The Planning Inspectorate

Appeal Decision

Site visit made on 23 January 2017

by D. M. Young BSc (Hons) MA MRTPI MIHE

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

Decision date: 20 February 2017

Appeal Ref: APP/J1915//W/16/3160364
Marshgate Drive, Hertford, Hertfordshire SG13 7AJ.

- 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 Poole (Weston Homes Plc) against the decision of East Hertfordshire District Council.
- The application Ref 3/16/0151/FUL, dated 1 February 2016, was refused by notice dated 15 April 2016.
- The development proposed is the erection of a building for electricity plant on behalf of UK Power Networks together with associated landscaping (retrospective).

Decision

1. The appeal is allowed and planning permission is granted for the erection of a building for electricity plant on behalf of UK Power Networks together with associated landscaping (retrospective) at Marshgate Drive, Hertford, Hertfordshire SG13 7AJ in accordance with the terms of the application, Ref 3/16/0151/FUL , dated 1 February 2016.

Preliminary Matters

2. When I visited the site I saw that the development has already been carried out. I have dealt with the appeal accordingly.

Main Issue

3. This is the effect of the development on the character and appearance of the area.

Reasons

4. The development is located on the western side of Marshgate Drive a short distance south of the River Lea. It sits on the edge of a recently constructed residential estate known as Smeaton Court. The area to the east and north is industrial in nature.

5. The sub-station is a diminutive structure. It has a staggered flat-roof and is faced in brickwork matching the buildings behind it. The doors are painted in the same neutral grey used extensively in and around the Smeaton Court development. The structure is surrounded on 3 sides by landscaping.

6. The appellant has put it to me that a fall-back position exists under Part 15 Class B of the General Permitted Development Order 2015. The Council's response to that argument is that it could restrict such rights through an Article 4 Direction. However, guidance stipulates that these should only be made in

exceptional circumstances and after local consultation. There is no evidence before me to suggest that such circumstances exist or that the Council has decided to embark on such a course of action. In fact there is nothing to suggest the Council has undertaken any work in relation to an Article 4 Direction. Consequently, I find there is no realistic prospect of the Council being able to restrict permitted development rights in this way. The fall-back position outlined by the appellant is therefore a significant material consideration and on this basis alone I conclude that the appeal should succeed.

7. Even if I am wrong about that, the character and appearance of the area is varied and I find nothing inherently sensitive about it which would justify the stringent approach taken by the Council. Taking account of its scale and external appearance and seen in the context of those unsightly industrial buildings and boundary treatments on the east side of Marshgate Drive, I cannot agree that the building is visually intrusive. On the contrary, the building compliments the general appearance of the Smeaton Court development which forms the backdrop for it in most views. Moreover, once the landscaping around it has had sufficient time to mature the building would have very little visual presence in the Marshgate Drive street scene or from the adjacent towpath which is at a lower level. Consequently, I conclude that the substation does not cause unacceptable harm to the character and appearance of the area.

8. The Council have referred to Policy ENV3 of the LP which is concerned with reducing the opportunities for crime by, inter alia, encouraging natural surveillance. As the building is overlooked at close quarters by a variety of windows, it is unclear how the development conflicts with the aims and objectives of Policy ENV3. The Council state that the building blocks views and sightlines. However, no further details are given and in any event, loss of views is not a material planning consideration to which I can attach any degree of weight. I concur with the Council that any change to the outlook of neighbouring occupiers to be limited.

9. I therefore conclude that there is no conflict with Polices ENV1, ENV2 and ENV3 of the "*East Hers Local Plan Second Review 2007*". Collectively these state that new development should adhere to the highest standards of design which reflects local distinctiveness and relates to the massing and height of adjacent buildings. There is also no conflict with the objectives of the "*Mead Lane Urban Design Framework 2014*" or the "*National Planning Policy Framework*".

Conclusion

10. For the reasons given above and taking into account all other matters raised, I conclude that the appeal should succeed. No conditions have been recommended by the Council nor do I consider it necessary to impose any.

D. M. Young

Inspector

The Planning Inspectorate

Appeal Decision

Site visit made on 18 January 2017

by Jonathan Price BA(Hons) DMS DipTP MRTPI

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

Decision date: 22nd February 2017

Appeal Ref: APP/J1915/W/16/3160281
Swallowfield Farm, Church Road, Epping Green, Hertfordshire SG13 8NB

- 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 Planning (General Permitted Development)(England) Order 2015.
- The appeal is made by Mr Bradley Morgan against the decision of East Hertfordshire District Council.
- The application Ref 3/16/0977/ARPN, dated 23 April 2016, was refused by notice dated 7 July 2016.
- The development proposed is change of use of agricultural building to provide 1 No. 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 (GPDO) for the change of use of agricultural building to provide 1 No. dwelling at land at Swallowfield Farm, Church Road, Epping Green, Hertfordshire SG13 8NB in accordance with the terms of the application Ref 3/16/0977/ARPN, dated 23 April 2016, subject to the following condition:

   1) The development hereby permitted shall be carried out in accordance with the following approved plans:1:1250 location plan.

Application for costs

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

Main Issues

3. The main issues are whether the proposal would constitute permitted development and meet the conditions for prior approval set out in the GPDO.

Reasons

Whether permitted development

4. Under Class Q(a) of the GPDO development is permitted consisting of a change of use of a building and any land within its curtilage from a use as an agricultural building to a use falling with Class C3 (dwellinghouses) of the Schedule to the Use Classes Order. However, such development is not permitted if any of the criteria in the following paragraph Q.1 are not met.

5. Under Q.1(a) development is not permitted if the site was not used solely for an agricultural use as part of an established agricultural unit on 20 March 2013, or 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.

6. The brick and tile building in question is rectangular in shape and of single storey construction with rooflights and loft space accommodation. It fronts onto Church Road, roughly in line with the small amount of adjacent development in Epping Green, with the main part of the holding sited to its rear. The structure was approved in 1986 as an agricultural building and alterations made to it were allowed in 2003. On 30 October 2012, following an Inquiry, an appeal[1] was dismissed over the Council's refusal of a lawful use certificate for a residential use.

7. The Inspector in that Inquiry also considered two Section 174 appeals[2] and upheld and varied an enforcement notice. This required the cessation of the use of the property for residential purposes and removal of all fittings, fixtures and furniture associated with this use, except those which were reasonably required in the continued running of the holding. These were limited to (i) WC and shower/bathroom and (ii) staffroom facilities limited to a worktop and sink, a water heater, a kettle, a microwave, a fridge-freezer, a table, chairs, a TV and room heaters. A compliance period of 9 months was given.

8. The Council is satisfied that the enforcement notice was complied with and residential use of the building had ceased before 20 March 2013. However, the Council is not satisfied that there is any evidence that, on 20 March 2013, the building was being used for agricultural purposes, such that the appellant would benefit from the change of use to a dwelling permitted under Class Q. The Council provides three main reasons to support its case.

9. Firstly the Council refers to an application for the erection of a store for bee keeping equipment (reference 3/15/20148/FUL) which the applicant had stated was required to house additional equipment that has been acquired to release space within the principal building on health and safety grounds, which was used for educational purposes associated with the honey production. Extra space was stated by the applicant as required to safely accommodate disabled visitors and their needs.

10. Secondly, the Council considers the building does not lend itself to an agricultural use and 'still now retains a residential feel, with internal layout, wallpapering, etc.' and its restrictive layout and design means that it could not store or house the animals and vehicles kept at Swallowfield Farm as set out in the supporting statement.

11. Thirdly, the Council refers to the interpretation of agricultural building in Part 3 of the GPDO as a building (excluding a dwellinghouse) used for agriculture and which is so used for the purposes of a trade or business. The Council considers there to be a lack of evidence which demonstrates the building was being used as part of an agricultural trade or business.

12. To benefit from the permitted development rights conferred under Class Q it must be established that, following the cessation of the residential use, the site, which is the building and land edged red in the application, was used

[1] APP/J1915/X/12/2169114
[2] APP/J1915/C/11/2167523 and 4

solely for an agricultural use as part of an established agricultural unit on or before 20 March 2013. The evidence shows this site to be part of an established agricultural unit of some 2 hectares used for the keeping of pigs, poultry, bee-keeping and horticulture. However it needs to be determined whether the building site to which this appeal relates, as part of this holding, was used solely for an agricultural use.

13. The undeveloped part of the site edged red, between the road and the main building and south of the site entrance, contained a few bee hives and fruit trees, and so I consider this part to be in use as part of the wider agricultural holding. From my visit I saw the building itself contained a kitchen, with a table and chairs, work surfaces and cupboards, with a sink and taps and facilities for preparing drinks and food. Leading to the kitchen was a room with a dresser and some comfortable chairs and a small coffee table. There was also a WC/bathroom.

