The Planning Inspectorate

Appeal Decision

Site visit made on 16 August 2016

by Susan Wraith DipURP MRTPI

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

Decision date: 5 October 2016

Appeal ref: APP/J1915/X/16/3143830
Johnsons Thatch, East End, Furneux Pelham, Buntingford SG9 0JU

- The appeal is made under s195 of the Town and Country Planning Act 1990 [hereafter "the Act"] as amended by the Planning and Compensation Act 1991 against a refusal to grant a certificate of lawful use or development [hereafter "LDC"].
- The appeal is made by Mr S Shelsher against the decision of East Hertfordshire District Council.
- The application ref: 3/15/1104/CLE, dated 25 May 2015 was refused by notice dated 17 December 2015.
- The application was made under s191(1)(a) of the Act.
- The development for which an LDC is sought is: Use of garage as self contained residential unit.

Decision

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

Preliminary matters

2. On the LDC application form the development was described as "conversion of garage to flat". In the decision notice the development was framed as "use of garage as a self contained residential unit" and the appeal is also made in those terms. I shall adopt that description for the purposes of the appeal.

3. The building concerned comprises a garage, stables and a store together with first floor accommodation. From the drawings which accompanied the application, and from what I saw at my site visit, I understand that the flat occupies only a part of the building, that being the part above the garage and above one of the stables at first floor level. I shall deal with the appeal on that basis.

4. The relevant date for the purposes of this determination of lawfulness is the date of the LDC application, i.e. 25 May 2015. There is nothing to suggest that, at the date of the application, the use would have been in contravention of any enforcement notice or breach of condition notice then in force. The matter to be decided upon, therefore, under subsection (a) of s191(2), is whether the use would have been lawful on the application date as no enforcement action could then have been taken in respect of it.

5. S171B of the Act sets out the time limits within which enforcement action can be taken. In the case of a breach of planning control consisting in the change

of use of any building[1] to use as a single dwellinghouse the relevant time period is four years (s171B(2)).

6. A condition of planning permission for the garage building (I am told) limited its use to purposes incidental to the occupation of the main dwellinghouse. Whilst the time period for enforcing a condition (generally) is ten years (s171B(3)), case law has held that where a breach of condition relates to a change of use to a single dwellinghouse the relevant time period is four years[2]. Therefore, irrespective of whether the matter is considered as a change of use or a breach of condition, the relevant time period is four years.

7. In an appeal under s195 of the Act against the refusal of an LDC the burden of proof is upon the appellant. The test of the evidence is one of balance of probability. Additionally, the planning merits of the matter applied for do not fall to be considered. The decision will be based strictly on the evidential facts and on relevant planning law.

Main issue

8. The main issue in this appeal is whether the Council's decision to refuse the LDC was well founded.

Reasons

9. The flat, which is positioned within part of the first floor of the outbuilding, is accessed from within the garage via a staircase. It shares the driveway to the main dwelling and has parking spaces within a communal parking area. There is a small shared laundry to the corner of the garage. The flat itself is self contained having all the facilities necessary for day-to-day private domestic existence.

10. It is unclear as to when, precisely, the works to convert this part of the building to a flat were undertaken. However, there is evidence that the first tenancy commenced in May 2009. At that time the flat became a separate unit of occupation. It had the physical characteristics of a self contained dwelling and was being so used. This is the time when the unauthorised use commenced and the breach of planning control occurred. The parties are in agreement that the breach occurred in May 2009.

11. There is uncontested evidence that the use then continued between May 2009 until May 2012 at which point the flat became occupied by the appellant and his wife, for a period of some 18 months, whilst works were being carried out to their house (Johnsons Thatch) following a fire. By November 2013 the appellant had moved back into Johnsons Thatch and a new tenant had been found for the flat. Its use as a self contained residential unit was continuing at the date of the LDC application. The only issue between the parties is whether the period of occupation by the appellant and his wife broke the continuity of the use.

12. Once an unauthorised use has commenced it must continue substantially uninterrupted over the relevant time period (in this case four years) in order to gain lawful use rights. If an interruption is such that no enforcement action can

[1] In the interpretation given at s336 of the Act the term "building" includes (amongst other things) any part of a building.
[2] FSS v Arun DC and Brown (CoA 10/8//06, J.1158)

be taken against the use during that period, the breach will have come to an end. Any resumption of the use will constitute a fresh breach and the four year clock will restart from zero.

13. The appellant's case is that there has been no interruption of the use. It is contended that during the period he and his wife occupied the flat its use was as a self contained residential unit as it had been previously. The four year period (it is argued) continued to accrue.

14. The evidence indicates that, for the duration of the appellant's occupation, the main dwelling was uninhabitable. For example, a letter from the Insurance Adjusting Services [IAS] states that due to the extent of damage sustained it was necessary for the appellant to relocate to the annexe, thus incurring loss of rent, until the works were completed on 1 October 2013. A neighbour recalls that the property was "seriously fire-damaged" such that it was "re-built" and the appellant's legal advisor has stated that there was no second dwelling capable of occupation throughout the time that his client occupied the flat. The Council describes the works to Johnson's Thatch as "repair" rather than "re-building" but there is no evidence that any part of the main house was being used in common with the flat during the time that it was occupied by the appellant.

15. I find this evidence compelling. It supports the contention that the appellant was living in the flat throughout this period and that he and his wife would have needed to rely upon the facilities in the flat for day-to-day domestic living as the main property could not be used. There is no contradictory evidence.

16. The Council describes the appellant's use of the flat as "ancillary" occupation. However, there is no evidence that the flat had any functional relationship with the main dwelling during this period which would have been an essential feature for the use to be ancillary. On the contrary, the evidence indicates that, during this period, there was no active residential use of the main dwellinghouse and, thus, there was no main residential use which the flat could have had a functional relationship with.

17. Whilst the garage building was originally comprised within the wider dwellinghouse planning unit, the change of use in 2009 brought about the formation of a new planning unit within which the self contained residential unit subsisted. Even though one of the periods of occupation was by the appellant and his wife this, in itself, would not have brought about a material change in the nature of the use within that planning unit. The evidence is that the use as a self contained residential unit continued during the period that the appellant was in occupation in the same way that it had done before. It would, thus, have been possible to take enforcement action even though the occupiers at that time were the owners of the main property and the wider land comprised in the original planning unit. The time period would have continued to run during the appellant's occupation.

18. On the evidence, on balance of probability, I find that the use of this part of the garage building as a self contained residential unit had continued for a period of four years. There is no evidence to indicate other than that the use would have been lawful at the application date.

Conclusion

19. For the reasons given above I conclude, on the evidence now available, that the Council's refusal to grant an LDC was not well founded and that the appeal should succeed. I will exercise accordingly the powers transferred to me under s195(2) of the Act.

Susan Wraith

INSPECTOR

The Planning Inspectorate

Lawful Development Certificate

APPEAL REFERENCE APP/J1915/X/16/3143830
TOWN AND COUNTRY PLANNING ACT 1990: SECTION 191
(as amended by section 10 of the Planning and Compensation Act 1991)

THE TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE) (ENGLAND) ORDER 2015: ARTICLE 39

IT IS HEREBY CERTIFIED that on 25 May 2015 the development described in the First Schedule hereto, in respect of the land specified in the Second Schedule hereto and edged and hatched in red on the plan attached to this certificate, would have been lawful within the meaning of section 191(2) of the Town and Country Planning Act 1990 (as amended) for the following reason:

> The time period for enforcement had expired and the use did not contravene any of the requirements of any enforcement notice or breach of condition notice then in force.

Susan Wraith

INSPECTOR

Date: **5 October 2016**

First Schedule

Use of garage as self contained residential unit (Use Class C3).

Second Schedule

Part of the first floor and internal staircase of the garage building at Johnsons Thatch, East End, Furneux Pelham, Buntingford SG9 0JU

IMPORTANT NOTES – SEE OVER

CERTIFICATE OF LAWFULNESS FOR PLANNING PURPOSES

NOTES

1. This certificate is issued solely for the purpose of section 191 of the Town and Country Planning Act 1990 (as amended).
2. It certifies that the use described in the First Schedule taking place on the land specified in the Second Schedule was lawful on the certified date and, thus, would not have been liable to enforcement action, under section 172 of the 1990 Act, on that date.
3. This certificate applies only to the extent of the use described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use 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 Planning Inspectorate

Plan

This is the plan referred to in the Lawful Development Certificate dated: **5 October 2016**

by Susan Wraith DipURP MRTPI

Johnsons Thatch, East End, Furneux Pelham, Buntingford SG9 0JU

Appeal ref: APP/J1915/X/16/3143830

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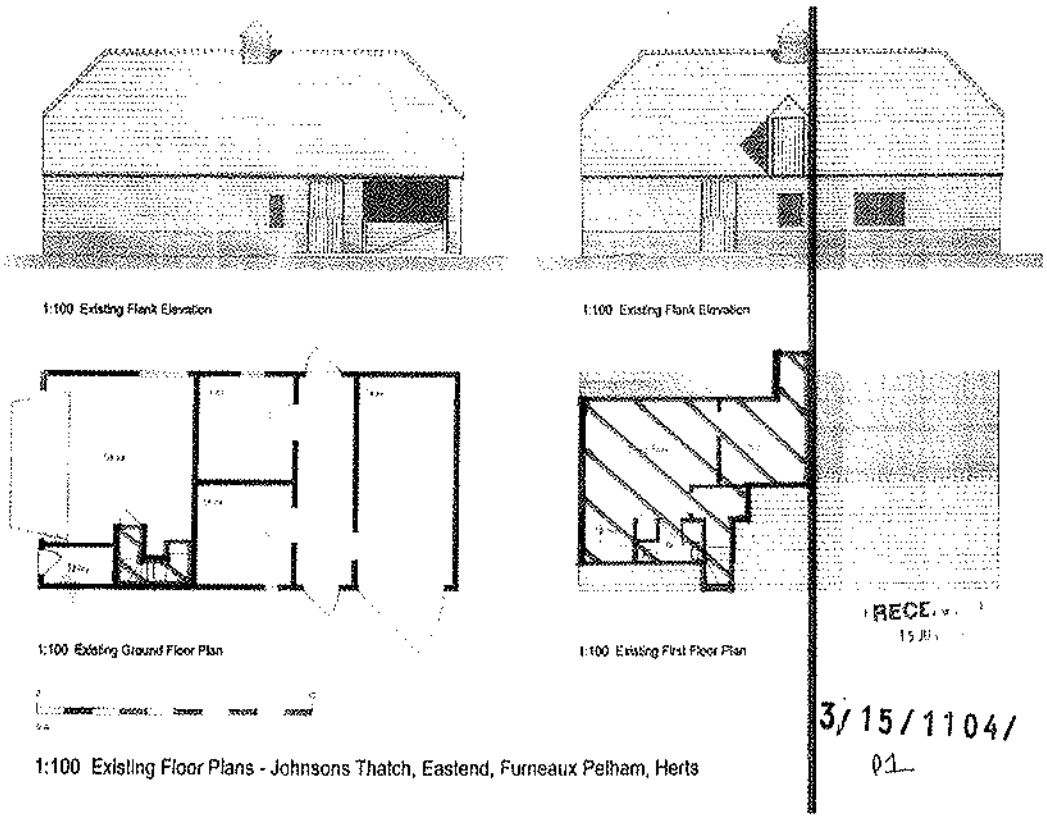

The Planning Inspectorate

Appeal Decision

Site visit made on 15 June 2016

by W G Fabian BA Hons Dip Arch RIBA IHBC

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

Decision date: 14 September 2016

Appeal Ref: APP/J1915/W/16/3144108
Highfield Barns, Highfield Farm, Mangrove Lane, Brickendon, Hertfordshire SH13 8QJ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under Schedule 2, Part 3, Class Q of the Town and Country (General Permitted Development)(England) Order 2015.
- The appeal is made by Mr A Winer against the decision of East Hertfordshire District Council.
- The application Ref 3/15/1494/ARPN, dated 14 July 2015, was refused by notice dated 10 September 2015.
- The development proposed is change of use of an existing agricultural use (poultry) building to Class C3 (dwellinghouse).

Decision

1. The appeal is dismissed.

Procedural Matter

2. The Planning Practice Guidance (the Guidance) was amended in March 2015 by the introduction of paragraphs 108 and 109 in respect of prior approval for changes of use from agricultural buildings to dwellings. It clarifies that the permitted development right does not apply a test in relation to sustainability of location. This is deliberate as the right recognises that many agricultural buildings will not be in village settlements and may not be able to rely on public transport for their daily needs. Instead the local planning authority can consider whether the location and siting of the building would make it impractical or undesirable to change use to a house. Paragraph 109 clarifies that when considering whether it is appropriate for the change of use to take place in a particular location, a local planning authority should start from the premise that the permitted development right grants planning permission, subject to the prior approval requirements. That an agricultural building is in a location where the local planning authority would not normally grant planning permission for a new dwelling is not a sufficient reason for refusing prior approval.

3. The Council in its statement for this appeal objects to the countryside location of the site with reference to its accessibility to shops, services and public transport and the impact that would arise from the residential conversion through domestic paraphernalia and activity. The Council suggests that there is conflict between the requirements of the Town and Country (General Permitted Development) (England) Order 2015 (GPDO) and the National

Planning Policy Framework (the Framework) in particular at paragraph 55, in that paragraph W(10)(b) and the provisions of Class Q entitle the Council to take into account the Framework's provisions when considering whether or not prior approval is required.

4. However, it seems clear to me that the GPDO was written in the light of the Framework, which it postdates. The GPDO at W(10)(b) requires the local planning authority to have regard to the Framework, so far as relevant to the subject matter of the prior approval, as if the application were a planning application. The Framework states that its policies should be taken as a whole. At paragraph 49 it seeks to boost significantly the supply of housing and the GPDO has been made to assist with this aim. Prior approval for the residential conversion of agricultural buildings must inevitably lead to dwellings in the countryside that would otherwise be resisted by paragraph 55 of the Framework. The Guidance has been published to provide clarification on this matter.

5. As such I will consider this appeal only on the basis of the Council's reason for refusal.

Main Issue

6. The main issue in this appeal is whether the building was used solely for an agricultural use as part of an established agricultural unit, on 20 March 2013 or when it was last in use prior to that date, in accordance with the GPDO.

Reasons

7. The GPDO sets out in Schedule 2, Part 3, Class Q – agricultural buildings to dwellinghouses, at Q1, that development is not permitted by this class if (a) the site was not used solely for an agricultural use as part of an established agricultural unit (i) on 20th March 2013, or (ii) in the case of a building which was in use before that date but was not in use on that date, when it was last in use, or (iii) in the case of a site which was brought into use after 20th March 2013, for a period of at least 10 years before the date of development under Class Q begins.

