

TOWN & COUNTRY PLANNING ACTS, 1971 and 1972

Other

Ref. No.

THE DISTRICT COUNCIL OF DACORUM

IN THE COUNTY OF HERTFORD

To Mrs. P. J. Andrews .
44 St. Mary's Avenue,
Northchurch,
Berkhamsted, Herts.P. J. Fountaine Esq.,
27 Castle Street,
Berkhamsted,
Herts.

..... Bungalow - outline,

.....

at ... 44 St. Mary's Avenue,

..... Northchurch, Berkhamsted, 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 10th. October 1980 and received with sufficient particulars on 11th. November 1980 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 development would represent over development of this particular site, and affect adversely visual and general amenities at present enjoyed by occupants of adjacent dwellings.
2. The proposed development would have a seriously detrimental effect on trees subject to a Tree Preservation Order, whereby the visual character of the area would be adversely affected.

Dated 23rd 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.

RETURN TO M.R. FOR COMMENT



Department of the Environment

COPY SENT TO SECRETARY'S DEPT

Room 1421

Tollgate House Houlton Street Bristol BS2 9DU

Telex 449321

PLANNING DEPARTMENT			
DACORUM DISTRICT COUNCIL			
Ref.	Direct line 0272-218 950	Ack.	
C.R.O.	Switchboard 0272-218811	B.C.	Admin.
	D.P.GTN 2074		File
Received		Your reference	
15 MAY 1981		15 MAY 1981	
Comments		Our reference	
		T/APP/5252/A/81/01012/05	
		Date	
		14 MAY 1981	

Mr P J Fountaine
27 Castle Street
BERKHAMSTED
Herts
HP4 2DW

15 MAY 1981

Sir

TOWN AND COUNTRY PLANNING ACT 1971, SECTION 36 AND SCHEDULE 9
APPEAL BY MRS P J ANDREWS
LOCAL PLANNING AUTHORITY APPLICATION NO:- 4/1703/80

603029

1. I refer to this appeal, which I have been appointed to determine, against the decision of the Dacorum District Council to refuse planning permission for the erection of a bungalow with garage at 44 St Mary's Avenue, Northchurch, Berkhamsted. 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 30 March 1981.
2. I noted that your client's application for outline planning permission was accompanied by a drawing showing the siting and design of the proposed bungalow and garage. It accordingly seems to me that it is only the details of the means of access to the building and the landscaping of the site that properly fall to be treated as reserved matters for subsequent approval by the local planning authority in this case.
3. From my inspection of the site together with its surroundings, and the representations made, I am of the opinion that a decision in this case turns primarily on whether or not the proposed development would relate satisfactorily to the area generally and the 2 large oak trees in your client's garden in particular. I noted that these 2 oak trees were the subject of a Tree Preservation Order.
4. I observed that the proposed bungalow and garage would be sited on the terraced lawns of your client's bungalow at 44 St Mary's Avenue where the ground falls in a north easterly direction at a slope of about one in 15. I also noted that the proposed development would involve the demolition of your client's detached garage.
5. On the relationship of the proposed development to the area generally it seems to me that your client's property was deliberately made larger than other plots on this estate to take account of the 2 fine oak trees, the sharp bend in St Mary's Avenue in connection with the siting of the garage, and the slope of the ground. Whereas it seems to me the design of the low profile bungalow would not cause serious problems of overlooking or overshadowing of the premises in Covert Road, I am not satisfied that it would not materially harm the outlook from your client's own bungalow and its garden. Furthermore I am not satisfied that a new garage for your client's bungalow could be erected at some date in the

future without either seriously harming one or other of the 2 oak trees, or with access from the inside of the bend in the road where it would cause traffic hazards.

6. Turning to the question of the relationship of the proposed development to the 2 oak trees it seems to me that it would seriously harm the most northerly of these trees. Whereas the building would be about 15 ft from the trunk of this tree you state in the letter accompanying the application that its spread extends to about 27 ft from the trunk. It accordingly seems to me that some very considerable lopping of this tree would be necessary and I am unable to accept your submission that "there will be no effect or damage upon this tree". Moreover it seems to me this tree would overshadow the kitchen and front garden of the proposed bungalow to a degree that would deprive both of sunshine for most of the day.

7. On balance I have reached the conclusion that the proposed development would not relate satisfactorily to its surroundings and the oak trees.

8. I have considered all other matters raised in the written representations, including your submissions on the general shortage of building land and your discussions with officers of the council before submission of the application before me. In my opinion neither these matters, nor any other matters raised in the written representations, are of sufficient strength to outweigh the considerations that have led to my decision.

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

I am Sir
Your obedient Servant



W D WOODALL FRICS FRTPi
Inspector



Department of the Environment
Caxton House Tothill Street London SW1H 9LZ

Telephone 01-834 8549 Ext 461

P J Fountaine Esq
27 Castle Street
BERKHAMSTED
Herts

BERKHAMSTED

OLE

Your reference

Re: ...
Purs. ...
Noted by ...
Ans'd

Our reference
T/APP/839/A/73/2662/RS

Date

1973

Sir

TOWN AND COUNTRY PLANNING ACT 1971, SECTION 36 AND SCHEDULE 9
JUDICIAL BY MR J ANDREWS

1. I refer to this appeal, which I have been appointed to determine, against the decision of the Berkhamsted Urban District Council, acting on behalf of the Hertfordshire County Council, to refuse planning permission for the erection of a dwelling with garage on land adjoining Shady Oaks, St Mary's Avenue, Northchurch. 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 2 August 1973.

2. From my inspection of the site and surroundings I am of the opinion that the determination issue is whether the erection of a dwelling here would have a serious effect on the amenities of residents of adjoining houses and on the street scene. You stated on your client's behalf that the site was adequate in size, in fact larger than many other developed plots, and that it lay in an area zoned for residential purposes.

3. The council considered that there had been no change in circumstances since the then Minister had dismissed in 1964 an earlier appeal by your client for the same development. Although it was agreed that urban land should be used to its fullest extent, and that it would be possible to erect a dwelling here, the estate had been designed as a whole, with the retention of an appreciable number of mature trees; covered by a tree preservation order, which also included the 2 oaks in your client's garden. As the ground sloped down to the north, the backs of the houses in Covert Road were overlooked by those in the parallel St Mary's Avenue on the higher ground. This was alleviated by the length of the gardens. To build a dwelling here would bring it unacceptably close to the houses in Covert Road, and could involve the loss of at least one of the trees. This estate had been laid out to secure the optimum number of dwellings consistent with reasonable standards of amenity, and purchasers had a reasonable right to assume that their amenities would be maintained in the future.

4. Objections were received from nine of the local people notified of your client's appeal.

5. Your client's bungalow lies on a corner of St Mary's Avenue in one of the pleasantest parts of this estate. The pleasantness is enhanced by the fine oaks in his garden and by the sense of spaciousness as the road with its footways and grass verges falls away to the north-east. Your client's land has a return frontage to the Avenue. Just beyond its boundary is the garage of No 15 Covert Road, alongside the garage to Shady Oaks. The branches of one of the oak trees extend almost as far as the garage. While I agree that the plot size proposed is not unreasonable, I consider that the present layout has been carefully thought out to take account of the slope of the

und, and to prevent the undesirable overshadowing and overlooking of the houses at
ower level that would occur if this plot were developed. It seems unlikely to me
t it would be possible to retain both trees at their present scale and spread if
re were a dwelling here, to the consequent detriment of the attractive street
ne. I have considered the other matters raised but am of the opinion that they
of insufficient weight to affect my decision.

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

m. Sir
r. obedient. Servant

Barbara Ellis

BARA ELLIS MA (Cantab) MRTPI
pactor

BERKHAMSTED URBAN DISTRICT COUNCIL.

Town & Country Planning Act, 1971.

APPEAL by Mr. J. A. JONES against the refusal of planning consent for the erection of a dwelling house on land for part of "Shady Oaks", 44 St. Mary's Avenue, Northchurch, Berkhamsted, Herts.

Local Authority Plan No: 417/72.
Herts County Council code No: W/4754/72.
Department of Environment reference number: APP/839/A/73/2662(12).

In accordance with the Town & Country Planning Appeals (Inquiries Procedure) Rules 1969, the Council submit the following statement in respect of the above appeal.

1. The appeal site was the subject of an earlier application for planning permission in respect of the erection of one dwelling house. This application, which was dated 14th January 1966, was the subject of refusal and an appeal was made to the Minister of Housing & Local Government against such refusal. The appeal was dealt with by written representations and the refusal of consent was upheld by the Minister by decision dated 7th October, 1968. The reference number of the Department in respect of that appeal was APP/839/A/24038.

2. In the opinion of the Council the circumstances leading to the refusal of the present application are not changed from those relating to the application of January, 1966. For this reason the views put forward at that time are reiterated in this statement.

3. The appeal site forms part of the garden of a detached bungalow known as "Shady Oaks", 44 St. Mary's Avenue, Northchurch, Berkhamsted. St. Mary's Avenue is a public highway and from an inspection of the application submitted by the appellant it will be seen that the land which the appellant wishes to use for the erection of an additional dwellinghouse is at the rear of 44 St. Mary's Avenue but, in fact also has a frontage to the same highway. This position arises because the existing bungalow is on a corner plot.

4. The appeal site was originally part of an area of some 24 acres of land which was held with an old family residence known as Northchurch Hall. The accompanying plan illustrates the extent of this land.

