

ADMINISTRATIVE COUNTY OF HERTFORD

The Council of the BOROUGH OF ...
URBAN DISTRICT OF BERKHAMSTED.
RURAL DISTRICT OF ...

TOWN & COUNTRY PLANNING ACT, 1962

To Messrs. J.D. Page (Contractors) Ltd.,
per Messrs. Denny and Bryan,
77-79 High Street,
WATFORD.

House and Garage
at Cedar Road, Berkhamsted.

Brief description and location of proposed development.

In pursuance of their delegated powers under the above-mentioned Act and the Orders and Regulations for the time being in force thereunder, the Council on behalf of the Local Planning Authority hereby refuse the development proposed by you in your application dated 5.11.65 and received with sufficient particulars on 9.11.65 and shewn on the plan(s) accompanying such application.

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

- 1. That there is insufficient space to allow the erection of a dwelling which would be in keeping with the other residential development of the area.
2. That the proposed site forms part of a site for which planning consent has already been issued and forms an essential part of such site.

Dated 16th day of November 19 65

[Signature]
Clerk/Surveyor of the Council.

NOTE.

(1) If the applicant wishes to have an explanation of the reasons for this refusal 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 by notice served within one month of receipt of this notice, appeal to the Minister of Housing and Local Government in accordance with Section 23 of the Town and Country Planning Act, 1962. The Minister has power to allow a longer period for the giving of a Notice of Appeal and he will exercise his power in cases where he is satisfied that the applicant has deferred the giving of notice because negotiations with the local planning authority in regard to the proposed development are in progress. The Minister is not, however, required to entertain such 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 provision of Section 17(1), 18(1) and 38 of the Act and 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 Minister of Housing and Local Government, 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 Council of the County District in which the land is situated a purchase notice requiring that Council to purchase his interest in the land in accordance with Section 129 of the Town and Country Planning Act, 1962.

(4) In certain circumstances, a claim may be made against the local planning authority or the Minister of Housing and Local Government for compensation, where permission is refused, or granted subject to conditions by the Minister on appeal or on a reference of the application to him. The circumstances in which such compensation is payable are set out in Section 123 and Part VI of the Town and Country Planning Act, 1962.



MINISTRY OF HOUSING & LOCAL GOVERNMENT

Whitehall, LONDON, S.W.1

Telegrams: Locaplan, Parl, London

Telephone: TRAFalgar 8020 , ext.

Please address any reply to

THE SECRETARY

and quote: APP/839/A/6624

Your reference: RHF/JGL.4138

23 NOV 1966

Sir,

Town and Country Planning Act 1963: Section 23

Appeal by J. D. Page (Contractors Limited)

Land at Cedar Road, Berkhamsted

1. I am directed by the Minister of Housing and Local Government to refer to the report of his Inspector, Miss J. M. Albery, A.R.I.B.A., A.M.T.P.I., A.I.L.A. on the local inquiry into your client's appeal 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 and garage on land at Cedar Road, Berkhamsted. (Application References: W/2359/65. 293/65).
2. A copy of the Inspector's report is enclosed.
3. The Inspector said in her conclusions that she was of the opinion that the residential development of the site would be incompatible with the retention of the cedar tree and that permission to fell the tree ought to be obtained before the granting of any permission to build on the site. Although small the site was suitable in other respects to contain the house and garage proposed, and the cedar was inappropriately hemmed in by small properties, but it was a magnificent tree, it was being well cared for by its present owner, and the decision to include it in a tree preservation order was reached quite recently and only after careful consideration following the holding of an inquiry. The Inspector concluded that it should be retained and she recommended that the appeal be dismissed.
4. The Inspector's conclusions and recommendation have been noted and the evidence given and the submissions made at the inquiry have been considered. The cedar tree was the subject, with other trees, of an inquiry in 1962 and it is obvious from the report of that inquiry, as well as from the report in the present appeal, that this tree is of exceptional amenity value. The restriction of the appeal site because of the tree which, it seems, is the result of bad layout, has been obvious at least since the confirmation of the tree preservation order requiring the retention of the tree. Whilst it is unusual for the Minister to restrict the building of a house in favour of the preservation of a tree, nevertheless in the present instance this course appears to be justified, having regard to the desirability of preserving natural amenities in a housing estate.

