundary wall to meet the existing cottage. Your clients intend to retain the boundary walls and repeat the division concept by connecting the proposed house and garage buildings to each other and to the south-east and south-west boundaries by means of high screen walls. The proposed division of the site is one of the factors I have taken into account in my consideration of this case and also for the avoidance of doubt, I shall condition this permission to ensure provision of those walls.

14. I have taken account of all the other matters raised but they are not sufficient to outweigh the considerations that have led me to my conclusion.

15. For the above reasons, and in exercise of the powers transferred to me, I hereby allow this appeal and grant planning permission for a replacement dwelling on land at The Garden Cottage, Nettleden Road, Little Gaddesden, Hertfordshire, in accordance with the terms of the application (No: 4/1546/86) dated 2.11.86 and the plans submitted therewith subject to the following conditions:

1. The development hereby permitted shall be begun before the expiration of 5 years from the date of this permission.

2. Development shall not begin until the existing dwellinghouse and derelict outbuildings on the appeal site have been demolished and the materials removed from the site.

3. Development shall not begin until details of the proposed external finishing materials have been approved in writing by the local planning authority.

4. Development shall not begin until details of the junction between the proposed access road and the highway have been approved by the local planning authority and the buildings shall not be occupied until that junction has been constructed in accordance with the approved details.

5. No development shall take place until there has been submitted to and approved by the local planning authority a scheme of landscaping, which 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.

6. All planting, seeding or turfing comprised in the approved details of the 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.

7. No development shall take place until there has been submitted to and approved by the local planning authority a scheme for a 1.8 m high imperforate fence or wall to be erected on the south-western boundary of the site between points AB and BC (marked in red on Plan No. TB 100) and the dwelling hereby approved shall not be occupied until the works have been carried out in accordance with the submitted plan.

8. No development shall take place until there has been submitted to and approved by the local planning authority a scheme for a 1.8 m high imperforate wall to be erected between point B, the dwelling, the proposed garage and point D (marked in red on Plan No. TB 100) and such walling shall be retained at all times thereafter. The dwellings shall not be occupied until the works have been completed in accordance with the submitted plan.

9. All glazing above ground storey level on the north-west elevation hereby permitted shown on Plan TB 102, shall be in obscured glass to be retained at all times thereafter and shall not be altered without the written consent of the local planning authority.

10. No windows or dormers shall be inserted into the north-west elevation of the dwelling hereby permitted as shown on Plan TB 102, without the written consent of the local planning authority.

16. Attention is drawn to the fact that an applicant for any consent, agreement or approval required by a condition of 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.

17. This letter does not convey any approval or consent which may be required under any enactment, byelaw, order or regulation other than Section 23 of the Town and Country Planning Act 1971.

#### THE APPLICATIONS FOR COSTS

18. At the inquiry your clients asked for a full award against the council because it is considered that the application need never have come to appeal. In seeking the

DP

## TOWN &amp; COUNTRY PLANNING ACTS, 1971 and 1972



## DACORUM BOROUGH COUNCIL

To Alath Construction Ltd.  
24 Lincoln Court  
Berkhamsted

A E King  
Dovecot Barn  
Alder Park Meadows  
Long Marston

..... Demolition of existing dwelling and .....  
 ..... erection of dwelling and double garage .....  
 at ..... The Garden Cottage, Nettleden Road .....  
 ..... Little Gaddesden .....

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 ..... 2.11.86 ..... and received with sufficient particulars on ..... 4.11.86 ..... 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 site is within a rural area beyond the Metropolitan Green Belt on the adopted Dacorum District Plan wherein permission will only be given for use of land, the construction of new buildings or changes of use of existing buildings for agriculture or other essential purposes appropriate to a rural area or small scale facilities for participatory sport or recreation. No such need has been proven and the proposed development is unacceptable in the terms of this policy.
2. By reason of Policy No 6 of the adopted Dacorum District Plan, permission may be given for replacement dwellings in rural areas providing that the new dwelling is of a similar size and is not more intrusive in the landscape than that which it replaces. Notwithstanding the inaccuracy of the submitted drawings, in the opinion of the local planning authority, the proposed development is contrary to the terms of this Policy by reason of its size and design.

Dated ..... 15 ..... day of ..... January ..... 19 87 .....

Signed.....

SEE NOTES OVERLEAF

P/D.15

Chief Planning Officer

#### 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.



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13. There is a fence between the appeal site and The Bothy but the drawing shows another fence line as well. For the avoidance of doubt and to follow the example in the existing permission I intend to attach a condition ensuring provision of a fence as proposed. The existing layout of the site is distinguished by the division formed by the extension south-westward of the south-east end of the high north-eastern boundary wall to meet the existing cottage. Your clients intend to retain the boundary walls and repeat the division concept by connecting the proposed house and garage buildings to each other and to the south-east and south-west boundaries by means of high screen walls. The proposed division of the site is one of the factors I have taken into account in my consideration of this case and also for the avoidance of doubt, I shall condition this permission to ensure provision of those walls.

14. I have taken account of all the other matters raised but they are not sufficient to outweigh the considerations that have led me to my conclusion.

