



The Planning Inspectorate

Report to the Secretary of State for Communities and Local Government

by Chris Preston BA (Hons) BPI MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Date: 20 November 2015

TOWN AND COUNTRY PLANNING ACT 1990

EAST HERTFORDSHIRE DISTRICT COUNCIL

APPEAL BY MR MIKE MOULT (WATTSDOWN LTD)

Hearing held on 21 January 2015

Land to the east of Aspenden Road, Buntingford, Hertfordshire

File Ref(s): APP/J1915/A/14/2224660

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Land to the east of Aspenden Road, Buntingford, Hertfordshire

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
- The appeal is made by Mr Mike Moulton against the decision of East Hertfordshire District Council.
- The application Ref 3/13/1399/OP, dated 31 July 2013, was refused by notice dated 12 March 2014.
- The development proposed is: Residential development (up to 56 dwellings) and open space, including vehicular/ cycle/ pedestrian access to Aspenden Road, alterations to levels, footpath/ cycleway, landscaping and related works.

Summary of Recommendation: That the appeal be allowed and planning permission be granted.

PROCEDURAL MATTERS

1. At the Hearing an application for costs was made by Mr Mike Moulton against East Hertfordshire District Council. This application is the subject of a separate Report.
2. The Hearing was held on 21 January 2015. I made an unaccompanied visit to the site and the surrounding area on the afternoon of 20 January 2015 and a formal, accompanied, site visit on 21 January 2015.

APPEAL RECOVERY

3. The appeal was recovered by the Secretary of State for Communities and Local Government for his own determination on 27 March 2015. The reason for this direction is that the appeal involves proposals which raise important or novel issues of development control, and/or legal difficulties.

SITE AND SURROUNDINGS

4. The appeal site comprises a greenfield site of approximately 2.9ha located to the south of Buntingford with access from Aspenden Road. The River Rib runs through the site and divides it into two main parts – the eastern part, which has an open character, with gently sloping topography and the western part, which is more enclosed by virtue of established vegetation. Modern residential developments at Olvega Drive and Crouch Gardens border the site to the east. To the west is Aspenden Road with the Watermill Industrial Estate, the recycling centre and Sewage Treatment Works beyond. The A10 passes to the south on a raised embankment with a bridge over Aspenden Road. The perimeter of the site is enclosed by mature vegetation.
5. In the south-west corner of the site the River Rib passes under Aspenden Bridge, a grade II listed wrought iron structure which forms part of Aspenden Road.
6. In the wider context, the linear village of Aspenden is situated a short distance to the south-west of the A10, although direct visual links to the appeal site are interrupted by the substantial embankment which provides a significant physical and visual barrier between the southern end of Buntingford and land to the south of the A10. Buntingford itself is a small, compact, town with a central focus around the cross-roads between London Road and the B1038.
7. A full description of the site and its immediate surroundings, including photographic representation, can be found within the Landscape and Visual

Assessment (November 2012), at Appendix 5b of the appellant's statement of case. Further photographs of the condition and alignment of Aspenden Road are produced in Appendix C of the Highways and Transport Statement produced by the appellant.

PLANNING POLICY

The Development Plan

8. The development plan for the area comprises the East Herts Local Plan Second Review (2007) (the Local Plan). A number of policies in the plan were saved under the direction of the Secretary of State in a letter dated 22 March 2010. Three saved policies were referred to by the Council within the reasons for refusal; TR20, ENV1 and ENV25. In addition, policy IMP1 is relevant in relation to planning obligations and conditions.
9. Policy TR20 relates to proposals that would generate traffic on rural roads. The policy states that developments that are expected to give rise to a significant change in the amount or type of traffic on rural roads will not be permitted where the road is poor in terms of width, alignment and construction; or where increased traffic would have a significant adverse effect on the local environment, either to the character of the road or properties along it. However, development will not be precluded where the applicant is able to mitigate any impact via suitable highway improvements.
10. Policy ENV1 is a general design and environmental policy that is applicable to all proposals. It includes eight specific criteria, at points a) to h) that proposals will be expected to meet. Insofar as the policy is relevant to the reasons for refusal criteria d) states that developments will be expected to respect the amenity of future occupants and ensure that their environments are not harmed by noise and disturbance, amongst other factors.
11. Policy ENV25 identifies three criteria that will be taken into account in the consideration of noise sensitive developments, including residential proposals. These include the noise exposure categories in the now revoked Planning Policy Guidance Note 24, the proximity to noise generating sources, and the degree to which layout and design can provide protection against noise.
12. The Local Plan was not prepared as a development plan document in accordance with the Planning and Compulsory Purchase Act 2004. Therefore it is a document to which paragraph 215 of the National Planning Policy Framework (the Framework) applies, and any saved policies should be given weight according to the extent that they are consistent with the Framework.

Emerging Policies

13. The main parties acknowledge, within the Statement of Common Ground (SCG), that little weight can be given to policies within the emerging District Plan due to the stage in preparation of that document. They also agree that the development is not of a scale that would prejudice the housing allocations in the District Plan process. Moreover, no extracts or policies from the emerging plan were submitted to the appeal and no reference was made to any emerging policy at the Hearing. Consequently, in the absence of any specific evidence, I can attach little, if any, weight to any emerging policies in putting forward my recommendation within this report.

The Framework

14. The National Planning Policy Framework (the Framework), published in March 2012, sets out the Government's planning policies in relation to this appeal. These policies are augmented by the National Planning Practice Guidance (the Practice Guidance).

THE PROPOSALS

15. The application was submitted in outline with all matters reserved apart from access. The proposal comprises a scheme of residential development (up to 56 dwellings) including on-site open space, with vehicular, cycle and pedestrian access to Aspenden Road.
16. The original submission was accompanied by an illustrative housing layout showing one option of how the proposed quantum of development could be accommodated on the site (Drawing 106 revision B). A further illustrative layout was submitted prior to the application being determined by the Council and the decision notice states that the decision relates to plan number 107 revision B.
17. The appellant submitted a further illustrative housing layout with the appeal (drawing AB-02-001). This related to noise modelling that had been carried out as part of the appeal submission. Two layouts were modelled; Option 1, which was based on the illustrative layout before the Council when it determined the application and; Option 2, which was based on the illustrative plan, as revised. Option 1 was modelled on the basis that an acoustic fence would be required along the boundary of the site with the A10. No acoustic fence was included in Option 2.
18. At the Hearing, the appellant confirmed that he no longer wished to pursue Option 1 and, consequently, requested that the illustrative layout on plan 107 revision B did not form part of my consideration. Option 2 was put forward as the appellant's preferred option. The indicative layout in Option 2 contains 51 dwellings whereas the application form states that the proposal is for 'up to' 56 dwellings. The reduction in Option 2 resulted predominantly from the removal of a number of units along the southern boundary, adjacent to the A10, when compared to the indicative layout in Option 1. Notwithstanding that the layout only showed 51 units the appellant confirmed that the description of development was unchanged i.e. that the proposal was for up to 56 dwellings. In his view, this number could be accommodated through a reconfiguration of the illustrative layout, with a slightly higher density in the areas of the site that are further away from the A10.
19. The Council and other interested parties at the Hearing raised no objection to this suggestion and I find no reason to disagree with that position. In effect, the revised illustrative material does not alter the nature of development, as described on the application form. The proposal before the Secretary of State is an outline application for up to 56 dwellings. I have considered the proposal on that basis and have taken account of the indicative layout in Option 2 in making my recommendation.

THE PARTIES' CASES

Statement of Common Ground

20. A signed and dated Statement of Common Ground (SCG)¹ was submitted at the Hearing. It identifies two main points of dispute between the main parties, stemming from the two reasons for refusal that were set out within the Council's decision notice. These matters are summarised as follows:
- i) Whether the proposal would generate a significant increase in traffic on Aspenden Road and would thereby have a detrimental impact on the users of that highway and the character and appearance of the surrounding area that is not satisfactorily mitigated by the highway improvements proposed; and
 - ii) Whether future occupiers would be exposed to harmful traffic noise and whether the reliance on mechanical ventilation would result in poor internal amenity levels, thus failing to provide for adequate residential amenity.
21. The SCG also identifies a number of matters upon which the Council and the appellant agree. These include the fact that the Council is unable to demonstrate a five-year supply of deliverable housing land and that the proposal would not prejudice the housing allocation process in the emerging District Plan.
22. It is also common ground between the main parties that the level of affordable housing provision would be in-line with development plan policy; that adequate levels of open space would be provided; that any ecological effects can be adequately mitigated; that there are no insurmountable technical issues with regard to flood risk, drainage and contamination; that there would be no harm to the setting of the Grade II listed Aspenden Bridge, or to the setting of the Buntingford and Aspenden Conservation Areas; and that the illustrative layout indicates that a satisfactory scheme could be provided with respect to the character and appearance of the area. The Council and the appellant also agree that the proposal would not have an adverse impact upon the living conditions of neighbouring residents by way of overlooking, overbearing impact or loss of light and that satisfactory living conditions could be provided for future residents of the proposed development, with respect of air quality and odours arising from the local sewage treatment works.

The Case for the Council

23. The following paragraphs summarise the Council's case, which is set out more fully in their Hearing Statement, which included the *Highways and Transportation Matters Report*, prepared by JMP Consultants Limited, dated 08 December 2014.

Highway Safety for Road Users

24. Whilst noting that no objection was raised by the Local Highway Authority, members of the Council's planning committee were concerned regarding the width of Aspenden Road and its footway and the potential dangers to pedestrian

¹ Statement of Common Ground (SCG) between DLP Planning for Mr Mike Moulton of Wattdown and East Hertfordshire District Council, dated December 2014

and cycle users. The Council raises no objection to the projected trip generation rates, set out within the appellant's Transport Statement but maintains that the forecast would represent a significant increase in traffic on Aspenden Road, with an additional 264 vehicle movements over a 12-hour period (0700-1900), and an increase of 61 pedestrian movements and 8 cycle movements over the same period. In percentage terms, this would represent a 20% increase in vehicle movements and a 127% increase in pedestrian movements.

25. There is a 40 metre stretch of Aspenden Road to the north of the site that is narrower than 4.1 metres – the minimum width required to allow two cars to pass side by side, based on recommended widths in Manual for Streets (MfS). There is a 75 metre stretch to the north of the site that is too narrow for a car and HGV to pass one another and most of Aspenden Road between the application site and the junction with Fairfield is narrower than 5.5 metres, the width required to allow two HGVs to pass one another.
26. It is apparent that vehicles only manage to pass one another through this narrow stretch by over-running onto either the earth bank on the east side of the road or onto the footway on the west side. The Council have conducted a Non-Motorised User Audit² which identifies that the width of the footway is unsuitable for journeys on foot or by cycle, with no section achieving a width of 2 metres as recommended in MfS. The footway is less than 1 metre wide for 15 metres and under 1.5 metres wide for a length of approximately 70 metres, this being the recommended width for two pedestrians to pass side by side.
27. In combination, the alignment of the road, the sub-standard road and footway width and the increase in traffic will reduce the safety of this section of Aspenden Road. This will have a detrimental effect on the rural character of the road and impact on users of the highway. Most residents of the development would need to travel north along Aspenden Road to connect with local services. The lack of street lighting along this stretch of highway would exacerbate the risk for pedestrians.
28. Aspenden Road is considered to be an intimidating environment for non-motorised road users by virtue of the reduced road width and the necessity for large vehicles to mount the footway. As such, the proposal would not comply with the requirements of paragraph 32 of the Framework which requires that decisions must take account of whether safe and suitable access can be achieved for all people. It would also be contrary to paragraph 35 of the Framework which states that developments should be located, where practical, to give priority to pedestrian and cycle movements and to create safe and secure layouts which minimise the conflict between traffic and cyclists or pedestrians, and consider the needs of people with disabilities.
29. The Council maintains that Aspenden Road is a rural road in the context of saved policy TR20 of the Local Plan. The Department for Transport has published guidance that defines rural roads as major and minor roads outside urban areas that have a population of more than 10,000 people³. The population of Buntingford was 4,948 in the 2011 census. At a local level, the road would class

² Produced at Appendix G of the Highways and Transportation Matters Report, JMP Consulting Ltd, dated 08 December 2014.

³ *Road Traffic Speeds and Congestion Statistics Guidance*, DfT, February 2014

as a 'Rural Local Distributor Road' as defined by guidance published by Hertfordshire County Council⁴, being a country lane connecting minor settlements. Based on the guidance within these documents and the inherent character of the part of Aspenden Lane in the vicinity of the site, with mature hedgerows, limited road markings and a lack of street lighting, the Council maintains that Policy TR20, which relates to rural roads, is applicable to the proposed development.

30. The proposed mitigation would incorporate localised widening of Aspenden Road to a width of 5.5m for a 66m stretch on land owned by the appellant. This would be sufficient to allow two HGVs to pass side by side adjacent to the access to the site. The appellant has also agreed to make a financial contribution to promote sustainable transport measures and this money would be used for improving pedestrian accessibility to the site. However, it has not been demonstrated what this could be spent on and the opportunity for widening the road or footway beyond the stretch owned by the appellant is limited due to land ownership constraints. Without such widening on the narrowest section of Aspenden Road, the impact of additional pedestrian trips would not be adequately mitigated. Therefore, the proposed highway improvements and financial contribution would not satisfactorily mitigate the impact on users of the highway and the character and appearance of the surrounding area.

Noise

31. The application was originally supported by an Environmental Noise Assessment⁵ which assessed noise levels in relation to the now revoked PPG24 standards. That report identified that the majority of the site, for both daytime and night-time, was within Noise Exposure Category (NEC) B, a category defined as one where 'noise should be taken into account when determining planning applications and, where appropriate, conditions imposed to ensure an adequate level of protection against noise'. The Council's Environmental Health team raised no objection to that report, subject to a condition to provide whole house ventilation systems across the whole site.
32. The appellant's statement in relation to the appeal included further noise modelling and assessments against the development in relation to the Framework and the Noise Policy Statement for England. The Council raises no objection to the methodology or the accuracy of the noise modelling work that has been undertaken. The statement modelled two options; Option 1 involving the installation of an acoustic fence alongside the A10; and Option 2 which amended the proposed layout to ensure that the gardens of houses that would face onto the A10 would be situated to the north of those dwellings, such that the buildings themselves would provide a noise buffer between traffic noise and the external amenity space. The Council raises no objection to the proposal being considered on the basis of Option 2 (see paragraphs 16-20 above).
33. The modelling for Option 2 indicates that some dwellings would experience façade noise levels exceeding 55 and 60 dB LAeq, 16h. Having regard to former

⁴ *Roads in Hertfordshire Highway Design Guidance 3rd Edition*, Hertfordshire County Council

⁵ AIRO report, November 2010, produced at Appendix A of the Hearing Statement of Andrew John Colthurst MIOA CMCIEH

noise levels set out in PPG24 and BS8233:2014⁶, the Council contends that future occupiers would be exposed to harmful traffic noise. The proposed mitigation recommends a range of ventilator types, including trickle vents and mechanical ventilation. The Council accept that the use of such systems would result in acceptable internal noise levels but considers that the reliance on mechanical ventilation would result in poor internal living conditions where residents would be unable to open their windows without experiencing harmful noise disturbance. This would result in unacceptable levels of amenity for future residents. Whilst the Council has accepted the use of mechanical ventilation on other developments it considers that the use of such systems is more appropriate to urban than rural settings. Mechanical ventilation would not be appropriate on the appeal site which is in a semi-rural setting.

34. A number of residential gardens would experience noise levels above 50dB LAeq, 16h which is set out as the desirable noise limit for external spaces within BS8233:2014. Although the BS sets out an upper limit of 55dB LAeq, 16h, this is only acceptable in noisier environments. The Council contends that the site should not be considered as a 'noisier environment' for the purposes of BS8233:2014, due to the semi-rural location of the site and the fact that the A10 is the only significant source of noise. Consequently, the noise environment within gardens exceeding 50dB LAeq, 16h would result in unacceptable living conditions for residents of those dwellings.
35. In summary, the proposal would result in unacceptable living conditions and a poor quality of life, contrary to Local Plan policies ENV1 and ENV25 and paragraph 123 of the Framework.

The Planning Balance

36. The Council has no objection to the principle of developing this site and does not contest the contribution that the proposal would make towards the five-year housing land supply. This is a matter that weighs in favour of the scheme. However, the constraints in the width and alignment of Aspenden Road, and its footway, are such that the increased traffic arising from the development, including pedestrian and cycle movements, would result in harm to the character and appearance of Aspenden Road and have a detrimental impact on users of the highway. In addition, a number of proposed dwellings would have an unacceptable reliance upon mechanical ventilation and a number of private garden areas would experience noise at a higher level than is deemed to be acceptable within BS8233:2014.
37. Therefore, the harmful impacts would significantly and demonstrably outweigh the benefits of housing delivery and, with regard to the presumption in favour of sustainable development at paragraph 14 of the Framework, the appeal should be dismissed.