/The

R. H. Faulkner Esq., F.R.I.C.S., F.A.I.
43 Market Street
WATFORD
Herts.

5. The Minister has therefore decided to accept his Inspector's recommendation and not to grant planning permission in this case: accordingly he hereby dismisses the appeal.

I am, Sir,
Your obedient Servant,

(H. C. Hollington)

Authorised by the Minister
to sign in that behalf.



HERTFORDSHIRE COUNTY COUNCIL

BERKHAMSTED URBAN DISTRICT COUNCIL

APPEAL

by

J. D. PAGE (CONTRACTORS) LIMITED

Inspector: Miss J. M. Albery, A.R.I.B.A., A.M.T.P.I., A.I.L.A.
Date of Inquiry: 23rd August 1966
File No: APP/839/A/6624

Whitehall,

London, S.W.1.

2nd September 1966

To The Right Honourable Anthony Greenwood, M.P.,
Minister of Housing and Local Government.

Sir,

I have the honour to report that on 23rd August 1966 I held an inquiry at the Civic Centre, Berkhamsted into an appeal by J. D. Page (Contractors) Limited under section 23 of the Town and Country Planning Act 1962, against the refusal of the Berkhamsted Urban District Council, acting on behalf of the Hertfordshire County Council, to permit the erection of a dwelling and garage on land at Cedar Road, Berkhamsted.

1. The Reasons for Refusal are:-

1. that there is insufficient space to allow the erection of a dwelling which would be in keeping with the other residential development of the area,
2. and the proposed site forms part of a site for which planning consent has already been issued and forms an essential part of that site.

2. This report includes a description of the appeal site and surroundings, the gist of the representations made at the inquiry, and my findings of fact, conclusions and recommendation. Lists of appearances, documents and plans are attached.

THE SITE AND SURROUNDINGS

3. The trunk road, A.4 runs north west from London through Berkhamsted along the valley of the river Bulbourne. Cedar Road runs steeply up out of the south west side of the trunk road at a point close to the south eastern edge of the town.

4. The residential area to which Cedar Road belongs was partly developed in the 1930s and partly in the 1960s on the parkland surrounding a demolished mansion. It consists of detached and semi-detached houses. Plots near the site vary in size from less than $\frac{1}{8}$ up to $\frac{1}{4}$ acre. There are quite a number of trees hereabouts including some very large ones among which are three cedars over 60 feet high. Two of these are on "amenity" land apparently kept up as part of the highway, the third is in the back garden of No. 1 Cedar Way, a cul-de-sac leading out of Cedar Road. A fourth stood in the front garden of a nearby house, but has been felled.

5. The site fronts to the north west side of Cedar Road about 150 feet north east of a triangular group of fine trees where Hillside Gardens runs out to the west and Cedar Way to the north west. A pair of four bedroom houses Nos. 22 and 24 Cedar Road lie between the site and Cedar Way. A detached five bedroom house No. 18 is next to the site on the north east, and it has a west boundary at its north west end which adjoins No. 1 Cedar Way and is close against the cedar tree on that property.

6. The site has a frontage of 47 feet and an average depth of about 74 feet. The lowest branches of the cedar tree are about 15 feet high and a number of branches have been carefully removed, but it is a fine specimen in good condition. Its branches overhang the site to a point about 50 feet from the frontage and the general building line in Cedar Road is about 20 feet from the frontage. No. 1 Cedar Way is a semi bungalow with a garage in the front garden, and the back wall of the bungalow is about 20 feet from the overhang of the cedar tree. The ground falls appreciably down towards the north east and there is an open view across the valley to the north.

CASE FOR THE APPELLANTS

The material points are:-

7. The appellants originally bought an L shaped piece of land comprising the site of No. 1 Cedar Way and the appeal site and containing a large cedar tree subject to a preservation order, and situated at the internal angle of the L. In 1963 they obtained planning permission to build a dwelling and garage on this land. A semi bungalow and garage were then built fronting to Cedar Way and were sold on a plot with a frontage of about 70 feet and an average depth of about 100 feet and containing the cedar tree.

