



Planning Inspectorate

Department of the Environment

Room 1121 Tollgate House Houlton Street Bristol BS2 9DJ

Telex 449321

Direct Line 0272-218915/36/38

Switchboard 0272-218811

GTN 1374

1/1/88
2/1/88

Mr P G C Ellis
6B Glenview Gardens
Boxmoor
HEMEL HEMPSTEAD
Herts
HP1 1TF

32953

CHIEF EXECUTIVE OFFICER				Council Reference:	
Dacorum Borough Council				4/1728/89E	
17 MAY 1990				Ack. Your Reference:	
File	RECORD	D.P.	D.C.	Admin.	File
Refer to ...				Our Reference:	
Cleared ... 17 MAY 1990				T/APP/C/89/A1910/6/P6	
Date				15 MAY 90	
Comments					

Sir

TOWN AND COUNTRY PLANNING ACT 1971, SECTION 88 AND SCHEDULE 9

LOCAL GOVERNMENT AND PLANNING (AMENDMENT) ACT 1981

LAND AND BUILDINGS AT 6 GLENVIEW GARDENS, BOXMOOR, HEMEL HEMPSTEAD, HERTFORDSHIRE

1. I have been appointed by the Secretary of State for the Environment to determine your appeal 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, by the Council and by interested persons and I inspected the site on 28 March 1990.

2. a. The date of the notice is 21 August 1989.

b. The breach of planning control alleged in the notice is failure to comply with condition numbers 2 and 3 subject to which planning permission was granted.

c. The permission was granted on 26 August 1987 and was for the conversion of a dwelling to form 2 flats.

d. The conditions which are alleged not to have been complied with are as follows:

(2) The flats shall not be occupied until the two car parking spaces shown on Plan No 4/0971/87 have been provided and they shall not be used otherwise than for car parking.

(3) Before development is commenced a scheme shall be submitted to and approved by the local planning authority illustrating the means by which sound transmission between ground and first floors and adjoining properties shall be resisted. Such scheme as is approved shall be implemented prior to occupation of the flats hereby permitted.

e. It is alleged that the condition has not been complied with in that:

1. The two car parking spaces shown on Plan No 4/0971/87 have not been provided.

2. No scheme was submitted to the local planning authority prior to commencement of the development, illustrating the means by which sound



transmission between ground and first floor and adjoining properties shall be resisted, and no approved scheme was implemented prior to occupation of the flats.

f. The requirements of the notice are:

1. Provide the two car parking spaces shown on Plan No 4/0971/87 and indicated coloured yellow on the plan attached hereto within one month from the date on which this Notice takes effect.
2. Submit a satisfactory scheme to the local planning authority for approval illustrating the means by which sound transmission between ground and first floors and adjoining properties shall be resisted within one month from the date on which this Notice takes effect.
3. Implement fully such approved scheme within two months of its approval by the local planning authority.

h. The appeal was made on the grounds set out in Section 88(2) (a), (b) and (g) of the 1971 Act as amended.

3. No 6 Glenview Gardens is one of a terrace of 12 small 2-storey houses facing Glenview Road across a shared access way and front garden land about three quarters of a mile north of Hemel Hempstead station. Several of the houses have been subdivided into 2 units, but Nos 2, 3, 4, 5, 11 and 12 appear to be occupied as single dwelling houses. No 6 Glenview Gardens has been split horizontally, with one flat on each floor. No 6B is the ground floor flat.

4. One of the parking spaces referred to in the notice is to the front of No 9 Glenview Gardens, which has a concrete area across the full plot width along the footway boundary. The other is one of the garages in a courtyard to the rear of the church on the opposite side of Glenview Road.

The appeal on ground (b)

5. You say that the parking space outside No 9 Glenview Gardens has been provided, and that the developer claims to have installed soundproofing. The Council, however, maintains that only 1 space has been provided, not 2 as required by condition No 2, and that no scheme of soundproofing has ever been submitted or approved by the local planning authority.