14. These elements were allowed to be retained in the previous appeal decision, which upheld and varied the enforcement notice over the residential use of the building, as the Inspector agreed they were reasonably required for the running of the holding, including for the preparation of honey. These features, along with the internal fitting out of the building, convey a residential feel, which is not surprising given the previous unauthorised and unlawful use. However, these features do not persuade me that the use of the building on the relevant dates was anything other than for agricultural purposes.

15. Regarding the Council's doubts over the use of the building in relation to the educational purposes associated with the honey production and to the accommodation of the disabled visitors, the appellant's statutory declaration refutes this. In regard to this particular matter I have also considered the concerns raised by an immediate neighbour over there having been a commercial use relating to educational visits. The appellant states the farm was not being used for educational purposes on 20 March 2013 but that two young adults had been placed in the care of the operation to act as volunteers in tending the livestock. The Council has not provided further evidence to dispute this and the placement of two adults to work on the farm would not constitute a change of use or weigh against a conclusion that the building remained solely in agricultural use.

16. Whilst the building might not lend itself to an agricultural use, and retains a residential feel, there is no evidence to suggest the enforcement notice had not been complied with, or that the internal layout of the building is any different from that originally approved. The residential character of the building would therefore not, in this case, weigh against a conclusion that it was being put to an agricultural use.

17. The appellant advises that the building was approved as an open-sided agricultural building in 1986 and the Council gave permission in 2003 to enclose the open sides and install windows and roof lights. In my view this permission would have curtailed the agricultural use of the building, such as for the storage of large machinery or vehicles or for keeping larger animals, such as pigs. Whilst the building might not be convenient for the storage of agricultural machinery or for housing livestock I am persuaded by the evidence provided that it is in accordance with the plan approved by the Council and would be suitable for the storage of animal feed, bee keeping and veterinary

materials and as mess room accommodation ancillary to the wider farm holding.

18. At my visit there was little agricultural storage taking place in the building, apart from a few bales of straw, a single caged turkey, some jars of honey and various other items stored throughout the ground floor and in the roof space. However, the appellant's statutory declaration refers to the moving back into the building of the animal feedstuffs, bee hives, bee keeping equipment and other items which had been housed in the adjacent workshop building during the period of the unauthorised residential occupation.

19. I have no reason to doubt the appellant's statutory declaration and the Council has provided no further evidence to refute this. I have also considered the statutory declaration from Frank Banner, another immediate neighbour to Swallowfield Farm, in regard to the purchase of hay from the building in February 2013 and its use at that time. For the reasons given, the evidence is that on the balance of probability the site was used solely for an agricultural use as part of an established agricultural unit after the cessation of the unauthorised residential use and before 20 March 2013. As such, this proposal would be permitted under Class Q of the GPDO.

Conditions for prior approval

20. Although not accepting the evidence that the proposal would have the benefit of the change of use to a dwelling permitted under Class Q, the Council has also proceeded to refuse prior approval based on the conditions for this set out in Paragraph Q.2. This followed the prior approval procedure in Schedule 2 Part 3 W(3) of the GPDO. The consultation necessary had been carried out by the Council prior to making this decision.

21. The provisions of Paragraph Q.2 require the local planning authority to assess the development permitted under Class Q(a) solely on the basis of its impacts on transport and highways, noise, contamination risks on the site, flooding risks and whether the location or siting makes it otherwise impractical or undesirable for the building to change from agricultural use to a dwellinghouse. My determination of this issue has been made in the same manner.

22. The Council's refusal to grant prior approval rests on consideration (e) in Paragraph Q.2 which requires an assessment of whether the location or siting of the building makes it otherwise impractical or undesirable for the change of use from agricultural to residential. I agree with the Council that there would be no material harm arising from considerations (a)-(d) listed in Paragraph Q.2. Consideration (f), concerning the design or external appearance of the building, does not apply in this case.

23. Paragraph 108 of the Planning Practice Guidance (PPG) states that this permitted development right does not apply a test in relation to the sustainability of location. This is deliberate as many agricultural buildings will not be in settlements and may not be able to rely on public transport for their daily needs. Instead the consideration can be whether the location and siting of the building would make it impractical or undesirable to change use to a house.

24. Paragraph 109 of the PPG advises that whilst 'impractical and undesirable' are not defined in the regulations a reasonable ordinary dictionary meaning should

be applied in making any judgement. Impractical is stated as reflecting that the location and siting 'would not be sensible or realistic' and undesirable that it would be 'harmful or objectionable'. The PPG further advises that when considering whether it is appropriate for the change of use to take place in a particular location this should start with the premise that the permitted development right grants permission, subject to the prior approval requirements. Where an agricultural building is in a location where permission would not normally be granted for a dwelling this is not a sufficient reason for refusing prior approval.

25. The sustainability of the location is central to the Council's decision and, having considered the advice of the PPG, greater weight has been given to Paragraph W(10)(b) of the GPDO over regard being had to the National Planning Policy Framework (the Framework) as far as relevant to the subject of the prior approval as if it were a planning application. The Council's approach is based on legal advice that the PPG is in conflict with the requirements of the GPDO. The Council has been granted consent from the High Court to challenge through judicial review a similar case to this, where an Inspector allowed an appeal[3] relating to a refusal of prior approval due to its isolated location for change of use from agriculture to residential. However, the outcome of this judicial review is pending.

26. The Council is therefore basing its decision primarily on the Framework, and specifically Paragraph 49 in respect of considering housing applications in the context of the presumption in favour of sustainable development and Paragraph 55 in respect of enhancing or maintaining the vitality of rural communities, avoiding new isolated homes in the countryside and for the re-use of farm buildings leading to an enhancement to the immediate setting.

27. Government legislation, policy and guidance should be considered in the round. The intention of GPDO Class Q is to encourage the re-use of redundant farm buildings and the PPG qualifies the presumption in favour of sustainable development in the Framework in recognition of such buildings often being located outside of a settlement. In this case, Swallowfield Farm is quite clearly within and a part of the small settlement of Epping Green and not in an entirely isolated and remote location. The change of use would cause no material harm in respect of the character and appearance of the area. The building fronts a metalled road serving adjacent dwellings.

28. Pending the outcome of the judicial review, I find no reason that the siting or location of this proposal would make the change of use from agricultural building to a single dwelling either impractical or undesirable. I have considered the case made by the Council over the sustainability of this location but, having had regard to the PPG, do not consider refusal of prior approval for this reason would accord with current and explicit Government advice.

Conclusion

29. For the reasons set out above I conclude that the appeal should be allowed.

Jonathan Price

INSPECTOR

[3] APP/J1915/W/16/3142497

The Planning Inspectorate

Costs Decision

Site visit made on 18 January 2017

by Jonathan Price BA(Hons) DMS DipTP MRTPI

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

Decision date: 22nd February 2017

Costs application in relation to Appeal Ref: APP/J1915/W/16/3160281
Swallowfield Farm, Church Road, Epping Green, Hertfordshire SG13 8NB

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
- The application is made by Mr Bradley Morgan for a full award of costs against East Hertfordshire District Council.
- The appeal was against the refusal to grant approval required under Schedule 2, Part 3, Class Q of the Town and Country Planning (General Permitted Development)(England) Order 2015 for the change of use of agricultural building to provide 1 No. dwelling.

Decision

1. The application for an award of costs is allowed in the terms set out below.

Reasons

2. The Planning Practice Guidance (PPG) advises that costs may be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process. Unreasonable behaviour described in the PPG can either be procedural, relating to the process, or substantive, relating to the issues arising from the merits of the appeal. Paragraph 49 of the PPG provides examples of the types of behaviour which might give rise to a substantive award of appeal costs against a local planning authority. This application refers to a number of these examples.

3. In the appeal, the appellant had provided evidence to demonstrate that the building had been in use for agricultural purposes and formed part of an established agricultural unit on 20 March 2013. In addition to the appeal statement and the report accompanying the original prior notification application, there was a further statement covering the agricultural use of Swallowfield Farm and statutory declarations from both the appellant and an immediate neighbour.

4. The Council had relied on its delegated report and had not provided a separate appeal statement. Whilst in principle this might be acceptable practice the delegated report provides little of substance to dispute the evidence provided by the appellant. There is some doubt expressed by the Council over how the building was used on the relevant date. However, this relates to the statement accompanying a separate planning application for the bee keeping equipment store referring to the accommodation of disabled visitors. The terms of the enforcement notice had allowed the retention of some staff facilities and the appellant's statutory declaration refutes that there had been any use for

educational purposes. Council has relied here on no substantial evidence to suggest the use was not agricultural.

5. The Council's concern over the building not lending itself to an agricultural use and retaining a residential feel provides little to substantiate it not being in agricultural use on the relevant date. The evidence suggests to me that these all relate to the nature of the building originally allowed, the terms of the enforcement notice and the recent unauthorised use as a dwelling, rather than any firm evidence that it was not in agricultural use.

6. I agree with the appellant that there was no need to demonstrate the economic viability or profitability of the farm and so the Council has little evidence to substantiate its concern over whether the building was being used for agriculture as a trade or business. On the basis of the above, there is a clear failure of the Council to substantiate its reason that insufficient evidence had been submitted to demonstrate the building was in agricultural use for the purpose of a trade or business on an established agricultural units on 20 March 2013. With reference to paragraph 49 of the PPG this would be unreasonable behaviour in a substantive sense.

7. Pending the outcome of judicial view, the Council has also acted unreasonably in a substantive sense by not determining this appeal in accordance with other appeal decisions, including a number in this District, where Inspectors have clearly followed the advice in paragraphs 108 and 109 of the PPG in respect of not applying a test in relation to the sustainability of the location of Class Q proposals and applying Government's definition of what would be impractical or undesirable. The Council has not provided any recent appeal decisions which support the approach it has taken in this appeal. With reference to the sixth example given in paragraph 49 of the PPG the Council has therefore behaved unreasonably by persisting in the refusal of a Class Q proposal on the grounds of location, where several Inspectors have previously indicated similar cases to be acceptable.

Conclusion

8. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has been demonstrated and conclude that a full award of costs is justified.

Costs Order

9. In exercise of the powers under section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990 as amended, and all other enabling powers in that behalf, IT IS HEREBY ORDERED that East Hertfordshire District Council shall pay to Mr Bradley Morgan the costs of the appeal proceedings described in the heading of this decision; such costs to be assessed in the Senior Courts Costs Office if not agreed. The applicant is now invited to submit to East Hertfordshire District Council, to whose agent a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

Jonathan Price

INSPECTOR

The Planning Inspectorate

Appeal Decisions

Site visit made on 23 January 2017

by K R Saward Solicitor

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

Decision date: 10 February 2017

10 Pentlows, Braughing, Herts SG11 2QD
Appeal A: APP/J1915/C/16/3161923
Appeal B: APP/J1915/C/16/3162290

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeals are made by Mr K Sullivan (Appeal A) and Mrs J Sullivan (Appeal B) against an enforcement notice issued by East Hertfordshire District Council.
- The enforcement notice was issued on 29 September 2016.
- The breach of planning control as alleged in the notice is unauthorised change to the levels of the land to the rear of the property with a wooden sleeper retaining wall and raised terraced area with wooden sleeper retaining walls.
- The requirements of the notice are: remove all the wooden sleeper retaining walls and reinstate the land back to its former level prior to the unauthorised works taking place.
- The period for compliance with the requirements is 4 months.
- Appeal A is proceeding on the grounds set out in section 174(2)(a) & (f) of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground (a) an application for planning permission is deemed to have been made under s177(5) of the Act.
- Appeal B is proceeding on the ground set out in section 174(2)(f) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have not been paid within the specified period, the application for planning permission deemed to have been made under section 177(5) of the Act as amended does not fall to be considered.

Summary of Decision: The appeal on ground (a) is allowed, the enforcement notice is quashed, and planning permission is granted in the terms set out below in the Formal Decision.

11 Pentlows, Braughing, Herts SG11 2QD
Appeal C: APP/J1915/C/16/3161925
Appeal D: APP/J1915/C/16/3162293

- The appeals are made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeals are made by Mr W Duffy (Appeal C) and Mrs Duffy (Appeal D) against an enforcement notice issued by East Hertfordshire District Council.
- The enforcement notice was issued on 29 September 2016.
- The breach of planning control as alleged in the notice is unauthorised change to the levels of the land to the rear of the property incorporating a wooden sleeper retaining wall and raised terraced areas with brick retaining walls.
- The requirements of the notice are: remove the wooden sleeper retaining wall and raised terrace areas and brick retaining walls and reinstate the land back to its former level prior to the unauthorised works taking place.
- The period for compliance with the requirements is 4 months.
- Appeal C is proceeding on the grounds set out in section 174(2)(a) & (f) of the Town and Country Planning Act 1990 as amended.

- Appeal D is proceeding on the ground set out in section 174(2)(f) of the Town and Country Planning Act 1990 as amended. Since the prescribed fees have not been paid within the specified period, the application for planning permission deemed to have been made under section 177(5) of the Act as amended does not fall to be considered.

Summary of Decision: The appeal on ground (a) is allowed, the enforcement notice is quashed, and planning permission is granted in the terms set out below in the Formal Decision.

Preliminary Matters

Appeals A,B,C & D

1. Originally, appeals were brought under ground (a) in the names of Mr and Mrs Sullivan (10 Pentlows) and Mr and Mrs Duffy (11 Pentlows). As section 174 of the 1990 Act specifies that "a person" having an interest in the land to which an enforcement notice relates or "a relevant occupier" may appeal against the notice, there is no right of joint appeal. Therefore all the individuals who appealed against the enforcement notice are treated as having made separate appeals. When an appeal is made against an enforcement notice on ground (a), an application for planning permission for the development enforced against is deemed to be made under Section 177(5) of the Act and a fee is payable in respect of each application. The deemed applications made by Mrs Sullivan and Mrs Duffy lapsed following non-payment of the prescribed fees within the specified period. Their appeals proceed on ground (f) only.

2. The argument is made under ground (f) that the requirement to reinstate the land to its former level prior to the unauthorised works taking place is too vague in its wording. This raises an issue over the validity of the notices. It is well-established case law that a notice must tell a recipient of it fairly what he has done wrong and what he must do to remedy it. During my site visits, the appellants at each address were able to show me how and where changes to the ground levels had been made. There are also some physical features such as new fencing which assist in identifying the points of change. Moreover, as the appellants are the ones who had the works undertaken, they are in the best position to know the former levels without necessitating further particulars. I regard each notice to be sufficiently clear and precise in requiring the former levels to be reinstated.

3. The enforcement notices were issued on the same date and concern similar development. There are some differences in the allegations and requirements, but the reasons given for the issue of each notice is identical. A single Appeal Statement has been submitted in respect of all the appeals. I shall deal with the appeals together unless the context otherwise requires.

Appeals A & B only

4. In Appeals A and B, the enforcement notice alleges that there is a raised terraced area, but no mention is made of this in the steps required unlike the notice in Appeals C and D which specifically requires removal of the terrace. Prior to my site visit I consulted the parties on whether the requirements of the notice need correction to include specific reference to the terrace. The appellants' agent submitted that the notice does not require removal of the terrace whereas the Council appeared to suggest that it does and regards the notice to suffice as drafted because it requires the land to be reinstated.

5. At my site visit I saw that the terrace at No 10 wraps around one corner of the property. Both parties agreed that the part of the terrace at the side of the house is at a lower ground level than originally. Therefore, the land could only be reinstated to its former level if this part of the terrace is removed. In such circumstances, the notice does not need to explicitly require its removal.

Appeals A and C

Ground (a) and the deemed planning applications

Main Issue

6. The main issue is the effect of each development on the character and appearance of the surrounding area and the character or appearance of the Braughing Conservation Area.

Reasons

7. 'Pentlows' is a private road forming a small modern housing estate where the dwellings are configured in cul-de-sac layout. The location is within the Braughing Conservation Area, being a designated heritage asset. The houses were built pursuant to a planning permission granted in 2012.

8. Nos 10 and 11 are two neighbouring detached houses whose rear gardens originally sloped steeply downwards away from the dwellings in a westerly direction towards the meadowland beyond. The gardens are not particularly large and the amount of useable space was confined by the topography.

9. To create more useable garden, the appellants excavated and imported soil to establish flat levels in the slope of their respective gardens. A retaining wall composed of wooden sleepers forms a continuous line extending along the rear boundary of the two properties. At No 11, a brick retaining wall has been built inside the boundary with a post and rail fence above. Hard steps have been built into the slope leading to different patio areas. More wooden sleepers have been used at No 10 to create another retaining wall and an 'L' shape patio has been laid. The change in levels and associated works amounted to engineering operations being development for which planning permission was required, but not obtained.

10. Retrospective planning applications were made to regularise the position at each property. Both were refused on 12 August 2016 for the same reasons given in the enforcement notice. No appeal was made against those decisions.

11. Section 72(1) of the Planning (Listed Building and Conservation Areas) Act 1990 requires special attention be paid to the desirability of preserving or enhancing the character or appearance of the Conservation Area. In this regard, the appellants quote the Council's own Conservation and Urban Design team who did not object to the retrospective planning applications because they did not consider that the works have caused harm to the character or appearance of the Conservation Area. Notwithstanding that reply, the Council clearly did have concerns which it has reiterated in this appeal. The developments fall to be considered afresh in the deemed planning applications.

12. The topography of the surrounding area is undulating. The appeal properties are among a row of houses at Pentlows sited at an elevated level. The land falls sharply away into a wide expanse of meadowland which is described as

public open space. The rear elevations and gardens of the properties overlook the meadow and its balancing pond with views towards the adjoining churchyard and the more distant houses in Church End. Looking away from Pentlows the sense is distinctly rural and one of spaciousness in stark contrast to the built form of this small housing estate on quite tightly knit plots.