8. The GPDO at paragraph X. Interpretation of Part 3 confirms that for the purposes of Part 3 – 'agricultural building' means a building (excluding a dwellinghouse) used for agriculture and which is so used for the purposes of a trade or business; and 'agricultural use' refers to such uses: 'established agricultural unit' means agricultural land occupied as a unit for the purposes of agriculture.

9. The Town and Country Planning Act 1990 (TCPA) provides interpretation at Section 336. Agriculture is defined as including horticulture, fruit growing, seed growing, dairy farming, the breeding and keeping of livestock (including any creature kept for the production of food, wool, skins or fur, or for the purpose of its use in the farming of land), the use of grazing land, meadow land, osier land, market gardens and nursery grounds, and the use of land for woodlands where that use is ancillary to the farming of the land for other agricultural purposes, and "agriculture" shall be construed accordingly.

10. The planning history of the appeal site up until 2003 or so is recorded in an appeal decision (APP/J1915/A/03/1134591) issued in April 2004; this related to the planning permission granted for residential conversion of Highfield Farm

and specifically to removal of a condition requiring demolition of existing buildings, which included the building subject to this appeal. That appeal was allowed. It records that the use of the whole site ceased in April 2002 and that it had been a research unit in connection with animal feeds and health care, which the Council considered to have been sui generis. The inspector commented that 'the nature and appearance of the 4 buildings is wholly agricultural.....the appellant has indicated that the prospective owners would be using the buildings for agricultural purposes.' The decision also confirms that the appeal site is within the Green Belt.

11. The appeal building is the largest of four agricultural type buildings and is the furthest one from Highfield Farm itself, which has now been wholly converted to around fifteen dwellings. It is accessed by a track that passes the residential development and skirts the car park for it, leading to the buildings. Only the three larger buildings lie within the appeal site boundary, the fourth is a modest stable type building closest to the dwellings. The appeal building is described on the submitted sales particulars from 2009 as one of two redundant insulated timber frame poultry buildings with corrugated fibre cement roofs. The third building, which lies between these two, is an open sided concrete portal framed building clad with corrugated fibre cement panels. All three buildings have concrete floors and an apron of concrete hardstanding all round. The particulars describe 0.49 hectares of grassland enclosed by post and rail fencing.

12. The appellant's agent's letter accompanying the application, in July 2015, stated that Mr Winer purchased the property on 26 July 2010 as an established agricultural unit and cited these particulars as confirming this. However, I note that although the sales agents are 'Sworders Agricultural' the description was as two redundant poultry sheds and an agricultural building, no reference is made to previous agricultural use. The letter sets out that the appellant 'raises livestock (chickens and pigs) on the land and within some of the other agricultural buildings. He regularly has to make the 30 mile round trip to the site from his current home twice each day to feed and tend to his animals.'

13. The letter continues that he purchases chickens in batches of 50 from a local farmer and these are raised for ultimate sale to the general public. The eggs are sold to local farm shops and the general public. The company 'Highfield Hens' domain name was registered on 30 July 2012. The letter confirmed that the appeal building had always been used by the appellant to store chicken and pig feed, as well as for hay storage.

14. The property is a registered smallholding and has been insured through the National Union of Farmers as a smallholding[1]. Additionally, the appellant has provided a letter from his accountant IPS Consultancy Services, dated January 2016, which confirms that tax accounts have been prepared for 'Highfield Farm' and 'Highfield Hens' for the years 2011/12 – 2014/15, with profit being shown to increase year on year despite re-investment. No copies of accounts are provided for the three year period. An affidavit, dated 2 February 2016, from a former employee is also submitted. This confirms full time employment for cleaning out chickens and duties in connection with selling the eggs to the public from September 2012 to March 2013. It also confirms ongoing visits to

[1] A copy of the insurance certificate on this basis for 2010-2011 is included with the submissions, but not for subsequent years.

the premises since then and records that the business operation has continued unchanged.

15. I saw at my visit that the appeal building had had an end bay removed and temporary waterproof construction installed. It was very clean and tidy; and appeared relatively underused, with much of the space unoccupied. Inside the first partitioned off section were some chiller type units and stainless steel counter tops with a limited number of trays of eggs stacked on them and sacks of sow feed stacked nearby. Within the main shed area were two empty low segmental rearing pens with heat lamps above them, some items of agricultural type towable equipment, some empty pallets, a few rolls of wire mesh, some sacks of fertiliser and some sacks of sawdust. Outside within the grassed area alongside the building were some lambs penned in by electric fencing. In the adjacent open building were two pens with a total of around 50 hens in them.

16. The appellant has provided a letter, dated January 2015, from Yeats Ltd confirming the supply of free-range eggs to their farm shop from 2011 onwards. This gives no details of the quantity of eggs supplied, which could amount to a few trays only (a maximum of around 50 eggs per day, given the number of chickens that I saw in the two pens shown to me on site). A letter, dated March 2015, from Frost Free Range Hens confirms that the appellant regularly buys chickens (usually in batches of 50) from them to rear for sale to the general public via his website. This provides no detail as to the frequency of these purchases of chickens. The website printout also provided advertises point of lay hens of around eight different breeds, for sale to the public. No detail is provided as to the number of chickens bought from the appellant, nor is there any detail of the turnover resulting from the appellant's website.

17. The Brooks Farm Forest YMCA confirmed by letter in April 2015 that since 2012, the appellant has regularly moved their stock to other farms and collects animals for them from elsewhere using his vehicle and livestock trailer. This seems to me possibly to show philanthropic activity by the appellant; it is unclear as to the connection between this and the appeal site.

18. It may well be that the appellant's level of use was more intense at March 2013 than it now appears. The definition of agriculture provided in the TCPA includes the rearing of livestock for food, in this case the production of eggs and it appears that a degree of profit has been made from this. As such I accept that the building subject to this appeal is in agricultural use. However, I must also consider whether the building forms part of an established agricultural unit, as is also required for Class Q Permitted Development at Q1 (a). As such, this must be a matter of judgement based on fact and degree; I turn to this matter below.

19. None of the evidence submitted nor the account of activities undertaken seems to me to amount to evidence that demonstrates the existence of an established agricultural unit, as required by the GPDO. It is not apparent from the submissions that the appeal property ever formed part of one, even prior to the appellant's purchase of it in 2010. The former use as a research facility ceased in 2002 and the buildings were subsequently recorded as redundant. The appellant did not purchase them until 2010. While he has been using them for an agricultural purpose, rearing poultry for eggs, there is no other evidence before me to demonstrate that there has at any previous time been an

agricultural use as part of an established agricultural unit. The rearing of hens for food has been taking place on a seemingly very small scale, for a period in total of around five years, and for only a little more than two years as at March 2013. According to the sales particulars provided, the appeal site amounts to only around half a hectare of land and there is nothing to show that it is connected with any greater size of agricultural land or unit.

20. Taking all the evidence put before me and all other matters raised into consideration, I conclude that on balance the building that is the subject of this appeal was not used solely for an agricultural use as part of an established agricultural unit, on 20 March 2013 or when it was last in use prior to that date, in accordance with the GPDO. Therefore, the proposal is not permitted development under Schedule 2, Part 3, Class Q of the GPDO.

21. The appeal should be dismissed.

Wenda Fabian

Inspector

The Planning Inspectorate

Appeal Decision

Site visit made on 16 August 2016

by Susan Wraith DipURP MRTPI

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

Decision date: 19 September 2016

Appeal ref: APP/J1915/X/15/3141457
19 Orchard Road, Tewin, Welwyn, Hertfordshire AL6 0HG

- The appeal is made under s195 of the Town and Country Planning Act 1990 [hereafter "the Act"] as amended by the Planning and Compensation Act 1991 against a refusal to grant a certificate of lawful use or development [hereafter "LDC"].
- The appeal is made by Mrs Joan Woods against the decision of East Hertfordshire District Council.
- The application reference: 3/15/1604/CLP dated 31/07/2015 was refused by notice dated 25th September 2015.
- The application was made under s192(1)(b) of the Act.
- The development for which an LDC is sought is: 3m two storey extension to the original dwellinghouse. Replacement of existing outbuilding.

Decision

1. The appeal is dismissed insofar as it relates to the replacement of an existing outbuilding. The appeal is allowed insofar as it relates to the 3m two storey extension to the original dwellinghouse; and attached to this decision is a certificate of lawful use or development describing the proposed operations which are considered to be lawful.

Preliminary matters

2. The relevant date for the purposes of this determination of lawfulness is the date of the LDC application i.e. 31/07/2015. The matter to be decided upon is whether the proposed development, if carried out at that date, would have been lawful.

3. The relevant statutory instrument for the purposes of assessing whether the development would have been lawful is the Town and Country Planning (General Permitted Development)(England) Order 2015 [hereafter "the GPDO"]. Part 1 to Schedule 2 of the GPDO applies to householder development. It provides for enlargements, improvements or other alterations of a dwellinghouse and for incidental buildings as "permitted development" subject to limitations and conditions.

4. On 13 April 2016 the Department for Communities and Local Government published "Permitted development rights for householders: technical guidance" [hereafter 'Technical Guidance']. The Technical Guidance updates and replaces the previous guidance which has been referred to by the parties in the appeal submissions. However, so far as the issues in this appeal are concerned there is no material difference between these two versions.

5. Whilst not a definitive statement of the law, the Technical Guidance sets out how Government intends that permitted development provisions for householders are to be interpreted. The Technical Guidance should, therefore, generally be followed unless a different interpretation is given by the Courts.

6. In an LDC appeal the burden of proof to demonstrate that the matter proposed is lawful is upon the appellant. The planning merits of the matter applied for do not fall to be considered. The decision will be based strictly on the evidential facts and on relevant planning law.

Main issue

7. The main issue in this appeal is whether the Council's decision to refuse the LDC was well founded.

Reasons

Replacement outbuilding

8. Under Class E (paragraph E.1(e)) to Part 1 of Schedule 2 to the GPDO there is a height limitation of 3m for incidental buildings which do not have dual pitched roofs. The proposed outbuilding exceeds 3m in height and does not have a dual pitched roof. The appellant concedes, and I agree, that the building would not have been permitted development and, thus, would not have had entitlement to an LDC.

3m two storey extension

9. This element of the proposal falls to be considered under Class A of Part 1 to Schedule 2 of the GPDO. It is common ground that, apart from the condition imposed by A.3(c), the development complies with all other limitations and conditions of Class A. I have no reason to disagree. I shall, therefore, focus upon the condition in question.

10. The condition states that, in the case of an extension that has more than a single storey, the roof pitch of the enlarged part must, so far as practicable, be the same as the roof pitch of the original dwellinghouse.

11. The original dwellinghouse has a hipped roof. The roof to the proposed extension follows the pitch of the original roof hips and its rear facing plane. To all of its three elevations the pitch of the extension roof is seen as being the same as the roof pitch of the original dwelling.

12. The height of the extension roof is a little below the ridge of the original dwellinghouse. This is where its roof slopes end and where the extension is then crowned by a section of flat roof. However, the flat roof section is not seen in any of the elevations and would be barely detectable when viewing the extension from its surroundings. It cannot reasonably be drawn, from this inconspicuous roof crown, that the development as a whole fails to match the roof pitch of the original dwellinghouse.

13. The Technical Guidance (at page 32) has a diagram which shows, as an example, a hipped roof of a rear extension that is said to comply with A.3(c) and which closely resembles the appellant's proposal. Whilst I acknowledge that the horizontal roof line in the diagram could represent a ridge, rather than

the edge of a section of flat roof, the accompanying text does not rule out either possibility.

14. The Council argues that a pitched roof design (without a flat section) would be practicable and that the appeal proposal does not go far enough[1]. However, the appeal proposal as it stands provides for a roof pitch which is the same as the original dwelling. There is no need to examine the practicalities of what is being proposed or of alternative designs as the proposal complies with the condition in any event.

15. In the specific circumstances of this case I find that the 3m two storey extension with its roof pitches, if erected at the application date, would have complied with condition A.3(c) as a matter of fact and degree.

Conclusions

16. For the reasons given above I conclude that the Council's refusal to grant an LDC was well founded insofar as it relates to the replacement of the existing outbuilding. However, insofar as it relates to the 3m two storey extension to the original dwellinghouse I conclude that the Council's refusal to grant an LDC was not well founded. The appeal succeeds to that extent. I will exercise accordingly the powers transferred to me under s195(2) of the Act and grant a certificate relating to that part.

Susan Wraith

INSPECTOR

[1] An LDC has been granted for a 3m extension of different roof design which matches the pitch of the original roof and which does not include a flat section.

The Planning Inspectorate

Lawful Development Certificate

APPEAL REFERENCE APP/J1915/X/15/3141457
TOWN AND COUNTRY PLANNING ACT 1990: SECTION 192
(as amended by section 10 of the Planning and Compensation Act 1991)

THE TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE) (ENGLAND) ORDER 2015: ARTICLE 39

IT IS HEREBY CERTIFIED that on 31/07/2015 the development 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(2) of the Town and Country Planning Act 1990 (as amended) for the following reason:

> The proposed development would have been permitted development under Class A of Part 1 to Schedule 2 of the Town and Country Planning (General Permitted Development)(England) Order 2015 (as amended).

Susan Wraith

INSPECTOR

Date: **19 September 2016**

First Schedule

3m two storey extension to the original dwellinghouse as shown on plans numbered 3872 PLA 1.00, 3872 PLA 1.01, 3872 PLA 1.02 and 3872 PLA 1.03 accompanying the application dated 31/07/2015.

Second Schedule

19 Orchard Road, Tewin, Welwyn, Hertfordshire AL6 0HG

IMPORTANT NOTES – SEE OVER

CERTIFICATE OF LAWFULNESS FOR PLANNING PURPOSES

NOTES

1. This certificate is issued solely for the purpose of section 192 of the Town and Country Planning Act 1990 (as amended).
2. It certifies that the development 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, would not have been liable to enforcement action, under section 172 of the 1990 Act, on that date.
3. This certificate applies only to the extent of the development described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any development 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.
4. 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.