8. The remaining area comprises the site, and this will remain derelict unless permission to build on it is granted. It is not an essential part of the plot upon which No. 1 Cedar Way is built, and it does not contain the cedar tree. The question of building on it should be judged on its own merits and it is eminently suitable to contain the three bedroom detached house and garage for which a detailed design has been submitted.

9. The houses immediately adjoining may be a little larger but many detached houses close by are about the same size and have less frontage, while Nos. 22 and 24 Cedar Road which are next door have back gardens only 16 feet in depth. Because the county council suggest that houses should have a minimum of 90 feet between back walls, the district council assert that back gardens should not be less than 45 feet in depth, but this does not follow. Although the proposed house might not be more than 25 feet from the back fence at its west corner, there is no house opposite and the corner of the nearest house would be 70 feet distant.

10. Permission under by-laws, which deal with space about buildings, has been granted by the council, and presumably it is they who have numbered the adjoining properties 18 and 22 thus allowing for a house on the appeal site. Their surveyor was in favour of the present application, and although the divisional planning officer suggested that the plot was too small he has not come to give evidence, and neither have council members. They appear to have been unduly influenced by the past history of the site, but this plot is amply large enough to provide a garden suitable for present day needs and a house built on it would fill an odd gap. All services are available.

11. Of 23 nearby residents notified of the appeal only 7 have expressed any views. They are concerned on account of the cedar tree, but this now belongs to the owner of the adjoining plot. He bought this plot in full knowledge of the existence of the tree, and of course if it should become dangerous it could be taken down. This tree is not relevant to the question of building on the appeal site.

CASE FOR THE PLANNING AUTHORITY

The material points are:-

12. That part of Cedar Road, Cedar Way, and Hillside Gardens shown developed on the submitted plan was laid out and built in the 1930s and a number of specimen trees which stood in the parkland of which the estate formed part were retained. The L shaped piece of land bought by the appellants and containing one of a number of very large cedars, was apparently left undeveloped with the object of preserving the cedar, but in 1962 proposals for developing the adjoining open areas were submitted by George Whimpey and Company Limited and included two houses on the L shaped plot.
13. The council then decided to make a tree preservation order and to include the cedar on this plot. They were prepared to see some trees felled, but there was public opposition and a local inquiry was held. At this inquiry it was submitted on behalf of the developers that two houses should be built on the L shaped plot and that it would be necessary to fell the cedar tree on it. This was opposed, the tree was included in the preservation order, and Whimpey's built some 60 houses, but none on the L shaped plot.
14. The appellants bought this plot and in 1963 they were given planning permission to build a house and garage on it. There was then no question of felling the tree or of further building there, but in 1964 application was made for a house and garage on the appeal site. This was identical with the application now subject to appeal, and both were refused on account of the small over-all size of the plot and the proximity of the tree.
15. The council's surveyor who acts as their planning advisor took the view that permission should be granted, but the divisional planning officer wrote that in his view the back garden would be too small and that the effect of the cedar tree would have to be considered. This tree had a spread of 50 to 60 feet and if it was to be retained the site would be sterilized for residential development. (Document 4) The council wish the tree to be preserved. It has great amenity value, and they gave consent for No. 1 Cedar Way to be built on the basis that it should occupy the whole of the L shaped plot.
16. The site is too small to form a satisfactory separate building plot, and besides this any house built there would be badly overshadowed by the cedar tree. Any owner would desire the removal of the tree, or at least the removal of the branches extending over the site. The tree is so close to the boundary fence that the present owner could not care for it properly without trespassing on the site, which would then be someone else's garden, and he would be saddled with responsibility for any damage caused by the tree to persons or to property in that garden. Any permission given would be likely to result in an application for severe lopping or for the removal of the tree even before building began.

CASE FOR INTERESTED PERSONS

The material points are:-

17. Mrs. D. I. Bentley nearby resident. She lives in one of the older houses opposite the site. Due to bad planning in 1930 with plots left next to the cedar tree which were too small in size a problem was created. A preservation order does not in itself preserve a tree. Care and service with access and co-operation are necessary. One cedar subject to the same preservation order has already gone. A branch broke under

snow, the owner took fright and obtained permission to fell. His house was set back and it was in his front garden. The council should insist that subsequent planning should reinforce rather than jeopardize the preservation order. Whimpey's with all their resources considered that it would be unsuitable to develop either plot next to the tree if it was to be retained. At the previous inquiry there was much talk about the disastrous effect of the tree on any houses. Its root spread must be equal to the spread of its branches. Now it is described as an asset. The garage for No. 1 Cedar Way was originally shown sited on the Cedar Road frontage. Once it had been built in its present position application for a second house was inevitable, but if it is allowed the tree will be lost. The site should have remained as part of the curtilage of No. 1 Cedar Way.