13. From the descriptions given by various parties, it is plain that the ground levels have been changed significantly at the appeal properties. However, the extent of change is far less evident when on site and visiting for the first time. Most notable is the abrupt end of the gardens where they meet the meadowland now that there are retaining walls. Even prior to these works, the boundaries were demarcated to provide segregation between private and publicly accessible land. Whilst that line of separation may be much less subtle than before, it is the houses themselves that have prominence from the meadow, the churchyard and also further afield rather than the gardens or any works undertaken. Moreover, views towards Pentlows from the churchyard[1] are obscured to a large degree by mature trees planted along its boundary with the meadow. When the trees are in leaf views of Pentlows will be reduced further.

14. Parts of the garden space, particularly the terraces at No 11, are now at a more elevated level enabling domestic use of the land closer to the boundary with the meadow. However, against the backdrop of the houses none of these features appear out of keeping or harmful to the wider setting.

15. Upon the grant of planning permission in 2012 a condition was imposed for the approval and implementation of a landscaping scheme. According to the Council, that scheme was completed as confirmed by its Landscape Officer who undertook a site visit on 1 March 2016. The Council contends that a native hedgerow and landscape features planted along the western boundary in accordance with the approved scheme were removed during the works giving rise to the appeals. These, it says, were intended to soften the western edge and form a relatively sympathetic transition to the meadowland beyond in keeping with the rural location and outlook.

16. The appellants say that there was never a native hedge, only some small 'whips' planted in the meadowland which remain beside the rear boundary of No 10. I was able to see this planting on my site visit and noted them to be unremarkable specimens currently providing next to no screening.

17. By the time of my site visit, a new hedge had been planted beside the boundaries of Nos 10 and 11 in the meadowland. This land has either been or is due to be transferred to the parish council as public open space. That being so, there can be confidence that the hedge will be retained. A route into the meadowland is via gates at the side of No 11. A worn path leads past the rear boundary of that property. The new hedge provides physical and visual separation between these areas.

18. Whilst the relationship between the gardens of the properties and the meadowland has changed, there is no material harm arising from the works given the context as residential gardens and the ability of planting to soften the transition. Once the newly planted hedge becomes established, there will be a natural buffer between the gardens and meadowland in similar manner to that originally anticipated. As the ground levels now differ, the transition to soft

[1] Interested parties identify the Church as Grade I listed

edge can be boosted further by the addition of planting within the boundary of No 11, secured by way of condition. Various planting has already been carried out at No 10 in front of the second timber sleeper. To ensure that the planting is suitable longer term, a condition can require approval of the details and maintenance thereafter.

19. Having regard to all the above, the change in levels and associated works do not detract from the area or the heritage significance of the Conservation Area. Consequently, I find no conflict with policy ENV1 of the East Herts Local Plan Second Review, 2007 which, amongst other things, seeks high quality design compatible with its surroundings or policy BH6 thereof which requires development to be sympathetic to the general character and appearance of the Conservation Area. Nor do I find conflict with paragraph 132 of the National Planning Policy Framework which states that great weight should be given to the conservation of heritage assets.

Other matters

20. Aside from some letters in support, objections have also been made by local residents and 'The Braughing Society'.

21. There is no right to a view, but the distance between the rear gardens of Nos 10 and 11 and the nearest properties in Church End is considerable. Once planting already undertaken in the meadow as part of the approved landscaping scheme becomes established, the views will be lesser still. Due to the separation distance, the change in ground levels has no adverse effect on the privacy to properties in Church End.

22. The ground levels at other neighbouring properties are relatively even and so it is somewhat difficult to see how the developments in this instance could be repeated elsewhere. In any event each application and appeal must be decided on its individual merits and no precedent is created by the grant of planning permission in these particular cases.

23. The Council has confirmed that the conditions imposed by the 2012 planning permission to address land contamination have been discharged. The Council does not consider that the importation and manipulation of soil will have resulted in any material harm in terms of contamination risks. I have no evidence to indicate otherwise.

Conclusion on ground (a) and the deemed planning applications

24. For the reasons given above, and having had regard to all other matters raised, I conclude that the appeals should succeed on ground (a) and planning permission will be granted. The appeals on grounds (f) and (g) do not therefore need to be considered.

Conditions

25. The Council has suggested five conditions in this eventuality which I have considered in accordance with Paragraph 206 of the Framework and the national Planning Practice Guidance (PPG). The appellants contest the appropriateness of the conditions.

