



The Planning Inspectorate

Room 1404
Tollgate House
Houlton Street
Bristol BS2 9DJ

Direct Line 0117 - 987 8927
Switchboard 0117 - 987 8000
Fax No 0117 - 987 8139
GTN 1374 - 8927
E-mail ENQUIRIES.PINS@GTNET.GOV.UK

Andrew King and Associates
Merrifield House
Meadway
BERKHAMPSTEAD
Hertfordshire
HP4 2PL

Your Reference:

Our Reference:
T/APP/A1910/A/99/1025169/P8

Date: 04 NOV 1999

Dear Sirs

TOWN AND COUNTRY PLANNING ACT 1990
SECTION 78 AND SCHEDULE 6
LOCAL GOVERNMENT ACT 1972, SECTION 250(5)
APPEAL BY MR & MRS G PUDDEPHATT

1. I refer to your application for an award of costs against Dacorum Borough Council which was made at the hearing held at The Civic Centre, Hemel Hempstead, Herts on 7 October 1999. The hearing was in connection with an appeal by Mr and Mrs Puddephatt against a refusal of planning permission for the erection of a detached house and garage on land adjoining 68 Tring Road, Wilstone, Herts. A copy of my appeal decision letter is enclosed.

THE CASE FOR MR AND MRS G PUDDEPHATT

2. At the hearing you provided me with a typewritten application for costs (Document 4). This was supplemented by some additional comments indicating why you consider the Local Authority have behaved unreasonably. You seek a full award of costs.

3. You have highlighted guidance in Circular 8/93. You suggest that, by reference to Paragraph 7 of Annexe 3 of the Circular, the Local Planning Authority has sought to prevent development which could reasonably be permitted based on misleading evidence and omitting to take into account the Inspector's findings on the Conservation Area issue in an appeal decision dated 5 June 1985. You have addressed each of the three reasons for refusal in turn.

4. You accept the guidance in Paragraph of Annexe 3 to the Circular that Planning Authorities are not bound to adopt the professional advice of their Officers. Nevertheless, it is necessary for them to show that they had reasonable planning grounds for taking a decision contrary to such advice. You refer to the discussions with the then Head of Conservation, who was instrumental in the design of the amended plans which were subsequently considered by the Local Authority. You suggest that neither the delegated report or the pre-hearing statement show reasonable planning grounds for taking a contrary decision given the input of the Head of Conservation.

5. You point to the Council's reliance upon four previous refusals of planning permission. However, the Authority appear to have ignored the fact that the last planning application and the 1985 appeal were not refused upon Conservation Area issues. In this regard, you refer me to Paragraph 16 of the Annexe to the Circular. The conclusions of the Inspector in 1985 are clearly relevant to the current appeal. He stated that "while I accept that a form of development on the appeal site, following the principles illustrated on the submitted plan, need not conflict with the appearance and character of the Conservation Area, I do not find this argument in favour of the scheme adequate to overcome the objections on policy grounds as it could be repeated too often."

6. As to Ground 2 of the refusal, you state that none of the matters raised by the Council on amenity grounds constitute realistic planning objections and are unsupported by any reasoned justification, nor do they come close to being "finely balanced." The only element of the appeal proposal potentially sustainable as having a detrimental impact on the amenities of surrounding properties is the relationship of the secondary window to Bedroom 1 of the proposed dwelling with the front elevation of the existing cottages. Consequently, it is submitted in accordance with Paragraph 7 of the Annexe to the Circular that in all but one of the amenity-related issues, this reason for refusal is not properly supported by substantial evidence.

7. The highway reason for refusal was imposed contrary to the advice given by the Highway Engineer. There is no relevant evidence to support the Council's concern that by removing part of the hedge traffic would approach the bend at greater speed and/or that highway safety would be reduced. You refer to Paragraph 9 of Annexe 3 to the Circular. The Council have been unable to produce any substantiated evidence to support this ground of refusal, which is based upon misguided concerns expressed by the Council.

