

TOWN & COUNTRY PLANNING ACTS, 1971 and 1972



DACORUM BOROUGH COUNCIL

To Mrs M Foy
26 Goldfield Road
Tring
Herts

D R Stanley
26 Glebe Close
Hemel Hempstead
Herts

One dwelling (outline)
.....
.....
at Land adj Pear Tree Cottage, Wilstone, 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
11 November 1987 and received with sufficient particulars on
2 December 1987 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 the rural area beyond the Green Belt on the adopted Dacorum District Plan wherein permission will only be given for use of land, the construction of new buildings, changes of use of existing buildings for agricultural 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. The adopted Dacorum District Plan shows the site to be within the Chilterns Area of Outstanding Natural Beauty wherein the policy of the local planning authority seeks to preserve the appearance of the area, encourage agriculture and conserve wildlife by the restriction of further development having particular regard to the site, design and external appearance of buildings. The proposed development is unacceptable in the terms of this policy. PTO

Dated 4th day of February 19 88

Signed.....

Chief Planning Officer

SEE NOTES OVERLEAF

P/D.15

3. The proposal is likely to lead to a conflict of vehicular turning movements to the detriment of highway safety.

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.



Planning Inspectorate
Department of the Environment

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28246

**CHIEF EXECUTIVE
OFFICER**

8 FEB 1989

File No.

Refer to

Circ.

(1) Lance Kent & Co
Solicitors
34 Alexandra Road
HEMEL HEMPSTEAD
Herts
HP2 5BS

(2) Mr D R Stanley
Contract Draftsman
26 Glebe Close
HEMEL HEMPSTEAD
Herts
HP2 5PA

PLANNING DEPARTMENT 1/AHS/Foy
DACORUM BOROUGH COUNCIL
Council reference:

HEMEL HEMPSTEAD
Ack 4/0640/88E & 4/1840/87

Our reference:

T/APP/C/88/A1910/2/P6 &
T/APP/A1910/A/88/097825/P6

Received

- 8 FEB 1989

Date:

Comments

- 6 FEB 89

Gentlemen and Sir

TOWN AND COUNTRY PLANNING ACT 1971, SECTIONS 88 AND 36 AND SCHEDULE 9
LOCAL GOVERNMENT AND PLANNING (AMENDMENT) ACT 1981
APPEALS BY MRS M A FOY

LAND AND BUILDINGS AT ADJACENT TO PEARTREE COTTAGE, WILSTONE, TRING, HERTFORDSHIRE

1. I have been appointed by the Secretary of State for the Environment to determine the above appeals against an enforcement notice issued by the Dacorum Borough Council and against a refusal of outline planning permission by that Council concerning the above land and buildings. I held an inquiry into the appeals on 10 and 11 January 1989.

2. a. The date of the notice is 11 February 1988.

b. The breach of planning control alleged in the notice is the making of a material change of use from agricultural land to use for storage of caravans and other vehicles which are being or have been used for human habitation.

c. The requirements of the notice are:

1. Cease the use of land for storage of caravans and other vehicles which are being or have been used for human habitation.

2. Remove all caravans and other vehicles which are being or have been used for human habitation from the land.

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

e. The appeal was made on the grounds set out in section 88(2)(a), (b), (c), (e), and (h) of the 1971 Act as amended, but at the inquiry grounds (b) and (h) were withdrawn.

3. The development for which outline planning permission was refused is the erection of a detached chalet bungalow.

4. The evidence relating to the appeal under s88 of the 1971 Act was taken on oath.

THE APPEALS SITES AND SURROUNDINGS

5. The appeals sites lie in open countryside, within the Chilterns Area of Outstanding Natural Beauty, about 400m south of Wilstone, and close to Wilstone Reservoir. From the public footpath along the top of the reservoir embankment, there are panoramic views over the flat, open land to the north-east, including the appeals sites.