6. On my inspection I saw both the parking space outside No 9 Glenview Gardens and the garage indicated on the plan. There is no evidence that either are used other than for car parking. The condition requiring the provision of car parking spaces does not require that they be retained for use by the occupiers of any particular property. It merely requires that they be provided before the premises are occupied. The spaces coloured yellow on the plan attached to the notice exist and in my opinion Condition No 2 has been complied with. Therefore your appeal on ground (b) succeeds in so far as it relates to the alleged breach of that condition.

7. I accept that some soundproofing works have been carried out to the property as claimed by the developer. However, it is clear from the representations that whatever the character of the work undertaken no scheme of soundproofing has been submitted to or approved by the local planning authority following the grant of planning permission as required by that condition. To my mind, therefore, this condition has not been complied with, the breach of planning control alleged in the notice has taken place, and your appeal on ground (b) fails in so far as it relates to Condition No 3.

The appeal on ground (a) and the deemed application

8. You say that you moved into your flat in early 1988 and since that time you have suffered no noise either from No 6A Glenview Gardens or from adjoining properties. Nor are you aware of any complaints alleging noise from your flat. Therefore, you argue, either the soundproofing has been installed or if it has not no further work is necessary. The Council, however, refers to complaints received from the occupier of an adjoining property. Since no scheme has been submitted the Council cannot comment on the effectiveness of what has been done.

9. From the representations and my observations of the site and its surroundings I consider the main issue on the appeal on ground (a) and on the deemed application to be whether continuation of the use without complying with Condition No 3 is likely to lead to unacceptable noise and disturbance to the occupiers of the flat above or the occupiers of Nos 5 and 7 Glenview Gardens.

10. On my inspection it was not possible to see exactly what sound insulation had been fitted. There is in the representations no indication of noise transmission problems between your flat and Nos 6A or 7 Glenview Gardens. This may or may not be due to the internal arrangement of those properties or work that has already been carried out, but it may also be due to your behaviour. It seems that no objective assessment of noise transmission between the units has been undertaken and without such an assessment, which would no doubt have followed submission of details to the Council, it is impossible to say whether the insulation properties of the walls and ceiling of your flat meet acceptable standards.

11. In my experience noise is a frequent problem where the living accommodation of one unit adjoins the bedroom of another in terraces such as this. In my opinion it was reasonable for the Council to impose Condition No 3 on the planning permission because of this potential problem. I have concluded that continuation of the use of No 6 Glenview Gardens as 2 flats without complying with Condition No 3 is likely to lead to unacceptable noise and disturbance to the occupiers of at least one of the adjoining residential units.

12. I have taken into account all the other matters raised in the written representations, including the references to the chronology of the events leading to the issue of the notice, but they do not affect the above conclusions or my decision. Therefore the appeal on ground (a) fails in so far as it relates to the failure to comply with Condition No 3, I will uphold the notice in so far as it relates to that condition and I will not grant planning permission on the deemed application.

The appeal on ground (g)

13. Your appeal on this ground appears to refer wholly to the requirements of the notice with respect to Condition No 2. Since your appeal on ground (b) succeeds in so far as it relates to that condition I will vary the notice by deleting references to that condition.

FORMAL DECISION

13. For the above reasons and in exercise of the powers transferred to me I hereby determine this appeal as follows:

1. I allow your appeal in so far as it relates to the alleged failure to comply with Condition No 2 subject to which planning permission was granted and direct that the notice be varied by the deletion of sub-paragraph (i) of both Schedule 2 and Schedule 3;

2. I dismiss your appeal in so far as it relates to the alleged failure to comply with Condition No 3 subject to which planning permission was granted and refuse to grant planning permission on the application deemed to have been made under Section 88B(3) of the Act;

3. subject to the variations specified above I uphold the enforcement notice.

RIGHT OF APPEAL AGAINST DECISION

14. 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

John Roberts

J G ROBERTS BSc(Hons) DipTP MRTPI
Inspector

ENC