18. Mr. C. P. Jay adjoining owner-occupier. His house and No. 24 have four bedrooms and No. 18 has five. The proposed house would not be comparable. If the existing building line were adhered to the house would be very close to the cedar tree which is 80 to 90 feet high. He is most surprised that the original plot should be halved. The site should be part of the garden of No. 1 Cedar Way.

19. Mr. A. P. Clark adjoining owner occupier. The tree is in his garden. If permission to build were given it would be boxed in. He has taken expert advice. The tree is between 70 and 80 feet high and it is about 200 years old and in sound condition. If it were ever necessary to fell it, this would be difficult, costly and hazardous in the absence of a clear space such as is provided by the appeal site. He enjoys the tree to look at but it makes gardening difficult. If a house were built on the site it would be unfair that he should have to accept responsibility for any damage caused by the tree and he would ask the council to accept responsibility for any claims or to allow the tree to be felled. It is only 3 feet from the site boundary.

20. Mrs. P. J. Harris adjoining owner occupier. Supports the views of Mrs. Bentley and Mr. Jay. Permission was given for one house at 1 Cedar Way including the appeal site, if the site were built on how could the tree eventually be felled. If the site remains empty can it be cleared of weeds? She is apprehensive concerning any additional connections to the drainage system which is a combined one.

21. Mrs. N. Coggan nearby resident. Fully supports the views of the other interested persons.

FINDINGS OF FACT

22. I find the following facts:-

- (1) The site is part of a housing area built on parkland where a number of specimen trees are subject to a preservation order.
- (2) When this area was developed in the 1930s and in the 1960s an L shaped piece of land with frontages to Cedar Road and to Cedar Way, and containing a cedar tree over 70 feet high, remained undeveloped.
- (3) The appellants bought this piece of land, obtained permission to build a house and garage on it and sold the area fronting to Cedar Way which has a frontage of about 70 feet and an average depth of about 100 feet.

- (4) The cedar tree is on this plot which is now owned by the occupant of a semi-bungalow which has been built on it, and he is apprehensive concerning his liability for damage by the tree should the site be built on.
- (5) The appellants now wish for permission to build a house and garage on the site which comprises the remainder of the L shaped piece of land and has a frontage of 47 feet and an average depth of about 74 feet.
- (6) The surrounding properties are detached and semi-detached houses occupying plots varying from less than $\frac{1}{8}$ up to $\frac{1}{4}$ acre.
- (7) In 1962 the firm developing the area wished to fell the cedar tree and to build two houses on the L shaped piece of land but following strong representations by local residents and the holding of an inquiry it was included in the councils' tree preservation order and omitted from building operations carried out by that firm.
- (8) The cedar tree is 3 feet from the site boundary, it is a fine specimen in good condition although branches have been trimmed. No branches are lower than about 15 feet but they extend to within about 20 feet to the semi-bungalow which is to the south west, and to within about 50 feet of the site frontage which is to the south east and where the general building line is about 20 feet.
- (9) If a house were to be built on the site little but the top of this cedar would be seen from the public highway, and severe mutilation if not the destruction of the tree would be almost inevitable.
- (10) The surveyor and planning advisor to the urban district council took the view that permission to build should be granted, but local residents are anxious to preserve the cedar tree.

INSPECTOR'S CONCLUSIONS

23. Bearing in mind the above facts I am of opinion that the residential development of the site would be incompatible with the retention of the cedar tree and that permission to fell the tree ought to be obtained before the granting of any permission to build on the site. Although small the site is suitable in other respects to contain the house and garage proposed, and the cedar is inappropriately hemmed in by small properties, but it is a magnificent tree, it is being well cared for by its present owner, and the decision to include it in a tree preservation order was reached quite recently and only after careful consideration following the holding of an inquiry. I conclude that it should be retained.