6. The s36 appeal site is a "U"-shaped area of land surrounding Peartree Cottage, and having 2 road frontages to Lower Icknield Way, the B489, in the middle of an "S" bend. The suggested site access is opposite the junction of the road from Wilstone with Lower Icknield Way. The site is generally flat and uncultivated. At the time of my inspection, a motor coach, adapted for human habitation and in residential use, was stationed partly on the appeal site and partly on the rear yard of Peartree Cottage. Peartree Cottage is unoccupied and derelict.

7. The plan attached to the enforcement notice defines the s88 appeal site as 2 separate parcels of land. Neither parcel of land is cultivated. The public footpath leads from Lower Icknield Way to the foot of the reservoir embankment, where it joins the public footpath descending from the top of the reservoir embankment. The western parcel of land ("the western land") includes the s36 appeal site. The other parcel of land, OS field No 6952 ("the field"), is mostly laid to pasture. In the field stand 2 dilapidated caravans.

8. One caravan (caravan A) stands near the southwestern side of the field. Inside the caravan are a large area with a television, easy chairs, heaters and general domestic bits and pieces, including a portable gas hob, and 2 sleeping compartments containing beds, one of which is made up for use.

9. The other caravan (caravan B) is brightly painted, and stands next to a half-demolished shed near the northeastern boundary of the field. Caravan B contains tables and chairs, a bed with toy soldiers on it, a mattress and wardrobe, a small compartment containing a chemical toilet, and a kitchenette with sink and cooker, kettle and tea bags.

UNDISPUTED FACTS

10. At the turn of the century, several cottages, including Peartree Cottage stood on or near the appeals sites. The public footpath which now separates the western land and the field was known at that time as Wells Lane. By the time of the survey for the 1924 Ordnance Survey map, only Peartree Cottage remained standing.

11. In 1966, Mr Poulton, the then owner of Peartree Cottage and both appeals sites, applied unsuccessfully for planning permission for the siting of one caravan on the western land. At the same time, he also applied unsuccessfully for planning permission to use the western land as a car breaker's yard. In 1968, an enforcement notice was served requiring the cessation of the use of the western land for car breaking and repair.

12. In February 1976, planning permission was refused for the continued use of part of the field for the stationing of a caravan. In August 1976 an enforcement notice was served requiring the cessation of the use of part of the field for the stationing of 2 caravans used for residential occupation. The appeals against the refusal of permission and against the enforcement notice were dismissed.

13. At the time of service of the 1976 enforcement notice, that part of the field which was affected by the notice was fenced off from the remainder. On the remainder of the field stood a third caravan, in the approximate position now occupied by caravan A.

14. The appellant's personal knowledge of the appeals sites dates back to 1976, when she and her husband moved to Tring. In 1984, the appellant's husband bought the appeals sites from Mr Poulton. Since then, he and his family have used caravan A for residential purposes for short periods at holidays and weekends. In 1986, the appellant bought the appeals sites from her husband. In November 1986, caravan B was brought to the field. The appellant's husband uses caravan B for war games, which is his hobby.

15. From time to time, other residential caravans have been stationed on the appeals sites, but neither caravan A nor caravan B stand on that part of the field which was the subject of the 1976 enforcement notice.

16. The Countryside Commission has proposed that the area to the north of Tring, which includes the appeals sites, be deleted from the designated Chilterns Area of Outstanding Natural Beauty. The Secretary of State has yet to determine the proposal.

17. Lower Icknield Way is heavily trafficked. At the junction of the road from Wilstone, visibility is below the standard which would now be required for the construction of a new junction onto Lower Icknield Way. Visibility at the proposed site access is substandard.

THE S36 APPEAL

18. From my inspection and all the matters raised at the inquiry, I consider the main issues to be the effects of the proposed chalet bungalow on the rural character of the area, on the character and appearance of this part of the Chilterns Area of Outstanding Natural Beauty, and on highway safety.

19. Building in the open countryside, away from existing settlements has long been strictly controlled. New houses will not normally be permitted unless there is a special need in the particular case. This applies equally to areas where, as here, there are already a few scattered buildings.