The Planning Inspectorate

Plan

This is the plan referred to in the Lawful Development Certificate dated: **19 September 2016**

by Susan Wraith DipURP MRTPI

19 Orchard Road, Tewin, Welwyn, Hertfordshire AL6 0HG

Appeal ref: APP/J1915/X/15/3141457

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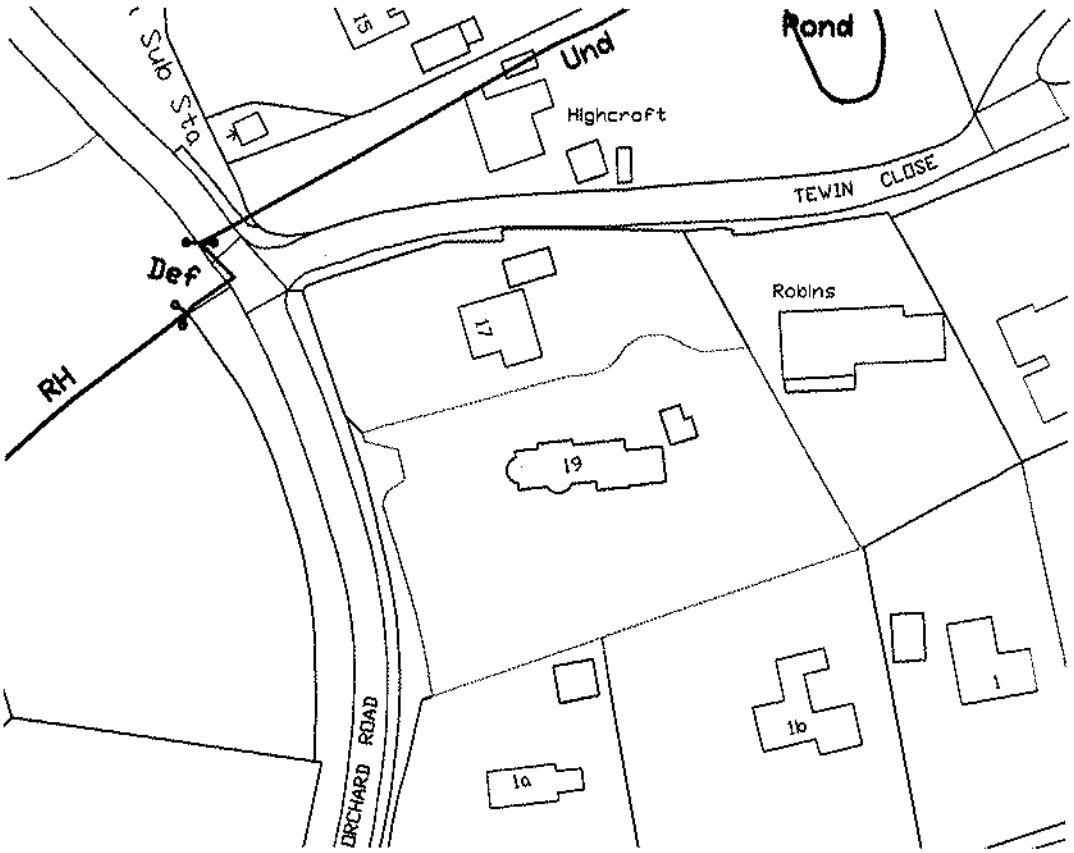

The Planning Inspectorate

Appeal Decisions

Site visit made on 8 August 2016

by Jonathan Price BA(Hons) DipTP MRTPI DMS

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

Decision date: 7th September 2016

Appeal A Ref: APP/J1915/W/16/3149228
Lodge Farm, Epping Green, Hertfordshire SG13 8NQ

- 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 L Lord against the decision of East Hertfordshire District Council.
- The application Ref 3/15/1933/FUL, dated 22 September 2015, was refused by notice dated 16 November 2015.
- The development proposed is demolition of existing barns and erection of three dwellings with garaging and parking.

Appeal B Ref: APP/J1915/W/16/3149391
Lodge Farm, Epping Green, Hertfordshire SG13 8NQ

- 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 L Lord against the decision of East Hertfordshire District Council.
- The application Ref 3/16/0132/FUL, dated 20 January 2016, was refused by notice dated 15 March 2016.
- The development proposed is demolition of existing barns and erection of three dwellings with garaging and parking – revised proposal.

Decisions

1. Appeal A and Appeal B are both dismissed.

Procedural Matter

2. As set out above there are two appeals on this site. They both relate to the demolition of two large barns and the erection of three dwellings with garaging and parking but differ in that the Appeal B scheme involves a reduction in the massing and footprint of the development in comparison with the Appeal A scheme. I have considered each proposal on its individual merits. However, to avoid duplication I have dealt with the two schemes together, except where otherwise indicated.

Main Issues

3. The main issues in each appeal are:

   - Whether the proposals would be inappropriate development in the Green Belt having regard to the National Planning Policy Framework (the Framework) and relevant development plan policy.

- Whether the occupants of the proposed developments would have reasonable access to shops and services.
- Whether the harm by reason of inappropriateness, and any other harm, would be clearly outweighed by other considerations. If so, whether this would amount to the very special circumstances required to justify the proposals.

Reasons

Development in the Green Belt

4. Section 9 of the Framework sets out the great importance attached by Government to the Green Belt where the fundamental aim of policy is to prevent urban sprawl by keeping land permanently open.

5. Policy GBC1 of the East Herts Local Plan Second Review April 2007 (LP) states that the construction of new buildings on land falling within the Green Belt will be inappropriate other than for a number of exceptions. None of these exceptions apply to these proposals and neither are any of these put forward in support of the appellant's case. Both proposals would therefore conflict with LP Policy GBC1 where inappropriate development will not be permitted other than in very special circumstances.

6. However, LP Policy GBC1 is not fully consistent with the Framework in how the Council should regard the construction of new buildings as inappropriate in Green Belt as set out in Paragraph 89. In the final bullet point of this paragraph development might be considered as not inappropriate in the Green Belt where it comprises *limited infilling or the partial or complete redevelopment of previously-developed sites (brownfield land), whether redundant or in continuing use (excluding temporary buildings), which would not have a greater impact on the openness of the Green Belt and the purpose of including land within it than the existing development.* This inconsistency limits the weight that can be given to LP Policy GBC1. However, the Framework remains a significant material consideration.

7. These proposals would not be limited infilling as each would consolidate a sporadic and loose pattern of development in countryside outside of any identifiable settlement. Both would comprise the partial redevelopment of a site containing former agricultural buildings. The definition of previously-developed land in Annex 2 of the Framework includes land occupied by permanent structures, excluding agricultural or forestry buildings.

8. However, the appeal site is no longer part of an active farm enterprise and these former agricultural buildings have subsequently been adapted for equestrian purposes and the stabling of horses. This activity has also ceased and the buildings are currently used partly as domestic and other storage and provide an office ancillary to the adjacent residential use. Therefore, the exception to the definition of previously-developed land provided by the appeal buildings being in agricultural use no longer applies and the site would now qualify as being a 'brownfield' site.

9. However, the Framework would still require the redevelopment of previously-developed land not to have a greater impact on the openness of the Green Belt, and the purpose of including land within it, than the existing barns for these two schemes to be considered as not inappropriate development.

10. The appeal site contains two substantial barns set within an open, hard-surfaced apron area, mainly extending to the north and east sides. Public views of these buildings are restricted. There are intermittent views through the existing accesses along White Stubbs Lane, otherwise screened by the roadside hedging and the existing residential properties. Dense woodland screens the barns from the south and west. To the east is open countryside, with no nearby rights of way, from where any public views of these buildings would be distant.

11. In both schemes the arrangement of the dwellings would be similar, based on the footprint of the existing barns. The schemes are well-designed to appear as barn conversions and, in both cases, would comprise a substantially smaller volume and floor area compared to the existing buildings and no parts would be of a greater roof height. The private back gardens would be screened by the proposed dwellings from the north, east and south and by the woodland to the west. Any loss of openness assessed from a visual point of view would be mainly experienced from within the appeal site and by residents of the adjacent three dwellings.

12. The proposals would replace two former farm buildings, set in plain hardened yards, of a conventional agricultural character as commonly found in the countryside. The three dwellings in both cases would be of a smaller volume and floor area but nonetheless, compared to the barns, would create a more expansive area of development when also considering their associated front and rear gardens, garaging, car parking, boundary walls and fences and bin storage. Both proposals would have a significantly wider urbanising impact, creating a greater intrusion into the openness of the Green Belt, compared to the existing buildings.

13. Although from public areas outside the appeal site the visual perception of the proposed schemes would be limited, their effect would detract from openness in a spatial sense. This would conflict with the fundamental aim of Green Belt policy to keep land permanently open to prevent urban sprawl and safeguard the countryside from encroachment. Notwithstanding the large barns that would be replaced these proposals would both result in a more expansive and intrusive area of development.

14. I acknowledge that, compared to the Appeal A scheme, the Appeal B scheme would create less overall massing of built development and provide a more spacious layout through removing the garage linking houses A and B and reducing the two storey element and eastward projection of house C. Whilst the impact on openness would be moderated by the amendments provided in Scheme B the effect of both proposals would be to encroach upon the openness of the Green Belt in this location. Although the loss of openness would not be considerable it would still be significant in respect of both schemes.

15. Therefore, both appeal schemes would be inappropriate development in the Green Belt as they would involve the partial redevelopment of a previously developed site that would have a greater impact on the openness of the Green Belt, and the purpose of including land within it, than the existing development. As a consequence these proposals would be contrary to LP Policy GBC1 and the Framework and result in significant harm. Under paragraph 88 of the Framework substantial weight should be given to the harm found.

Access to shops and services

16. An earlier appeal[1] decision relating to the conversion of the southern of the two barns on this site (Denzil's Barn) was dismissed on 23 December 2014, with the Inspector finding that this site was in an isolated location and future occupiers would be dependent on private car use to access basic services and facilities. This earlier appeal decision is a material consideration.

17. The appellant has sought support from an appeal decision[2] allowing the residential change of use of an agricultural building at Levens Green. Although quite distant from this appeal site this is a similarly isolated rural location, further to the north and outside the Green Belt. However, this decision related to an application for prior approval of development permitted under former Class MB of the General Permitted Development Order. Although not published when this decision was made, the Government's Planning Practice Guidance has since provided clearer advice over this permitted development right not applying a test in relation to sustainability of location, recognising agricultural buildings will often not be in village settlements and able to rely on public transport for daily needs.

18. The Inspector's consideration in the Levens Green appeal was limited to whether the location or siting of the building made it otherwise impractical or undesirable for the change of use to a dwelling. These appeal proposals are not for the prior approval for a residential use for which the principle is already accepted under permitted development rights. Therefore I consider the test in relation to the sustainability of location to be materially different to these cases such that only limited weight is attached to the Levens Green appeal decision.

19. I have considered the fact that there is a mainline railway station at Bayford some 1.5 miles from the site of these appeals, where there is also the nearest primary school. Although the appellant refers to these appeals being part of a hamlet of 40 dwellings this is a loosely developed, sporadic arrangement of housing in mainly undeveloped countryside. The nearest village of Little Berkhamsted is around a mile to the north and offers a village shop and post office, a further pub to that nearer the appeal site and other facilities. Although safely accessible by foot I calculate the 15 minute walk to the village claimed would need to be taken quite briskly. I consider the future occupiers of these dwellings would be largely dependent upon private car use to have reasonable access to regularly required services and to reach the nearest train station and primary school. Therefore, in the case of both appeals, the proposals would quite clearly comprise three dwellings within an isolated location in the countryside.

20. As a consequence, in both appeals, the proposals would be contrary to the requirements of paragraph 55 of the Framework where to promote sustainable development in rural areas housing should be located where it will enhance or maintain the vitality of rural communities and that new isolated homes in the countryside should be avoided other than in special circumstances. Accordingly, significant harm would result from both the proposals by reason comprising new isolated homes in the countryside.

[1] APP/J1915/A/13/2194060
[2] APP/J1915/A/14/2222125

Other considerations

21. There would be no highway safety concerns in the case of both proposals, and each would be designed to emulate as closely as possible a traditional farm yard. However, these considerations provide no weight as benefits and only indicate an absence of harm in these respects.

22. The Council acknowledges that it cannot demonstrate the required 5 year supply of housing land and significant weight is given to the current shortfall. The Council's LP is out-of-date in this respect and the relevant policies for the supply of housing should not be considered up-to-date. In such circumstances paragraph 14 of the Framework indicates that permission should be granted unless amongst other matters specific policies in the Framework indicate development should be restricted, as would be the case with these appeals being within a designated Green Belt.

23. Weight can be given to the contribution each scheme would make to addressing the under supply of housing. However, the contribution of three houses would be relatively modest and the weight attached to this benefit is limited. The social benefits of the additional dwellings would be reduced as these dwellings would not be for affordable housing.

24. Some weight can be attached to the short-term benefits provided to the local economy through the construction of three dwellings and the longer-term benefits in the support of local services. However, these economic benefits would be offset by the loss of buildings that could be put to some employment-generating use.

Conclusions

25. These proposals would be inappropriate development in the Green Belt which by definition would be harmful and should not be approved except in very special circumstances. The proposals would erode the openness of this part of the Green Belt and result in isolated housing in the countryside overly reliant on private car use to reach regularly required shops and services. The harm to the Green Belt by reason of the inappropriateness of what is proposed, to which substantial weight must be given, along with the other harm identified, would not be clearly outweighed by the other considerations. The very special circumstances would not exist to support this development in the Green Belt and therefore I conclude, having taken into consideration all other matters raised, that both Appeal A and Appeal B should be dismissed.

Jonathan Price

INSPECTOR

The Planning Inspectorate

Appeal Decision

Site visit made on 6 June 2016

by Christa Masters MA (Hons) MRTPI

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

Decision date: 16 June 2016

Appeal Ref: APP/J1915/D/16/3145791
87 Apton Road, Bishops Stortford, Hertfordshire CM23 3ST

- 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 Miss Suzanne Melia against the decision of East Hertfordshire District Council.
- The application Ref 3/15/2179/HH, dated 27 October 2015, was refused by notice dated 18 December 2015.
- The development proposed is part two-storey, part single-storey rear extensions, including raised decking with a canopy over and new boundary fencing. The rearmost extension to be used as a studio and for guest accommodation

Decision

1. The appeal is allowed and planning permission is granted for part two-storey, part single-storey rear extensions, including raised decking with a canopy over and new boundary fencing. The rearmost extension to be used as a studio and for guest accommodation at 87 Apton Road, Bishops Stortford, Hertfordshire CM23 3ST in accordance with the terms of the application, Ref 3/15/2179/HH, dated 27 October 2015 and the plans submitted with it.

Background and Main Issue

2. Planning permission was granted in 2013 for a part two/part single storey extension, decking and boundary fence. The appellant implemented these works but not in accordance with the details as approved. The Council have raised no objection to the part two storey extension, raised decking and canopy as well as the boundary fencing as built. The applicant demolished the existing outbuilding at the property and replaced it with the existing structure as built on site. The Council contend that this structure fails to present a high standard of design.

3. The main issue in this appeal is therefore whether the proposal would preserve or enhance the character and appearance of the Bishops Stortford Conservation Area.

Reasons

4. The appeal site is a two storey semi detached residential dwelling. The Bishops Stortford Conservation Area covers an extensive area. The conservation area appraisal and management plan (2014) note that the area has a diverse and high quality built environment. From what I saw on the site visit, I would

describe this part of Apton Road as providing a mixture of Victorian and Edwardian terraced and semi detached dwellings which have a uniform appearance to the road frontage. Oak Street wraps around the rear of the appeal property with No 47 Oak Street being positioned unusually directly behind No 85 Apton Road which is a detached dwelling. The positioning of these two properties means that the site is significantly enclosed on this northern boundary and that there is a compact urban form as a result.

5. Policy ENV1 of the East Herts Local Plan Second Review (LP) 2007 advises, amongst other things, that all development proposals will be expected to be of a high standard of design and layout to reflect local distinctiveness. Policy ENV5 is a general policy regarding extensions to dwellings and policy ENV6 provides a 5 point criteria to be applied to proposals for extensions to dwellings. These criteria include, amongst other things, that extensions should be in materials to match or complement the original building and flat roof extensions will be refused except where they are on the ground floor. Policy BH5 refers to extensions and alterations to unlisted buildings in conservation areas. It advises that proposals will be permitted where they are sympathetic in terms of scale, height, proportions and form, as well as the general character and appearance of the area.

6. In relation to the size of the structure, the parties agree that the building has replaced an original structure at the property and the appellant has submitted photographs to demonstrate the size and appearance of this previous structure. There appears to be disagreement between the parties as to how the existing structure differs in height and scale from the structure it replaced. The delegated officers report advises the structure is 1.5 metres longer than the previously demolished building, and is marginally taller and wider. The appellant advises that the stricture is 1.6m longer, 0.45m wider but the same height as the previous structure.

7. From what I saw on the site visit, the single storey structure presents a significant structure to the rear of the host property. However, I do not consider that the extra width and length of the structure is materially different so as to have a significant harmful effect on the conservation area. Furthermore, the size of the structure does not dominate the host property or the immediate environment.

8. In terms of the siting of the structure, it is positioned in the same position as the structure it replaced. This previous structure reflected the existing pattern of development in the area and therefore the siting is in keeping with the general pattern and established form of development in the area.

9. Turning to the issue of design, the structure has a flat roof, and is finished in timber weatherboarding. In my view, this material assists in ensuring that the appearance of the structure is subservient to the main dwelling and complements the existing materials used within the immediate environment. The Council have raised concerns regarding the flat roof and the felt finish. However, policy ENV6 does not prohibit flat roof extensions at ground floor level. In the particular circumstances of this appeal, the use of felt is in keeping with the outbuilding appearance of the structure. I am therefore of the view that the design and materials used complement the local distinctiveness of the area. I do not consider that the materials used or design detract from the appearance of the structure or cause material harm to the character or appearance of the conservation area as a result.

10. I therefore conclude the proposal would accord with policies ENV1, ENV5, ENV6 and BH5 of the LP. Taking the above into account, the proposal would therefore be consistent with paragraph 132 of the Framework which anticipates that great weight should be given to the conservation of heritage assets. For these reasons, I conclude that the proposal would preserve the character and appearance of the conservation area, in accordance with section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990.

Other Matters

11. The occupiers of No 89 Apton Road have raised concerns regarding the effect of the proposal on privacy and lighting levels. However, given the positioning of the windows and separation distances involved, as well as the boundary fencing in place, I concur with the views expressed by the Council that the proposal is unlikely to result in material harm in relation to loss of privacy. Similarly, given the location, positioning and scale of the single storey structure, I am not convinced that the proposal has resulted in any materially harmful effect on the levels of light reaching neighbouring properties.

Conclusion

12. As the development has already taken place, I do not consider it is necessary to attach any conditions to this decision. I therefore conclude that having considered all matters raised, the appeal should be allowed.

Christa Masters

INSPECTOR

The Planning Inspectorate

Appeal Decision

Site visit made on 22 August 2016

by Jason Whitfield BA (Hons) DipTP MRTPI

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

Decision date: 13 September 2016

Appeal Ref: APP/J1915/W/16/3149444
Barns at New Barns Lane, Much Hadham SG10 6HH

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant prior approval required under Schedule 2, Part 3, Class Q of the Town and Country Planning (General Permitted Development) (England) Order 2015.
- The appeal is made by Foxley Builders against the decision of East Hertfordshire District Council.
- The application Ref 3/15/2349/ARPN, dated 24 November 2015, was refused by notice dated 22 January 2016.
- The development proposed is the conversion of agricultural buildings to residential garage and dwelling.

Decision

1. The appeal is allowed and approval is granted under the provisions of Schedule 2, Part 3, Class Q of the Town and Country Planning (General Permitted Development) (England) Order 2015 (the GPDO) for the conversion of agricultural buildings to residential garage and dwelling at Barns at New Barns Lane, Much Hadham SG10 6HH, in accordance with the details submitted pursuant to Schedule 2, Part 3 Class Q of the GPDO through application Ref 3/15/2349/ARPN, dated 24 November 2015 and subject to the following conditions:

    1) The development hereby permitted shall be carried out in accordance with the following approved plans: 2687-1, 2687-2, 2687-3, 2687-4 and 2687-5.

    2) The development hereby permitted shall not begin until a scheme to deal with contamination of land and/or groundwater has been submitted to and agreed in writing by the Local Planning Authority and the measures approved in that scheme have been implemented full. The scheme shall include all of the following measures:

        (1) a site investigation shall be carried out by a competent person to fully and effectively characterise the nature and extent of any land and/or groundwater contamination and its implications. The site investigation shall not be commenced until;

            (i) The requirements of the Local Planning Authority for site investigations have been fully established, and

            (ii) The extent and methodology have been agreed in writing by the Local Planning Authority.

(2) A written method statement for the remediation of land and/or groundwater contamination affecting the site shall be submitted to and agreed in writing with the Local Planning Authority prior to commencement and all requirements shall be implemented in full and completed to the satisfaction of the Local Planning Authority by a competent person.

3) The presence of any significant unsuspected contamination that becomes evident during the development of the site shall be brought to the attention of the Local Planning Authority. Any mitigation measures required shall be agreed in writing with the Local Planning Authority and thereafter implemented in accordance with the agreed measures.

Application for costs

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

Background and Main Issues

3. Schedule 2, Part 3, Class Q of the Town and Country Planning (General Permitted Development) Order (England) 2015 (GPDO) permits the change of use of an agricultural building and any land within its curtilage to a residential use, along with building operations reasonably necessary to convert the building.

4. There is no dispute between the parties that the development would comply with the criteria of Paragraph Q1 and is therefore permitted development. On the evidence before me, I have no reason to come to any alternative view.

5. Development permitted under Class Q is subject to the condition that before commencement, an application must be made to determine whether prior approval is required in respect of the matters referred to in (a)-(f) of paragraph Q.2(1). The Council has raised no concerns in respect of the transport and highway, noise, flooding or design impacts of the development. I have, on the evidence before me, no reason to disagree.

6. On that basis, the main issues are:

- Whether there are contamination risks on the site which would make the site unsuitable for residential use.
- Whether the location or siting of the building would make it otherwise impractical or undesirable to change to a residential use.

Reasons

Contamination Risks on the Site

7. The appeal site consists of two agricultural buildings and associated land. The buildings are predominately redundant and are surrounded by agricultural fields. It is proposed to convert the larger of the two buildings to a four bedroom, single storey dwelling and the smaller building to a garage and garden store/workshop.

8. Paragraph W(10)(c) of the GPDO states that in assessing contamination risks on the site, decision makers must determine whether, as a result of the

proposed change of use, taking into account any proposed mitigation, the site would be contaminated land and if so, refuse to give prior approval. The appellant indicates that there are no known contamination risks and no evidence of contamination at the site. It is, however, indicated that the buildings have been used intermittently for the agricultural storage of grain and machinery. To that end I agree with the Council that there is the potential for contamination from the historical storage of farm machinery, pesticides and other chemicals associated with agricultural practices.

9. Nevertheless, a Phase 1 Contamination Survey has been provided with this appeal which recognises potential sources of contamination and recommends further investigations for soil and groundwater. The Council's Environmental Health officer has recommended that conditions in respect of contamination should be imposed. Paragraph W (13) of the GPDO states that prior approval may be granted subject to conditions reasonably related to the subject matter of the prior approval. I am satisfied that that in this case, the imposition of conditions would ensure that the appropriate investigations and, if necessary, remediation as recommended in the Phase 1 Survey would be taken to satisfactorily deal with any contaminations risks on the site.

10. I conclude, therefore, that having regard to the paragraph W(10) of the GPDO, and subject to appropriate conditions, the development would not result in contamination risks which would make the site unsuitable for residential use. As a result, the proposal would accord with Condition Q.2.(1)(c).

Location and Siting

11. Paragraph W(10)(B) of the GPDO states that regard is to be hard to the National Planning Policy Framework (the Framework) so far as relevant to the subject matter of the prior approval, as if the application were a planning application. The Council has drawn my attention to the presumption in favour of sustainable development set out in Paragraph 49 of the Framework and the provisions in respect of rural housing in Paragraph 55 of the Framework.

12. However, Planning Practice Guidance (the Guidance) states that the permitted development right under Class Q does not apply a test in relation to the sustainability of a location[1]. It states that this is deliberate as the permitted development right recognises that many agricultural buildings will not be in village settlements and may not be able to rely on public transport for their daily needs.

13. The Council considers that the Guidance is in conflict with the GPDO and that the sustainability of the proposal should remain a consideration in order to accord its requirements. In my view, the practical regard to the Framework in accordance with the GPDO must be confined to the subject matter of the prior approval. In this respect the test under Paragraph Q.2(1) of the GPDO is not simply one of the sustainability of the proposal but whether the location or siting of the building makes it otherwise impractical or undesirable to change to a residential use.

14. The Guidance states that a reasonable, ordinary dictionary meaning should be applied to the terms impractical and undesirable[2]. It further states that the term impractical reflects that the location and siting would "not be sensible or

[1] Planning Practice Guidance: Paragraph 108 Reference ID 13-108-20150305
[2] Planning Practice Guidance: Paragraph 109 Reference ID 13-109-20150305

realistic". The term undesirable reflects that it would be "harmful or objectionable". It goes on to state that the fact an agricultural building is in a location where the local planning authority would not normally grant planning permission for a new dwelling is not a sufficient reason for refusing prior approval. It provides the example of an agricultural building on the top of a hill with no road access, power source or other services as one where its conversion would be impractical and the example of a building adjacent to other uses such as intensive poultry farming, silage storage or buildings with dangerous machines or chemicals as undesirable.

15. I recognise that the interpretation of statutory provisions is a matter for the Courts. However, the Council has not provided any evidence of such judgements which suggest the approach set out in the Guidance is incorrect. As it is, the Guidance provides the most up-to-date interpretation of the GPDO and provides clarity in its practical application. The Council indicates that it has received legal advice on this matter, however, as I am not in receipt of the advice, I am unable to afford it more than limited weight. Consequently, in this instance I find the advice contained in the Guidance would significantly outweigh the Council's submissions in respect of this matter.

16. The Council considers that the location need not be as extreme as the examples given in the Guidance to be impractical or undesirable to a point which cannot be mitigated. In this instance, the Council considers that the unsustainable location and the introduction of the new residential use along with associated activity and paraphernalia, would result in a harmful impact that cannot be mitigated.

17. I note that the appeal site is located in the open countryside and in a location where permission may not normally be granted for a new dwelling. However, the appeal site lies adjacent to an existing dwelling and cannot, in my view, be considered to be isolated. There are no other surrounding units which would be incompatible with a residential use. Moreover, whilst the site would be accessed via a long, narrow rural lane which would not necessarily be conducive to walking or cycling, the road is hard surfaced for most of its length and would be easily accessible by private motor vehicle. The settlement of Much Hadham is nearby with a range of services and facilities.

18. I note that the proposal would also have some degree of urbanising effect by virtue of introducing a residential use where the site has a distinct agricultural character within a rural setting. However, the existing barns are in poor condition and I agree with the appellant that the proposal would improve their visual appearance.

19. I conclude, therefore, that the location or siting of the buildings would not make it otherwise impractical or undesirable to change to a residential use. Thus, the proposal would accord with Condition Q.2.(1)(e).

Conditions

20. Paragraph Q.2.(3) of the GPDO states that permitted development is subject to a condition that development permitted under Class Q must be completed within a period of 3 years starting from the prior approval date. As such, no time limit condition is necessary or appropriate. Paragraph W(12) requires the development must be carried out in accordance with the details approved. For clarity and to provide certainty, I have imposed a condition to this effect.

21. Given the findings and recommendations of the Phase 1 Contamination Survey, I consider a condition relating to contamination as suggested by the Council's Environmental Health Officer necessary to ensure the wellbeing of future residents and the protection of the surrounding environment and water courses. I have, however, omitted the suggested requirement for the preparation and submission of a desktop study as one has already been undertaken within the Phase 1 Contamination Survey and no objections have been received from the Council during this appeal process to its content.

22. There is no substantive evidence before me to suggest the proposed construction would give rise to harmful effects on the living conditions of nearby residents. A condition controlling the timing of such works would not therefore be necessary.

Conclusion

23. For the reasons given above I conclude that the proposal satisfies the prior approval requirements of the GPDO with regard to being permitted development under Schedule 2, Part 3, Class Q for change of use from an agricultural building to a dwelling (Class C3). Therefore, the appeal should be allowed and prior approval is granted subject to conditions.

Jason Whitfield

INSPECTOR

The Planning Inspectorate

Appeal Decision

Site visit made on 16 August 2016

by Chris Forrett BSc(Hons) DipTP MRTPI

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

Decision date: 19 September 2016

Appeal Ref: APP/J1915/W/16/3152775
Matts Auto Repair Services, Bryan Road, Bishops Stortford, Hertfordshire CM23 2HR

- 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 Derek Rose against the decision of East Hertfordshire District Council.
- The application Ref 3/15/2445/FUL, dated 4 December 2015, was refused by notice dated 23 February 2016.
- The development proposed is the erection of a single dwelling.

Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are:-

   i. whether the proposal would comply with the spatial strategy of the National Planning Policy Framework (the Framework) and the Local Plan in terms of minimising flood risk; and

   ii. whether the proposal would result in acceptable living conditions for the future occupiers of the development with particular regard to noise and disturbance.

Reasons

Flood risk

3. The appellant has carried out a site specific flood risk assessment which indicates that the site lies within Flood Zones 2 and 3. Based upon this work the Environment Agency considers that planning permission could be granted subject to a number of conditions to ensure that the site would be safe from flooding. Nevertheless, as the Agency state in their letter of 19 January 2016, the sequential test should first be applied to the site to determine if there are other available sites with a lower probability of flooding.

4. Paragraph 100 of the Framework advises that inappropriate development in areas at risk from flooding should be avoided by directing development away from areas at highest risk. Paragraph 101 goes on to advise that a sequential, risk-based, approach must be taken that steers development towards areas with the lowest probability of flooding. The Framework requires a sequential test to be applied to all development in high risk areas.

5. The Framework also makes it clear that only if there are no sites with a lower flood risk that consideration should be given to whether the development could be made safe and not increase the risk of flooding elsewhere through a Flood Risk Assessment and the application of the exception test. The Appellant appears to have jumped straight to the latter part of the process by concentrating on flood mitigation measures, without considering whether there is better located land to accommodate the development in question.

6. Whilst a pragmatic approach to the availability of alternative sites should be taken, the evidence before me seems to indicate that there are other available sites in the vicinity. In any event, there is little evidence to suggest that there is not.

7. I have also had regard to the operational aspects of the business. Whilst I consider that there would be some clear benefits in this respect it would not outweigh the harm I have identified.

8. For all of these reasons the proposed development would fail to minimise flood risk by locating new housing in an area of higher flood risk contrary to the sequential test. As a consequence, it would be contrary to Policy ENV19 of the East Herts Local Plan Second Review April 2007 (LP) and the Framework.

Living conditions

9. The appeal development would be surrounded on three sides by activities associated with the vehicle repair business with parking spaces located to the side and rear of the proposed dwelling. The front of the dwelling would be approximately 10 metres away from the workshop with the garages only access in between.

10. Whilst I accept that noise and general disturbance at the rear, and to a certain extent at the side, would be minimised by the operation of the business (with only employees of the business using the spaces at the rear) it is unclear how this could be achieved in practice. Additionally, I share the concerns of the Council in relation to the lounge and particularly bedroom 4 owing to their proximity and relationship to the workshop. The same concerns apply to bedroom 2, albeit to a lesser extent.

11. I note that the Appellant considers that this concern would be addressed as the house is to be occupied by the business owner and his family. It has also been indicated that a planning condition could be imposed, or legal undertaking required, to the effect that the house could only be occupied by someone operating or occupied in the workshop.

12. Whilst this may address some of the living condition concerns (particularly from early morning, evening and weekend disturbance), from the limited evidence before me I am not convinced that this would be sufficient to ensure that the occupiers of the dwelling would not be subjected to an unacceptable living environment.

13. For the above reasons, I conclude that the proposal would result in unacceptably poor living conditions for the future occupiers of the dwelling as a result of noise and disturbance from the vehicle repair workshop. Therefore the proposal would conflict with the provisions of Policy ENV1 of the LP which amongst other things seek to protect the amenity of the occupiers of residential properties.

Other matters

14. The site is located close to the Bishops Stortford Conservation Area. I note that the Council consider that the proposal would not give rise to harm to the setting of the Conservation Area and I have no reason to disagree.

15. I have also had regard to the security benefits to the business that a dwelling on site would have. However, I consider that this benefit does not outweigh the harm I have found.

Conclusion

16. For the above reasons and having regard to all other matters raised, including some support for the development, I conclude that the appeal should be dismissed.

Chris Forrett

INSPECTOR

The Planning Inspectorate

Appeal Decision

Site visit made on 8 August 2016

by Jonathan Price BA(Hons) DipTP MRTPI DMS

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

Decision date: 5th September 2016

Appeal Ref: APP/J1915/W/16/3148828
Former Sun and Harrow Public House, Fanhams Road, Ware, Hertfordshire

- 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 Sun and Harrow Ltd against the decision of East Hertfordshire District Council.
- The application Ref 3/15/2560/FUL, dated 21 December 2015, was refused by notice dated 16 February 2016.
- The development proposed is nine dwellings with associated parking and landscaping.

Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by Sun and Harrow Ltd against East Hertfordshire District Council. This application is the subject of a separate Decision.

Preliminary Matters

3. The Council is currently unable to demonstrate a five-year supply of deliverable housing sites. In accordance with paragraph 49 of the National Planning Policy Framework (the Framework) relevant policies for the supply of housing in the East Herts Local Plan Second Review 2007 (LP) should therefore not be considered up-to-date.

4. The Council's decision is based on LP policies ENV1, ENV2 and HSG7. These are general, criteria-based policies which include considerations over the character and arrangement of development and the provision of landscaping and open space. As such, these policies can have relevance to the amount of housing insofar as they might influence the pattern and density of proposals. Consequently, as these policies influence the supply of housing through the LP, they are not considered up-to-date. Because of this, the presumption in favour of sustainable development, as set out in paragraph 14 of the Framework, must be applied to this decision.

Main Issues

5. Therefore, the main issues in this case are:

    - The effect of the proposals on the character and appearance of the area.

- Whether acceptable living conditions would be provided for future residents, with particular regards to privacy and garden space.
- Whether the proposals would gain support under a presumption in favour of sustainable development.

Reasons

Character and appearance

6. The proposal relates to a vacant corner site, previously occupied by a public house, at the junction of Fanham Road and King George Road. It is located within a large estate of similarly designed, medium-density residential development comprising mainly houses, either semi-detached or in short terraces. The surrounding housing is quite spaciously arranged with dwellings set back from the street to an even building line, and with mainly quite generous back gardens.

7. The proposals provide for a terrace of eight houses along the two road frontages which wraps around the corner of the site, with a ninth unit situated to the rear adjacent to three parking spaces which are accessed at the southern end of the site off King George Road.

8. The eight frontage dwellings would amount to a development of about twice the density of the surrounding housing. However, the current scheme has been shown to have evolved from an extant permission[1] given in 2014 for the development of a three-storey, 30 bedroom care home on this site. In comparison with this scheme the arrangement of the frontage housing would appear acceptable.

9. The three-bedroomed, hipped roofed pair of dwellings fronting Fanham Road would reflect the design and scale of the existing adjacent houses and, whilst set forward of the building line, would fit in acceptably in the street scene. The pair of units facing the corner have a projecting two storey element which would provide a strong visual focus for the scheme and the roof heights of the four units facing King George Road step down with the falling gradient to provide interest to the roofscape.

10. There would be space for landscaping at the front of the corner units 5 and 6. However, the space at the front of the other units would be largely given over to bin storage and car parking. An alternative layout might have provided space for a greater amount of soft landscaping at the front of the site. However, the lack of frontage landscaping is not considered to result in material harm given the generally positive contribution this scheme provides to the appearance of the street-scene. Consequently, this proposal would not conflict with LP Policy ENV2 in regard to the adequacy of landscaping.

11. Generally, the design and massing of the eight frontage units would be satisfactory. However, the ninth dwelling, at the rear of the site, would not relate comfortably with the arrangement of the frontage units. The inclusion of this rear unit would quite clearly tip the balance from a compact but reasonably successful development of eight units to a cramped and contrived arrangement of nine houses. Other than providing passive surveillance of a parking area I can see little merit in providing an additional unit in this location. Whilst it is

[1] 3/13/2251/FP

clear this proposal has been the subject of a period of comprehensive stakeholder engagement and detailed pre-application discussion this does not persuade me of the merits of the detached unit in this scheme. Neither does the Design and Access Statement demonstrate how, in the evolution of this proposal, this element would be necessary or desirable.

12. The eight joined units, whilst sited forward of the established building line, and built to a higher density, generally conform to the prevailing pattern of frontage housing in this area. Unit 9 would add an incongruous backland element to the development which would not relate acceptably to how the other new houses are arranged or conform to the existing pattern of housing surrounding this site.

13. For these reasons the proposals would provide for a cramped and over-intensive development which would not be supported by LP Policies ENV1 and HSG7 which seek a high standard of design and layout in developments.

Living conditions

14. The Council has identified no harm to the living conditions of the existing occupiers of neighbouring houses. LP Policy ENV 1 expects development proposals to respect the amenity of future occupants and ensure their environments are not harmed by inadequate privacy. The Council has not expanded on the lack of privacy that would be provided for the occupants of this development or on the desirable size of private garden space.

15. However, whilst space at the rear of the development would still be required for car parking, I am in no doubt that the inclusion of unit 9 precludes the provision of more adequately sized and secluded garden spaces for the remaining houses. Unit 9 would have a limited area of rear garden, lacking privacy by being surrounded by other gardens on all sides. Furthermore, this detached house would be of a contrived design in only having south facing windows, providing an unsatisfactory single outlook over a car parking area. The position of unit 9 would also result in an overbearing outlook from the rear of the other houses, particularly units 2 and 3.

16. Future residents would have the benefit of consumer choice in respect of choosing whether or not to live in this development, and it is acknowledged that other kinds of housing, notably flats, provide less or no private garden space. The Committee reports concerning the town centre housing developments approved in Hertford at the former Waters Garage site in North Road and at St Andrews Street have been considered. However, I am not persuaded the circumstances or constraints relating to these decisions are sufficiently comparable to lend any material support to this proposal.

17. These examples do not alter my opinion that where the opportunity arises, it would be generally good planning to develop a site in a manner that would provide the most reasonable and optimal living conditions for future occupiers. This proposal would be deficient in this respect and therefore this scheme would not be supported by LP Policy ENV1 which encourages that a good standard of living conditions be provided for the occupants of new developments.

Presumption in favour of sustainable development

18. There are no specific policies in the Framework that indicate that development should be restricted in this location. Therefore, in accordance with paragraph 14, where relevant policies are out-of-date, this would mean granting permission for this proposal unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.

19. As set out in the Framework there are three dimensions to sustainable development: economic, social and environmental, which inform the roles played by the planning system and are mutually dependent.

20. This proposal would perform a social role in helping to boost the provision of housing, in a location accessible to services, and addressing the current five-year supply shortfall that exists. By making efficient use of a previously-developed site this scheme would also secure an environmental role. The construction and servicing of the development of this site would fulfil an economic role.

21. However, these roles would be also supported by the development of this site in a manner that supported a stronger social role in providing a higher quality built environment, and a stronger environmental role with a well-designed layout.

22. The adverse impacts of permitting this scheme, which would be of a poor quality layout in respect of being cramped and providing unsatisfactory living conditions for future occupants, would significantly and demonstrably outweigh the benefits in this case. Consequently this proposal would not be the sustainable development supported by the Framework.

Conclusions

23. Whilst out-of-date in respect of their relevance in influencing the supply of housing, the weight given to LP Policies ENV1 and HSG7 rests with this decision. These policies are generally consistent with the Framework principles to always seek to secure high quality design and a good standard of amenity for all existing and future occupants of land and buildings and are therefore afforded significant weight. For the reasons set out above, this proposal would not gain support from these LP policies and, having taken into account all other matters raised, I conclude that this appeal should be dismissed.

Jonathan Price

INSPECTOR

The Planning Inspectorate

SMART SAVE SCANNED

Appeal Decision

Site visit made on 16 August 2016

by Chris Forrett BSc(Hons) DipTP MRTPI

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

Decision date: 1 September 2016

Appeal Ref: APP/J1915/W/16/3150971
Land to the North of St Marys Church, Ermine Street, Colliers End, Ware, Hertfordshire SG11 1ED

- 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 V Hodge against the decision of East Hertfordshire District Council.
- The application Ref 3/16/00034/FUL, dated 22 December 2015, was refused by notice dated 22 March 2016.
- The proposal is for the development of 3 Dwellings on a site that is an under used parcel of former agricultural land that is too small and inaccessible for productive agriculture.

Decision

1. The appeal is allowed and planning permission is granted for the development of 3 Dwellings at land to the North of St Marys Church, Ermine Street, Colliers End, Ware, Hertfordshire SG11 1ED. Permission is granted in accordance with the terms of the application, Ref 3/16/00034/FUL, dated 22 December 2015, subject to the conditions set out in the schedule to this decision letter.

National Planning Policy Background

2. The Council have confirmed that they do not have a five year housing land supply. It follows that, in accordance with paragraph 49 of the National Planning Policy Framework (the Framework), the housing supply policies in the East Herts Local Plan Second Review April 2007 (LP) are out of date.

3. Consequently the fourth bullet point of paragraph 14 of the Framework comes into force. This makes clear that where development plan policies are out of date planning permission should be granted unless the adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework as a whole.

Main issue

4. The main issue is the effect of the proposed development on the character and appearance of the area.

Reasons

5. The appeal site is located at the southern end of the village of Colliers End between existing residential (and commercial) properties and St Mary's Church. Opposite the site is a modern residential development whilst to the east and to the south, beyond the church, is open undeveloped countryside.

6. The site is currently rough meadow land with hedgerow and trees to the site boundaries. The location of the new dwellings would be towards the rear of the site where the land levels are lower than the road frontage.

7. As I understand it the site lies outside any defined village development boundary and, in planning policy terms, is located in the countryside. Given the undeveloped nature of the site, and the open countryside to the east and south, it has a rural feel to it.

8. The new dwellings would be sited a significant distance back from Ermine Street and would be broadly in line with other residential properties to the north. This setback from the road, with the open area to the site frontage, would significantly reduce the impact of the development on the rural character of the area. Notwithstanding this, the development would still have an adverse impact on the open character of the area by extending development along Ermine Street.

9. For the above reasons, I conclude that the dwellings would lead to unacceptable harm to the rural character and appearance of the area contrary to the provisions of Policies GBC3 and ENV1 of the LP which amongst other things seek to protect the character and appearance of the area. This would also be at odds with the Framework which seeks to secure good design.

Other matters

10. I have also had regard to the impact on the setting of St Mary's church. However, as acknowledged by the Council, the church is not a designated heritage asset. To my mind, the development would not give rise to any significant harm to the setting of the church, especially given the open area to the site frontage.

11. Turning to the comments of the Parish Council I note their desire to use the open area of land at the front of the site for open space purposes. However, given the scale of the development, there is no requirement for such provision as a direct result of this development. I also note that the appellant has confirmed that this does not form part of the proposed development. I therefore give this very limited weight.

Planning balance

12. In their reason for refusal the Council cite Policy GBC3 from the LP. A recent court judgement (Cheshire East Borough Council v SoS for CLG and Renew Land Developments Ltd) has made clear that relevant policies for the supply of housing as mentioned in paragraph 49 of the Framework include policies that influence the supply of housing by restricting the locations where they may be developed. From this I deduce that Policy GBC3 is a policy for the supply of housing, and that therefore it cannot be considered to be up to date. Limited weight can therefore be afforded to any conflict arising with it and the fourth bullet point of paragraph 14 of the Framework comes into force as detailed above.

13. I have found that the proposed development would give rise to some harm to the character and appearance of the area and would conflict with the LP and the Framework. This factor weighs against allowing the proposed development.

14. My attention has been drawn to a recent appeal decision (APP/J1915/W/15/3121638) in the village where it was concluded that whilst amenities and services in Colliers End are limited, there is a bus route with a reasonable level of service for a rural area and journeys by car to nearby towns, especially to Ware, would be relatively short. I also noted from my site visit that the bus stops on both sides of the road are located just to the north of the proposed access. In terms of the sites location, the site cannot be considered to be unsustainable as a result of its rural location or the level of accessibility to services and facilities and therefore is not in an isolated location in the context of paragraph 55 of the Framework.

15. Whilst limited, the addition of three dwellings would provide some economic and social benefits to the village.

16. From the evidence before me, it is unclear what the current shortfall in the Council's five year housing land supply is. Notwithstanding this, the provision of three dwellings is unlikely to have any significant effect in reducing any deficit. Nevertheless, the provision of additional dwellings is a benefit.

17. Taking all of these factors into account given that the area of open land to the frontage of the site considerably minimises the impact of the proposal on the surrounding rural area, to my mind, the adverse impact of the development does not significantly and demonstrably outweigh its benefits. I therefore consider that the development is sustainable development when considering the Framework taken as a whole.

Conditions

18. Other than the standard time limit condition, it is necessary to ensure that the development is carried out in accordance with the approved plans for the reason of certainty. Conditions relating to the finished ground and floor levels, external materials and details/implementation of the landscaping and boundary treatment and the retention of the existing trees and hedges are appropriate in the interest of the character and appearance of the area. Given the possibility of archaeological remains a condition is also required to ensure that any findings are recorded. In the interests of highway safety during construction works it is also necessary to ensure that wheel washing facilities are provided on site.

19. With the exception of the archaeology, land levels, and wheel washing facilities it is not necessary for any of these to be pre-commencement conditions. It is necessary for these matters to be agreed prior to any works commencing as they involve matters which are required to be investigated prior to ground disturbance, could affect the initial site works, or relate to the period of construction works.

20. I have also considered the Council's suggested condition on the restriction of the hours of construction. However, this is not necessary as the site is not located in a densely populated area and construction works are not likely to result in any significant noise or disturbance.

Conclusion

21. Taking all matters into consideration, whilst the development does not accord with the Policies in the LP, given my conclusion in relation to the sustainable

nature of the development, and its compliance with the Framework when taken as a whole, the appeal should be allowed.

Chris Forrett

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: Site location plan 367/COL DRG No:01; Plot 1 plan 367 Drawing No 002A; Plot 2 plan 367 Drawing No 003A; Plot 3 plan 367 DRG No: 004A; and site layout plan 367COL DRG No:07B.

3) No development shall take place within the development site until the applicant, their agents, or their successors in title, has secured the implementation of a programme of archaeological work in accordance with a Written Scheme of Investigation, which shall be submitted to and approved in writing by the local planning authority. The scheme shall include a report of all the required archaeological work and (if appropriate) a commitment to publish the findings. Any agreed archaeological investigations shall be carried out prior to the commencement of any site clearance works.

4) No development shall take place until full details of the existing and proposed ground levels of the site, relative to the adjoining land, together with the finished floor levels of the dwellings have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved levels.

5) Prior to the first occupation of any of the dwellings details of all boundary walls, fences and other means of enclosure (relative to that plot) shall be submitted to and approved in writing by the local planning authority. The approved details shall be erected prior to the first occupation of the plot to which it relates and shall be retained in accordance with the approved details.

6) Prior to the commencement of the construction of the external surfaces of each dwelling samples of the materials to be used in the external finishes of the buildings hereby permitted shall be submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.

7) Unless shown on the approved drawings as being removed, all trees and hedgerows shall be retained for a minimum of five years following the practical completion of the development. All trees and hedgerows on and immediately adjoining the site shall be protected from damage as a result of works on the site in accordance with BS5837:2012 Trees in relation to design, demolition and construction for the duration of the works on site. In the event that trees or hedging becomes damaged or otherwise

defective during such periods the local planning authority shall be notified as soon as reasonably practicable and remedial action agreed and implemented. In the event that any tree or hedging dies or is removed without the prior permission of the local planning authority it shall be replaced as soon as reasonable practicable (and in any case not later than the end of the first available planting season) with trees or hedgerow of such size, species and in such number and positions as may be agreed with the local planning authority.

8) Prior to the first occupation of the first dwelling full details of both hard and soft landscaping proposals shall be submitted to and approved in writing by the local planning authority. The details shall include any hard surfacing materials, planting plans, schedule of plants (including species, sizes and numbers/densities).

9) All hard and soft landscaping works comprised in the approved details of landscaping shall be carried out in the first planting and seeding seasons following the first occupation of the dwelling to which it relates or in accordance with a timetable first agreed in writing by the local planning authority. Any trees or plants which within a period of 5 years after planting die, are removed or become seriously damaged or diseased shall be replaced as soon as practicable possible with others of similar size and species unless the local planning authority gives its written consent to any variation.

10) Prior to the commencement of any site works, wheel washing facilities shall be established within the site in accordance with details to be first submitted to and approved in writing by the local planning authority. The approved facilities shall be kept in operation at all times during the construction works.

The Planning Inspectorate

Appeal Decision

Site visit made on 8 August 2016

by Jonathan Price BA(Hons) DipTP MRTPI DMS

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

Decision date: 5th September 2016

Appeal Ref: APP/J1915/W/16/3149749
2 Castle View, Rye Meads, Hoddeston, Hertfordshire EN11 0EQ

- 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 Billy O'Brien against the decision of East Hertfordshire District Council.
- The application Ref 3/16/0040/OUT, dated 6 January 2016, was refused by notice dated 21 March 2016.
- The development proposed is new house.

Decision

1. The appeal is dismissed.

Main Issues

2. The main issues in this case are:

   - Whether the proposal would be inappropriate development in the Green Belt having regard to the National Planning Policy Framework (the Framework) and relevant policies in the development plan.
   - The effect on the openness of the Green Belt.
   - The effect on the living conditions of the neighbouring occupiers, with particular regard to outlook and daylight.
   - The level of flood risk to the proposal.
   - Whether the harm by reason of inappropriateness would be clearly outweighed by other considerations. If so, whether this would amount to the very special circumstances required to justify the proposal.

Reasons

Whether inappropriate development

3. As set out in Section 9 of the Framework, the Government attaches great importance to Green Belts with the fundamental aim to prevent urban sprawl by keeping land within them permanently open.

4. Paragraph 89 of the Framework regards the construction of new buildings as inappropriate in the Green Belt. None of the exceptions set out in this paragraph apply to this proposal which would comprise a new house which would be inappropriate development within the Green Belt, contrary to Policy

GBC1 of the East Herts Local Plan Second Review April 2007 (EHLP) and Part 9 of the Framework.

Openness

5. The dwelling would be sited directly adjacent to a relatively isolated pair of semi-detached houses located on the north side of the toll road that leads east out of the built-up part of Hoddeston. The surrounding area in this part of the Metropolitan Green Belt is characterised by a general absence of housing. The main development comprises the various structures associated with a major sewage works occupying a substantial area of land to the east. In other directions the land is more open and free of development, containing the settling lagoons serving the sewage works and expansive wetland areas that include a nature reserve. Due to the types of uses this area provides generally open views, largely free of visibly dominant buildings with vegetation providing a naturalised appearance.

6. The appellant argues that the proposed dwelling would comprise less than 25% of the footprint of the garage and storage buildings on this site. However, my visit showed these buildings to be demolished and the debris stored at the front of 2 Castle View, with some banked up along the front boundary of the appeal site. Therefore, any impact these structures had on the openness of this area has largely been removed.

7. A new house would be sited quite closely adjacent the existing pair of houses, and be of a comparable scale. Such an arrangement would limit the impact this dwelling has on the openness of the area. The site is described as residential in the application form, whereby its incidental use as garden space might currently permit fencing and other aspects of domestic paraphernalia. However, the additional dwelling, with its own front garden, access, car parking and long back garden would intensify the domesticating effect of the housing here which would further detract from the naturalised, open character of the wider area.

8. For these reasons, it is judged that this new dwelling would result in moderate harm to the openness of the Green Belt. As a consequence, this proposal would be further contrary to EHLP Policy GBC1 and Part 9 of the Framework.

Living Conditions

9. The dwelling would be sited in line with the adjacent semi-detached house and separated by around 2m. The flank wall of the proposed house would be close enough to have a significantly overbearing effect on the outlook from a next door upstairs bedroom that benefits from only a single window in the south west facing gable wall. The proposed house would also reduce the level of daylight to this bedroom.

10. Consequently, this proposal would result in some harm to the living conditions of next door occupiers due to the effects it would have on this bedroom. The other first-floor gable windows affected by this proposal serve a landing and a bathroom that also has a rear facing window. Therefore, the effects on living conditions derive mainly from the effects on the one bedroom.

11. The appellant owns No 2 and therefore might reasonably be expected to tolerate the effects of this proposal. Future occupiers would also have the option of choice. However, this proposal would nonetheless give rise to a

degree of conflict with EHLP Policy ENV1 which seeks that developments respect the amenity of future neighbouring occupants, including in respect of providing for adequate daylight. A moderate degree of harm arises from this proposal as a result.

Flood risk

12. The appeal site lies within Flood Zone 2 and under paragraph 101 of the Framework should not be permitted if there are reasonably available sites appropriate for the proposed development in areas with a lower probability of flooding. This would quite clearly be the case and this proposal would therefore not satisfy the sequential test for the location of housing in respect of flood risk and thus be contrary to EHLP Policy ENV19. This adds further significant harm that would result from this proposal.

Other considerations

13. Very little weight can be given to this proposal replacing unattractive garaging and storage buildings as these structures have already been demolished and any visual benefit derived from their removal has been already achieved. The fact that the proposed dwelling would be designed to complement the character of the existing houses would indicate an absence of harm, in respect of the appearance of the dwelling, but would not amount to any material degree of benefit deriving from this proposal.

Conclusions

14. This proposal would be inappropriate development in the Green Belt which by definition would be harmful. It would also result in harm by eroding the openness of the Green Belt. As required by paragraph 88 of the Framework I must give this harm substantial weight in my decision. Further harm is found from the effects the proposal would have on the living conditions of future occupiers of the adjacent house and through it failing the sequential test in relation to development and flood risk.

15. The harm to the Green Belt, and the other harm found, would not be clearly outweighed by any other considerations. Therefore, the very special circumstances would not exist to support this development and I conclude, having taken into consideration all other matters raised, that this appeal should be dismissed.

Jonathan Price

INSPECTOR

The Planning Inspectorate

Appeal Decision

Site visit made on 13 September 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: 28 September 2016

Appeal Ref: APP/J1915/W/16/3151833
The Bower House, The Street, Furneux Pelham, Hertfordshire SG9 0LB

- 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 David Brunner against the decision of East Hertfordshire District Council.
- The application Ref 3/16/0120/FUL, dated 16 January 2016, was refused by notice dated 15 March 2016.
- The development proposed is existing 4 bed dwelling to be demolished and replaced with new 6 bed dwelling.

Decision

1. The appeal is allowed and planning permission is granted for the existing 4 bed dwelling to be demolished and replaced with a new 6 bed dwelling at The Bower House, The Street, Furneux Pelham, Hertfordshire SG9 0LB in accordance with the terms of the application, Ref 3/16/0120/FUL, dated 16 January 2016, subject to the following 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: 3000.P.001, 3000.P.002, 3000.P.003, 3000.P.004 Rev A, 3000.P.005 Rev A, 3000.P.006 Rev A, 3000.P.007 Rev A, 3000.P.008 Rev A, 3000.P.009, 3000.P.010 and 3000.P.11 Rev A.

    3) No development shall commence until details of the materials to be used in the construction of the external surfaces of the building hereby permitted 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 a scheme of landscaping has been submitted to and approved in writing by the local planning authority. The scheme shall include indications of all existing trees and hedgerows on the land, identify those to be retained and set out measures for their protection throughout the course of development. Development shall be carried out in accordance with the approved scheme.

    5) All planting, seeding or turfing comprised in the approved scheme of landscaping shall be carried out in the first planting and seeding seasons following the occupation of the building or the completion of the development, whichever is the sooner; and any trees or plants which within a period of 5 years from the completion of the development die,

are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species.

Procedural Matter

2. The name of the appellant was spelt incorrectly in the original application form. Written confirmation has been provided of the correct name, which is used above.

Main Issue

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

Reasons

4. Furneux Pelham is a small rural village dispersed along a number of lanes with a number of historic buildings. Properties on the approach to the appeal site tend to be two storeys and front the road with little screening. The appeal site itself is situated on the north-western edge of the village and remote from most other properties. The existing dwelling is largely hidden from view along the road to the south due to its scale and the screening provided by vegetation. It can briefly be seen close up from the public footpath immediately to the west of the house and in longer distance views from the public footpath running to the north-east of the house where it appears nestled between mature trees within the wider site. As such, the overall character and appearance of the area surrounding the appeal site is green, rural and secluded.

5. The existing residential dwelling, whilst single storey, has a large footprint. It is situated beyond the boundary of Ferneux Pelham Conservation Area and is unremarkable in terms of its architectural design. Consequently, it makes a neutral contribution to the character and appearance of the area. At my site visit, there was no evidence of it being of poor construction, although I note the submissions of the appellant which highlight its poor energy efficiency. It would appear that it is capable of being retained and upgraded to be more energy efficient, notwithstanding the appellant's concerns regarding the excessive amount of work and the subsequent loss of internal space.

6. Apart from a small conservatory on the western elevation, the existing dwelling does not appear to have been extended. The appellant contends that the existing dwelling could be enlarged considerably via unexpended permitted development rights under the current General Permitted Development Order[1]. I have not been provided with any drawings to illustrate such extensions or any clear evidence on the extent of the unexpended permitted development rights. As such, I cannot be certain how much larger the existing dwelling could be without the need for planning permission.

7. The proposed development would be larger than the existing dwelling in terms of footprint and height and would more than double the current volume according to the figures provided by the appellant. Notwithstanding the lack of certainty regarding unexpended permitted development rights, it is likely that the volume of the new dwelling would be materially larger than the dwelling it would replace.

[1] Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended)

8. In terms of the effect on the character and appearance of the area, the proposed development would be taller and more conspicuous in views from the footpaths and road than the existing dwelling. However, this would be offset by the remote and secluded location of the site with the building set back from the site boundaries. Even allowing for reduced foliage in winter months, the surrounding vegetation is thick and mature and would help to screen and integrate the building. Furthermore, the design of the dwelling would replicate elements of the local area in terms of its barn-like appearance and use of sympathetic materials. The height would also be comparable to other dwellings within the village. Therefore, while it is likely to be materially larger in volume than the dwelling it would replace, the proposed development would not be visually intrusive and would maintain the green, rural and secluded nature of the surrounding area.

9. To conclude on the main issue, the proposed development would have an acceptable effect on the character and appearance of area. Therefore, it would accord with Policy HSG8 of the East Herts Local Plan Second Review (April 2007) in terms of being no more visually intrusive than the dwelling to be replaced. It would also accord with Policies HSG7 and ENV1 which, amongst other things, seek development that is well sited and compatible with its surroundings with a high standard of design to reflect local distinctiveness. There is some conflict with parts of Policy HSG8 insofar as the existing dwelling is capable of retention based on its construction and the volume of the proposed dwelling is likely to be materially larger than the existing dwelling. However, the site specific circumstances indicate that these factors would not result in an unsustainable form of development in terms of the effect on the character and appearance of the area.

Conditions

10. 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. A condition concerning the materials to be used is necessary to ensure that the appearance of the development is satisfactory.

11. The appellant has indicated that they would be willing to accept conditions requiring the approval of replacement or enhanced planting to address the Council's concerns. I consider that such conditions would be necessary and relevant given the importance of vegetation to help screen and integrate the development into the surrounding area.

Conclusion

12. Despite some conflict with parts of Policy HSG8, the proposed development accords with the overall development plan. Therefore, for the reasons given above, and having had regard to all matters raised, I conclude that the appeal should be allowed.

Tom Gilbert-Wooldridge

INSPECTOR

The Planning Inspectorate

Appeal Decision

Site visit made on 16 August 2016

by Chris Forrett BSc(Hons) DipTP MRTPI

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

Decision date: 15 September 2016

Appeal Ref: APP/J1915/D/16/3151404
12 Holly Grove Road, Bramfield, Hertford, Hertfordshire SG14 2QH

- 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 & Mrs Brady against the decision of East Hertfordshire District Council.
- The application Ref 3/16/0123/HH, dated 19 January 2016, was refused by notice dated 11 March 2016.
- The development proposed is a two storey rear elevation and single storey side extension (Resubmission).

Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are:

   (i) whether the proposal is inappropriate development in the Metropolitan Green Belt;

   (ii) the effect on the openness of the Metropolitan Green Belt; and

   (iii) if the development is inappropriate, whether the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations so as to amount to the very special circumstances necessary to justify the development.

Reasons

Whether the proposal is inappropriate development in the Green Belt

3. The National Planning Policy Framework (the Framework) at paragraph 89 sets out the categories of development which may be regarded as not being inappropriate in the Green Belt. Extensions or alterations to buildings can be considered as not amounting to inappropriate development provided they are not '... disproportionate additions over and above the size of the original building'[1]. Saved Policies GBC1 and ENV5 of the of the East Herts Local Plan Second Review April 2007 (LP) also corresponds to the Framework in this respect, including the cumulative effect of extensions.

4. No 12 Holly Grove Road has been extended previously (planning permission 3/88/0482/FP). The Council have calculated the floor space of the original

[1] Third bullet point of paragraph 89 of the Framework

dwelling to be approximately 105 square metres, and the cumulative amount of extensions would be an increase of approximately 89 square metres. It is noted that the appellant considers that a previous (now demolished) appendage should have been included in original floor space calculation. However, from the limited information before me, it would appear that this has already been taken into account by the Council. In relation to the outbuildings shown on the aerial photographs I have not been provided with any details of their size. In any case, I consider that these do not have any significant bearing on this appeal as they have not been demonstrated to be part of the original dwelling.

5. Given the cumulative size of the extensions, from the Council's figures, the development would result in an increase in floor space of approximately 85% when compared to the original dwelling. Whilst the majority of this increase in floorspace was created when the previous extension was built, the cumulative impact would result in a development that would disproportionately increase the size of the original dwelling.

6. Therefore, I conclude that the appeal development would result in a disproportionate enlargement for the purposes of paragraph 89 of the Framework and Policies GBC1 and ENV5 of the LP. Accordingly, the proposal would be inappropriate development within the Green Belt.

Effect on the openness of the Green Belt

7. Paragraph 79 of the Framework outlines the fundamental aim of Green Belt policy which is to prevent urban sprawl by keeping land permanently open. The essential characteristics of Green Belts are their openness and their permanence.

8. It is inevitable that the bulk of the building would be increased by the proposed extensions and therefore would reduce the openness of the area. However, in isolation, the loss of openness in this case would be small.

Green Belt balance

9. The Framework indicates that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. Additionally, I have found that there would be a small loss of openness of the Green Belt. Paragraph 88 of the Framework identifies that substantial weight should be given to the harm to the Green Belt. Very special circumstances will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations.

10. The Council consider that the extensions are sited and are of a size, scale, design which would not be detrimental to the character and appearance of the existing dwelling or that of the surrounding area. They also say that the proposal would not have an adverse impact of the living conditions of the occupiers of neighbouring properties and I have no reason to disagree.

11. Similarly, I have also had regard to the Appellants desire to return the property to a single dwelling and create a modern living environment. I have also considered the existing extension at No 11 in relation to the proposal and the nearby dwelling which has also been extended.

12. The lack of harm in relation to the character of the area and neighbour amenity matters are neutral factors in the consideration of this appeal. In relation to the extensions already built at the neighbouring property and the modernisation of the property are minor factors in favour of the development.

13. I consider that the substantial weight given to Green Belt harm is not clearly outweighed by these considerations. It follows that they cannot amount to the very special circumstances necessary to justify the extensions to the dwelling and the development would conflict with Policies GBC1 and ENV5 of the LP and the Framework.

Conclusion

14. Taking all matters into consideration, I conclude that the appeal should be dismissed.

Chris Forrett

INSPECTOR

The Planning Inspectorate

Appeal Decision

Site visit made on 16 August 2016

by Andrew McCormack BSc (Hons) MRTPI

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

Decision date: 08 September 2016

Appeal Ref: APP/J1915/D/16/3152863
Pine Lodge, 110 Bramfield Road, Bulls Green, Datchworth, Hertfordshire SG3 6SA

- 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 & Mrs D O'Connor against the decision of East Hertfordshire District Council.
- The application Ref 3/16/0297/HH, dated 8 February 2016, was refused by notice dated 7 April 2016.
- The development proposed is extensions and alterations.

Decision

1. The appeal is dismissed.

Procedural Matter

2. Since the application was determined, the appellant has produced and submitted a Bat Survey to the Council in response to the second reason for refusal. The survey indicates that there is no evidence of bats at the site and concludes that the local bat population would not be adversely affected by the proposal. The Council has confirmed that the Bat Survey provides sufficient detailed information to satisfy its second reason for refusal of the application and therefore that reason has been withdrawn. Therefore, I do not need to consider that matter further.

Main Issues

3. The main issues are:

    - whether the proposal would be inappropriate development within the Metropolitan Green Belt for the purposes of national and local planning policies;
    - the effect of the proposal on the openness of the Green Belt and on the character and appearance of the area; and
    - if the proposal would be inappropriate development, whether the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations, and would amount to the very special circumstances necessary to justify it.

Reasons

Inappropriate development

4. Paragraph 89 of the National Planning Policy Framework (the Framework) sets out that new buildings within the Green Belt are inappropriate unless, amongst other things, they are an extension or alteration of a building which does not result in disproportionate additions over and above the size of the original building.

5. Previous extensions have already increased the dwelling's floor space by almost twice its original amount. Whilst the proposal before me would, on its own, constitute a modest increase in the floor space of the current dwelling, the cumulative effect of the proposal with the previous additions would result in an increase of more than twice that of the original dwelling. The extensions together would therefore be disproportionate additions in terms of the Framework and policies GBC1 and ENV5 of the East Herts Local Plan Second Review 2007 (the Local Plan).

6. Furthermore, the proposal would alter the appearance of the property by increasing its scale, mass and roof height in relation to the western extension. This would result in two substantial developments at either end of the building which would appear at odds with each other. The western extension would also appear as an awkward juxtaposition with, and disproportionate to, the original dwelling in the centre in terms of scale, height and size. For these reasons, the proposal would constitute inappropriate development in the Green Belt.

7. Consequently, I conclude that the proposed development would not comply with Paragraph 89 of the Framework and Policies GBC1 and ENV5 of the Local Plan. Amongst other matters, these policies seek to strictly control development in the countryside and the Green Belt and to ensure that it maintains the character and appearance of buildings and their surroundings.

Effect on openness of the Green Belt

8. The appellant states that the inclusion within the Framework of a range of developments that may not be inappropriate indicates that, in some circumstances, a reduction in openness is acceptable. However, the Framework is clear, where development is not inappropriate in the Green Belt, the matter of openness is not a consideration.

9. However, in this case, on the basis of my findings above, the proposal would increase the ridge height of the dwelling as part of its substantial western extension and would result in a greater scale and mass to the property. Furthermore, it would increase the footprint of the dwelling, albeit modestly, as a result of the proposed extensions, including the front porch. Whilst its impact on the openness of the Green Belt would be relatively modest, it would nevertheless, have a material effect on it.

10. As a result, the proposed development would have a minimal but harmful impact on the openness of the Green Belt and on the Green Belt purpose of safeguarding the countryside from encroachment. Therefore, I must give substantial weight to this harm.

11. Consequently, I conclude that the proposal would not comply with Paragraph 80 of the Framework and Policies GBC1 and ENV5 of the Local Plan. Amongst other matters, these policies seek to ensure that development does not intrude on the openness of the Green Belt or the rural qualities of the countryside.

Other considerations

12. I appreciate that there is an awkward layout to the existing dwelling due to the previous extensions, particularly in relation to the western end of the property and that this causes some difficulties to the appellants. However, the property is a substantial dwelling and as a result, I give such considerations only limited weight in my decision making.

Conclusion

13. The Framework indicates that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. In addition, the proposed development would have an adverse effect on openness and therefore be contrary to the Green Belt purpose of safeguarding the countryside from encroachment. Accordingly, substantial weight should be given to the Green Belt harm caused. Very special circumstances will not exist unless the harm, by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations.

14. Having regard to all other matters raised, I find that the substantial weight to be given to Green Belt harm would not be clearly outweighed by other considerations. Accordingly, those other considerations cannot amount to the very special circumstances necessary to justify the development. Therefore, for the above reasons, I conclude that the appeal should be dismissed.

Andrew McCormack

INSPECTOR

The Planning Inspectorate

Appeal Decision

Site visit made on 16 August 2016

by Andrew McCormack BSc (Hons) MRTPI

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

Decision date: 12 September 2016

Appeal Ref: APP/J1915/D/16/3152784
Folly Cottage, Bury Green, Little Hadham, Hertfordshire SG11 2ES

- 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 Martin Gay against the decision of East Hertfordshire District Council.
- The application Ref 3/16/0328/HH, dated 10 February 2016, was refused by notice dated 8 April 2016.
- The development proposed is erection of triple garage.

Decision

1. The appeal is dismissed.

Main Issues

2. The proposed development would be within the Metropolitan Green Belt and the main issues are:

    - Whether the proposal would be inappropriate development for the purposes of the national and development plan policies;
    - The effect of the proposal on the openness of the Green Belt and on the character and appearance of the area; and
    - If the proposal would be inappropriate development, whether the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations, so as to amount to the very special circumstances necessary to justify it.

Reasons

3. The proposed garage would be sited on part of the lawned garden to the south west of a detached dwelling in the small settlement of Bury Green. It is within the Metropolitan Green Belt, with mature trees and hedges screening the site to the north and west and more open countryside to the south and east. The property is relatively removed from other dwellings in the area although some of these are visible from the site in more distant views.

Inappropriate development

4. Paragraph 89 of the National Planning Policy Framework (the Framework) states that new buildings in the Green Belt will be inappropriate development except in specified circumstances. New ancillary buildings are not covered by these exceptions. Nonetheless, case law has established that a domestic outbuilding may be regarded as an extension to a dwelling provided that it forms a 'normal

domestic adjunct'.[1] Therefore, an extension to a building is not inappropriate development provided that it does not result in disproportionate additions over and above the size of the original building.

5. In this case, the proposed development would be a sizeable garage which would be located within the garden area of the property approximately 10 metres from the existing dwelling. Whilst there would be no physical attachment between the dwelling and the proposed garage, there would be a visual and functional relationship between the two and therefore the garage can be considered to be an extension.

6. Policy GBC1 of the East Herts Local Plan Second Review 2007 (the Local Plan) makes provision for limited domestic extensions within the Green Belt. Such extensions should be consistent with Policy ENV5 of the Local Plan in that the cumulative impact of proposed and existing extensions and outbuildings would not disproportionately alter the size of the original dwelling. Whilst these saved policies predate the Framework, I am satisfied that they are consistent with it.

7. The proposed detached garage would constitute an extension of a building in terms of the Framework and Policy GBC1 of the Local Plan. Notwithstanding this, as an outbuilding, the proposal should be assessed against Policy ENV5 in terms of the cumulative impact on the original dwelling. I note that in combination with other previous extensions, the proposal would more than double the floor space of the original dwelling on the site. In that regard, the proposal would not be a limited or proportionate addition to the original dwelling.

8. The appellant points to the Framework not specifying outbuildings as inappropriate development and that reference to outbuildings is only made in Policy ENV5 of the Local Plan which should be afforded less weight in the overall planning balance due to its age and claimed inconsistency with the Framework. The appellant therefore argues that outbuildings can be not inappropriate in the Green Belt. Paragraph 89 of the Framework states what is not inappropriate in the Green Belt. If the proposed garage were not considered to be an extension then it would be considered as inappropriate development as it would not be a stated exception in Paragraph 89. Outbuildings are not specified as an exception and accordingly should be regarded as inappropriate development. Policy ENV5 is consistent with the Framework and provides a local distinction in referring to outbuildings in addition to extensions and alterations contributing to the floor space of dwellings.

9. Having regard to the above, I find that the proposal would be inappropriate development in the Green Belt as a result of being a disproportionate addition over and above the size of the original dwelling. It would therefore be contrary to the Framework and Policies GBC1 and ENV5 of the Local Plan. These policies, amongst other matters, seek to strictly control development in the Green Belt.

Effect on openness

10. The proposed garage would be built on open garden land to the south west of the host dwelling. This would result in the loss of this garden area and would unavoidably result in a reduction in the openness of the site.

11. In the wider context, the appeal site is in a slightly elevated position in relation to the surrounding landscape to the south and east. This, combined with the open character of that surrounding countryside would mean that both nearby and distant views of the proposed garage would be obtained. It would therefore be highly visible in the surrounding area. Furthermore, the proposal would increase the

[1] Sevenoaks DC v SSE and Dawes

extent of built development on the site. As a result, it would have a moderate detrimental effect on the open character of the area and cause a reduction in openness of the Green Belt. Therefore, the proposal would cause material harm to the openness of the Green Belt and would impact on the Green Belt purpose of safeguarding the countryside from encroachment.

12. Consequently. I conclude that the proposed development would not comply with Paragraph 80 of the Framework and Policies GBC1 and ENV5 of the Local Plan. Amongst other matters, these policies seek to ensure that development does not intrude on the openness of the Green Belt or the rural qualities of the countryside.

Other considerations

13. The appellant states that the proposed garage could be built to the side of the dwelling using permitted development rights. It is argued that such rights would allow for an outbuilding, as proposed, to be constructed within the curtilage of the dwelling. Furthermore, the appellant argues that there is no distinction made between development within or outside of the Green Belt within the General Permitted Development Order 2015 (the GPDO). I note that the appellant intends to pursue this course were the appeal to fail. As a result, the appellant states that there would be little impact on openness given that an outbuilding of the size of the proposal would be built to the side of the existing dwelling under permitted development rights in any event, were this appeal to fail.

14. However, such a building would need to be in line with or behind the front elevation of the dwelling. This would position the sizeable garage on the main garden land available on the property which would not be desirable or an appropriate outcome for the appellant. Moreover, whilst it is indicated to be a fall-back position, there would be nothing to prevent the appellant from expanding the property further using permitted development rights and then implementing this proposal, were it allowed. Therefore, the potential cumulative impact of such development would have a greater adverse effect on the Green Belt.

15. In addition. I appreciate that the existing property does not benefit from a garage and that the proposal would provide this benefit to the occupiers. However, having regard to these other considerations, I find that they would not, either individually or cumulatively, outweigh the harm I have identified or justify inappropriate development in the Green Belt.

Conclusion

16. The Framework indicates that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. In addition, substantial weight should be given to any harm to the Green Belt. Very special circumstances will not exist unless the harm to the Green Belt and any other harm are clearly outweighed by other considerations.

17. Having had regard to all other matters raised, I find that the substantial weight to be given to Green Belt harm is not clearly outweighed by other considerations sufficient to demonstrate the very special circumstances necessary to justify the proposal and so cannot amount to very special circumstances.

18. Consequently, for the reasons given above, and in accordance with national and local planning policy, I conclude that the appeal should be dismissed.

Andrew McCormack

INSPECTOR

The Planning Inspectorate

Appeal Decision

Site visit made on 8 September 2016

by George Arrowsmith BA, MCD, MRTPI

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

Decision date: 16 September 2016

Appeal Ref: APP/J1915/D/16/3155399
31a High Road, Waterford. Herts, SG14 2PR

- 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 Richard Botterman against the decision of East Hertfordshire District Council.
- The application Ref, 3/16/0382/HH dated 11 February 2016, was refused by notice dated 12 April 2016.
- The development proposed is a single storey front extension to a domestic house and minor alterations to rear windows/doors.

Decision

1. The appeal is dismissed.

Main Issue

2. The main issue is whether the proposal would be inappropriate development in the Green Belt and, if so, whether there are any very special circumstances which outweigh the harm from inappropriateness and any other harm.

Reasons

3. The appeal site is in the Green Belt as defined in the East Herts Local Plan Second Review 2007. Paragraph 89 in the National Planning Policy Framework (NPPF) says that local planning authorities should regard the construction of new buildings as inappropriate in the Green Belt. It specifies a number of exceptions to this general rule, the only one applicable to the appeal proposal being the extension or alteration of a building provided that it does not result in disproportionate additions over and above the size of the original building. Paragraph 87 says that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. Paragraph 88 says that very special circumstances will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations. Saved policies GBC1 and ENV5 in the Local Plan are broadly compatible with those in the NPPF.

4. The appellant disagrees with the officer's calculation of the cumulative degree of extension now proposed. Part of this disagreement relates to the area of the 'original' building. The house was originally built in accordance with a planning permission granted in 1969. The officer's report on the current application says

that the original floor area was 110 sq m and that this was extended by around 80 sq m, an increase of around 72%, in accordance with a 2001 permission. The appellant accepts that the original floor area was stated as 110 sq m but says that this excluded a 15 sq m garage and a 10 sq m covered link. On this basis the appellant calculates that the cumulative increase in floor area following the 2001 permission was only 59% or, if the covered link is discounted, 64%.

5. I am not told why the floor area in the 1969 application was quoted as only 110 sq m, but the plans for the 2001 application produced as appendix B to the appellant's statement appear to show that the garage and covered link did not exist at the time of that application. In fact the part of the 2001 plans relating to the garage and link are annotated with the words '*To be built before proposed and within 'permitted development' regulations'*. This suggests that the garage and link shown on the 1969 plans had not been built when the 2001 application was made. The relevance of this history is established by the glossary to the NPPF which says that, for a building constructed after 1 July 1948, the term 'original' is to be the interpreted as the building as built originally. If the garage and link were not part of the building as originally constructed, the officer's calculation of the degree of extension to date is to be preferred.

6. A further difference between the parties is that the appellant says that the increase in floor area if the dwelling is extended as now proposed would be 20 sq m as opposed to the 25 sq m quoted in the officer's report. On the basis of my examination of the application plans I prefer the appellant's calculation.

7. Taking all the above points into account, my calculation is that the cumulative degree of increase in floorspace if the appeal proposal were to go ahead would be 91% (i.e. increases of 80 + 20 sq m over an original of 110 sq m). By way of comparison the officer calculates an increase of 95% (i.e. increases of 80 + 25 sq m over an original of 110 sq m) whereas the appellant calculates an increase of between 74% and 80% depending on whether or not the area of the covered link is excluded from the original.

8. The officer's report does not refer to any guidance to indicate how the Council decide on what is and what is not disproportionate. The officer's report does nevertheless indicate that a 72% increase if floor area is considered to be disproportionate, from which I infer that the Council would consider even the appellant's lower estimate of cumulative increase to be disproportionate. I agree with this implied judgement. In the case of the appeal property it is clear that a very substantial degree of extension was permitted by the 2001 permission. Whether this degree of extension was disproportionate is not a matter before me, but I am satisfied that the cumulative degree of extension entailed by adding the extension now proposed to that already permitted would be disproportionate in the normal sense of that word. The current proposal would therefore be inappropriate development in the Green Belt in terms of both national and local planning policy and, as such, should only be approved in very special circumstances.

9. If, as appears to be the case, the officer's report is justified in taking the original floor area to be 110 sq m, the degree of extension would be greater

than calculated by the appellant and the argument against the proposal is strengthened.

10. The appellant has not explicitly identified any very special circumstances but I have considered whether any of his supporting arguments satisfy that test.

11. It is argued that the proposal would not be out of keeping with the character and appearance of the original dwelling. Here I agree with the appellant. In particular I consider that I would not be changing the essential nature of the proposal if I were to impose a condition requiring a minor amendment to the garage roof, which is the single unattractive design feature identified in the officer's report. Importantly, however, as NPPF paragraph 79 says: *"The fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open"*. My finding that the development would not harm the character or appearance of the dwelling is not a very special circumstance that can outweigh the harm to openness that arises from extending a building by a disproportionate amount. Equally the absence of objection from neighbours is not a very special circumstance.

12. The appellant draws my attention to developments at 5 other properties in the village. In two of these cases the percentage increase in floor area is lower than the appellant's lower estimate of the percentage increase that would result from the appeal proposal. In only one case is it higher than the appellant's higher estimate, and in that case very special circumstances were identified. Leaving aside that 'special circumstances' case, all the quoted permissions entail a cumulative degree of extension lower than my calculation of the percentage increase entailed by the proposal before me. I do not know the detailed considerations which led to any of the permissions and, most importantly, I must determine the appeal before me on its own merits. Whatever the merits of these other decisions they do not amount to very special circumstances that should affect my decision in this appeal.

13. If I had identified any harm from the proposal beyond that arising from inappropriate development it would have been necessary to take that harm into account. The absence of such additional harm cannot reduce the intrinsic harm that arises from inappropriate development and it is not a factor which affects my decision.

George Arrowsmith

INSPECTOR

The Planning Inspectorate

Appeal Decision

Site visit made on 16 August 2016

by Chris Forrett BSc(Hons) DipTP MRTPI

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

Decision date: 9 September 2016

Appeal Ref: APP/J1915/D/16/3151759
North Cottage, Stansted Road, Hunsdon, Hertfordshire SG12 8PS

- 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 Jim Demetriou against the decision of East Hertfordshire District Council.
- The application Ref 3/16/0453/HH, dated 25 February 2016, was refused by notice dated 27 April 2016.
- The development proposed is the part demolition and single storey front extension and alterations to roofs to provide additional accommodation.

Decision

1. The appeal is dismissed.

Main Issue

2. The main issue is the effect of the proposed development on the character and appearance of the area.

Reasons

3. North Cottage is located at the end of a private road which runs northwards from the B180. The property has extensive gardens with two large ponds. The dwelling is sited in the southwest corner of the site and does not appear to be readily visible from any public vantage point. The dwelling is two-storey in design with two projecting gable features facing northwards.

4. The key issues in this appeal relate to the size, scale, form and design of the proposed extension and alterations. I note that a similar scheme has been given planning permission by the Council.

5. In relation to the size of the extension works, both parties have measured this in floorspace. The Council has related this back to the size of the original property and whether it would disproportionately alter the size of the original dwelling. From the information before me, it would appear that the footprint of the overall building would increase by approximately 5 square metres from the existing situation and that of the recent planning permission. However, the development would also include a new first floor above the existing garage, and a gallery area.

6. The Council officers' report indicates a 72% increase in floor space, which would be the same percentage increase as the approved scheme. However, I am not convinced that this calculation on the increase in floor area is correct as

there is an increased floor area as a result of the gallery area and the enlarged ground floor element (taking into account the part to be demolished).

7. Notwithstanding the confusion over the actual percentage increase in floor area, I consider that a further increase in footprint of approximately 5 square metres does not, in principle, give rise to any significant harm in this case.

8. Turning to the scale, form and design of the development the scheme would link the roof of the outbuilding to the main dwelling and introduce a large gable on the front elevation. It would also include an altered roof above the front projection of the kitchen which links into the new gable.

9. The combined effect of the roof alterations would be a very wide unbalanced building. Whilst the change from a gable roof to a hipped roof at the western end would reduce some of the massing it would not outweigh the harm caused by the linking the roof of the outbuilding with the main house.

10. Furthermore, the inclusion of the gable to the front elevation, which is considerably larger than the ones on the existing property, further adds to the increased massing in an undesirable fashion and would dominate the front elevation to the detriment of the character of the original property.

11. For the above reasons, by virtue of the bulk of the roof over the gallery and the overly large front gable feature, the proposal would result in a significant harm to the character and appearance of the existing property and the rural area contrary to Policies GBC3, ENV1, ENV 5 and ENV6 of the East Herts Local Plan Second Review April 2007 which amongst other matters seek to ensure that development protects and enhances the character and appearance of the area.

Conclusion

12. Taking all matters into consideration I conclude that the appeal should be dismissed.

Chris Forrett

INSPECTOR

The Planning Inspectorate

Appeal Decision

Site visit made on 19 September 2016

by Chris Forrett BSc(Hons) DipTP MRTPI

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

Decision date: 28th September 2016

Appeal Ref: APP/J1915/D/16/3155178
10 Maple Avenue, Bishops Stortford, Hertfordshire CM23 2RR

- 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 & Mrs David Howes against the decision of East Hertfordshire District Council.
- The application Ref 3/16/0652/HH, dated 18 March 2016, was refused by notice dated 12 May 2016.
- The development is described on the application forms as a proposed new garage.

Decision

1. The appeal is allowed and planning permission is granted for the erection of a detached garage with games room above at 10 Maple Avenue, Bishops Stortford, Hertfordshire CM23 2RR in accordance with the terms of the application, Ref 3/16/0652/HH, dated 18 March 2016, subject to the following conditions:

   1) The development hereby permitted shall begin not later than 3 years from the date of this decision.

   2) The development hereby permitted shall be carried out in accordance with the following approved plans: BA/1848/226 and BA/1848/227.

   3) The materials to be used in the construction of the external surfaces of the development hereby permitted shall match those used in the existing dwelling.

Procedural Matter

2. The Council in their decision notice have described the development as the erection of a detached garage with games room above. The appellant has also used that description on the appeal form. Given that this description better reflects the proposal, I have dealt with the appeal on this basis.

Main Issue

3. The main issue is the effect of the proposed development on the character and appearance of the area (with particular regard to the character of the Bishops Stortford Conservation Area).

Reasons

4. The appeal site is located on the north side of Maple Avenue, and as I understand it, following an appraisal, now forms part of the extended Bishop Stortford Conservation Area. Maple Avenue is a residential street with

generally large properties set in spacious plots with large mature trees and landscaping on the street frontage. From my site visit I saw several large prominent garages along Maple Avenue, some of which had steep roof pitches and/or accommodation in the roof. The appeal dwelling is set well back from the highway and has been recently extended in a sympathetic style and scale.

5. Whilst the proposed garage includes accommodation in the roofspace, and has an eaves height greater than a normal garage, it would still be much lower than the recent extension and would not appear disproportionately large. Its overall appearance would reflect its host dwelling.

6. The garage would occupy part of the existing space between the house and the boundary. However, there would still be a gap of approximately 1.8 metres between the extension and the garage. There would also be a small landscaped area to the boundary given the angle of the garage to the boundary. Given the scale of the garage, together with the remaining gap, I consider that it would not appear unduly cramped nor would it be out of character with the wider area.

7. Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires me to have special regard to the desirability of preserving the character or appearance of the Conservation Area.

8. In this case, the existence of several prominent garages in the area, together with the siting of the garage and the retained gap between the extended house and the proposed garage would not, to my mind, give rise to any harm to the character or appearance of the Conservation Area.

9. For the above reasons, the development would not result in harm to the character and appearance of the area, or the character of the conservation area. Therefore, I find that the proposal would accord with Policies ENV1, ENV5, ENV6 and BH6 of the East Herts Local Plan Second Review April 2007 which, amongst other things, seek to ensure that new development protects the character and appearance of the area and the Conservation Area. The proposal would also accord with the design and conservation principles of the Framework.

Other matters

10. I have also had regard to the comments raised in the representations on the application, including matters relating to noise, cooking smells, privacy, drainage and human rights.

11. In relation to noise, the proposal is for a domestic garage with a games room above. The overall use of the building would be domestic and as such it is unlikely to give rise to undue noise and disturbance. In terms of cooking smells whilst there is a small kitchenette proposal on the upper floor, even if this was utilised for the cooking of food, I consider that this would not give rise to any significant additional smell or fumes. In consideration of all of the above, the development would not affect the peaceful enjoyment of adjoining dwellings and would not conflict with Article 1 of the first protocol of the Human Rights Act 1998.

12. Turning to the matter of privacy, the upper floor has windows in the front and rear elevations, in addition to rooflights which face the host dwelling. Given the relative angle of the garage, I consider that it would not result in any

overlooking to 12 Maple Avenue, and there would be sufficient distance between the rear facing window and 12b Maple Avenue to ensure that there would not be any significant loss of privacy. Taking all of this into consideration, the development would respect the occupiers right for private and family life as detailed in Article 8 of the Human Rights Act 1998.

13. In addition to the above, I have also considered the effect on drainage in the area. Whilst there have not been any details provided of the intended drainage for the building, given the scale of development I consider that this would be suitably dealt with through the Building Regulations.

Conditions

14. Other than the standard time limit condition, it is also necessary to ensure that the development is carried out in accordance with the approved plans for the reason of certainty. A condition relating to the external materials is also appropriate in the interest of the character of the area.

Conclusion

15. Taking all matters into consideration, for the reasons given above, I conclude that the appeal should be allowed.

Chris Forrett

INSPECTOR