⁶ BS8233:2014 *Guidance on sound insulation and noise reduction for buildings*, produced at Appendix F of the Hearing Statement of Andrew John Colthurst MIOA CMCIEH

The Case for the Appellant

38. The following paragraphs are a summary of the appellant's case. That case is set out in full within statements from Mr Osborne, relating to planning matters and the overall planning balance, Mr Colthurst, relating to noise, and Mr Fulcher, relating to transport and highway issues.
39. It is common ground that there is a substantial and persistent shortfall in housing supply. Given that the Council accepts this situation, the appellant has not sought to explore the issues of housing land supply in greater depth. However, the Council's Annual Monitoring Report, published in February 2014, assesses housing supply against the annual requirement of 660 dwellings, as derived from the revoked East of England Plan (RSS). The RSS provides the only housing requirement figure that has been subject to formal examination but is now demonstrably out of date.
40. For the purposes of the preferred options consultation in relation to the emerging Local Plan, the Council used an annual requirement of 750 dwellings, based on the Sub-National Population Projection 2012. This figure has not been tested through examination and does not have regard to factors such as the Strategic Housing Market Area. Therefore, it can not be considered to represent the OAN for the district but it is useful to consider the impact of this higher figure on the 5-year supply which would suggest that the situation is substantially worse than presently accepted by the LPA.
41. The existing Local Plan is time expired. It was not a Development Plan Document prepared in accordance with the Planning and Compulsory Purchase Act 2004. As such, in accordance with paragraph 215 of the Framework, any saved policies can only be given weight according to the extent they are consistent with the Framework. In these circumstances the appeal proposal is sustainable development for which there is a presumption in favour. It is not in conflict with the objectives of relevant development plan policies and no other material considerations arise to suggest that planning permission should not be granted subject to appropriate conditions.

Highway Safety for Road Users

42. The Local Highway Authority (LHA), Hertfordshire County Council, raised no objection to the proposed development and the proposal was refused against the advice of planning officers. With regard to highway matters, the reason for refusal refers to saved policy TR20 of the Local Plan *Development Generating Traffic on Rural Roads*. The applicability of this policy to this part of Aspenden Road is contested.
43. There is no definition in the East Herts Local Plan Second Review April 2007 to distinguish between an urban and a rural road. The settlement boundary of Buntingford, as defined by the Local Plan, runs down the east side of Aspenden Road from the south west corner of the Fairfield estate to a point immediately south of the access to the Watermill Industrial Estate where it then crosses the road before following the boundary of the industrial estate. Therefore this part of the road is in the urban settlement and is therefore logically an urban road. Furthermore it provides the vehicular link between the Watermill Industrial Estate, which is inside the Settlement Boundary, and the remainder of the town. It

would be perverse for a road providing the only link between two parts of the urban settlement to be classified as a rural road.

44. Notwithstanding that point, should the view be taken that Aspenden Road is a rural road, the proposal would comply with the requirements of the policy which sets two tests. The first of these is to establish whether the road is poor and the second is whether there is a significant adverse impact on the local environment either to its rural character or the residential properties along it. No complaints about the quality of the construction of the road have been made. The road is traversed by heavy goods vehicles and there are no signs of failure in the road surface.
45. In terms of traffic generation, the TRICS database was used to calculate the number of vehicle trips that would be likely to be generated by the proposal. With regard to comments from interested parties, including Aspenden Parish Council, about the validity of the TRICS database, the appellant notes that no objections to the data were received from professional officers at the Council or the LHA. Over the twelve hour period 07:00 to 19:00 the predicted number of additional movements along Aspenden Road would be 264. This equates to less than two vehicles every five minutes. Even in the peak hours the additional traffic will only amount to one vehicle every two minutes. It is not considered that this is a significant change in the amount of traffic using Aspenden Road. Any increase in percentage terms may look relatively high but that reflects the fact that the absolute numbers of vehicle movements using the road are low.
46. Neither would there be a significant effect on properties along Aspenden Road. There are only three properties that front onto Aspenden Road; two dwellings just north of the junction with Fairfield and White Cottage, between Fairfield and the appeal site. There has been no suggestion that the residents of these three properties would suffer. On the basis of the existing traffic flow that passes White Cottage, and the predicted traffic generation for the residential development on the Appeal Site, the increase in traffic passing that property in the twelve hour period 07:00 to 19:00 would be from four vehicles every fifteen minutes to just under five vehicles. The proportionate increase passing the two properties to the north of Fairfield would be less because of the additional traffic that travels between Fairfield and London Road.
47. The additional traffic will increase the potential for a car to meet a heavy goods vehicle on the narrow section immediately south of White Cottage, but that is an impact on the limited amount of heavy goods vehicles and the new development traffic. It does not affect the great majority of existing road users to any significant extent. This is balanced by the proposed mitigation that would remove of one of the pinch points and allow a greater length of road over which two heavy goods vehicles can pass, making it easier for vehicles entering the narrower section to see an oncoming vehicle.
48. For a car to pass a heavy goods vehicle a width of 4.8 metres is required. At present the road width falls below this over three sections. The first of these is on the bend that starts by White Cottage. The second occurrence is along the northern section of the Appeal Site frontage, and the third is the bridge over the River Rib. If a heavy goods vehicle is approaching a narrow section and a car is approaching from the opposite direction it is necessary for one of the vehicles to stop and wait for the first vehicle to pass. This can be difficult at the moment

because there is limited space for a heavy goods vehicle to pull into between the first and second narrow sections. A consequence of this is that heavy goods vehicles may meet on the narrow section and in order to pass one will have to mount the footway. Although it has been suggested that this results in safety issues for pedestrians, the vehicles will be moving so slowly that it is most unlikely that a pedestrian would be unaware of the situation. This is supported by the absence of any record of a collision involving an injury to a pedestrian.

49. The introduction of the new access will introduce a much longer section in which heavy goods vehicles can pass or wait before entering a narrower section. At present the section of road that has a width of 5.5 metres is just 22 metres long. With the junction in place it will increase to 66 metres. This will also assist heavy goods vehicles travelling north as it reduces the section through which they cannot pass another heavy goods vehicle. The main issue that has been raised by objectors relates to the use of the road by heavy goods vehicles. As a residential scheme the proposed development would only result in the occasional visit by a heavy goods vehicle. Thus existing users will not encounter heavy goods vehicles any more often than they do at the moment.
50. With regard to pedestrians, counts of pedestrians using the footway indicate that it is lightly used. The pedestrian count on the section of footway to the south of White Cottage shows that over the course of a fifteen hour period between 06:00 and 21:00 there were just 60 pedestrians traversing the footway on the Tuesday and 74 on the Saturday. This level of pedestrian activity is very low and does not make a footway width of 1.5 metres unsafe.
51. The appellant contends that the proposed mitigation measures would be of material benefit to the road and footway at Aspenden Road. If there are residual issues that are of concern to the LHA, that is something that could be addressed through the financial contribution put forward within the planning obligation. The proposal would comply with the requirements of Policy TR20, if that policy is deemed to be applicable. Paragraph 32 of the Framework seeks that developments only be prevented or refused on transport grounds where the residual cumulative impacts of development are severe. The appellant has demonstrated in the Transport Statement supporting the application that the likely cumulative highways impacts are not severe and, therefore, the Council was not justified in refusing the application on transport grounds.

Noise

52. The noise measurement survey undertaken by AIRO in 2010 was submitted with the application and considered by East Herts Council's Development Management Committee at meetings held on 8 January and 12 March 2014. A further baseline noise survey was undertaken by WSP in October 2014 to update and supplement the data reported by AIRO. The AIRO survey took place over a 24-hour period spanning Wednesday 13 and Thursday 14 October 2010 and the WSP survey was undertaken between Thursday 2 October and Wednesday 8 October 2014.
53. From the measurements and observations during the site visits at the start and end of the monitoring it is evident that the principal noise source affecting the site is that of road traffic on the A10. The noise of individual vehicles passing on Aspenden Road was apparent and contributes to the ambient noise levels in the west of the site but does not dominate. However, the LAFmax noise levels resulting from individual vehicles are evidently higher on occasions than those

arising from traffic on the A10 simply because of the lesser distance between the passing vehicle and the measurement position. The Council have raised no objection to the validity of the noise survey data that has been presented by the appellant.

54. In accordance with the guideline levels in Table 4 of BS 8233: 2014, the daytime target internal noise level is 35 dB LAeq,16h for living rooms and bedrooms and 40 dB LAeq,16h for a dining room or area. For night-time the target is 30 dB LAeq,8h and there is a separately specified 45 dB LAFmax standard drawn from the WHO Guidelines for Community Noise. In all cases those internal noise levels are readily achievable, subject to appropriate construction standards and mitigation. The target external noise level for gardens is 55 dB LAeq,16h and this would be achieved or bettered in all cases.
55. The modelling demonstrates that the proposed development would lie within the noise ranges described previously as NECs A and B, as defined in the now withdrawn guidance note PPG 24. Therefore, subject to the provision of suitable mitigation for the houses on the plots most exposed to noise from road traffic on the A10 and plot 41, adjacent to Aspenden Road, there was no good reason for the refusal of consent for the proposed development on grounds of noise.
56. The modelling demonstrates that in fact only the houses on the south side of the proposed development and the west façade of plot 45 would require mechanical ventilation, eight plots out of a total of 51, as modelled in Option 2. The gardens of all plots would meet the BS 8233 recommended level of LAeq,16h 55 dB ambient noise level for external amenity spaces.
57. The expectations of residents coming to the proposed development would be conditioned by the ambient noise climate of the site and its location to the north of the A10. Unlike some existing residential properties in the area the development would include sound insulation, screening and ventilation measures capable of ensuring the internal noise level design range of BS 8233 was achieved for those residents choosing to use them. The measures proposed are not unusual for new residential properties close to existing noise sources and are well within the performance range of standard commercially available products.
58. The use of mechanical ventilation systems is established practice and there are a number of planning appeal decisions that have considered the matter⁷. Thermal efficiency requirements under the Building Regulations have resulted in increasingly higher standards of air tightness for new buildings and a trend towards the incorporation of mechanical ventilation with heat recovery (MVHR) systems. These are designed on the principle that the only ventilation openings through the building envelope are for the inlet and outlet ducts. Opening windows defeats the purpose of such systems and the incorporation of a summer bypass mode enables the circulation of air at ambient temperature when required.
59. The increasing adoption of MVHR systems for new homes does not support the second reason for refusal and the suggestion therein that "reliance on mechanical ventilation as a mitigation measure would result in poor internal amenity levels."

⁷ Appeal reference(s) APP/R0660/A/12/2170820, APP/Y3940/A/13/2194511, and APP/K2610/A/12/2177219, produced at Appendix I of the Hearing Statement of Andrew John Colthurst MIOA CMCIEH.

The primary purpose of MVHR is to reduce energy consumption in homes whilst at the same time maintain a healthy indoor environment. An appropriately designed, installed and maintained MVHR system, with summer bypass, offers those benefits whilst additionally enabling occupiers to keep windows closed to exclude noise should they so wish.

60. With regard to saved policy ENV1 of the Local Plan, the scheme would provide an environment which is not harmed by noise. In terms of Policy ENV25, so far as it is relevant, the scheme has specifically had regard to prevailing, up to date, assessments of the noise environment and the illustrative layout demonstrates that protection against noise – where it may be needed – has been taken into account in considering the layout and design of the site. Demonstrably, the scheme is not exposed to significant adverse impacts on health and quality of life in the terms expressed in paragraph 123 of the Framework.

The Planning Balance

61. The LPA acknowledge that they have a significant shortfall in housing land supply and have recently acknowledged that the shortfall is persistent in the terms described by the Framework. It is common ground that the shortfall creates a presumption in favour of granting planning permission. The appeal site can make a further contribution to housing land supply in a location that is acknowledged to have capacity to accommodate development of the scale proposed and where the Council identify that there would be no adverse cumulative impacts. As such it can make a material contribution to the objectives of increasing supply, widening choice and providing an additional resource of much needed affordable homes.
62. The site is deliverable now and is in the hands of a reputable national housebuilder who intends to secure the necessary reserved matters approvals at the earliest opportunity. The proposal would not give rise to traffic issues which would be so severe as to warrant refusal of permission. Rather, it gives rise to no adverse issues and access can be provided safely and efficiently for vehicles pedestrians and cyclists alike. Nor does it give rise to the potential to create a poor quality environment in terms of noise.
63. Substantial weight should be given to national policy in respect of the supply of housing land and to the actions that should be taken where there are significant and persistent shortfalls in supply. The presumption at paragraph 14 of the Framework is applicable and, as there would be no adverse impacts of granting planning permission, and permission would give rise to significant benefits, it is requested that the appeal be allowed.

THE CASE FOR INTERESTED PARTIES

64. A number of interested parties attended the Hearing and took part in the discussion regarding the appeal proposal. These included Mr Cocker, a local resident; Mr Spears, the Chairman of Aspenden Parish Council; Cllr Waite, of Buntingford Town Council; Cllr Ranger, a local councillor; and Cllr Bonner, who is the mayor of Buntingford. Mr Cocker, Aspenden Parish Council and Buntingford Town Council also submitted written objections to the scheme to the Planning Inspectorate, following the appeal, and to the Council, prior to the application

being refused. Summaries of their written objections are set out below. The comments raised in discussion at the Hearing were consistent with those written submissions.

65. In addition, Cllr Waite noted that the Town Council is extremely concerned with the number of housing developments within the town and that they have requested that the local MP should contact the planning minister to discuss the issue.
66. Cllr Bonner considered that the development would fail to meet any of the three strands of sustainable development at paragraph 7 of the Framework and that the lack of infrastructure and employment in the town is such that it is unsuitable for further growth.
67. In addition to points raised in writing by Aspenden Parish Council, Mr Spears considered that the concept of localism would be dead if decisions do not take account of local views.

Written Representations Submitted to the Planning Inspectorate

68. The following is a summary of the written representations received by the Planning Inspectorate in relation to notification letters regarding the appeal.

Aspenden Parish Council

69. Object to the proposal on the grounds that it is contrary to policy TR20 of the Local Plan. Refute the developer's claim that Aspenden Road provides a suitable access for the number of vehicles associated with 56 homes. This road serves the industrial estate, with associated HGV traffic, and the local recycling facility. With a further 1000 dwellings planned for the town, this will only get busier. It is impossible for a lorry and car to pass in several places on the road and the pavement is enclosed.
70. Aspenden village is on a 'no through road' and has no facilities or bus service. Therefore, the majority of the village use Aspenden Road to access services in Buntingford and the wider world.

Mr Cocker

71. Mr Cocker submitted lengthy correspondence with regard to four main points of objection, relating to the unsuitability of Aspenden Road; noise pollution from the A10; the cumulative effect of the development and other approved schemes on local services and amenities; and the loss of the separate identity of Aspenden, which is a Conservation Area, as a result of loss of countryside between Buntingford and the village.
72. With regard to Aspenden Road, the carriageway is too narrow for vehicles to pass safely and thick foliage on the east side forces vehicles into the middle of the road. The stopping zone for Aspenden Bridge would straddle the entrance to the proposed site. There has been a failure to consider the 150+ vehicles leaving the development at peak times and a failure to understand the inadequate width of the pavement which is further reduced by overgrown foliage. It was noted that the foliage was cut back immediately prior to the Hearing. The cumulative effect of the increased traffic and inadequate road and footway width will increase the risk to pedestrians and motorists.

73. Other highway concerns include the increase in traffic exiting onto London Road; the poor road surface at the blind bend between the site and Fairfield; lack of street lighting between the site and Fairfield; the additional impact on vehicles and pedestrians exiting from Fairfield and Luynes Road; the fact that most vehicles pass Fairfield at speeds way beyond 30mph; the effect of HGVs hitting foliage which then blocks the highway; flooding on the carriageway; the fact that increased development will increase rat-running on rural roads to avoid congestion on the A10; failure to enforce against vehicles parking on yellow lines at the exit onto London Road; the lack of safe cycling provision and inadequacy of the visibility splays from the proposed exit at the site, taking account of traffic speeds of up to 60mph.
74. In terms of noise, it is evident that future traffic generation will grow substantially on the A10, increasing the noise pollution at the site.
75. The cumulative effect of the development must be considered alongside other recently completed proposals which amount to around 250 dwellings without any infrastructure gains. In addition, recently agreed developments amount to 831 dwellings and appeals/ proposals totalling 630 units yet to be decided. That would be 1711 dwellings, resulting in 4770+ cars and 2660 children needing education and amenities. This is not a sustainable level of growth.
76. The proposal would integrate Aspenden into Buntingford and the development would intrude into the countryside and reduce open space

Mr Flexmore

77. The volume of traffic at the Aspenden Road/ London Road junction is already high and exiting Aspenden Road is dangerous, due to poor line of sight to the south, made worse by the failure of the Council to lay yellow lines. Aspenden Road narrows to the south of the junction with Fairfield such that traffic is unable to pass easily. The pavement at that point is dangerously reduced in width which, together with the overgrown hedge, makes it too narrow for a pushchair. The additional traffic would make the road intolerable.