THE COUNCIL'S REPLY

8. Mrs Ambrose, on behalf of the Council, does not consider that the comments of a previous Inspector as to the impact of that scheme upon the Conservation Area is relevant today. Had the Appellants wished her to look at the present application based upon his comments, she would have done so. However, she was not asked to take that decision letter into account.

9. Insofar as Paragraph 8 of that decision letter is concerned, it does not in her submission suggest that another scheme would automatically be acceptable. The Council's views and planning considerations in general have changed during the last 15 years as to what is, or is not, acceptable within such designated areas.

10. As to the comments made by the former Head of Conservation, those related to design issues only and did not address the principle of residential development on the appeal site. She has no evidence to suggest Mr Kingsley Fulbrook (former Head of Conservation) ever agreed to the principle of development of the appeal site.

11. With regard to the second issue, it is contended that the matters raised are serious concerns as judged against the Council's guidelines. The relationship of No's 64/66 Tring Road to the cottages opposite does not justify the siting of a new dwelling so close to those properties. Mrs Ambrose considers there are fundamental issues relating to the detrimental effect upon the amenities of nearby properties which needed to be addressed.

12. The basis of the pre-planning discussions with regard to the proposed means of access to the site was acknowledged. However, what was not discussed was the potential effect upon highway safety. Mrs Ambrose's discussions with the Parish Council regarding access to the site included input from local people who were concerned that the removal of part of the hedge would bring about an increase in the speed of traffic negotiating this blind bend with a possible effect upon highway safety. She considers that adequate highway evidence has been adduced at the hearing and that the costs application does not accord with guidance in Circular 8/93.

MY CONCLUSIONS

13. The application for costs falls to be determined in accordance with the advice contained in Circular 8/93. This advises that, irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably and thereby caused another party to incur or waste expenditure unnecessarily.

14. In my opinion, you were fully justified in undertaking pre-application discussions with the Officers of the Local Authority upon matters of detailed design and access given, in particular, the location of the site within a Conservation Area. Although the plans were amended to take account of the comments made by the former Head of Conservation, I have seen no evidence to suggest that the principle of development of the appeal site with one detached dwelling had been accepted by the Local Authority or their Officers.

15. I have raised no objections to the detailed design or scale of the proposed dwelling. However, I consider that the erection of a detached house and garage would be likely to have a harmful effect upon the character and appearance of this part of the Conservation Area for the detailed reasons set out in my decision letter. It was this consideration which was advanced by the Local Authority in their grounds of refusal and at the hearing as the basis of their objections to your Clients' scheme. These concerns were, to my mind, a legitimate reason for refusing the application and defending the refusal at appeal.

16. In my judgement, the arguments as to the impact of the proposal upon the amenities of nearby residents were finely balanced. The Council were, to my mind, correct to include such concerns as a second reason for refusal. The suggestion by you of including an additional condition to address the possibility of overlooking or loss of privacy arising from the secondary window to Bedroom 1 was only put forward on the day of the hearing. My conclusions upon this issue, although favouring the Appellants, were reached only after very careful consideration.

17. The highway objections put forward at the hearing were, in my opinion, insufficiently compelling to warrant refusal on these grounds. Moreover, I agree with you that the mere concerns expressed by the Council as to increased traffic speeds at this point in Tring Road do not comprise the substantial evidence upon this topic advocated by Paragraph 15 of Annexe 3 to the Circular. However, it was not necessary for you to adduce any specialist evidence upon highway matters and I therefore consider it inappropriate to make a partial award of costs relating to the third ground of refusal.

FORMAL DECISION

18. For the above reasons, and in exercise of the powers transferred to me,

I hereby refuse your application on behalf of Mr and Mrs G Puddephatt for an award of costs against Dacorum Borough Council.

Yours faithfully

A handwritten signature in cursive script, appearing to read 'R J Maile', is written over a horizontal line.

R J Maile BSc FRICS
Inspector

Enc: