

TOWN & COUNTRY PLANNING ACTS, 1971 and 1972

Other
Ref. No.

THE DISTRICT COUNCIL OF DACORUM

IN THE COUNTY OF HERTFORD

To A. M. Bradley Esq.,
10 Sandridge Close,
Hemel Hempstead,
Herts.

5 ft high fence,
.....
.....
xx land adj. 10 Sandridge Close,
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
 13th October 1980 and received with sufficient particulars on
 17th October 1980 and shown on the plan(s) accompanying such application.

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

The proposed development would adversely affect the visual amenity of, and have a detrimental effect upon, the appearance of this open space.

Dated 4th day of December 19 80...

Signed.....

Designation Director of Technical
Services.

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.

Department of the Environment and Department of Transport

Common Services

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GTN 2074 C.P.O. D.P.

Council ref 4/T260/84E

**CHIEF EXECUTIVE
OFFICER**

12 SEP 1985

Dacorum District Council

File Ref.

Refer to Adm.

Closed C. Admin.

Council ref 4/T260/84E

Your reference

Received

12 SEP 1985 13800

Our reference

Comments

T/APP/A1910/C/84/2815/P6

Date

10 SEP 85

Mr A M Bradley
10 Sandridge Close
HEMEL HEMPSTEAD
Hertfordshire
HP2 7NG

Sir

TOWN AND COUNTRY PLANNING ACT 1971, SECTION 88 AND SCHEDULE 9
LOCAL GOVERNMENT AND PLANNING (AMENDMENT) ACT 1981
LAND AND BUILDINGS AT 10 SANDRIDGE CLOSE, HEMEL HEMPSTEAD

1. As you know I have been appointed by the Secretary of State for the Environment to determine your appeal. This appeal is against an enforcement notice issued by the Dacorum District Council concerning the above mentioned land and buildings. I have considered the written representations made by you and by the Council and also those made by interested persons. I inspected the site on Monday 8 July 1985.

2. a. The date of the notice is 23 July 1984.

b. The breach of planning control alleged in the notice is the change of use of land adjoining 10 Sandridge Close, Hemel Hempstead, shown edged red on the plan attached to the notice, from use as amenity open space to use as part of residential garden.

c. The requirements of the notice are:

i. The discontinuance of the use of the land as part of residential garden.

ii. The removal of the ranch type wooden fence enclosing the land.

d. The period for compliance with the notice is 3 months.

e. The appeal was made on ground 88(2)(a), (b), (c) and (g).

3. Your house is at the northern end of a stepped terrace of 2-storey houses fronting onto Sandridge Close, which is a cul-de-sac leading off Elstree Road. It forms part of a large modern housing development, built to a moderately high density to the north of the centre of Hemel Hempstead and known as the Woodhall Farm Estate. No. 10 has a small open garden at the front and a somewhat larger rear garden which incorporates an area of land to the north of it enclosed by rustic timber fencing, of the ranch type, about 1 m in height on the eastern, northern and western boundaries. It is this land which is the subject of the notice. To the north of the appeal site is an area of open land of irregular shape onto which a number of houses face. This land is crossed by footpaths, contains a number of small, scattered trees and shrubs and is covered with neatly mown grass.

THE APPEAL ON GROUNDS (b) AND (c)

4. You contend that a material change of use requiring planning permission has not taken place because use of the land as part of a residential garden does not preclude its concurrent use as amenity open space. You also maintain that the land is used for the same purpose as the amenity land on the other side of the path. So far as the fence enclosing the land is concerned, which the notice requires to be removed, you argue that this is permitted development under the provisions of the General Development Order.

5. You have not disputed that prior to your purchasing it from the development company and its annexation to your existing rear garden, the land formed part of the larger adjoining open space. The extract from the approved layout plan for the estate and the notice of planning permission submitted by the council confirm that it did.