Mr Bradley

78. Aspenden Road is unable to cope with additional traffic. In addition, Buntingford is unable to cope with the increased population without addressing local infrastructure such as schools and medical services which are struggling to cope following other recently completed developments. I often walk on Aspenden Road with my grand-daughter and the pavement is extremely narrow and often overgrown with vegetation, forcing people to walk in the road.

Mr Pidduck

79. Noise from the A10 has an unacceptable impact on existing property in Olvega Drive with a constant rumble of traffic between 0400 and 1200 and then between 1600 and 2000. The validity of the noise investigations is questioned, not as an expert but as someone who has direct experience of the noise. Traffic noise can be heard inside the building with windows closed and trickle vents open and the back garden is subjected to high traffic noise, particularly from lorries and motorcyclists. He is also concerned to ensure that the line of trees on the old railway line are protected.

Mr Hide

80. The Council correctly refused the application on grounds of the dangerous and insufficient road access and pollution from the A10. These are both serious issues that cannot be properly mitigated against. Also deeply concerned about flooding, loss of wildlife habitat and considers that infrastructure within the town cannot accommodate the additional population in a sustainable manner.

Mrs McKechine

81. The road already has far too great a volume of traffic, including HGVs. It was originally used as a means of access to Aspenden but traffic has expanded since the construction of the Watermills Industrial Estate and the council tip, and the expansion of Poulton's landscape business. It is a dangerous road for the elderly, disabled or mothers with push chairs. It is constantly flooded in wet weather. The proposal would add to those difficulties. No thought has been given to how the facilities in the town can accommodate the extra population.

Hertfordshire County Archaeologist

82. Requests that an archaeological condition is attached to any permission if the Secretary of State is minded to allow the appeal, to ensure the investigation and recording of any archaeological remains.

Hertfordshire County Council

83. Set out their request for financial contributions in relation to education provision, childcare, youth services, libraries, sustainable transport provision, and the need for fire hydrants to serve the development.

Written representations submitted to the Council at the application stage

84. In addition to the comments received in relation to the appeal, a number of letters of objection were sent to the Council in response to consultation on the planning application. These included letters and emails from individual residents and comments from an action group known as BARD – Buntingford Action for Responsible Development. The issues raised in correspondence submitted to the Council were largely replicated by those submitted in relation to the appeal, as summarised above.
85. In terms of site specific matters, objections were submitted to the Council on the grounds that Aspenden Road was unsuitable to accommodate additional traffic; loss of green space between Buntingford and Aspenden; noise from traffic using the A10; flooding; odour from the waste treatment works affecting future residents; and harm to wildlife. Wider concerns were expressed about the impact of new housing on the town, the inability of local infrastructure to accommodate additional growth, and the unsustainable travel patterns associated with growth in the town due to poor public transport services and lack of local employment opportunities.
86. The **Buntingford Civic Society** objected on grounds that the site lies within Flood Zone 2; the cumulative traffic related impact of this and other developments; loss of a green buffer between Buntingford and Aspenden; and the inability of Aspenden Road to accommodate further growth. **Buntingford Town Council** objected for very similar reasons and noted that the TRICS

Council should not consider any of the applications in Buntingford in isolation but through the Local Plan review.

UNILATERAL UNDERTAKING

88. The appellant submitted a signed and executed planning obligation by Unilateral Undertaking on the day of the Hearing. This included the following provisions:

- 40% of the dwellings to be affordable housing, with a 75:25 split in favour of affordable rented units against shared ownership properties;
- The provision of an area of public open space within the scheme and the provision of a Local Area for Play within that public open space, together with on-going maintenance of those spaces through a management company;
- An outdoor sports facilities contribution of £531.36 per occupant, towards the provision of sports facilities to serve the development;
- A sustainable transport contribution that would be calculated on a pro-rata basis, based on the number of bedrooms within the scheme;
- A requirement that 15% of the dwellings would be built to the Lifetime Homes standard and a requirement for a 'Water Scheme' to be submitted and agreed, including details of how water services and fire hydrants would be provided;
- Financial contributions towards education provision (first, middle and upper levels), childcare provision, youth services provision and library facilities, all calculated on a pro-rata formula based on formulae within the County Council's Planning Obligations Toolkit (the Toolkit).
- A monitoring fee (of an unspecified amount), payable to the council towards the cost of monitoring compliance with the deed.

89. The Practice Guidance advises on the relationship between planning obligations and the Community Infrastructure Levy (CIL)⁸. As of 06 April 2015, Regulation 123(3) of the Community Infrastructure Levy Regulations (2010) (the CIL Regulations) restricts the use of pooled contributions towards items that may be funded via the CIL levy. Beyond that date, no more may be collected in respect of a specific infrastructure project, or type of infrastructure, through a s.106 agreement, if five or more obligations have been entered into since 06 April 2010, and it is a type of infrastructure that is capable of being funded by the levy.

90. The Hearing was held on 21 January, in advance of the cut-off date for pooling restrictions within the CIL Regulations. Consequently, the implications of the CIL Regulations in respect of pooled contributions were not discussed at the event. Therefore, following the close of the Hearing, the main parties were contacted, in writing, to seek their views on the implications of pooling restrictions on the unilateral undertaking that had been submitted at the Hearing. Following discussions with the District Council and Hertfordshire County Council, the appellant submitted an amended unilateral undertaking to the Planning

⁸ Reference ID: 25-099-20140612

Inspectorate on 09 October 2015. The undertaking has been signed and executed but is undated.

91. The amended undertaking contains the same broad heads of terms as the original version but is more specific in terms of the projects upon which the respective financial contributions would be spent. The following provides a summary of the contents of the revised obligation and the differences with the original version:

- 40% of the dwellings to be affordable housing, with a 75:25 split in favour of affordable rented units against shared ownership properties (unchanged from the undertaking submitted at the Hearing);
- The provision of an area of public open space within the scheme and the provision of a Local Area for Play within that public open space, together with on-going maintenance of those spaces through a management company (also unchanged from the version submitted at the Hearing);
- A financial contribution of £531.36 per occupant towards outdoor sport facilities within the parish of Buntingford. In that respect, the amended undertaking would require the same level of financial contribution but use of the contribution would be restricted to facilities and maintenance within the Parish of Buntingford, as opposed to the original undertaking which required the funding to be spent on sports facilities 'to serve the development' in an undefined area.
- A sustainable transport contribution that would be calculated on a pro-rata basis, based on the number of bedrooms within the scheme (unchanged from the version submitted at the Hearing);
- Financial contributions towards education provision (first, middle and upper levels), childcare provision, youth services provision and library facilities, all calculated on a pro-rata formula based on the number of bedrooms. The amount of the respective financial contributions within the amended obligation is unaltered but the obligation is more specific in terms of the areas or projects on which the contributions would be spent.
- The 'First Education Contribution' would be specifically used towards the expansion of Millfield First School, the 'Middle Education Contribution' towards the expansion of Ralph Sadler School, and the 'Upper Education Contribution' towards the provision of open air sports facilities (including feasibility studies and access improvements) to benefit Freman College. The 'Libraries Contribution' would be towards the cost of creating a larger children's area within Buntingford Library; the 'Childcare Contribution' would be used towards the cost of out of school care at Layston First School; and the 'Youth Contribution' would be used towards the enhancement and provision of equipment of the gym at the existing youth facility known as the 'Team Technical Institute';
- The amended obligation also contains a requirement that 15% of the dwellings would be built to the Lifetime Homes standard (unchanged from the original version) and a requirement for a 'Water Scheme' to be submitted and agreed (unchanged from the original agreement);

- The requirement to pay a monitoring fee to the Council, of an unspecified amount, towards the cost of monitoring compliance with the agreement (unchanged from the original agreement).

92. I am satisfied that it was reasonable for the appellant to submit an amended planning obligation following the close of the Hearing given the material change in circumstances, post April 2015, resulting from the CIL Regulations. There has been on-going discussion between the appellant, the Council and the County Council with regard to the content of the obligation and those parties would not be prejudiced were the amended version be taken into account⁹. Similarly, as the broad heads of terms remain largely unaltered I consider that no other party would be substantially prejudiced if the SoS took the amended version into account in reaching his decision.
93. Although an amended obligation has been signed and executed no deed of revocation has been submitted in relation to the original obligation. Whilst the parties have indicated their intention to submit such a deed it is not before me at the time of writing. That raises the possibility that the development would be bound twice i.e. by the obligations contained in both unilateral undertakings. The SoS may therefore wish to satisfy himself that a deed of revocation has been provided prior to any decision being issued. He may also wish to seek confirmation of why the copy of the amended planning obligation provided by the appellant is undated and satisfy himself that the document has been properly executed in that regard.
94. However, it is clear that the appellant wishes the most up-to-date obligation to be considered and, accordingly, I have considered that version within my report.
95. The content of the obligation is not a matter of dispute between the Council and the appellant. Moreover, the County Council has been closely involved in the drafting of the amended obligation and has raised no objection to its content. Nonetheless, it is incumbent upon me to assess the obligation against the tests outlined in regulation 122 of the CIL Regulations and paragraph 204 of the Framework. These are that the obligation is necessary to make the development acceptable in planning terms, that it is directly related to the development, and is fairly and reasonably related in scale and kind to the development.
96. The obligation would ensure that 40% of the dwellings would be affordable units, with a 75:25 split between affordable rented and shared ownership units. This provision is in line with locally adopted standards, within saved policy HSG3 of the Local Plan and responds to a defined local need. The provision and maintenance of an area of public open space within the development, including a play area and footbridge, are also necessary to meet the needs of the development and proportionate in scale and kind. At the Hearing, the Parish Council suggested that a contribution of £10,000 should be sought towards local play areas. However, given that the proposal includes provision for play on site, such a contribution would be disproportionate to the needs of the development and not necessary to make it acceptable in planning terms.
97. I have no doubt that the increase in local population will result in a proportionate increase in the use of local sports facilities. However, the terms of the obligation

⁹ See Hearing Documents 3, 4, 5 and 6 for detailed correspondence

database, upon which the appellant's predicted trip generation is based, bears no resemblance to Buntingford. In addition, the Town Council consider that the future growth of the town should be considered through the District Plan process.

87. Consultation responses were also submitted from a number of organisations, as summarised below:

- **Environment Agency.** Initially objected on the grounds that the applicant had not demonstrated that sustainable drainage systems could be used. Following additional soak-away tests, the EA were satisfied that the proposal was acceptable and removed their objection. Noted residents' concerns regarding flooding but was satisfied that the applicant had demonstrated that all dwellings would be outside the 1 in 1000 year flood event.
- **Local Highway Authority (Hertfordshire County Council).** Recommended that the proposal should be approved and considered that the existing carriageway width was not a justifiable reason to refuse planning permission and did not consider that there were any over-riding safety concerns. The carriageway improvements proposed by the appellant will improve HGV movements along the frontage of the site. Standing water on the carriageway was due to 2 blocked drains. The road widening works will include new drainage to improve this situation. Are satisfied that the site access and visibility splays meet the requirements of 'Manual for Streets'. Satisfied that the TRICS database was a robust method of calculating trip generation. Noted that the financial contribution towards sustainable transport measures would be used to improve pedestrian access to the site, although no specific scheme was put forward.
- **Hertfordshire Ecology.** Agreed with the recommendations of the bat, badger and bird survey reports and recommended conditions to ensure compliance with the findings of those reports.
- **Natural England.** Advised that the proposal was unlikely to affect and statutorily protected sites, or bats.
- **Hertfordshire Constabulary Crime Prevention Design Advisor.** Did not support the proposal and was disappointed that the applicant had made little reference to crime, disorder or fear of crime. Concerned with the location of the children's play area, away from housing across the stream.
- **Hertfordshire Fire and Rescue.** Requested that adequate access and turning facilities be provided, along with fire hydrant provision.
- **Hertfordshire County Archaeologist.** Noted that the desk based archaeological assessment identifies the potential for Roman, mediaeval and post-mediaeval buried remains and recommended a condition to secure a programme of archaeological investigation and recording.
- **Campaign to Protect Rural England.** Recommended that the application be refused on the grounds that it is contrary to the principles of the Framework and the East Hertfordshire Local Plan. Considered that the

would require the funding to be spent on 'one or more' relevant projects within the parish of Buntingford. From the information presented to me I am unable to assess whether local sports facilities within the Parish are operating over-capacity or whether they would be able to accommodate the needs of the development. Therefore, on the information before me, I cannot conclude that the contribution is necessary to make the development acceptable in planning terms and recommend that no account be taken of that element of the undertaking in the determination of the appeal.

98. The commuted payments towards education provision, childcare provision, library services, youth facilities and sustainable transport have been calculated on the basis of standard formulae within the Toolkit. In the absence of an adopted CIL Levy, the County Council maintain that the use of the Toolkit remains an appropriate and proportionate method of calculating the base costs for the obligations sought, particularly as the application is submitted in outline and the exact number and mix of dwellings that would be built is not certain.
99. Whilst the CIL regulations place a limit on the use of pooled contributions, and thereby a restriction on the wider use of tariff style contributions, that does not necessarily discredit the research behind the Toolkit or the way in which the costs of mitigating for additional residential development have been calculated. From the information before me, the document provides a proportionate method of arriving at the likely cost of mitigation, based upon the scale of development proposed¹⁰. On the information presented I am satisfied that the formulaic approach to costs set out within the undertaking in relation to education, childcare provision, library services, youth facilities and sustainable transport are reasonably related in scale and kind to the development.
100. Based upon the County Council's appeal statement it is anticipated that there will be "unsatisfied demand" in future years for school places as first, middle and secondary level, and a shortage of childcare places within Buntingford. The additional child yield from the proposed development would add to that demand and I am satisfied that the proposed contributions towards education and childcare are necessary to make the development acceptable in planning terms and to accord with the requirements of saved policy IMP1 of the Local Plan. The contributions within the relevant obligations have been tied to specific projects at local schools. Those projects would be directly related to the impact of the proposal and the contributions would not result in five or more obligations being in place for those particular projects.
101. Similarly, residents within the proposed scheme would add pressure on the local library and youth services. The County Council's appeal statement highlights local deficiencies within those services and the undertaking includes specific projects that would be directly related to the identified need. From the information before me, the contributions in those respects are proportionate, directly related to the development and necessary to make it acceptable in planning terms.

¹⁰ As explained at paragraphs 12.1 to 12.9 of the Toolkit, appended to Hertfordshire County Council's Hearing Statement

102. As set out below, I recommend that a condition to secure a green travel plan is attached if the SoS is minded to grant planning permission. That would assist in encouraging sustainable patterns of travel. Little information has been provided to enable an understanding of how the 'Sustainable Transport Contribution' would be spent. The terms of the obligation in that respect are generic and no specific project has been identified. In the absence of a clear understanding of the way in which the contribution would be used I find it difficult to conclude that it would be necessary to make the development acceptable in planning terms and, unless further information in that respect is provided, I recommend that the SoS takes no account of the proposed contribution in reaching his decision.
103. Saved policy HSG6 of the Local Plan requires that 15% of all dwellings in new residential developments are constructed to 'Lifetime Homes' standards. However, from 1 October 2015 the government's policy is that decision makers should only require compliance with the optional new national technical standards where there are policies in an existing relevant Local Plan, neighbourhood plan, or supplementary planning document which demonstrate need and where the impact on viability of the new development has been considered¹¹. Thus, the Lifetime Homes standard has now been replaced by the new optional technical standards.
104. The Written Ministerial Statement (WMS) of 25 March 2015 makes clear that, from 01 October 2015, any existing Local Plan standards should be interpreted by reference to the new optional technical standards. Where existing policies are yet to be revised local planning authorities are advised to clearly set out how existing policies will be applied in light of the WMS.
105. In this case, the WMS was published after the close of the Hearing and, as such, the matter was not covered within written statements or discussed at the event. Consequently, I am unable to report on how the Council consider that policy HSG6 should be applied in view of the WMS; the Council or the appellant have not had the opportunity to provide comment on that matter. Given that the Lifetime Homes standard has been superseded by the optional technical standards I must conclude that the obligation to secure that standard is not necessary to make the development acceptable in planning terms. As such, I recommend that the SoS does not take the obligation into account in reaching his decision.
106. In the absence of the Lifetime Homes standard I am not aware of which particular aspects of the optional technical standards, if any, the Council would consider appropriate for the proposed development. Therefore, I am unable to make a recommendation on whether it would be appropriate to seek to secure optional technical standards, either through an obligation or by condition. The SoS may wish to seek clarification on that matter.
107. The County Council suggest that the location of fire hydrants is not covered by building regulations and the requirement to provide fire hydrants is supported by guidance within the Toolkit. The appellant does not dispute the need for the details covered by the 'Water Scheme' and, having regard to local guidance, I am satisfied that the 'Water Scheme' is related to the development, necessary in the

¹¹ Planning Practice Guidance: Paragraph 001, Reference ID 56-001-20150327

interests of fire safety, and related in scale and kind to the needs of the development.

108. The obligation to pay a monitoring fee is not disputed by the appellant. However, the information presented does not demonstrate that payment of the fee is necessary to make the development acceptable in planning terms. The requirement to monitor a planning obligation would, in my experience, fall within the normal everyday function of a local planning authority. Therefore, it has not been demonstrated that the monitoring fee is compliant with the tests laid out in regulation 122 of the CIL Regulations. I therefore recommend that the SoS takes no account of the obligation in that regard in reaching his decision.

CONDITIONS

109. A number of suggested conditions were put forward by the appellant and the Council within the SCG. The conditions were discussed in detail at the Hearing, including discussion on various changes in the interests of precision and enforceability. The conditions that I recommend, if the Secretary of State is minded to allow the appeal, are set out in Appendix C. The numbering does not accord with that within the SCG as some conditions have been deleted whilst others have been combined and re-worded. For the avoidance of doubt the condition numbers in this section of the Report and hereafter concur with those in Appendix C.
110. **Conditions 1-3** relate to the requirement for the submission of reserved matters details and the statutory commencement period. **Condition 4** is necessary to ensure compliance with the approved plans. I have excluded reference to indicative plans because these represent illustrative material depicting how the site could be laid out; matters of layout and scale are reserved for later approval. The programme of archaeological work required by **Condition 5** is necessary in order to ensure the proper investigation and recording of any archaeological remains at the site.
111. A condition requiring a detailed surface water drainage strategy is necessary, as required by **Condition 6**, to ensure the proper drainage of the scheme, in accordance with the principles of the flood risk assessment and the need to avoid an increase in the run-off rate from the development into adjoining water courses. Measures to prevent contamination of groundwater are also required, under the terms of **Condition 7**, which would require the submission and approval of a detailed scheme to deal with any contamination, based on the desk study and ground investigation report. **Condition 8** is necessary for the same reason.
112. **Conditions 9 and 10** are necessary, in the interests of highway safety, to secure the implementation of the access and junction arrangements and the widening of the carriageway across the site frontage, in line with the plans submitted with the application. I am satisfied that the carriageway at Aspenden Road should be widened at the outset of development in order that suitable access is available for construction traffic, in the interests of highway safety. **Condition 11** is required to secure an arboricultural method statement and tree protection plan in order to protect existing trees and hedgerows during construction, in the interests of the character and appearance of the area. A construction management plan is necessary, as required by **Condition 12**, to minimise the impact of construction on the road network and **Condition 13** is

necessary to ensure the control of hours within which plant and machinery can be operated to protect the amenity of neighbouring residents.

113. **Conditions 14 and 15** are also necessary in the interests of nature conservation, with regard to the protection of badgers and to ensure that the development is carried out in accordance with the recommendations of the phase 1 habitat survey, reptile survey, bird survey and bat activity survey. The recommendations within the surveys include measures to mitigate the impact of the proposal and for enhancement of local habitat to provide better opportunities for protected species. Thus, condition 14 is in compliance with paragraph 109 of the Framework which seeks to minimise impacts on biodiversity and provide net gains where possible
114. **Condition 16** is required to ensure that the scheme will provide acceptable noise limits internally, within each dwelling, and externally, within private amenity spaces. Over time, residents would wish to replace windows or garden fencing etc and it would be unduly onerous and difficult for the Council to monitor and enforce such changes for the lifetime of the development. However, any future changes made by residents would be made in the knowledge of the prevailing noise climate at the time. Those residents could make an informed choice as to the standard of replacements in respect of the noise climate within their home. Therefore, I am satisfied that it is unnecessary for a condition to seek to retain measures in perpetuity, as suggested within the condition put forward within the SCG.
115. **Condition 17** is necessary to secure a Green Travel Plan Statement in the interests of promoting sustainable modes of travel.

INSPECTOR'S CONCLUSIONS

[Numbers in square brackets denote source paragraphs]

Main Issues

116. Based on my reading of the Decision Notice, the SCG, and statements submitted by the main parties and other representations, I have identified the following main considerations on which the Secretary of State needs to be informed for the purpose of his consideration of the appeal:
- i) Whether the proposal would result in a significant increase in traffic that would have an adverse effect on the character and appearance of Aspenden Road and the surrounding area;
 - ii) The effect of the proposal on highway safety for vehicles, pedestrians and cyclists, with particular regard to the level of traffic that would be generated by the proposal, the width and alignment of Aspenden Road and the effectiveness of any proposed mitigation;
 - iii) Whether the proposal would provide satisfactory living conditions for future occupants with regard to noise; and
 - iv) Having regard to the absence of a five-year supply of deliverable housing sites, and the presumption in favour of sustainable development at paragraph 14 of the National Planning Policy Framework, whether any adverse impacts of granting planning permission would significantly and

demonstrably outweigh the benefits, when assessed against the policies of the Framework taken as a whole.

Main Issue i) Whether the proposal would result in a significant increase in traffic that would have an adverse effect on the character and appearance of Aspenden Road and the surrounding area

117. Saved policy TR20 of the Local Plan states that development will not be permitted if, amongst other things, it would give rise to a significant change in the amount or type of traffic on a local rural road and that increase would have a significant adverse effect on the rural character of the road or residential properties along it. The Council and the appellant dispute whether Aspenden Road constitutes a rural road and, consequently, whether policy TR20 is applicable. What constitutes a rural road is not defined within the policy or the supporting text. This is therefore a matter of judgement depending on the circumstances of any given case.
118. The Council have referred to definitions used by the Department for Transport in the guidance document *Road Traffic: speeds and congestion statistics guidance* (November 2013) [29]. This defines a rural road as those highways outside urban areas with a population of greater than 10,000. The 2011 census showed the population of Buntingford as 4,948. From the limited extracts provided, there is no reason to assume that the definitions within the DfT document were intended for a wider purpose, beyond the scope of that guidance. The definition would place all roads in Buntingford as rural roads. It is a small town with an urban rather than rural character, with areas of residential and employment development and retail uses positioned centrally within the settlement. Consequently, it seems to me that the broad definition within the DfT guidance should not be used to define a rural road for the purpose of policy TR20.
119. The local highway authority uses a number of classifications ranging from Primary Roads down to Local Distributor Roads. A *Rural Local Distributor* is defined as a country lane that gives access to adjacent land or a road that connects minor settlements [29]. This could be applied to Aspenden Road as it provides the connection to the village of Aspenden, passing underneath the A10. However, an *Urban Local Distributor* is defined as a route that provides a link between a secondary distributor (such as London Road) and residential areas; such roads often being estate roads. Aspenden Road provides a link to the residential estate at Fairfield and, along its northern extent, has the character of an estate road. It also provides a link to the Watermill Industrial Estate and the Council recycling centre, both of which are accessed to the south of Aspenden Bridge.
120. Setting aside the function of the carriageway there is a distinct change in the visual character of the road to the south of the junction with Fairfield, beyond White Cottage. Up to that point, the northern section of the road has a regulated, urban character, with built development, pavements, and street lighting on both sides of the carriageway. Beyond this point, the road narrows to a pinch-point and a steep bank and hedgerow directly abut the eastern side of the carriageway, the pavement being restricted to the opposite side. West of the pavement a wooded brook separates the road from the Watermill industrial estate. As a result, the road is enclosed between mature vegetation on both sides and the alignment and configuration of the highway is much less regulated

than the stretch to the north. In visual terms the part of the road as it passes the appeal site has the feel of a country lane leading from the town to the neighbouring village.

121. To my mind, the traffic associated with the industrial estate does not alter this prevailing rural character. Like many highways Aspenden Road is multi-functional and has differing characters along its length. Further to the north it has the character of an *Urban Local Distributor*. However, as it passes the appeal site, I am satisfied that it constitutes a rural road and, consequently, that the policy TR20 is applicable to the proposal.

122. In terms of traffic levels, the Transport Statement (TS) predicts that the proposal would generate an additional 264 vehicle movements over a 12-hour period from 0700 to 1900hrs, based upon trip generation rates from the TRICS database [24 & 45]. This is a nationally recognised method for calculating likely trip generation and the validity of the data was accepted by the local highway authority and by the Council, as set out within the Statement of Common Ground (SoCG) [24]. Consequently, despite local concerns, I am satisfied that the data within the TS is robust and representative of the likely level of traffic that would be generated by the proposal.

123. This would equate to two additional vehicle movements every five minutes over the 12 hour period from 0700 to 1900. In the peak hour the additional traffic would equate to approximately one vehicle every two minutes. In overall terms, the Council note that the development would result in a 20% increase in the level of traffic using Aspenden Road. Although this would be a substantial increase in proportional terms, that is reflective of relatively low existing traffic usage, as opposed to significant levels of traffic stemming from the proposed development. In terms of the frequency of vehicle movements and the way in which the road would be experienced by drivers, other road users, and those living alongside it, the increase in traffic would not give rise to a significant change in the character of the road, taking account of its existing function.

124. In this respect, the proposal would conform to the requirements of saved policy TR20 (1 (a)) of the Local Plan.

Main Issue ii) The effect of the proposal on highway safety for vehicles, pedestrians and cyclists, with particular regard to the level of traffic that would be generated by the proposal, the width and alignment of Aspenden Road and the effectiveness of any proposed mitigation

125. Aspenden Road narrows to a pinch-point on a bend, roughly half way between White Cottage and the existing gate which provides access to the appeal site. The carriageway is less than 5 metres wide along the bend between these two points and is 3.79 metres wide at the narrowest point. DfT guidance *Manual for Streets* (2007) states that a width of 4.1 metres is the minimum required to allow two cars to pass one another. 4.8 metres is required for a car and a HGV to pass and 5.5 metres for two HGVs [25]. The width of the pavement is also below the recommended minimum in *Manual for Streets* of 2.0 metres [26].

126. Thus, at the narrowest point, the carriageway width is insufficient to allow 2 cars to pass and there is insufficient width to enable a car and HGV, or 2 HGVs to pass along much of the bend. The curvature of the road is such that drivers do not have sufficient forward visibility to determine whether they will meet a driver

moving in the opposite direction at the pinch-point in the road. This creates potential for drivers to meet 'on the bend' at the narrow part of the carriageway.

127. The evidence presented, including the oral evidence of local residents at the hearing, suggests that drivers take a number of actions when meeting vehicles in the opposite direction. If two cars meet, a common course of action is for both to slow down and edge past one another, something possible if the southbound vehicle leaves the bound area of the carriageway and passes onto the bottom of the earth bank at the foot of the adjacent hedgerow. I witnessed such a manoeuvre at my site visit and the compacted earth on the ground identifies that this is not uncommon. In effect, over time, this practice has widened the available passing space so that two cars can pass without reversing.
128. Whilst this manoeuvre is possible for two cars, it is not possible for a car to pass a HGV or for two HGVs to pass one another. In such situations, drivers would have the option to reverse to a wider point in the highway. Residents also noted that vehicles will occasionally mount the kerb and drive on the pavement and photographic evidence of tyre marks on the pavement would support these claims.
129. Although this is not an ideal scenario, the accident records do not depict and accidents stemming from the width and alignment of the carriageway [48]. Like many historic lanes and roads, Aspenden Road is not designed and laid out to modern highway standards. However, that does not preclude further development; it is necessary to consider the impact of any additional traffic and whether that impact can be adequately mitigated.
130. The trip generation associated with the development would not result in a significant increase in the level of traffic using the road in numerical terms. In the peak hour this would equate to an extra journey every two minutes. This would not result in a significant increase in the likelihood or frequency of vehicles meeting at the narrow point in the road. Furthermore, the TS demonstrates that the majority of vehicle trips would be within private cars, in line with the residential nature of the proposal. Therefore, the scheme would not result in a significant increase in HGV movements. Existing HGV movements are not substantial; the traffic survey noted 60 over a 12 hour period, 32 travelling southbound and 28 northbound. There were also 2 bus movements. Trips from larger vehicles were spread evenly throughout the day. Thus, the proposal would not add significantly to the likelihood of larger vehicles meeting at the narrow point on the carriageway. The likelihood of a car meeting a HGV would increase as a result of the proposal but not to any significant degree.
131. Furthermore, the proposed highway measures, as agreed with the local highway authority, would widen the carriageway to 5.5 metres across the majority of the site frontage from Aspenden Bridge up to the existing gated access [49]. This would enable two vehicles, including HGVs to pass and would result in a reduction in the length of highway that is below the minimum passable width. A vehicle travelling north would be able to travel further towards the pinch-point on the widened section of the carriageway. This would increase the opportunity to see on-coming traffic and thereby increase the likelihood that vehicles will wait at the wider point to allow vehicles to pass. Were two vehicles to meet at the narrow section, the northbound vehicle would have a relatively short distance to reverse onto the widened section of carriageway. The generally

low level of background traffic would also allow for such a manoeuvre, without vehicles being backed up behind one another.

132. In view of the above, I am satisfied that the proposal would not result in a significant increase in vehicles meeting at the narrow point in the carriageway. Furthermore, the proposed highway works would off-set the impact of additional traffic by widening the carriageway, something that would benefit existing and proposed users of the road.
133. The pavement on the western side of Aspenden Lane would be the most likely route for pedestrians walking to schools, shops and other facilities in the town. A public footpath runs through the Watermill Industrial Estate but the route is not well signposted, poorly surfaced in parts and is somewhat convoluted. This would deter frequent use, particularly in winter months. The pavement is below a metre in width at its narrowest, adjacent to the pinch-point on the carriageway. From this point, it gradually widens to the north and south but remains under 2 metres in width from Fairfield to Aspenden Bridge.
134. The width therefore falls well below the recommended 2 metres in *Manual for Streets* [26]. However, the diagrams within *Manual for Streets* depict a minimum width for a single pedestrian of 0.75m, a wheelchair at 0.9m and a parent and child walking side by side at 1.2m. The minimum width of the pavement, although restricted, would allow pedestrians, wheelchair users and those with pushchairs to pass in single file. Parents with children would be required to walk in single file for a short stretch of the route at the narrowest point.
135. Clearly, this is not an ideal situation but I consider that concerns regarding the substandard width of the pavement should be set in the context of the frequency with which it would be used. The TS predicts that there would be 61 pedestrian movements from the development over the course of a 12 hour day; 32 arrivals and 29 departures; the busiest expected time being in the morning peak with 11 movements between 0800 and 0900 hours [24]. The existing survey results showed 60 pedestrians passing the site over a 15 hour weekday; one every 15 minutes. 74 were recorded over the same period on a Saturday [50].
136. Therefore, the level of use would not be substantial and the likelihood of pedestrians meeting at the narrowest point on the pavement would be slim. Even in such situations pedestrians would have adequate visibility to see if vehicles were approaching before stepping onto the carriageway. Along much of its width, the pavement is wide enough to allow pedestrians to pass side by side. I also refer to my conclusions on the benefits associated with the widening of the carriageway across the site frontage, in terms of reducing the likelihood of vehicular conflict at the pinch-point. This would have associated benefits for pedestrians using this stretch of the pavement.
137. Consequently, whilst it falls below the recommended minimum standard in *Manual for Streets* I am satisfied that the pedestrian access arrangements would not be unduly hazardous or of such poor standard as to deter use. I was able to observe a range of people using the pavement during my accompanied visit and on my unaccompanied visit the day before the Hearing. On the evidence before me I can find no reason to conclude that the pavement would not be used similarly by future residents of the proposal.

138. Pedestrians would need to cross the road from the site access to reach the pavement on the opposite side. However, visibility is adequate to enable this to be done safely and there is no pedestrian safety requirement for a pavement on the eastern side of the carriageway.
139. Similarly, I am satisfied that the proposal would be accessible for cyclists. The Non Motorised User Audit undertaken on behalf of the Council concludes that Aspenden Road is wholly unsuitable for cyclists but provides little analysis to support this assertion. The width of the carriageway is sufficient to allow cyclists to pass on-coming traffic and, as discussed above, the level of traffic using the road is not substantial.
140. In view of the above, whilst noting that Aspenden Road does not fully conform to modern highway design requirements, I remain satisfied that safe and suitable access to the site can be gained for all modes of transport. The highway related improvements associated with the scheme would off-set the impact of additional traffic and would have associated benefits for existing road users. Buntingford is a relatively compact town and I am satisfied that those living in the proposed development would be able to access the facilities within it via a full range of transport options.
141. In relation to policy TR20 of the Local Plan, the proposal would not give rise to a significant change in the amount or type of traffic using Aspenden Road; the increase would be modest. The proposal would also conform to the requirements of paragraph 32 of the Framework which, amongst other things, notes that development should only be refused on transport grounds where the residual cumulative impacts of development are severe. That would not be the case in this instance. The associated highway improvements would off-set the additional traffic associated with the scheme such that the residual effect would be broadly neutral.

Main Issue iii) Whether the proposal would provide satisfactory living conditions for future occupants with regard to noise

142. The Council accept that the use of mechanical ventilation would result in satisfactory internal noise levels for prospective occupants of the proposed dwellings [33]. They also accept the validity of the noise modelling carried out on behalf of the appellant [32]. That modelling demonstrates that, with mitigation, internal noise levels can be achieved in line with those requested by the Environmental Health Officer, based on recommended limits prescribed by BS 8233: 2014 *Guidance on Sound Insulation and Noise Reduction for Buildings* [54]. However, they consider that the use of mechanical ventilation would provide a poor residential environment for residents due to the inability to open windows without being subjected to unacceptable levels of noise.
143. Government advice on noise in relation to planning is set out within the Practice Guidance, which itself refers to the Noise Policy Statement for England, March 2010 (NPSE), produced by the Department for Farming and Rural Affairs (Defra). The NPSE identifies 'observed effect levels' in relation to noise. The 'lowest observed adverse effect level' (LOAEL) is identified as the level of noise exposure above which adverse effects on health and quality of life can be detected. The 'significant observed adverse effect level' (SOAEL) is the level above which significant adverse effects on health and quality of life occur.

144. These levels are not defined numerically within the NPSE or the Practice Guidance. However, the Practice Guidance provides a tabulated summary of each category based upon the likely average response. The description of the SOAEL is where noise causes a material change in behaviour or attitude such as *'avoiding certain activities during periods of intrusion, where there is no alternative ventilation, having to keep windows closed most of the time because of noise'* (my emphasis added). In my view, reference to alternative ventilation within the Practice Guidance is a clear indication that such solutions form an accepted part of the approach to mitigating against the impact of noise. That guidance sets the Government's approach to planning and noise related issues.
145. Consequently, to my mind, the reliance on mechanical ventilation is not indicative of a poor internal environment. I also note the growing use of such systems, as set out within the appellant's evidence, for reasons related to thermal efficiency and heat control within new buildings [58 & 59]. Whilst the increase in use may be driven by sustainability objectives, as opposed to noise, it is an indication that occupiers are prepared to utilise such systems as part of the residential environment.
146. Furthermore, mechanical ventilation would only be required on a small number of dwellings; those closest to the A10 and to the south-west corner of the site. The indicative layout was revised as a result of modelling to show a row of dwellings fronting onto the A10. The front façade would be exposed to the highest noise levels but the building envelope would help to create a quieter façade to the rear. The modelling shows that the rear facing rooms of these dwellings (plots 18, 22, 45 and 51) could, for the most part, achieve acceptable internal noise levels with windows open.
147. The Practice Guidance considers whether other considerations should be taken into account in mitigating the impact of noise¹². One such factor is whether dwellings contain relatively quiet facades containing windows to habitable rooms. The proposals are indicative and, based on the noise modelling, it would be possible to orientate the internal layout such that the principal living rooms and bedrooms face the rear façade where occupants would have the opportunity to open windows without being subjected to unsuitable levels of noise.
148. With careful orientation and internal design (matters that could be addressed at the reserved matters stage), residents of those dwellings would have access to quieter façade to the rear where habitable room windows could be opened without harming the internal living environment to any significant degree.
149. BS 8233: 2014 states that it is desirable that external noise levels within amenity areas should not exceed 50dB LAeq, T, with an upper guideline of 55dB LAeq, T which is considered acceptable in noisier environments. The modelling demonstrates that it would be possible to achieve a layout with all gardens falling below the 55dB level. For a number of dwellings external amenity areas would fall between the 'desirable' level of 50dB and the upper guideline of 55dB.
150. The upper guideline is applicable to noisier environments, a term not defined within BS 8233: 2014. In my view this threshold would be applicable to a residential scheme adjacent to a busy road corridor such as the A10. There is no

¹² Paragraph 009 Reference ID 30-009-20140306

reason to conclude that Buntingford should be excluded from this threshold by virtue of the size of the town or its rural location. The Council's arguments in that regard are unconvincing. The indicative layout demonstrates that acceptable noise levels can be achieved within external amenity areas for all of the proposed dwellings with the building envelope providing screening from adjacent noise sources.

151. Subject to the imposition of a condition to ensure that satisfactory internal and external noise levels are achieved, as put forward within the SCG, the proposal would provide satisfactory living conditions for future occupants, in compliance with saved policies ENV1 and ENV25 of the Local Plan, advice within the Practice Guidance, and the requirements of paragraphs 109 and 123 of the Framework.

Main Issue iv) Having regard to the absence of a five-year supply of deliverable housing sites, and the presumption in favour of sustainable development at paragraph 14 of the National Planning Policy Framework, whether any adverse impacts of granting planning permission would significantly and demonstrably outweigh the benefits, when assessed against the policies of the Framework taken as a whole.

152. The Council cannot demonstrate a five-year supply of deliverable housing land and, as such, the presumption in favour of sustainable development, as set out at paragraph 14 of the Framework, is applicable. For decision taking, that means that planning permission should be granted unless the adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the Framework, taken as a whole.
153. The Framework aims to boost significantly the supply of housing and deliver a wide choice of quality homes to meet the needs of different groups in the community. In this context, and considering the shortfall in the five year supply, I attach significant weight to the benefits of additional housing proposed. In terms of the three-stranded definition of sustainable development at paragraph 7 of the Framework, these benefits would be economic and social. Economic benefits would be through investment and jobs in the construction phase and through the on-going boost to local shops and services from the spending power of additional residents. Meeting housing needs is a key element of the social element of sustainable development.
154. Reference has been made to a number of other residential developments within Buntingford, including those that have been granted on appeal. However, no cumulative impacts have been identified that would lead me to conclude that the proposal before me is unacceptable, in light of previous permissions. In particular, the education authority is satisfied that additional demand on childcare and nursery provision and primary and secondary education can be accommodated subject to proportionate financial contributions. The completed UU provide contributions in this regard, in line with those requested by the County Council. No evidence has been presented from the healthcare authorities to suggest that the proposal would have a harmful effect on the capacity of those services.
155. The site is located within easy reach of the education, employment, retail and leisure facilities within the town. The Officer Report to planning committee also

noted that buses run from London Road providing regular services to nearby towns. However, as noted by the Inspector in the Hare Street appeals¹³ the level of employment within the town is not sufficient to sustain the local working population and many residents commute elsewhere to work. No specific evidence in this regard was presented in relation to the appeal before me but I have no reason to conclude that commuting patterns would be substantially different.

156. It is likely that a number of residents would commute to work by car, contrary to the environmental aims of sustainable development which seeks to move towards a low carbon economy. This factor weighs against the proposal but the weight I attribute to it is moderated by the proximity of shops and services within the town itself and the short distances required to travel to those facilities.
157. The SCG acknowledges that the landscape and visual impact of the proposal would be acceptable and that there would be no adverse effects on flood risk, biodiversity or with regard to contaminated land. Based upon the technical supporting evidence that accompanied the application I find no reason to disagree with these conclusions. In particular the proposal would be contained by the A10 and is set against the backdrop of existing housing. In visual terms it would relate to the existing development of Buntingford and would not cause harm to the character or setting of Aspenden.
158. It is a statutory requirement to pay special regard to the effect of the proposal on the setting of Aspenden Bridge, a grade II listed structure. Protecting the historic environment also forms an integral part of the environmental role of sustainable development. The area adjacent to the bridge would be retained as open space, with the hedgerows and topography adjacent to the river remaining largely intact. Works to the highway further to the north to widen the carriageway would not result in a significant visual change in the approach to the structure and would be supported by additional landscaping on the highway verge. It is common ground that the proposal would preserve the setting of the listed structure and, for the reasons given, I concur with that conclusion.
159. Therefore, as set out, the proposal would result in economic and social benefits stemming from the provision of new housing. The benefits in this regard would be significant. The effect on local services could be adequately mitigated through the provisions of the UU. If the SoS agrees with my conclusions on that point, a dated and completed UU would need to be submitted to ensure that the necessary mitigation was achieved. Those services would be readily accessible to future residents. Consequently, no harmful social effects have been identified. In environmental terms, subject to the mitigation measures, which could be secured by conditions, no significant harm would arise in terms of noise, highway safety, flood risk, visual impact or the effect on designated heritage assets. Travel to work patterns would be likely to involve out-commuting, with use of the private car, a factor that weighs against the proposal. For the reasons given, I attach moderate weight to this harm.
160. Taken in the round, based on the three-stranded definition of sustainable development within the Framework, I conclude that the proposal would amount to sustainable development. In relation to paragraph 14 of the Framework, no

¹³ APP/J1915/A/13/2205581, APP/J1915/A/13/2205582 and APP/J1915/A/13/2199777

adverse impacts have been identified that would significantly and demonstrably outweigh the benefits of granting planning permission, when assessed against the Framework taken as a whole.

Conclusion

161. Subject to the mitigation measures put forward with the application suitable access to the site would be available for all road users. The level of additional traffic generated by the proposal would be modest and would not result in a significant change to the character of Aspenden Road or the local environment. Satisfactory living conditions would be provided for future residents, subject to necessary mitigation.
162. Based on the three-stranded definition within the Framework the proposal would constitute sustainable development. No adverse impacts have been identified that would significantly and demonstrably outweigh the benefits of granting planning permission for the delivery of housing to meet local needs.

INSPECTOR'S RECOMMENDATIONS

163. In view of the above, I recommend that the appeal should be allowed and planning permission granted subject to conditions.

Chris Preston

INSPECTOR

APPENDIX A: APPEARANCES

FOR THE APPELLANT:

Mr Neil Osborn BA (Hons) MRTPI	DLP Planning Ltd.
Mr Andrew Colthurst MIOA CMCIEH	WSP Acoustics
Mr Padgett Fulcher	URS

FOR THE LOCAL PLANNING AUTHORITY:

Ms Hazel Izod	Principal Planning Officer
Mr James Chequer	JMP Consultants
Mr Steve Wilson	Environmental Health Officer

INTERESTED PERSONS:

Mr M Cocker	Local resident
Mr P Spears	Chair, Aspenden Parish Council
Cllr J Ranger	District Councillor
Mr G Bonner	Mayor
Mr G Waite	Local resident

APPENDIX B: HEARING DOCUMENTS

Submitted at the Hearing

- 1 Drawing number PP/2900/WATTSDOWN/2011/2/F1, with extent of adopted highway super-imposed.
- 2 Unreferenced plan showing daytime noise modelling results

Post Hearing Correspondence

- 3 Letter from Mr Neil Osborn (DLP Planning) to Mr Peter Kozak (Planning Inspectorate), dated 22 June 2015, regarding the unilateral undertaking
- 4 Letter from Alexandra Stevens (Hertfordshire County Council) to Mr P Kozak (Planning Inspectorate), dated 16 June 2015, regarding the unilateral undertaking
- 5 E-mail from Hazel Izod (East Hertfordshire District Council) to Mr Kozak (Planning Inspectorate), dated 18 June, regarding the unilateral undertaking
- 6 Letter from Mr Neil Osborn to Mr Peter Kozak, dated 09 October 2015, regarding the amended unilateral undertaking, including attached e-mail correspondence between the appellant, Hertfordshire County Council and east Hertfordshire District Council

The Unilateral Undertakings

- 7 Undertaking, dated 19 January 2015, handed to the Inspector at the Hearing
- 8 Undated undertaking, submitted to the Planning Inspectorate on 09 October 2015

APPENDIX C: List of Suggested Conditions

- 1) Details of the appearance, landscaping, layout, and scale, (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development begins and the development shall be carried out as approved.
- 2) Application for approval of the reserved matters shall be made to the local planning authority not later than three years from the date of this permission.
- 3) The development hereby permitted shall begin not later than two years from the date of approval of the last of the reserved matters to be approved.
- 4) The development hereby permitted shall be carried out in accordance with the following approved plans: 100 revA, 101 rev A, 104 rev C, 3260-D-1, 3260-D-2, G402 rev B, 46381022/1/001 rev C, PP/2900/WATTSDOWN/2011/1/F2 and P/2900/WATTSDOWN/2011/2/F2.
- 5) No development shall take place within the proposed development site until a programme of archaeological work has been implemented in accordance with a written scheme of investigation which has been submitted to and approved in writing by the local planning authority.
- 6) Prior to the commencement of development, a detailed surface water drainage scheme shall be submitted to and agreed in writing by the Local Planning Authority and the approved scheme shall be implemented prior to first occupation of the development. The scheme shall be based on the submitted Flood Risk Assessment (Jubb Consulting Engineers report no. P9633/G201/D May 2013) and shall include a restriction in run-off rate and surface water storage as outlined.
- 7) The development hereby permitted shall not begin until a scheme to deal with contamination of land and/or groundwater has been submitted to and approved in writing by the Local Planning Authority. Thereafter, the measures approved in that scheme shall be fully implemented prior to the occupation of any dwelling. The scheme shall include all of the following:
 - i) A site investigation scheme, based on the Desk Study and Ground Investigation Report (GEA, May 2013) shall be carried out to provide information for a detailed assessment of the risk to all receptors that may be affected, including those offsite.
 - ii) The results of the site investigation and detailed risk assessment referred to in (i) and, based on these, an options appraisal and remediation strategy giving full details of the remediation measures required and how they are to be undertaken.
 - iii) A verification plan providing details of the data that will be collected in order to demonstrate that the works set out in the remediation strategy in (ii) are complete and identifying any requirements for longer-term monitoring of pollutant linkages, maintenance and arrangements for contingency action.
- 8) No infiltration of surface water drainage into the ground, or the use of piling or any other foundation design using penetrative methods shall be permitted other than with the express written consent of the Local Planning

Authority, which may be given for those parts of the site where it has been demonstrated that there is no resultant unacceptable risk to groundwater. The development shall be carried out in accordance with the approved details.

- 9) Before first occupation of the approved development all access and junction arrangements serving the development shall be completed in accordance with drawing number 46381022/1/001 rev C. The access arrangements shall be constructed to a specification that shall first be submitted to and approved in writing by the Local Planning Authority.
- 10) Prior to the commencement of development, other than work involved in the formation of the site access and widening of Aspenden Road, Aspenden Road shall be widened to 5.5m kerbed carriageway on either side of the site access in accordance with drawing number 46381022/1/001 rev C.
- 11) The plans and particulars submitted in accordance with the condition 1 (details of reserved matters) above shall include a plan showing the location of all existing trees and hedgerows on the site which are to be retained, together with a detailed arboricultural method statement and tree protection plan, specifying the measures that will be taken to protect the retained trees and hedgerows during the course of construction. No development shall commence until the arboricultural method statement and tree protection plan has been approved in writing by the Local Planning Authority. Thereafter, the development shall be carried out in accordance with the details so approved.
- 12) No development shall take place, including any works of demolition, until a Construction Method Statement has been submitted to, and approved in writing by, the local planning authority. The approved Statement shall be adhered to throughout the construction period. The Statement shall provide for:
 - i) the parking of vehicles of site operatives and visitors
 - ii) loading and unloading of plant and materials
 - iii) storage of plant and materials used in constructing the development
 - iv) wheel washing facilities
 - v) measures to control the emission of dust and dirt during construction
- 13) In connection with site demolition, site preparation and construction works, no plant or machinery shall be operated on the site before 0730 hours or after 1830 hours, Monday to Friday, before 0730 hours or after 1300 hours on Saturday, and at no time on Sundays or bank holidays.
- 14) Prior to the commencement of development an updated badger survey shall be undertaken by a suitably qualified ecologist and a report submitted to and approved in writing by the Local Planning Authority. The report shall include a Method Statement to minimise the risk to badgers during development, and appropriate mitigation measures. The development shall be carried out in accordance with the approved report.
- 15) The development shall be carried out in accordance with the recommendations of the submitted Phase 1 Habitat Survey, Otter and Vole Survey, Reptile Survey, Bird Survey, and Bat Activity Survey.

- 16) Any submission pursuant to condition 1 (details of reserved matters) shall be accompanied by a mitigation scheme for protecting the proposed dwellings from noise. The scheme shall provide details of the construction of the proposed dwellings (including glazing, trickle and mechanical ventilation); the layout of the proposed dwellings; and the location, height and design of any attenuation barriers to be provided. The scheme shall ensure that the development complies with the following standards:
- i) A maximum of 55dB LAeq, 16hr 0700-2300 within all rear garden areas;
 - ii) A maximum of 35dB LAeq, 16hr 0700-2300 within all indoor living areas with windows shut;
 - iii) A maximum of 40dB LAeq, 16hr 0700-2300 within all indoor dining rooms with windows shut;
 - iv) A maximum of 30dB LAeq, 16hr 0700-2300 within all bedrooms with windows shut; and
 - v) A typical maximum of 45dB LAfmax 0700-2300 within all bedrooms with windows shut.
- No development shall commence until the mitigation scheme has been approved in writing by the Local Planning Authority. Thereafter, the development shall be implemented in accordance with the approved details prior to the occupation of any relevant dwelling.
- 17) A Green Travel Plan Statement, with the object of reducing travel to and from the development by private car, shall be submitted with the submission of any subsequent Reserved Matters application for approval by the Local Planning Authority. The Green Travel Plan Statement shall include a timetable for the implementation of any measures within it. Thereafter, no development shall commence until the Green Travel Plan Statement has been approved in writing by the Local Planning Authority and the approved measures shall be implemented in accordance with the agreed timetable.

Costs Report to the Secretary of State for Communities and Local Government

by Chris Preston BA (Hons) BPI MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Date: 20 November 2015

TOWN AND COUNTRY PLANNING ACT 1990 EAST HERTFORDSHIRE DISTRICT COUNCIL APPLICATION BY MR MIKE MOULT (WATTSDOWN LTD)

Hearing held on 21 January 2015

Land to east of Aspenden Road, Buntingford, Hertfordshire SG9 9PB

File Ref(s): APP/J1915/A/2224660

File Ref: APP/J1915/A/2224660

Land to east of Aspenden Road, Buntingford, Hertfordshire SG9 9PB

- The application is made under the Town and Country Planning Act 1990, sections 78 and 322, and the Local Government Act 1972, section 250(5).
- The application is made by Mr Mike Moulton (Wattsdown Ltd) for a full award of costs against East Hertfordshire District Council.
- The hearing was in connection with an appeal against the refusal of planning permission for residential development (up to 56 dwellings) and open space, including vehicular/ cycle/ pedestrian access to Aspenden Road, alterations to levels, footpath/ cycleway, landscaping and related works.

Summary of Recommendation: That the application for an award of costs be refused.

The Submissions for Mr Mike Moulton (Wattsdown Ltd)

1. The applicant seeks a full award of costs. The application was submitted in writing and the written submission is appended to this report. Consequently, the following is a summary of the applicant's submission.
2. The application is made with reference to the terms of paragraphs 028, 046 and 049 of the Planning Practice Guidance (the Practice Guidance)¹. Paragraph 028 states that the aim of the costs regime is to encourage all those involved in the appeal process to behave in a reasonable way and follow good practice, both in terms of timeliness and the presentation of full and detailed evidence to support their case. Local planning authorities are also expected to rely on reasons for refusal that stand up to scrutiny on the planning merits of the case and not to add to development costs through unavoidable delay.
3. Paragraph 049 identifies a number of examples of unreasonable behaviour on substantive grounds and paragraph 046 confirms that this list is not exhaustive. Three examples of unreasonable behaviour from the list in paragraph 049 are cited; that the Council has prevented or delayed development which should clearly have been permitted having regard to the development plan, national policy and other material considerations; that they relied upon vague, generalised or inaccurate assertions that were unsupported by objective analysis; and that they failed to determine similar cases in a consistent manner.
4. In particular, the Council failed to demonstrate to any substantive effect that there would be any severe cumulative highway impacts that would outweigh the presumption in favour of sustainable development. In line with the professional advisors of the Council, highway matters could have been addressed through appropriate conditions, as recommended by paragraph 203 of the National Planning Policy Framework (the Framework). The decision to refuse rather than grant with suitable conditions amounted to unreasonable behaviour that has unnecessarily put the appellant to expense and given rise to delay.
5. Moreover, the Council has not taken account of technical advice from its Environmental Health Officers who have been consistent in recommending approval subject to appropriate conditions. The applicant has demonstrated his willingness to reconsider the illustrative scheme to demonstrate that all

¹ Reference ID: 16-028-20140306, 16-046-20140306, and 16-049-20140306

reasonable objections on grounds of noise can be overcome. The applicant has taken it upon himself to carry out survey and analytical work, the results of which the Council has not contested. Had the Council considered that such work was necessary it would have been reasonable for them to seek such information prior to determination. Only on receipt of the Council's evidence has the appellant fully understood what is in dispute.

6. In respect of noise, the Council has not been consistent in its approach, having previously approved a development in the village of High Cross, adjacent to the A10, on the basis of a scheme of mechanical ventilation to secure adequate internal noise levels. The Council must take responsibility for its decision to refuse the application on grounds that barely 2 months ago the planning committee found acceptable.
7. The Council has delayed development which is desperately needed in order to ameliorate the woeful shortfall in housing land supply and the acknowledged benefits of the provision of affordable homes. The Council agree that the principle of development is acceptable. All reasonable consideration of the balance of material considerations should have led members to have concluded that permission should have been granted, thereby avoiding the need for and cost of the Hearing.

The Response by East Hertfordshire District Council

8. The Council's response was submitted in writing and that submission is appended to this report. Consequently, the following is a summary of the response.
9. The Council resists the application for a full award of costs. Officer and consultees are there to provide advice but members need not slavishly adhere to that advice providing they have a reasonable basis for not doing so. That principle has been established through the High Court². Members were entitled to take a cautious approach to the development given their local knowledge about the condition and usage of Aspenden Road and their assessment of what would be an appropriate quality of life for future residents in respect of noise mitigation. Although there was no objection from the Local Highway Authority or Environmental Health elected members used their local knowledge and that of local residents to take an informed view which was set out in clear and concise reasons for refusal.
10. Noise is a subjective topic and consideration of the appropriateness of mitigation measures depends on location. Members did not act unreasonably in applying caution to the development of a site close to a busy road. The site referred to in High Cross is an entirely different site with different noise sources and problems. Issues regarding that site are on-going and the noise conditions are yet to be discharged. Members carefully considered the proposal and deferred the application prior to the point of refusal to enable further noise work to be carried out and to allow for further discussions.
11. A transport consultancy was appointed by the Council and they carried out their own analysis, identifying a number of constraints and safety issues that the Council feel cannot be satisfactorily resolved through conditions or other

² R (on the application of Tesco Stores Ltd) v Forest of Dean District Council [2014] EWHC 3348 Admin – as set out at paragraph 1. of the Council's costs response.

mitigation measures. Transport consultants and Environmental Health were present at the Hearing to provide evidence in respect of the Council's position.

12. Overall, the Council has behaved reasonably throughout the course of the application and members were entitled to take their own view based on the information available to them. Thus, the Council has not acted unreasonably and is not responsible for any wasted expense. It is therefore respectfully requested that the application for costs is dismissed.

Conclusions

13. The Practice Guidance advises that costs may only be awarded against a party who behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal proceedings.
14. The application was refused by members of the Council's planning committee, contrary to the advice of their officers. Two reasons for refusal were set out within the decision notice, one relating to highway matters and the other regarding the impact of traffic noise from the A10 and the consequential effect upon the living conditions of future residents of the proposed dwellings. With regard to highway matters, Hertfordshire County Council, the local highway authority, had raised no objections to the proposal subject to mitigation through conditions and the planning obligation. Similarly, the Council's Environmental Health Officer did not object to the proposal subject to a number of suggested conditions.
15. Notwithstanding the above, elected members are entitled to disagree with recommendations put to them by their officers, providing that they have a reasonable basis for doing so. Paragraph 049³ of the PPG sets out a non-exhaustive list of examples of when an award of costs may be justified against local planning authorities on substantive grounds. These examples include a failure to produce evidence to properly substantiate each reason for refusal; reliance upon vague, generalised or inaccurate assertions about a proposal's impact that are unsupported by objective analysis; and a failure to determine similar proposals in a like manner.
16. With regard to highway matters Aspenden Road is of variable width, narrowing to a pinch-point on a bend a short distance from the proposed entrance to the appeal site. At that point, it is difficult for two cars to pass side by side and the width of the carriageway is not sufficient for a car and HGV to pass one another. Forward visibility on the bend is such that it is not possible to see whether a car is travelling in the opposite direction before one progresses to the narrowest section of the carriageway, increasing the possibility that two vehicles will meet at the narrowest section, leading to a need to reverse to a wider point in the road or, as commonly happens be evidence on the ground, over-running onto the unmade bank at the side of the road.
17. Anecdotal evidence also suggests that HGVs occasionally mount the pavement to avoid traffic passing in the opposite direction. The pavement itself is also narrow as it traverses the bend in the road and unlit through this section. Consequently, the existing situation on the highway is not ideal and members would be well

³ Reference ID: 16-049-20140306

aware of this through representations made from interested parties and no doubt through local knowledge. It is not possible, within the land controlled by the applicant, to resolve all of the existing deficiencies in the width and alignment of Aspenden Road or the adjacent pavement. The pinch point would remain, albeit that the mitigation put forward by the applicant would widen the carriageway as it passes the site, and thereby reduce the length of carriageway that is of substandard width.

18. In essence, consideration of those matters requires a judgement as to whether the mitigation proposed would be sufficient to provide a safe access to and from the site and to off-set the impact of additional traffic using the sub-standard section of Aspenden Road. My conclusion was that the mitigation was sufficient to achieve those aims but that conclusion was finely balanced and required an assessment of a complex range of factors including the likely trip generation from the development, existing levels of traffic using the road and the suitability of proposed mitigation. The highway conditions on Aspenden Road following the completion of the development would remain less than ideal but my assessment was that the net effect of the proposed development would not worsen the existing situation to a degree that would warrant the refusal of planning permission.
19. Given the complexity of this issue, the strong level of local representation regarding the conditions on the highway, and the finely balanced nature of the matter it was not, in my view, unreasonable for the elected members of the Council to reach a different conclusion, notwithstanding the professional advice of their officers and those of the local highway authority.
20. Noise from the A10 is clearly audible across the site. The various noise surveys that have been undertaken demonstrate that the effect of that noise on living conditions of future occupiers would be unacceptable in the absence of suitable mitigation. The Council did not dispute the accuracy of the noise modelling provided by the appellant and the issues in dispute were essentially narrowed down to two issues; whether the reliance upon mechanical ventilation for some properties would provide an acceptable internal environment; and whether the predicted levels of garden noise would result in satisfactory living conditions.
21. With regard to the effect on living conditions as a result of mechanical ventilation I concur with the view of the Council that this is a matter of planning judgement with a degree of subjectivity. The Council accepted that satisfactory internal noise levels could be achieved but were concerned about the effect of requiring windows to remain closed in order to achieve appropriate internal noise levels. For the reasons set out in my associated report on the planning appeal I recommended that the likely need for mechanical ventilation on certain properties did not warrant planning permission being withheld.
22. However, that was a finely balanced recommendation, taking account of the fact that the likely number of dwellings that would rely on mechanical ventilation would be limited; that rear windows (facing away from the A10) could be open at most times whilst still achieving satisfactory noise levels; and taking account of the variation in noise levels from the A10 at different times of day.
23. I was also able to make that recommendation in the light of detailed noise monitoring that was submitted by the appellant in relation to the appeal – information that was not available to members of the planning committee at the

time they made their decision. In fact, the appellant submitted a revised indicative layout with the appeal reducing the number of proposed dwellings within close proximity to the A10 and re-orientating the proposed layout. To my mind, the fact that the appellant felt the need to introduce such changes is indicative that the proposed mitigation in relation to noise was not a straightforward matter. The Council could have requested further information regarding noise prior to determining the application but they were under no obligation to do so. In my view, it was reasonable for them to take a decision based on the information presented by the applicant and I note that consideration of the application had been deferred at a previous committee to allow further information to be sought. Consequently, the evidence in that regard points to the fact that members of the committee gave careful consideration of the likely noise impact.

24. In terms of garden noise both parties referred to BS8233:2014 *Guidance on sound insulation and noise reduction for buildings*. That guidance states that it is desirable that noise levels within gardens do not exceed 50 dB $L_{Aeq, T}$ with an upper guideline of 55 dB $L_{Aeq, T}$ which would be acceptable for noisier environments. No guidance was produced by either party as to what should be considered to constitute a 'noisier environment'. The modelling showed that a number of gardens on the indicative layout would be subjected to noise levels above the 50 dB $L_{Aeq, T}$ range but all would be below 55 dB. Clearly, for a number of properties, particularly those closest to the A10 the level of garden noise would be at the upper end of what is considered desirable in the relevant British Standard.
25. Thus, in the context within which the site is located I consider that it was reasonable for members of the planning committee to exercise their planning judgement as to the likely impact of the proposal on the living conditions of future occupiers and that they were not bound to accept recommendations of their Environmental Health Officer. Based upon the information that was available at the time the Council made its decision, it was clear that road noise was a significant issue. The refusal on those grounds was fully explained and set out in the Council's statement with reference to relevant policies and standards. The Council did not rely on vague or generalised statements and I am satisfied that their decision was not unreasonable in that regard.
26. The applicant has referred to another site where the Council had approved residential development subject to a condition regarding mechanical ventilation. Insufficient information was provided to the Hearing to allow me to determine whether the circumstances of that case are directly comparable to those at the appeal site. Each site will have individual characteristics in terms of noise levels and the nature of the surrounding area. The information before me does not demonstrate that the Council has behaved unreasonably as a result of inconsistency or a failure to determine similar cases in a like manner.
27. Consequently, in my view, the Council did not behave unreasonably in its approach to the consideration of highway matters or noise, notwithstanding that I reached a different conclusion on the merits of those matters. The Council's conclusions on those matters clearly had bearing on the way in which they assessed the overall planning balance. It was not unreasonable, in my view, for the Council to conclude that the harm they considered would arise from highway and noise related matters would outweigh the benefits of the proposal, including

the increase in the supply of housing. That was a matter of planning judgement. The Council's statement adequately explained how they had conducted that balance in the context of paragraph 14 of the Framework.

28. Taking account of the above, consideration of the proposal required a number of finely balanced judgements on the relevant planning issues. The reasons for refusal were properly substantiated and the Council's actions did not prevent or delay an application that should *clearly* (my emphasis) have been permitted having regard to the development plan and other material considerations. With regard to advice within the Practice Guidance I consider that their actions were not unreasonable.

29. In the absence of any unreasonable behaviour, an award of costs would not be justified, as set out in the PPG.

Recommendation

30. I recommend that the application for an award of costs be refused.

Chris Preston

INSPECTOR

Appeal Decision

Site visit made on 21 April 2016

by **P Eggleton BSc(Hons) MRTPI**

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 25 May 2016

Appeal Ref: APP/J1915/W/15/3141574

Water Hall Quarry, Lower Hatfield Road, Hertford, Hertfordshire SG13 8LE

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Water Hall (England) Ltd against the decision of East Herts Council.
 - The application Ref 3/15/1967/FUL was refused by notice dated 20 November 2015.
 - The development proposed is the parking of a touring caravan within quarry premises for use by member of staff for provision of night time security for mobile plant and equipment.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are whether the proposal would amount to inappropriate development within the Green Belt; whether there would be any other harm to the Green Belt; and whether the harm by reason of inappropriateness and any other harm, would be clearly outweighed by other considerations, so as to amount to the very special circumstances necessary to justify the development.

Reasons

3. The proposal is for the siting of a caravan within this quarry which lies within the Green Belt. The caravan is already in place.

Inappropriateness and any other harm to the Green Belt

4. The appellant contends that the provision of a caravan, to provide overnight security for this quarry, is not inappropriate development as it represents an ancillary use to the main use of the land. Mineral extraction is specifically referred to in paragraph 90 of the *National Planning Policy Framework* as a form of development that is not inappropriate in the Green Belt.
 5. The use of a caravan for residential purposes, even by a staff member providing additional security, represents a change of use of the land. A change of use of this nature is not one of the forms of development listed in paragraph 90 of the *Framework*. Although offering security benefits to the main mineral extraction use of the site, it does not represent a mineral extraction use. The
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proposal would therefore represent inappropriate development in the Green Belt.

6. Policy GBC1 of the East Herts Local Plan Second Review 2007 (LP), although reflecting previous Green Belt guidance, includes similar requirements to the *Framework* with regard to this form of development. I therefore afford it considerable weight. It identifies a material change of use of land as being inappropriate. It advises that permission will not be given for inappropriate development unless very special circumstances can be demonstrated that clearly outweigh the harm by reason of inappropriateness and any other harm.
7. Although the caravan is located on surfaced land and is close to an existing building, it would nevertheless reduce openness. I accept however that given its position and size, it would result in only very limited harm to the openness of the Green Belt.

Other considerations

8. The appellant has identified that there are many items of machinery of considerable value on the site. There is also fuel stored and equipment kept within the workshop. There is therefore a need for security measures to prevent theft. A report of theft from a neighbouring business has been referred to. Although thefts from this site have not been reported, the appellant advises that this is because the overnight presence is already in place.
9. The *Framework* offers support for the rural economy and to businesses generally. The residential use of a caravan, by a member of staff, would help to support the operation of the business and would have other benefits with regard to sustainability. It is reported that the quarry has a limited life expectancy and as such, the caravan would only be required for a short period, which could be controlled by condition.
10. There are specific issues with regard to this site that makes security much more challenging. Footpaths and bridleways run through or adjacent to the site and the nearest residential property does not offer surveillance of the access. Although gates are in place that would prevent vehicle access when closed and secured, there is nothing to prevent public access from the paths within and adjacent to the site. This significantly limits how secure the site can be made.
11. The appellant has suggested that the alternative of providing a secure floodlit compound would be more harmful than the caravan. I agree with this view. However, given the security concerns and the value of the items within the quarry, it would appear that there may be other alternative arrangements that could be considered which may not represent inappropriate development. I have nothing within the submitted documents to suggest that alternative arrangements have been fully explored.
12. Security staff, employed to be on the site overnight, would offer better security protection than a resident and would not need residential accommodation. It would appear that there is potential within the existing buildings and structures to provide overnight office accommodation. This would result in an additional expense but it has not been demonstrated that this would be prohibitive.

13. Even if it was considered that a residential presence was essential, it has not been demonstrated that such a use could not reasonably take place within an existing building or part of a building. The re-use of a building is a form of development that is not inappropriate in the Green Belt providing that it satisfies the other requirements of paragraph 90 of the *Framework*.

Conclusions

14. The *Framework* is clear that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. This proposal represents inappropriate development. The *Framework* is clear that substantial weight should be given to any harm to the Green Belt. I accept that the proposal would only result in very limited harm to the openness of the Green Belt.
15. The need for security and the benefits to the business, particularly given the access arrangements in and around the site, are considerations that provide considerable weight in favour of the proposal. However, on the basis of the evidence provided, I am not satisfied that other approaches to security have been fully considered. In these circumstances, I am not satisfied that the considerations in favour of the proposal would clearly outweigh the harm from inappropriateness.
16. As very special circumstances only exist if the potential harm to the Green Belt, by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations, I must conclude that very special circumstances do not exist. I therefore find conflict with LP Policy GBC1.
17. The *Framework* indicates that developments should be approved unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against its policies as a whole; or if specific policies indicate that development should be restricted. Overall, the harm from inappropriateness would outweigh the benefits when the policies of the *Framework* are considered as a whole; and I also find that the specific policies relating to the Green Belt, indicate that the development should be restricted. I therefore dismiss the appeal.

Peter Eggleton

INSPECTOR

Appeal Decision

Site visit made on 4 May 2016

by Jason Whitfield BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 07 June 2016

Appeal Ref: APP/J1915/W/16/3142833

Gregorys Farm, Dane End, Hertfordshire SG12 0PH

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr Michael Smyth against the decision of East Hertfordshire District Council.
 - The application Ref 3/15/2046/FUL, dated 8 October 2015, was refused by notice dated 18 December 2015.
 - The development proposed is conversion of buildings from ancillary to residential.
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Decision

1. The appeal is dismissed.

Application for Costs

2. An application for costs was made by Mr Michael Smyth against East Hertfordshire District Council. This application is the subject of a separate Decision.

Procedural Matter

3. It is apparent from the evidence submitted, and from my own observations, that operational development to facilitate the occupation of the buildings for residential use has been carried out. The parties indicate, however, that the proposed residential use has not commenced. I have therefore dealt with the appeal on that basis.

Main Issue

4. Whether the proposal would lead to isolated new dwellings in the countryside, contrary to the principles of sustainable development.

Reasons

5. The appeal site comprises two barns located adjacent to the Grade II listed Gregorys Farmhouse within the open countryside and outside of the Green Belt. The two barns stand at right angles to one another within a courtyard which includes a third barn which has historical origins and is curtilage listed with the farmhouse. The Council have recently granted consent for the residential conversion of the curtilage listed barn on the basis that securing the future of the heritage asset would outweigh the harm arising from the isolated location of the farmstead. The two barns subject to this appeal are not curtilage listed.

6. Policy GBC9 (II) of the LP states that permission will only be granted for the residential conversion of rural buildings where, inter alia, the building is worthy of retention and the introduction of a residential use would not detract from the character and appearance of the area; and, the retention of the building is unable to be facilitated by conversion to business, leisure, tourism, community use or other purposes compatible with the rural area.
7. It is common ground between the parties that the proposal would accord with the first criteria of Policy GBC9 (II) set out above. On the evidence before me, I have no reason to come to an alternative view and agree that the proposal would not detract from the character and appearance of the area.
8. Turning to the second criteria of Policy GBC9 (II) set out above, the Council consider that it has not been adequately demonstrated that the buildings could not be secured by another use in line with the policy. The appellant indicates that the location of the site is not suitable for business uses. However, I have no substantive evidence to support this view, nor any evidence to demonstrate that the building is not suitable for conversion to leisure, tourism, community or other rural uses.
9. The appellant considers that the sequential approach for business uses within Policy GBC9 (II) is in itself in direct conflict with Policy TR20 of the LP which advises against development which would cause damage to rural roads. However, it need not follow that sequentially preferable business uses under Policy GBC9 (II) would necessarily use heavy goods vehicles. Moreover, the policy allows for measures to mitigate against such impacts where possible. I cannot agree, therefore, that there would be a fundamental conflict between the two policies in this instance.
10. As a result, I consider that it has not been adequately demonstrated that the retention of the buildings could not be facilitated by other uses appropriate to the rural area. Nevertheless, I agree with the appellant that the approach in Policy GBC9 (II) is not one which is taken as prescriptively within the National Planning Policy Framework (the Framework). This therefore limits the weight to which I can afford it.
11. Turning then to the Framework, Paragraph 55 states that new isolated homes in the countryside should be avoided unless there are special circumstances. Those circumstances include where the development would re-use redundant or disused buildings and lead to an enhancement of the immediate setting.
12. The appeal site is accessed via a long, narrow farm track via a junction from Mill Lane which is in itself a narrow, country lane. The appellant indicates that the appeal site is around 16 minutes walk to the nearest bus stop and 2.8 miles to Watton-at-Stone train station. However, in order to reach the nearest bus stops and the train station, occupiers of the appeal site would be required to negotiate narrow and unlit country roads for a considerable period. The risks associated with doing so, particularly during dark evenings or inclement weather, render it unlikely that future occupiers would be receptive to using public transport. Indeed, it is an unreasonable expectation to place upon them. This lack of convenient and effect access to public transport, either by walking or cycling, would likely be a deterrent to its use. As a result, future occupiers would be reliant on private car to access the essential services and facilities required for day-to-day living and I consider the appeal site would therefore be isolated.

13. Whilst the properties are currently vacant, I have no evidence to suggest they are necessarily redundant or disused. The buildings are in good condition and I see no reason why they could not reasonably function as ancillary accommodation. Moreover, no external alterations are proposed as the works to facilitate residential habitation have already been carried out. Furthermore, I have no evidence to demonstrate that the proposal would lead to an enhancement of the immediate setting. Consequently, special circumstances, as set out in Paragraph 55 of the Framework, have not been demonstrated.
14. I conclude, therefore, that the proposal would lead to isolated new dwellings in the countryside, contrary to the principles of sustainable development. The proposal would conflict with Policy GBC9 (II) of the LP and fail to accord with Paragraph 55 of the Framework.
15. The Council's reason for refusal refers to Policy SD1 of the LP¹. Policy SD1, however, requires developments of 15 dwellings or more to provide a sustainability statement and is therefore not relevant in this instance.

Other Matters

16. Paragraph 49 of the National Planning Policy Framework (the Framework) states that where the Council cannot demonstrate a five-year supply of deliverable housing land, relevant policies for the supply of housing, such as Policy GBC9 (II), should not be considered up-to-date. The appellant indicates that the Council cannot demonstrate a five year supply, though has provided no evidence to support this view. Nevertheless, this is not disputed by the Council.
17. Paragraph 14 of the Framework sets out the presumption in favour of sustainable development as where relevant development plan policies are out of date, decision-makers should grant permission unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against the Framework taken as a whole. Whilst this does not change the statutory function of the development plan, the Framework is an important consideration.
18. The proposal would make a contribution towards the housing land supply within the District. That contribution would, however, be relatively modest, providing only two additional homes. Moreover, I have no evidence which sets out the extent of the existing under supply of housing within the District. I can therefore afford the benefits to housing supply only moderate weight.
19. The Council have raised no concerns with respect to the effect of the proposal on the historic environment. On the basis of the evidence before me, I agree that the proposal would not have a harmful effect upon the setting of the Grade II Listed Gregorys Farmhouse.
20. I have had regard to the examples of other barn conversions permitted in the area provided by the appellant. However, I have only limited details of those schemes so cannot be sure they are directly comparable to this appeal. In any case, I have dealt with this appeal on its own merits. I can, therefore, afford this matter no more than limited weight.

¹ East Herts Local Plan Second Review 2007

Conclusions

21. The proposal would lead to isolated new dwellings in the countryside, contrary to the development plan for the area, the principles of sustainable development and in conflict with Paragraph 55 of the Framework.
22. In terms of benefits, the proposed development would make a contribution towards addressing the undersupply of housing in the District. That contribution would, however, be relatively modest. I note the proposal would not be harmful to the character and appearance of the area, the setting of a listed building or highway safety. The lack of harm in respect of those matters is, however, not in itself sufficient to outweigh the harm identified.
23. I conclude, therefore, that the adverse impacts of the proposal would significantly and demonstrably outweigh the benefits. For the reasons given above, and having considered all other matters raised, I conclude that the appeal should be dismissed.

Jason Whitfield

INSPECTOR

Appeal Decision

Site visit made on 3 May 2016

by Tom Gilbert-Wooldridge BA (Hons) MTP MRTPI IHBC

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 6 June 2016

Appeal Ref: APP/J1915/W/15/3140702

Greenacres, Ware Road, Widford, Hertfordshire SG12 8RL

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr Stewart May against the decision of East Hertfordshire District Council.
 - The application Ref 3/15/2055/FUL, dated 12 October 2015, was refused by notice dated 4 December 2015.
 - The development proposed is the erection of 2 No. 3 bedroomed dwellings with garages and access from Ware Road.
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Decision

1. The appeal is allowed and planning permission is granted for the erection of 2 No. 3 bedroomed dwellings with garages with access from Ware Road at Greenacres, Ware Road, Widford, Hertfordshire SG12 8RL in accordance with the terms of the application, Ref 3/15/2055/FUL, dated 12 October 2015, subject to the conditions set out in the schedule at the end of this decision.

Procedural Matters

2. The name of the appellant differs from the name of the applicant, but it is clear from correspondence submitted with the appeal that it is proceeding in the name of Mr Stewart May.
3. The description of the proposal development on the original application form lacked clarity and so I have used the description from the appeal form, which also matches the description on the Council's decision notice.
4. In dealing with this appeal, I have had special regard to the desirability of preserving the setting of the listed buildings diagonally opposite the site.

Main Issues

5. The main issues are the effect of the proposed development on (a) the character and appearance of the surrounding area and (b) the significance of the adjoining conservation area and nearby listed buildings.

Reasons

Character and appearance

6. Widford is a small village surrounded by attractive undulating countryside. The appeal site is situated on the very edge of the village beyond the main built-up area and is set slightly above the road. It currently forms a spacious grassed
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garden area next to Greenacres bounded by established hedgerows on the sides and rear and a modest fence along the frontage. Despite the change in levels travelling past the site on Ware Road, it is not particularly conspicuous from any great distance along this road due existing landscaping and buildings.

7. The adjoining property of Greenacres is a modern and wide bungalow that appears somewhat incongruous and isolated on this side of Ware Road. On the opposite side there is a more established street scene of historic buildings and structures, including the parish church, some of which are greater in height than Greenacres. The overall character and appearance of this part of Ware Road is rural, green and spacious.
8. The proposed development has been amended from a previously refused planning application for two taller detached dwellings occupying a similar footprint. As shorter and somewhat wider chalet bungalows, the proposed development is not dissimilar from the scale and massing of Greenacres and attempts to resemble the design of a pair of rural cottages with sympathetic detailing and materials. They also appear to be fairly well-spaced in relation to each other and Greenacres, set back a similar distance from the road.
9. The proposed development would undoubtedly alter the street scene and character and appearance of the surrounding area with the introduction of two new dwellings within an open grassed site. However, they would not appear out of keeping or unduly prominent due to their relatively restricted scale and massing and their sympathetic design and spacing. The slight rise in levels from the road to the site would not overly accentuate their size, and they would not be particularly conspicuous. The approach into Widford would not be harmed and Greenacres would look less incongruous and isolated.
10. Concluding on this main issue, the proposed development would not harm the character and appearance of the surrounding area. Therefore, it would comply with Policy ENV1 of the Local Plan which, amongst other things, requires development to be of a high standard of design and layout and to reflect local distinctiveness, relating well to the massing and height of adjacent buildings and surrounding townscape. It would also accord with the aims of the NPPF, including paragraph 58 that development that responds to local character and reflect local surroundings and materials.

Conservation area and listed buildings

11. Widford Conservation Area is situated to the north and east of the appeal site, while two listed buildings (the Grade II* St John the Baptist Church and the Grade II The Old Rectory) are immediately to the north-west on the opposite site of Ware Road.
12. The significance of the conservation area can be derived from the rural character and appearance of the village, with a number of historic buildings alongside more recent development. The part of the conservation area adjoining the appeal site is characterised by the cluster of historic buildings around the church with views out to the countryside. It also forms an attractive approach into the village and conservation area from the west. The significance of the church and The Old Rectory derives much from their architectural interest as fine examples of buildings dating from the medieval period through to the Victorian era, as well as their historic interest. The

setting of this part of the conservation area and the two listed buildings is predominantly rural and contributes greatly to their significance.

13. I note that the Widford Conservation Area Appraisal and Management Plan (adopted October 2013) highlights that Greenacres and the boundary fencing and hedging enclosing the appeal site are out of keeping with the conservation area and listed buildings opposite. I consider that the appeal site itself makes a limited contribution to the significance of the conservation area and listed buildings. While it provides an open setting to these heritage assets, it is a rather plain and domestic space and not particularly rural or picturesque. Furthermore, there are no important views across the site towards these designated heritage assets and views from the heritage assets to the countryside are limited by the site's boundary treatments.
14. The setting of the conservation area and listed buildings would be altered by the proposed development with the loss of the site's current openness, but this openness is not critical to their significance. Furthermore, the new dwellings would not be unduly prominent or out of keeping because of their restricted size and sympathetic design. As such, the approach into the conservation area would remain attractive and the rural setting of the designated heritage assets would endure.
15. Concluding on this issue, the effect of development on the significance of the adjoining conservation area and listed buildings would not be harmful. Thus, the character and appearance of the conservation area and the setting of the listed buildings would be preserved. As a consequence, the proposed development would comply with Policy BH6 of the Local Plan as it would be sympathetic in terms of matters such as scale, siting and form and would not be to the detriment of important views or open spaces that contribute to the overall character and appearance of the conservation area. The proposed development would also comply with the aims of the NPPF to sustain the significance of designated heritage assets.

Other Matters

16. Consultees and third parties have raised issues relating to highway safety, contaminated land, ecology and the retention of the ditch and embankment along the front of the site, but none are substantial and in some cases could be addressed through appropriately worded conditions.

Conditions

17. Conditions setting a time limit for the commencement of development and for it to be carried out in accordance with the approved plans are necessary for clarity and compliance. Conditions concerning the materials and landscaping works to be used are necessary and relevant to ensure that the appearance of the development is satisfactory.
18. A condition regarding contamination is necessary and relevant given the concerns of the Council's environmental health officer and the previous agricultural use of the site, although I have amended the Council's suggested wording as there is no certainty of contamination until it has been investigated. Similarly a condition regarding highway access and parking is necessary and relevant given the concerns of the Highway Authority and the access onto a main road.

19. I have not included a condition regarding the potential use of piling foundations, as there is no evidence to support this condition and therefore would not be necessary to make the development acceptable. Similarly, I have not required details of ground levels and ridge heights as this information is sufficiently clear from the existing plans. A condition requiring the cleaning of construction vehicles seems unreasonable given that it is a small site that would not be likely to generate much debris or construction traffic or have the space to provide cleaning facilities. However, I agree that a condition relating to hours of construction is necessary and reasonable to safeguard the living conditions of occupiers of neighbouring properties.