20. Policy 2 of the adopted Dacorum District Plan states that in the rural areas beyond the Green Belt, planning permission will not be granted, except in very special circumstances, for development unless certain criteria apply. It was not suggested that the proposed bungalow came within any of these criteria.

21. Policy 24 of the District Plan requires the council to have particular regard for the protection of important views and skylines when considering proposals for buildings and other development. Because the site is clearly seen from the public footpaths in the locality, and from the surrounding road network, any built development on the appeal site would be readily visible. Despite being neglected and untidy, the appeal site nevertheless makes a contribution to the generally open rural scene. I consider that the proposed development would intrude into this open view, undesirably consolidating the existing sporadic development on adjacent land, and detracting from the rural character and appearance of the locality.

22. Turning to the second issue, the removal of land in the vicinity of the appeal site from the Chilterns Area of Outstanding Natural Beauty, is by no means certain. In the meantime, I must give due weight to the policies for the protection of that area. Policy 2 of the Structure Plan Review provides that the preservation of the beauty of the area will be the prime consideration, that the area will not be regarded as one of availability from the point of view of development, and that development will be subordinated to the basic theme of the Area of Outstanding Natural Beauty. This policy is supported by policy 23 of the District Plan, which expresses a concern to preserve the natural beauty of the landscape, to encourage agriculture and to conserve wildlife. I consider that these policies add further weight to the already strong planning objections to this development outlined in the previous paragraph.

23. In relation to the third issue, the suggested shared access with Peartree Cottage was only one possibility: the appellant owned the adjoining land, thus enabling the suggested access to be improved or an alternative access to be created on the adjoining land. As Planning Policy Guidance Note 13 advises, whatever the type of access, good visibility is essential. I have, therefore, considered the various points of access to the appeal site using land within the appellant's control. At my site inspection, the appropriate measurements were taken. While the Highway Authority agrees that visibility at the suggested accesses could be improved, each of the suggested accesses, even after improvement, would still be seriously substandard.

24. At present, the use of the access to Peartree Cottage is minimal, as the cottage is derelict and unoccupied. Consequently, in terms of traffic generation, the effect of sharing that access with the proposed bungalow would be tantamount to the formation of a new access onto Lower Icknield Way. In view of its location in the middle of an "S" bend opposite an existing unsatisfactory road junction, and the fact that the access would not be to the required standard, I consider that the proposed access would undesirably exacerbate an existing unsatisfactory situation. Bearing in mind also that adequate visibility could not be achieved on land in Mrs Foy's control in respect of the other suggested accesses, these other accesses would be equally unacceptable.

25. I have taken into account all other matters raised at the inquiry, including the former community nearby, which I understand is now beneath the reservoir, and the long-disappeared cottages which stood on or near the appeal site at the turn of the century. However, in my judgement, these matters are outweighed by my conclusions that the proposed development would cause demonstrable harm to interests of acknowledged importance.

THE APPEAL ON GROUND (e)

26. There was no suggestion that the appeal on ground (e) extends to the western land. In view of the existence of the 1976 enforcement notice, it seems to me that the appeal on ground (e) in respect of that part of the field affected by that notice must fail. I have therefore considered the appeal on ground (e) in respect of that part of the field which is not affected by the 1976 notice.

27. The evidence is patchy. The appellant and her husband did not know the area nor come to live nearby until 1976, and their evidence of earlier events is based on conversations with Mr Poulton, and a man known to them as Ted, who lived in a caravan on the field from time to time. Although the appellant and her husband had made considerable efforts to find witnesses who could give first hand evidence of the use of the appeal site for the stationing of caravans for residential purposes since the relevant date, they had been unable to find anyone. They had not asked Mr Poulton to give evidence on their behalf, partly because he would be likely to agree to whatever was asked of him, but mainly because he was no longer capable of dealing with his affairs, which were now dealt with by the Court of Protection.