RECOMMENDATION

24. I recommend that the appeal be dismissed.

I have the honour to be,
Sir,
Your obedient Servant,

Jessica M. Albery

APPEARANCES

FOR THE APPELLANTS

Mr. R. H. Faulkner, F.R.I.C.S., F.A.I.,

- Chartered Surveyor of
43 Market Street, Watford, Herts.

He called:

Mr. T. J. Denny, L.R.I.B.A.,

- Partner in the firm of Denny and
Bryan architects to the appellants.

FOR THE PLANNING AUTHORITY

Mr. S. C. Redding,

- Clerk to the urban district council.

INTERESTED PERSONS

Mrs. D. I. Bentley,

- nearby resident at 45 Cedar Road.

Mr. C. P. Jay,

- adjoining owner occupier at
22 Cedar Road.

Mr. A. P. Clark,

- adjoining owner occupier at
1 Cedar Way.

Mrs. P. J. Harris,

- adjoining owner occupier at
18 Cedar Way.

Mrs. N. Coggan,

- nearby resident at 3 Cedar Way.

DOCUMENTS

Document 1 - List of persons present at the inquiry.

" 2 - Letter of notification of the inquiry and list of persons notified.

" 3 - Copy of by-law consent to previous identical application to that now
subject to appeal.

" 4 - Copy of letter from the divisional planning officer to the engineer and
surveyor to the urban district council and relating to the application.

" 5 - Letter of objection from nearby resident.

SUBMITTED PLANS

PLAN A - First copy as submitted.

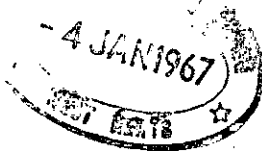
Second copy with trees and house numbers added by Inspector.

$\frac{1}{8}$ inch scale details of proposed house and local plan to 1/2500.

MINISTRY OF HOUSING & LOCAL GOVERNMENT

Ref: APP/839/A/6624
RHF/JGL.4138
W/2359-65

23rd November, 1966



Sir,

Town and Country Planning Act 1963: Section 23
Appeal by J. D. Page (Contractors Limited)
Land at Cedar Road, Berkhamsted

1. I am directed by the Minister of Housing and Local Government to refer to the report of his Inspector, Miss J. M. Albery, A.R.I.B.A., A.M.T.P.I., A.I.L.A. on the local inquiry into your client's appeal 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 and garage on land at Cedar Road, Berkhamsted. (Application References: W/2359/65. 293/65).

2. A copy of the Inspector's report is enclosed.

3. The Inspector said in her conclusions that she was of the opinion that the residential development of the site would be incompatible with the retention of the cedar tree and that permission to fell the tree ought to be obtained before the granting of any permission to build on the site. Although small the site was suitable in other respects to contain the house and garage proposed, and the cedar was inappropriately hemmed in by small properties, but it was a magnificent tree, it was being well cared for by its present owner, and the decision to include it in a tree preservation order was reached quite recently and only after careful consideration following the holding of an inquiry. The Inspector concluded that it should be retained and she recommended that the appeal be dismissed.

4. The Inspector's conclusions and recommendation have been noted and the evidence given and the submissions made at the inquiry have been considered. The cedar tree was the subject, with other trees, of an inquiry in 1962 and it is obvious from the report of that inquiry, as well as from the report in the appeal, that this tree is of exceptional amenity value. The restriction of the appeal site because of the tree which, it seems, is the result of bad layout, has been obvious at least since the confirmation of the tree preservation order requiring the retention of the tree. Whilst it is unusual for the Minister to restrict the building of a house in favour of the preservation of a tree, nevertheless in the present instance this course appears to be justified, having regard to the desirability of preserving natural amenities in a housing estate.

5. The Minister has therefore decided to accept his Inspector's recommendation and not to grant planning permission in this case: accordingly he hereby dismisses the appeal.

I am, Sir,
Your obedient Servant,

(H. C. Hollington)

Authorised by the Minister
to sign in that behalf.

R. H. Faulkner Esq., F.R.I.C.S., F.A.I.
43 Market Street
WATFORD
Herts.