5. The property known as Northchurch Hall was placed upon the market and in February 1956 was the subject of a development application by Messrs. Percy Bilton Ltd, who proposed to lay out the area for residential development by detached and semi-detached houses of varying types, detached and semi-detached bungalows, and some shops and maisonettes. As a result of discussions and negotiations the final design and number of dwellings was agreed and is shown on the plan accompanying this statement. In its present form the estate comprises 27 detached houses, 1 semi-detached house, 52 detached bungalows, 82 semi-detached bungalows, 5 shops and 8 maisonettes. The new development also included an improvement of the existing highway, Messrs Bilton, the construction of a new road parallel to track road and the construction of the present

estate roads known as Park Rise, Peter's Place, Covert Road and St. Mary's Avenue, all of which are indicated on the plan.

6. As mentioned above, the land involved in the estate development was formerly park land held with the property Northchurch Hall and there was an appreciable number of mature trees, such as might be found in this type of property. The estate developers co-operated with the Council by retaining as many of these trees as possible and an inspection of the estate will indicate what has been done in this respect. The trees are the subject of a Tree Preservation Order made by the Council on 20th August, 1955 and confirmed by the Minister on 9th July, 1956 (reference No. 839/40622/4). This Order includes 2 oak trees which are standing in the garden of 44 St. Mary's Avenue.

On the occasion of the previous appeal, referred to above, it was contended on behalf of the appellant that the two trees would not be affected by the proposed development. It is correct to say that the two trees are not within the appeal site. But the size of the trees and the close proximity of at least one of them to the proposed dwelling may well lead to an early application for lopping or removal, if the proposed development is permitted.

7. It will be seen from an inspection of the area that it has a marked rise from North to South, the main part of the estate development being from East to West along the lines of the contours. The property known as "Shady Oaks", 44 St. Mary's Avenue and the neighbouring bungalows are at a level which is appreciably higher than those on the South side of Covert Road. The backs of the houses on the South side of Covert Road are, therefore, overlooked by those on the North side of St. Mary's Avenue. Any inconvenience to the owners in Covert Road is alleviated by the lengths of the rear gardens of Covert Road and St. Mary's Avenue respectively. However, the application which is the subject of the present appeal indicates that the proposed new dwelling will be built at the northern extremity of the garden and almost immediately adjacent to the boundary fence between 44 St. Mary's Avenue and 45 Covert Road. The decision in this respect appears to have been determined by the need to retain some rear garden for 44 St. Mary's Avenue and by the awkward levels of the site. It will also necessitate the removal of the existing garage belonging to 44 St. Mary's Avenue and the provision of a new garage on the remainder of that site.

8. The effect of erecting the proposed new dwelling in the position shown on the application plan would be to bring it into close proximity with the rear of the houses in Covert Road and, in the opinion of the Council, this would have an adverse effect on the amenities of those properties.

9. The Council appreciate that it may be argued that on grounds purely of density it may be difficult to resist the present application, since it can be shown that it is possible to erect a dwelling on the appeal site. In the circumstances, however, this does not appear to be a valid argument for the grant of planning permission. In this case the lay-out of the estate of which the appeal site forms a part, was only agreed after discussion between

the estate developers and the local planning authority, and it must surely be a reasonable argument that the estate developers prepared their proposals having regard to what they considered to be the most desirable and advantageous method of laying out the property, to secure the optimum number of dwellings consistent with maintenance of reasonable standards of amenity. Purchasers of property on the estate had a reasonable right to assume that, in the light of the approved proposals, the estate development was complete and that the amenities then offered to them would be preserved in the future, not necessarily by the original developers but by the justifiable exercise of planning control by the local planning authority. A permission for the erection of an additional dwelling in the garden of "Shady Oaks", 44 St. Mary's Avenue may possibly lead to further applications of a similar nature.

10. In the Berkhamsted Urban District there is considerable pressure for all types of building land and this is accentuated by the fact that undeveloped areas of land are almost non-existent and, in any event, are not readily available to a purchaser who requires a single plot. The Council appreciate the need to utilise urban land to its fullest extent but also have in mind the fact that this utilisation should only be undertaken in appropriate circumstances. In this appeal the Council do not consider that any case has been made which would justify further infilling on this estate or of any circumstances which would justify the grant of planning consent for the appeal site, either on planning grounds or on any other grounds, such as personal hardship.

11. Notice of this appeal was given to the under-mentioned owners of the properties specified:

Mr.K.Johnson, 43 Covert Road
 Mr.G.C.Syers, 47 Covert Road
 Mr.J.Buzzing, 41 Covert Road
 Mr.R.Winford, 45 Covert Road
 Mr.I.F.Shaw, 51 St.Mary's Avenue
 Mr.R.Brown, 53 St.Mary's Avenue
 Mr.M.J.H.Clark, 57 St.Mary's Avenue
 Mr.D.L.Spencer, 61 St.Mary's Avenue
 Mr.L.J.Fussey, 59 St.Mary's Avenue
 Mr.L.F.Jeffery, 55 St.Mary's Avenue.

A copy of the notice is annexed to this statement.

The location of the premises referred to above is indicated in blue on the accompanying plan.

Nine of the owners referred to have submitted a joint statement in writing and a copy of this is annexed to this statement.

H.C. Reading

7th May 1973.

Clerk of the Council.