28. In relation to the site history prior to their arrival in Tring in 1976, all Mr and Mrs Foy could say with any reasonable degree of certainty was that Ted's caravan had been brought to the appeal sites sometime before the death of Mr Poulton's father in 1966. Bearing in mind that, in 1966, the present Mr Poulton applied for planning permission for the stationing of a caravan on the western land, I consider that, on the balance of probabilities, that application was likely to have been made in respect of the stationing of Ted's caravan. Be that as it may, there is no sound evidence before me that the part of the field on which caravans A and B now stand has been used for the storage of caravans which are or have been used for human habitation since before 1976, when the appellant moved to the area and when the 1976 enforcement notice plan indicated a caravan on that part of the field which was excluded from that enforcement notice site. In all these circumstances, the appeal on ground (e) fails.

THE APPEAL ON GROUND (c)

29. It was admitted that, as far as other caravans which are brought to the appeals sites from time to time, the alleged breach has taken place. This appeal related solely to caravan B, which, it was alleged, was used for storage as a replacement for a shed on the land. However, since it was admitted by the appellant's husband that he uses it for his war games hobby, and that the storage of the chemical toilet is in connection with the use of caravan A, and from the evidence of my inspection, I consider that the use of caravan B is ancillary to the residential use of caravan A. In addition, caravan B has clearly been used for human habitation at some stage. Consequently, I conclude that the presence of caravan B on the appeal site comes within the allegation as worded. The appeal on ground (c) therefore also fails.

THE APPEAL ON GROUND (a)

30. Policy 7 of the adopted Dacorum District Plan sets out a presumption against the use of land in rural areas as a site for residential caravans and that applications for planning permission for such development will be treated in the same way as for permanent residential development. In these circumstances, and bearing in mind my conclusions in respect of the appeal under s36, although caravans which are being or have been used for human habitation have been stored on the appeals sites for several years, I consider that the continuation of this use would have a detrimental impact on the rural character of the locality and upon the appearance of this part of the Chilterns Area of Outstanding Natural Beauty. Accordingly, the appeal on ground (a) fails.

31. As the correct fee payable under the Town and Country Planning (Fees for Applications and Deemed Applications) Regulations 1985 has not been paid, I do not propose to deal with the application for planning permission deemed to have been made under section 88B(3) of the 1971 Act as amended.

FORMAL DECISION

32. For the above reasons and in exercise of the powers transferred to me, I hereby dismiss these appeals, and uphold the enforcement notice.

RIGHT OF APPEAL AGAINST DECISION

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

I am Gentlemen
Your obedient Servant

G. J. Bowman.

MRS G J BOWMAN MA(Cantab) Barrister
Inspector

ENC.

APPEARANCES

FOR THE APPELLANT

The appeal under s88

Mrs D Allen

Solicitor, Lance Kent & Co.

She called:

(1) Mrs M A Foy

Appellant

(2) Mr T Foy

Husband of Appellant

The appeal under s36

Mr D Stanley

Contract Draughtsman

He gave evidence and he called:

Mr T Foy

FOR THE PLANNING AUTHORITY

Mr Steven Baker

Solicitor

He called:

(1) Miss N Mitchell

Housing Finance Officer

(2) Mr J P Smith

Planning Enforcement Officer

(3) Mr D Sibley

Senior Engineer, Hertfordshire County Council

(4) Mr G Bailey ARICS

Acting Principal Assistant Planner

DOCUMENTS

- Document 1 Bundle lists of persons present at the inquiry on each day.
- " 2 Notice of inquiry and list of addressees
- " 3 Letter of representation from Tring Rural Parish Council
- " 4 Copy Letter from Lance Kent & Co dated 9 January 1989 giving undertaking to pay the appeal fees.
- " 5 Inland Revenue Valuation of Land records, c.1910
- " 6 & 7 Extrcts Conveyances dated 24 September 1895
- " 8 Receipt for £450 for mobile home.
- " 9 Bundle applications for Supplementary Benefit.

- " 10 Copy Enforcement Notice dated 16 August 1976.
- " 11 Copy Council's Written Statement on appeal against enforcement notice dated 16 August 1976.
- " 12 Decision letter dated 14 April 1977 reference: T/APP/5252/C/76/4692/G4 & T/APP/5252/A/76/7120/G4.
- " 13 Bundle appendices to Mr Sibley's Proof of Evidence.
- " 14 Bundle appendices to Mr Bailey's Proof of Evidence.

PLANS

- Plan A Copy enforcement notice plan
- " B.1 Planning application plans and elevations
- " B.2 Planning application site location plan
- " B.3 Planning application land ownership plan
- " C Illustrative drawing of proposed chalet bungalow with cottages
- " D Plan GB 1, showing appeals sites
- " E Extracts 1924 Ordnance Survey map
- " F 1966 Planning application plan
- " G 1976 copy enforcement notice plan
- " H Office copy plan issued by the Stevenage District Land Registry
- " K JPS 1 the appeals sites 28 January 1987
- " L JPS 2 the appeals sites 16 July 1987
- " M JPS 3 the appeals sites 11 November 1987
- " N JPS 4 the appeals sites 17 January 1988
- " P Dacorum District Plan Proposals Map

PHOTOGRAPHS

- Photos 1-2 The appeals sites 23 October 1986
- " 3-7 The appeals sites 27 November 1986
- " 8-18 The appeals sites 28 January 1987
- " 19-22 The appeals sites 11 November 1987



BETWEEN TONEYE FOY PLAINTIFF PLAINTIFF
AND MR. E.P., MR. D.E. AND MR. G.P.A. MEAD DEFENDANTS

Before Mr. F.M. Ferris QC sitting as an Assistant Recorder at Aylesbury

Upon hearing the Plaintiff in person and Mr. Shillingford of Counsel for the Defendants, IT IS ORDERED:

1. That the Plaintiff's Claim and Counterclaim to Counterclaim be dismissed.
2. On the Counterclaim there be;
 - (a) A declaration that there is appurtenant to Title Number HD 3394 a right of drainage for all normal agricultural purposes into the ditch which lies along side the Defendants barn adjoining Lower Icknield Way from part of Little Farm comprised in that Title (so far as the Ditch itself is not comprised in the said Title) and thence a right to the passage of water from such ditch to the stream at the Western perimeter of the Plaintiff's land by means of the underground pipe or drain the line of which is indicated on the drainage plan which is exhibit P6 (b) and so that the said right of drainage includes:-
 - (i) The right to enter upon any part of the land through which the said ditch pipe or drain flows for the purpose of inspecting the same, unblocking it and generally maintaining and repairing it or, if necessary, replacing it.
 - (ii) The right to maintain and use an inspection pit on the said drainage plan (but not to maintain any open trench or ditch at trench B or D on the said drainage plan).
 - (b) An injunction restraining the Plaintiff by himself, his employees, agents or otherwise howsoever from interfering in any way with the said ditch or pipe or drain or the passage of water through the same or with the Defendants said right of entry to the same.
 - (c) A declaration that the land coloured purple on the plan annexed to the Defence and Counterclaim is comprised in Title Number HD 3394.
 - (d) An injunction restraining the Plaintiff by himself, his employees or agents or otherwise howsoever from trespassing on the said land coloured purple or taking down, damaging or otherwise interfering with the fences or gates surrounding it save for the purpose of bona fide use of

footpath number 43 shown on the Definitive Map and Statement prepared by Hertfordshire County Council under the National Parks and Access to the Countryside Act 1949.

AND IT IS FURTHER ORDERED that the Plaintiff do pay the Defendants damages in the sum of £22.00.

AND IT IS FURTHER ORDERED that the Plaintiff do pay the Defendants costs on the Claim, the Defence and Counterclaim and the Counterclaim to be taxed on Scale 3, such costs to include the costs reserved by His Honour Judge Verney on 21st June 1985, the costs adjourned by His Honour Judge Slack on 14th August 1985 and the costs reserved by Mr. Registrar Smees on 20th May 1986.

AND IT IS FURTHER ORDERED THAT a certificate be granted under Order 38, Rule 9 (1).

Dated this 20th day of August 1986.

TO: MR. TONEYE FOY OF 26, GOLDFIELD ROAD, TRING, HERTS.

TAKE NOTICE that unless you obey the directions contained in this Order you will be guilty of contempt of Court and will be liable to be committed to prison.

Dated this 20th day of August 1986.



G. D. WESTERN
J. D. SMEE
REGISTRARS



Planning Inspectorate
Department of the Environment

Room Tollgate House Houlton Street Bristol BS2 9DJ
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GTN 2074

COPY

TEAM 2

GB/SR/JD/NG/LK/Team 1
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cfo 8/2

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Your reference:

1/AHS/Fov

Council reference:

4/0640/88E & 4/1840/87

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APPEALS BY MRS M A FOY

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12. In February 1976, planning permission was refused for the continued use of part of the field for the stationing of a caravan. In August 1976 an enforcement notice was served requiring the cessation of the use of part of the field for the stationing of 2 caravans used for residential occupation. The appeals against the refusal of permission and against the enforcement notice were dismissed.

13. At the time of service of the 1976 enforcement notice, that part of the field which was affected by the notice was fenced off from the remainder. On the remainder of the field stood a third caravan, in the approximate position now occupied by caravan A.

14. The appellant's personal knowledge of the appeals sites dates back to 1976, when she and her husband moved to Tring. In 1984, the appellant's husband bought the appeals sites from Mr Poulton. Since then, he and his family have used caravan A for residential purposes for short periods at holidays and weekends. In 1986, the appellant bought the appeals sites from her husband. In November 1986, caravan B was brought to the field. The appellant's husband uses caravan B for war games, which is his hobby.

15. From time to time, other residential caravans have been stationed on the appeals sites, but neither caravan A nor caravan B stand on that part of the field which was the subject of the 1976 enforcement notice.

16. The Countryside Commission has proposed that the area to the north of Tring, which includes the appeals sites, be deleted from the designated Chilterns Area of Outstanding Natural Beauty. The Secretary of State has yet to determine the proposal.

17. Lower Icknield Way is heavily trafficked. At the junction of the road from Wilstone, visibility is below the standard which would now be required for the construction of a new junction onto Lower Icknield Way. Visibility at the proposed site access is substandard.

THE S36 APPEAL

18. From my inspection and all the matters raised at the inquiry, I consider the main issues to be the effects of the proposed chalet bungalow on the rural character of the area, on the character and appearance of this part of the Chilterns Area of Outstanding Natural Beauty, and on highway safety.

19. Building in the open countryside, away from existing settlements has long been strictly controlled. New houses will not normally be permitted unless there is a special need in the particular case. This applies equally to areas where, as here, there are already a few scattered buildings.

20. Policy 2 of the adopted Dacorum District Plan states that in the rural areas beyond the Green Belt, planning permission will not be granted, except in very special circumstances, for development unless certain criteria apply. It was not suggested that the proposed bungalow came within any of these criteria.

21. Policy 24 of the District Plan requires the council to have particular regard for the protection of important views and skylines when considering proposals for buildings and other development. Because the site is clearly seen from the public footpaths in the locality, and from the surrounding road network, any built development on the appeal site would be readily visible. Despite being neglected and untidy, the appeal site nevertheless makes a contribution to the generally open rural scene. I consider that the proposed development would intrude into this open view, undesirably consolidating the existing sporadic development on adjacent land, and detracting from the rural character and appearance of the locality.

22. Turning to the second issue, the removal of land in the vicinity of the appeal site from the Chilterns Area of Outstanding Natural Beauty, is by no means certain. In the meantime, I must give due weight to the policies for the protection of that area. Policy 2 of the Structure Plan Review provides that the preservation of the beauty of the area will be the prime consideration, that the area will not be regarded as one of availability from the point of view of development, and that development will be subordinated to the basic theme of the Area of Outstanding Natural Beauty. This policy is supported by policy 23 of the District Plan, which expresses a concern to preserve the natural beauty of the landscape, to encourage agriculture and to conserve wildlife. I consider that these policies add further weight to the already strong planning objections to this development outlined in the previous paragraph.