15. For the above reasons, and in exercise of the powers transferred to me, I hereby allow this appeal and grant planning permission for a replacement dwelling on land at The Garden Cottage, Nettleden Road, Little Gaddesden, Hertfordshire, in accordance with the terms of the application (No: 4/1546/86) dated 2.11.86 and the plans submitted therewith subject to the following conditions:

1. The development hereby permitted shall be begun before the expiration of 5 years from the date of this permission.
2. Development shall not begin until the existing dwellinghouse and derelict outbuildings on the appeal site have been demolished and the materials removed from the site.

3. Development shall not begin until details of the proposed external finishing materials have been approved in writing by the local planning authority.

4. Development shall not begin until details of the junction between the proposed access road and the highway have been approved by the local planning authority and the buildings shall not be occupied until that junction has been constructed in accordance with the approved details.

5. No development shall take place until there has been submitted to and approved by the local planning authority a scheme of landscaping, which 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.

6. All planting, seeding or turfing comprised in the approved details of the 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.

7. No development shall take place until there has been submitted to and approved by the local planning authority a scheme for a 1.8 m high imperforate fence or wall to be erected on the south-western boundary of the site between points AB and BC (marked in red on Plan No. TB 100) and the dwelling hereby approved shall not be occupied until the works have been carried out in accordance with the submitted plan.

8. No development shall take place until there has been submitted to and approved by the local planning authority a scheme for a 1.8 m high imperforate wall to be erected between point B, the dwelling, the proposed garage and point D (marked in red on Plan No. TB 100) and such walling shall be retained at all times thereafter. The dwellings shall not be occupied until the works have been completed in accordance with the submitted plan.

9. All glazing above ground storey level on the north-west elevation hereby permitted shown on Plan TB 102, shall be in obscured glass to be retained at all times thereafter and shall not be altered without the written consent of the local planning authority.

10. No windows or dormers shall be inserted into the north-west elevation of the dwelling hereby permitted as shown on Plan TB 102, without the written consent of the local planning authority.

16. Attention is drawn to the fact that an applicant for any consent, agreement or approval required by a condition of 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.

17. This letter does not convey any approval or consent which may be required under any enactment, byelaw, order or regulation other than Section 23 of the Town and Country Planning Act 1971.

#### .THE APPLICATIONS FOR COSTS

18. At the inquiry your clients asked for a full award against the council because it is considered that the application need never have come to appeal. In seeking the

award your clients highlight the advice in paragraph 7 of Circular 22/80 upon unreasonable refusal and go on to indicate their consideration that the reasons for refusal are imprecise. More importantly, the reasons are thought not to be supported by the evidence where for instance, the first reason for refusal is a policy item ignoring the extant permission for a replacement dwelling.

19. In an alternative application for a partial award your clients' view is that the reasons for refusal cannot be justified if permission is given on appeal. It is considered that the officer's report to committee is neither wholly accurate nor is it comprehensive in not putting forward a condition restricting the creation of additional floorspace and thereby overcoming the council's objection to the proposal. Local opposition is believed to be prejudiced and founded on a poor grasp of planning principles.

20. The council's behaviour in abandoning design objections is unreasonable in the terms set out in paragraph 10 of the costs circular as is their failure to provide the support called for in paragraph 13 of the circular upon the imposition of a condition withdrawing permitted development rights. While no additional expense is incurred the council's late introduction of volume calculations for comparison rather than the superficial area criteria normally employed and the equally late withdrawal of design objections is indicative of their general approach.

21. In reply the council dispute the assertion that a grant of permission on appeal is a reason for awarding costs and say that because your clients felt they have a case it does not mean that the council is wrong. It is considered that your clients' costs are their own because they sought the inquiry rather than an informal hearing. The council are thought not to be unreasonable and in a long experience have only ever had one award made against them. It is pointed out that the policies are not strict laws but are open to interpretation, that the interpretation differs does not call for a penalty and the council's reasons for refusal are well supported by the evidence.

#### CONCLUSIONS

22. In determining these applications for costs I have borne in mind that in planning appeals the parties are normally expected to meet their own expenses irrespective of the outcome of the appeal and that costs were awarded only in very exceptional circumstances on grounds of unreasonable behaviour. Accordingly, I have considered the applications for costs in the light of Circular 2/87, the appeal papers, the evidence submitted by the parties and all the relevant circumstances in the appeal. To my mind the crucial issue is whether the council are unable to produce evidence to substantiate their reasons and thus whether they have behaved unreasonably.

23. Dealing with both applications together. The appeal site is in a sensitive rural area and as indicated in the body of this letter there is no dispute between the parties upon the application of the policies nor is there any dispute upon the acceptability of the principle of replacement of the existing structure by a somewhat larger structure. It is agreed that the extant permission received full and proper consideration and if this is so it seems to me and in my opinion the evidence confirms it, that the appeal proposal is unlikely to have been less than properly considered. Whatever the differences in terms of floorspace and volumes the appeal proposal is significantly different in conception, conformation, architectural style and location within the site to the scheme permitted in 1986. Although my assessment of the impact of the proposal does not accord with that of the council I am conscious that the assessment is largely a subjective matter. In this case where there is room for more than one viewpoint I do not think it unreasonable for the council to take the stance that they did and nor therefore that they should be penalised for it.

24. In all the circumstances set out in paragraphs 18-23 above I consider that for awards for costs on the grounds of unreasonable behaviour would not be justified and your clients' applications for either a full or partial awards of costs are accordingly refused.

I am Gentlemen  
Your obedient Servant

William A. Greenoff

WILLIAM A GREENOFF DiplArch RIBA  
Inspector