Conclusion

20. The proposed development would not harm the character and appearance of the surrounding area or harm the significance of designated heritage assets. Having had regard to all matters raised, I therefore conclude that the appeal should be allowed.

Tom Gilbert-Wooldridge

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: P01d, P08a, P09a, P10b and P11b.
- 3) No development shall commence until details of the materials to be used in the construction of the external surfaces of the development have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
- 4) No development shall commence until full details of both hard and soft landscape works have been submitted to and approved in writing by the local planning authority. These details shall include (a) means of enclosure (b) hard surfacing materials (c) planting plans (d) written specifications (including cultivation and other operations associated with plant and grass establishment), (e) schedules of plants, noting species, plant sizes and proposed numbers/densities where appropriate and (f) implementation timetables. All hard and soft landscape works shall be carried out in accordance with the approved details. Any plant material removed, dying or becoming seriously damaged or diseased within 5 years of planting shall be replaced in the next planting season with others of similar size and species unless otherwise agreed in writing by the local planning authority.
- 5) No development shall commence until an assessment of the risks posed by any contamination, carried out in accordance with British Standard BS 10175:2011, shall have been submitted to and approved in writing by the

local planning authority. If any contamination is found, a report specifying the measures to be taken, including the timescale, to remediate the site to render it suitable for the approved development shall be submitted to and approved in writing by the local planning authority. If, during the course of development, any contamination is found which has not been previously identified, work shall be suspended and additional measures and timescales for its remediation shall be submitted to and approved in writing by the local planning authority. The site shall be remediated in accordance with all of the approved measures and timescales and a verification report shall be submitted to and approved in writing by the local planning authority prior to the first occupation of the development.

- 6) Prior to the first occupation of the development, the vehicular access, visibility splays, parking and turning areas shall be completed in accordance with the approved plans and constructed to the specifications of the highway authority. The visibility splays shall be on both sides of the access between a point 2.4 metres along the centre line of the access measured from the edge of the carriageway and a point 66 metres along the edge of the carriageway measured from the intersection of the centre line of the access. The area contained within the visibility splays shall be kept free of obstruction between 0.6-2.0 metres in height above the nearside channel level of the carriageway.
- 7) Demolition or construction works shall only take place between 07:30 and 18:30 hours on Mondays to Fridays and between 07:30 and 13:00 hours on Saturdays, and not at any time on Sundays or on bank or public holidays.

Appeal Decision

Site visit made on 4 May 2016

by Jason Whitfield BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 26 May 2016

Appeal Ref: APP/J1915/D/16/3144035

29 St Margarets Road, Stanstead Abbots, Hertfordshire SG12 8EP

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Ms Samantha Grayston against the decision of East Hertfordshire District Council.
 - The application Ref 3/15/2224/HH, dated 2 November 2015, was refused by notice dated 10 December 2015.
 - The development proposed is described as "two storey side, part two and part single storey rear and single storey front extensions (resubmission of 3/11/1048/FP)."
-

Decision

1. The appeal is dismissed.

Preliminary Matter

2. Planning permission¹ was granted in 2011 for a two-storey rear and side and single storey front and rear extensions. It was evident from my site visit that work on the approved scheme has commenced but has not progressed beyond the ground floor level of the house. The appeal proposal seeks permission for a revision to the previously approved scheme. I have, therefore, dealt with the scheme on the basis that it is a proposal.

Main Issue

3. The main issue is the effect of the proposal on the character and appearance of the area.

Reasons

4. The appeal dwelling is a two-storey, semi-detached property. The property has a hipped roof and a driveway to the side. St Margarets Road is a suburban avenue characterised by a linear pattern of similarly designed, two-storey semi-detached houses. The gaps between the houses act as an important component of the spacious and leafy character of the area.
5. The proposal would include a single storey extension to the front and a part two-storey and single-storey extension to the rear. Those extensions would be identical to the permission granted in 2011 and the Council has raised no concerns with those elements. On the basis of the evidence before me, I see no reason to come to an alternative view. However, I consider that those

¹ 3/11/1048/FP

works are not functionally or physically separable from the remainder of the proposal.

6. Policy ENV6 of the LP² states that side extensions at first floor level should ensure that appropriate spaces are left between the flank wall of the extension and the boundary with a neighbouring property. As a general rule, a space of 1m will be the minimum acceptable to prevent a visually damaging terracing effect. The proposal would include a two-storey side extension, which would be wider in part than the previous permission in 2011 and would project up to the shared boundary with 27 St Margarets Road. The proposal would therefore conflict with Policy ENV6.
7. I note that No 27 has also proposed to erect a two-storey side extension which would project up to the shared boundary with the appeal site, though that is not a matter before me for determination under this appeal. I acknowledge that the two properties are staggered, with No 27 set back from the appeal property. I also note that the extension would be set in from the boundary in line with the front elevation of No 27 and that this would reduce, to some extent, any potential terracing effect.
8. However, the proposal would offer little visual break, significantly reducing the sense of openness between the two properties and disrupting the spacious rhythm of the street. Moreover, despite the staggered relationship, the proposal would result in a significant risk of the appeal property and No 27, along with their respective pairings, appearing as a terrace of four properties, in stark contrast to the prevailing pattern of semi-detached pairs.
9. I note that there are several properties which have been extended to the side up to the shared boundary within St Margarets Road. However, where such properties are comparable to the appeal proposal, in my view, they only serve to represent the harm such developments can cause to the character and appearance of the area. I also note that the extension would use different materials and have a different roof design to No 27. However, that would not overcome the harm arising from the loss of openness between the two nor the potential for a terracing effect.
10. As a result, I consider that the proposal would have a harmful effect on the character and appearance of the area. The proposal would therefore conflict with Policy ENV6 of the LP. The proposal would also conflict with policies ENV1 and ENV5 which seek to ensure that all developments are of a high standard of design and that extensions to dwellings should not significantly affect the character and appearance of the area.

Conclusions

11. For the reasons given above, and having considered all other matters, I conclude that the appeal should be dismissed.

Jason Whitfield

INPSECTOR

² East Herts Local Plan Second Review 2007

Appeal Decision

Site visit made on 4 May 2016

by Chris Preston BA (Hons) BPI MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 19 May 2016

Appeal Ref: APP/J1915/X/16/3145218

11 Bishops Road, Tewin Wood, Tewin, Hertfordshire AL6 0NR

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Mr Ali Kavakeb against the decision of East Hertfordshire District Council.
 - The application Ref 3/15/2279/CLP, dated 12 November 2015, was refused by notice dated 04 January 2016.
 - The application was made under section 192(1)(a) of the Town and Country Planning Act 1990 as amended.
 - The development for which a certificate of lawful use or development is sought is:
Erection of outbuilding.
-

Decision

1. The appeal is allowed and attached to this decision is a certificate of lawful use or development describing the proposed operation which is considered to be lawful.

Procedural Matters and Explanation of Main Issues

2. A Lawful Development Certificate (LDC) application is not an application for planning permission. Its purpose is to enable owners and others to ascertain whether specific operations or activities would be lawful. In this case, the dispute between the Council and the appellant is whether the proposed building would constitute 'permitted development' by virtue of the rights conveyed by the Town and Country Planning (General Permitted Development) Order 2015 (the GPDO).
3. Therefore, for the avoidance of doubt, I make clear that the planning merits of the proposed outbuilding are not relevant in this appeal. In that regard, I note that a number of issues have been raised in correspondence from interested local residents. Those matters include alleged 'over-development' of the site, effect on the Green Belt, impact on flooding and sewerage in the local area, the potential for noise disturbance, effect on trees, and the effect on neighbouring privacy. Whilst I note those concerns, they are not matters that can influence the determination of this appeal which is solely dependent on whether the proposed development would be lawful, having regard to the extant legislation governing this type of development – the GPDO.

4. Any decision in relation to the lawfulness, or otherwise, of a proposed development in planning terms does not negate any responsibilities in terms of other legislation.

Main Issue(s)

5. The main issue is whether the Council's decision to refuse to grant a lawful development certificate (LDC) for the erection of the outbuilding was well founded.

Reasons

6. No. 11 Bishops Road is a large detached property situated within a residential estate of similar sized properties within the attractive setting of Tewin Wood. The dwelling, which has recently been extensively rebuilt and refurbished, is set within a small cul-de-sac of dwellings to the rear of the main driveway of Bishops Road. The local topography is undulating and the land rises up from the rear of the dwelling towards Burnham Green Road. The proposed outbuilding would be situated to the side of the dwelling, set back slightly from the front of the property but extending beyond the rear wall of the house. The entrance door would be roughly opposite from the side entrance to the main dwelling and a set of bi-fold doors would be situated in the side elevation, opening onto the patio at the rear of the dwelling.
7. Class E, Part 1 of Schedule 2 of the GPDO grants planning permission for 'any building or enclosure, swimming or other pool required for a purpose incidental to the enjoyment of the dwellinghouse as such, or the maintenance, improvement or other alteration of such a building or enclosure'. Those 'permitted development rights' are subject to a number of conditions and restrictions, listed at paragraphs E.1 to E.3.
8. The Council do not dispute that the proposal would comply with the conditions and limitations listed at paragraphs E.1 to E.3 but dispute whether the proposed building would be 'incidental to the enjoyment of the dwellinghouse'. If the purpose of a building would not be incidental then it would fall outside the scope of the permitted development rights granted under Class E of the Order. I concur that the building, in terms of its scale and proportions, would comply with the stipulated limitations of paragraphs E.1 to E.3 and, consequently, my decision hinges upon whether the building would be used for a purpose incidental to the enjoyment of the dwelling.
9. When the application was submitted to the Council the proposed floor layout indicated that the building would be split into three sections; a boot room, a store and a family room. The dwelling is large and has a sizeable garden. In that context I find that the boot room and store would be incidental to the use of the property, being common features found in many outbuildings. The Council have not disputed that those elements would be incidental in terms of their use and I see no reason to disagree. Furthermore, I am satisfied that the scale of those elements is not excessive, given the size of the dwelling and the associated garden.
10. In terms of the family room I have been provided with correspondence between the Council and the agent acting for the appellant which preceded the Council's decision. It is clear from that correspondence, and the Council's delegated officer report, that the Council considered the room would be the

equivalent of an additional living room to the dwelling. In other words, that it would form primary accommodation that one would normally expect to find within a dwelling and not accommodation of an incidental nature. The appellant sought the Council's views on whether that would remain the case if the room was used as a gym, or as a gym combined with a family room. The Council indicated that its position would be unlikely to change in any of the scenarios presented.

11. A layout plan was submitted with the appeal indicating how the room would be laid out, with a gym in one part and a television or home cinema viewing area in another. Given that the suggested use was discussed with the Council prior to the decision being made I have taken account of the plan in reaching my decision. In effect, the plan makes no alteration to the proposal, in terms of the size or design of the building, but provides greater clarity as to how the appellant would utilise the structure.
12. To my mind, the use of gym equipment is an activity that should be considered incidental to the enjoyment of the dwelling. Those using such equipment will often wish to play music or watch instructional material whilst exercising and it is logical, given the potential level of noise from the activity, that residents may wish to house a gym in a separate space, distinct from the accommodation within the main dwelling. The layout plan indicates how various pieces of equipment could be set out and demonstrates that the size of the space proposed is commensurate with what may reasonably be required for personal gym equipment, with associated circulation space.
13. My decision regarding the use of the family room is finely balanced. *Permitted Development Rights for Householders – Technical Guidance (April 2016)* (the Technical Guidance) has been published by the Government to provide clarity on matters of interpretation of the GPDO. The 2016 version follows previous versions published in 2010, 2013 and 2014. In relation to Class E the Technical Guidance notes that a large range of outbuildings may be permitted, providing that their use can properly be described as having a purpose incidental to the enjoyment of the house. The Technical Guidance makes clear that a purpose incidental to the house would not include normal residential uses such as separate self-contained accommodation nor the use of an outbuilding for primary living accommodation such as a bedroom, bathroom or kitchen.
14. In this case, the building would not provide self-contained accommodation, nor would it contain a bedroom, bathroom or kitchen. However, the examples within the Technical Guidance are not exclusive and a judgement is required as to whether the 'family room' would provide primary accommodation. Based upon the information before me the room would be used as a cinema area in addition to a gym. The drawing shows a television fixed to the wall with a seating area surrounding it, a layout which suggests that the room would be used for watching films, television or other similar activities. In that respect, the use of the room would share similarities with a living room that one would expect to find as part of the primary accommodation of a normal family home.
15. However, the existing dwelling is substantial in scale and contains the normal range of living accommodation one would expect in a family dwelling, including family living space. It appears to me that what is proposed is incidental to the primary living space in that it is deliberately planned as a distinct and separate

space where members of the family can exercise or relax away from the main house. In other words, residents would not rely upon use of the space as part of the primary living space of the dwelling but would be able to use the room in an incidental manner, whether for watching films, using the gym, or for children playing computer games for example. To my mind there would be a logic in separating such uses, which have the potential to cause greater levels of noise, from the accommodation within the main dwelling. Although the matter is finely balanced, as a matter of fact and degree I find that the function of the room would be incidental to the enjoyment of the dwelling.

16. Moreover, I am satisfied that the scale of the building is reasonable given its intended function. The layout plan indicates a room furnished with a reasonable amount of furniture and apparatus which does not appear excessive in relation to the domestic needs of the occupants of the dwelling. Consequently, I find nothing in the overall scale of the building that would lead me to conclude that it would not be incidental to the enjoyment of the substantial main house.
17. The Council have noted the proximity of the proposed building to the entrance door at the side of the dwelling. Whilst it would be relatively close there is nothing within the terms of Class E of the GPDO, or the associated technical guidance, which requires outbuildings to be set a minimum distance from the main house. In addition, having looked at the site and noted the contours of the garden and the position of the neighbouring woodland, it appears to me that the relatively flat area to the side of the house would be the most logical position to locate an outbuilding on the site. Therefore, the relationship of the building to the dwelling does not alter my conclusions on the fact that it would be incidental to the enjoyment of the dwellinghouse.
18. In reaching my conclusion I have had regard to other appeal decisions referred to by the appellant. However, without a full understanding of the cases involved, and in the absence of any knowledge of the information that was put to the respective Inspectors regarding the uses proposed in those cases, it is difficult to draw any firm comparisons to the case before me. Consequently, I have determined the appeal on the particular circumstances of the case and on the basis of the information before me.

Conclusion

19. In view of the above, I am satisfied that the building would comply with the limits and requirements of Class E, Part 1, Schedule 2 of the GPDO such that it would constitute 'permitted development'. For the reasons given I conclude, on the evidence available, that the Council's refusal to grant a certificate of lawful use or development in respect of the proposed outbuilding was not well-founded and that the appeal should succeed. Accordingly, I will exercise the powers transferred to me under section 195(2) of the 1990 Act as amended.

Chris Preston

INSPECTOR

Lawful Development Certificate

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 192
(as amended by Section 10 of the Planning and Compensation Act 1991)

TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE) (ENGLAND)
ORDER 2010: ARTICLE 35

IT IS HEREBY CERTIFIED that on 12 November 2015 the operations described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged in red on the plan attached to this certificate, would have been lawful within the meaning of section 191 of the Town and Country Planning Act 1990 (as amended), for the following reason:

The development would have complied with the limits and requirements of Class E, Part 1, Schedule 2 of the GPDO such that it would have constituted 'permitted development'

Signed

Chris Preston

Inspector

Date: 05 May 2016

Reference: APP/J1915/X/16/3145218

First Schedule

Erection of outbuilding

Second Schedule

Land at 11 Bishops Road, Tewin Wood, Tewin, Hertfordshire AL6 0NR

NOTES

This certificate is issued solely for the purpose of Section 192 of the Town and Country Planning Act 1990 (as amended).

It certifies that the operations described in the First Schedule taking place on the land specified in the Second Schedule would have been lawful, on the certified date and, thus, were not liable to enforcement action, under section 172 of the 1990 Act, on that date.

This certificate applies only to the extent of the operations described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any operation which is materially different from that described, or which relates to any other land, may result in a breach of planning control which is liable to enforcement action by the local planning authority.

The effect of the certificate is subject to the provisions in section 192(4) of the 1990 Act, as amended, which state that the lawfulness of a specified use or operation is only conclusively presumed where there has been no material change, before the use is instituted or the operations begun, in any of the matters which were relevant to the decision about lawfulness.

Plan

This is the plan referred to in the Lawful Development Certificate dated:

by Chris Preston BA(Hons) BPI MRTPI

Land at: 11 Bishops Road, Tewin Wood, Tewin, Hertfordshire AL6 0NR

Reference: APP/J1915/X/16/3145218

Scale: Not to Scale