23. In relation to the third issue, the suggested shared access with Peartree Cottage was only one possibility: the appellant owned the adjoining land, thus enabling the suggested access to be improved or an alternative access to be created on the adjoining land. As Planning Policy Guidance Note 13 advises, whatever the type of access, good visibility is essential. I have, therefore, considered the various points of access to the appeal site using land within the appellant's control. At my site inspection, the appropriate measurements were taken. While the Highway Authority agrees that visibility at the suggested accesses could be improved, each of the suggested accesses, even after improvement, would still be seriously substandard.

24. At present, the use of the access to Peartree Cottage is minimal, as the cottage is derelict and unoccupied. Consequently, in terms of traffic generation, the effect of sharing that access with the proposed bungalow would be tantamount to the formation of a new access onto Lower Icknield Way. In view of its location in the middle of an "S" bend opposite an existing unsatisfactory road junction, and the fact that the access would not be to the required standard, I consider that the proposed access would undesirably exacerbate an existing unsatisfactory situation. Bearing in mind also that adequate visibility could not be achieved on land in Mrs Foy's control in respect of the other suggested accesses, these other accesses would be equally unacceptable.

25. I have taken into account all other matters raised at the inquiry, including the former community nearby, which I understand is now beneath the reservoir, and the long-disappeared cottages which stood on or near the appeal site at the turn of the century. However, in my judgement, these matters are outweighed by my conclusions that the proposed development would cause demonstrable harm to interests of acknowledged importance.

THE APPEAL ON GROUND (e)

26. There was no suggestion that the appeal on ground (e) extends to the western land. In view of the existence of the 1976 enforcement notice, it seems to me that the appeal on ground (e) in respect of that part of the field affected by that notice must fail. I have therefore considered the appeal on ground (e) in respect of that part of the field which is not affected by the 1976 notice.

27. The evidence is patchy. The appellant and her husband did not know the area nor come to live nearby until 1976, and their evidence of earlier events is based on conversations with Mr Poulton, and a man known to them as Ted, who lived in a caravan on the field from time to time. Although the appellant and her husband had made considerable efforts to find witnesses who could give first hand evidence of the use of the appeal site for the stationing of caravans for residential purposes since the relevant date, they had been unable to find anyone. They had not asked Mr Poulton to give evidence on their behalf, partly because he would be likely to agree to whatever was asked of him, but mainly because he was no longer capable of dealing with his affairs, which were now dealt with by the Court of Protection.

28. In relation to the site history prior to their arrival in Tring in 1976, all Mr and Mrs Foy could say with any reasonable degree of certainty was that Ted's caravan had been brought to the appeal sites sometime before the death of Mr Poulton's father in 1966. Bearing in mind that, in 1966, the present Mr Poulton applied for planning permission for the stationing of a caravan on the western land, I consider that, on the balance of probabilities, that application was likely to have been made in respect of the stationing of Ted's caravan. Be that as it may, there is no sound evidence before me that the part of the field on which caravans A and B now stand has been used for the storage of caravans which are or have been used for human habitation since before 1976, when the appellant moved to the area and when the 1976 enforcement notice plan indicated a caravan on that part of the field which was excluded from that enforcement notice site. In all these circumstances, the appeal on ground (e) fails.

THE APPEAL ON GROUND (c)

29. It was admitted that, as far as other caravans which are brought to the appeals sites from time to time, the alleged breach has taken place. This appeal related solely to caravan B, which, it was alleged, was used for storage as a replacement for a shed on the land. However, since it was admitted by the appellant's husband that he uses it for his war games hobby, and that the storage of the chemical toilet is in connection with the use of caravan A, and from the evidence of my inspection, I consider that the use of caravan B is ancillary to the residential use of caravan A. In addition, caravan B has clearly been used for human habitation at some stage. Consequently, I conclude that the presence of caravan B on the appeal site comes within the allegation as worded. The appeal on ground (c) therefore also fails.

THE APPEAL ON GROUND (a)

30. Policy 7 of the adopted Dacorum District Plan sets out a presumption against the use of land in rural areas as a site for residential caravans and that applications for planning permission for such development will be treated in the same way as for permanent residential development. In these circumstances, and bearing in mind my conclusions in respect of the appeal under s36, although caravans which are being or have been used for human habitation have been stored on the appeals sites for several years, I consider that the continuation of this use would have a detrimental impact on the rural character of the locality and upon the appearance of this part of the Chilterns Area of Outstanding Natural Beauty. Accordingly, the appeal on ground (a) fails.

31. As the correct fee payable under the Town and Country Planning (Fees for Applications and Deemed Applications) Regulations 1985 has not been paid, I do not propose to deal with the application for planning permission deemed to have been made under section 88B(3) of the 1971 Act as amended.

FORMAL DECISION

32. For the above reasons and in exercise of the powers transferred to me, I hereby dismiss these appeals, and uphold the enforcement notice.

RIGHT OF APPEAL AGAINST DECISION

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

I am Gentlemen
Your obedient Servant

G. J. Bowman

MRS G J BOWMAN MA(Cantab) Barrister
Inspector

ENC.

APPEARANCES

FOR THE APPELLANT

The appeal under s88

Mrs D Allen

Solicitor, Lance Kent & Co.

She called:

(1) Mrs M A Foy

Appellant

(2) Mr T Foy

Husband of Appellant

The appeal under s36

Mr D Stanley

Contract Draughtsman

He gave evidence and he called:

Mr T Foy

FOR THE PLANNING AUTHORITY

Mr Steven Baker

Solicitor

He called:

(1) Miss N Mitchell

Housing Finance Officer

(2) Mr J P Smith

Planning Enforcement Officer

(3) Mr D Sibley

Senior Engineer, Hertfordshire County Council

(4) Mr G Bailey ARICS

Acting Principal Assistant Planner

DOCUMENTS

- | | | |
|----------|-------|--|
| Document | 1 | Bundle lists of persons present at the inquiry on each day. |
| " | 2 | Notice of inquiry and list of addressees |
| " | 3 | Letter of representation from Tring Rural Parish Council |
| " | 4 | Copy Letter from Lance Kent & Co dated 9 January 1989 giving undertaking to pay the appeal fees. |
| " | 5 | Inland Revenue Valuation of Land records, c.1910 |
| " | 6 & 7 | Extrocts Conveyances dated 24 September 1895 |
| " | 8 | Receipt for £450 for mobile home. |
| " | 9 | Bundle applications for Supplementary Benefit. |

- " 10 Copy Enforcement Notice dated 16 August 1976.
- " 11 Copy Council's Written Statement on appeal against enforcement notice dated 16 August 1976.
- " 12 Decision letter dated 14 April 1977 reference: T/APP/5252/C/76/4692/G4 & T/APP/5252/A/76/7120/G4.
- " 13 Bundle appendices to Mr Sibley's Proof of Evidence.
- " 14 Bundle appendices to Mr Bailey's Proof of Evidence.

PLANS

- Plan A Copy enforcement notice plan
- " B.1 Planning application plans and elevations
- " B.2 Planning application site location plan
- " B.3 Planning application land ownership plan
- " C Illustrative drawing of proposed chalet bungalow with cottages
- " D Plan GB 1, showing appeals sites
- " E Extracts 1924 Ordnance Survey map
- " F 1966 Planning application plan
- " G 1976 copy enforcement notice plan
- " H Office copy plan issued by the Stevenage District Land Registry
- " K JPS 1 the appeals sites 28 January 1987
- " L JPS 2 the appeals sites 16 July 1987
- " M JPS 3 the appeals sites 11 November 1987
- " N JPS 4 the appeals sites 17 January 1988
- " P Dacorum District Plan Proposals Map

PHOTOGRAPHS

- Photos 1-2 The appeals sites 23 October 1986
- " 3-7 The appeals sites 27 November 1986
- " 8-18 The appeals sites 28 January 1987
- " 19-22 The appeals sites 11 November 1987