6. The term "open space" is defined in Section 290 of the 1971 Act as meaning, among other things, any land laid out as a public garden, or used for the purposes of public recreation. The adjective "amenity" is not defined in the Act and is not in my view of particular significance. Clearly the enclosure of the land and its use by you as part of your private garden excludes access to it by the public regardless of ownership. I am satisfied, therefore, that as a matter of fact and degree a material change of use requiring planning permission has occurred and as no such planning permission has been granted your appeal on grounds (b) and (c) consequently fails.

7. The erection of the fence does not form part of the allegation and I deal with that matter in relation to the appeal on ground (g).

THE APPEAL ON GROUND (a)

8. From my inspection of the site and its surroundings and from the representations made I consider the principal issue to be whether or not this development seriously detracts from the character of the surrounding area.

9. I observed at my inspection that it is a feature of this estate that front gardens are for the most part not fenced and that a number of areas of communal open space have been incorporated into the layout. These features in my view help to counteract what might otherwise be a somewhat cramped and claustrophobic feeling arising from the relatively high density of the development.

10. The open space between Sandridge Close and Bramfield Place, including the appeal site, is as you have pointed out one of the largest areas in the estate and for that reason it provides a particularly welcome break in this otherwise built-up corner of the estate. Any reduction of this important open space by piecemeal enclosure would in my view tend to seriously impair the open character of the area and should be resisted.

11. I note your comment that no other plot of land is likely to be incorporated into private gardens, but the history of similar cases around the estate tends to contradict this, however I understand from your submissions that no other part of this particular open space is in private control.

12. You have also pointed out that some privately owned parts of the open spaces within the development tend to be neglected, however this is not in my view a sound argument for permitting development which is unsatisfactory.

13. Concerning the several previous planning decision and appeal decisions relating to similar development on the estate, referred to by you, and as illustrated on the plan submitted by the council, I note that some of these have been permitted and others refused. However none of these examples, it appears to me, involves land forming part of so large an area of open space as in the present case, so that no meaningful comparison can be made in my opinion.

14. Bearing in mind all the foregoing considerations, I conclude that planning permission should not be granted and your appeal on ground (a) fails.

THE APPEAL ON GROUND (g)

15. Having concluded in respect of the appeals on grounds (b) and (c) that a material change in the use of the land from open space to private garden has occurred without planning permission, and that planning permission ought not to be granted, the requirement to discontinue that use is in my view a logical and necessary one to remedy the situation.

16. With regard to the second step of the requirements, the erection of the fence excludes the public from the land; it reduces the visual impact of the open space as well as its usable area and its removal is I consider a reasonable and necessary part of the requirements. So far as the fencing on the eastern boundary is concerned, whilst I note your comment that this also has a safety function it seems to me to serve primarily as part of the enclosure of the land and should be removed with the remainder. In consequence I consider that your appeal on ground (g) should also fail.

17. I have taken account of all the other matters raised, including the fact that the notice does not require the removal of the young conifers which you have planted inside the fence and the support which you have received from 2 of your neighbours. These matters are however of insufficient substance to affect the considerations which have led to my decision.

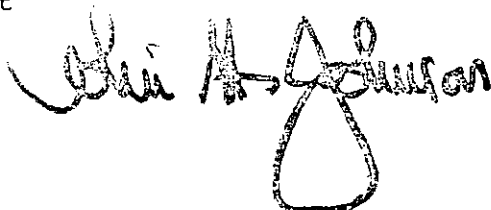
FORMAL DECISION

18. For the above reasons, and in exercise of the powers transferred to me, I hereby dismiss your appeal, uphold the enforcement notice and refuse to grant planning permission for the development referred to therein on the application deemed to have been made therefor under Section 88B(3) of the Act.

RIGHT OF APPEAL AGAINST DECISION

19. This letter is issued as the determination of the appeal before me. Particulars of the rights of appeal against the decision to the High Court are enclosed for those concerned.

I am Sir
Your obedient Servant



C H JOHNSON ARICS
Inspector

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