26. As the developments are complete, there is no need for a commencement condition. A condition cannot require landscaping on land outside the

appellants' control and a hedge has been now been planted on the adjoining land in any event. However, in light of the importance in these cases to ensure appropriate landscaping to minimise the impacts of the developments, conditions shall be imposed to require approval and maintenance of on-site landscaping provision.

27. The conditions need some redrafting for greater clarity and precision and to reflect the fact that the developments are complete. Unlike an application for planning permission for development yet to commence, it is not possible to use a negatively worded condition precedent to secure the landscaping because the development has already taken place. The purpose and effect of the condition is therefore to ensure that the development authorised by the grant of planning permission may only remain if there is compliance with each one of a series of requirements.

28. The appellants object to the inclusion of conditions removing certain permitted development rights as suggested by the Council pursuant to the Town and Country Planning (General Permitted Development)(England) Order 2015[2]. In particular, the Council seeks removal of rights under Schedule 2, Part 1, Class E and Schedule 2, Part 2, Class A. Respectively, these provisions would otherwise allow buildings to be built incidental to the enjoyment of a dwellinghouse and also gates, fences or other means of enclosure without express planning permission. Even though those rights were not removed by the 2012 planning permission, circumstances have now changed.

29. As set out in the PPG, conditions restricting the future use of permitted development rights will rarely pass the test of necessity and should only be used in exceptional circumstances. By altering the ground levels, potentially more harm could be caused if such development were to be carried out without being under the control of the Council. To my mind, these are exceptional circumstances which warrant the imposition of the conditions subject to amendments. Aside from a correction to refer to the current Order, the suggested wording which allows the Council to give prior written consent is vague and introduces uncertainty and should not be inserted.

Formal Decisions

Appeal A

30. The appeal is allowed, the enforcement notice is quashed and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended for the development already carried out, namely the change to the levels of the land to the rear of the property with a wooden sleeper retaining wall and raised terraced area with wooden sleeper retaining walls at 10 Pentlows, Braughing, Herts SG11 2QD referred to in the notice, subject to the following conditions:-

    1) The operations hereby permitted shall be removed and the land reinstated back to its former level within 6 months of the date of failure to meet any one of the requirements set out in i) to iv) below:

    i) within 3 months of the date of this decision details for landscaping of the site shall have been submitted for the written approval of the local

[2] The Council has erroneously quoted the earlier Town and Country Planning (General Permitted Development) Oder 1995

planning authority. Unless the landscaping has already been implemented in full, the details shall include a timetable for its implementation.

ii) within 11 months of the date of this decision the local planning authority refuse to approve the details or fail to give a decision within the prescribed period, an appeal shall have been made to, and accepted as validly made by, the Secretary of State.

iii) if an appeal is made in pursuance of ii) above, that appeal shall have been finally determined and the submitted scheme shall have been approved by the Secretary of State.

iv) the approved details shall have been carried out and completed in accordance with the approved timetable and shall thereafter be maintained in accordance with the approved details.

2) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that Order with or without modification), no works or development as described in Schedule 2, Part 1, Class E of the Order shall be undertaken.

3) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that Order with or without modification), no gates, fences, walls or other means of enclosure as described in Schedule 2, Part 2, Class A of the Order shall be undertaken.

Appeal B

31. I take no further action in respect of this appeal.

Appeal C

32. The appeal is allowed, the enforcement notice is quashed and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended for the development already carried out, namely the change to the levels of the land to the rear of the property incorporating a wooden sleeper retaining wall and raised terraced areas with brick retaining walls on land at 11 Pentlows, Braughing, Herts SG11 2QD referred to in the notice, subject to the following conditions:

1) The operations hereby permitted shall be removed and the land reinstated back to its former level within 6 months of the date of failure to meet any one of the requirements set out in i) to iv) below:

i) within 3 months of the date of this decision a scheme for landscaping of the site shall have been submitted for the written approval of the local planning authority and the scheme shall include a timetable for its implementation.

ii) within 11 months of the date of this decision the local planning authority refuse to approve the scheme or fail to give a decision within the prescribed period, an appeal shall have been made to, and accepted as validly made by, the Secretary of State.

iii) if an appeal is made in pursuance of ii) above, that appeal shall have been finally determined and the submitted scheme shall have been approved by the Secretary of State.

iv) the approved scheme shall have been carried out and completed in accordance with the approved timetable and shall thereafter be maintained in accordance with the approved details.

2) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that Order with or without modification), no works or development as described in Schedule 2, Part 1, Class E of the Order shall be undertaken.

3) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that Order with or without modification), no gates, fences, walls or other means of enclosure as described in Schedule 2, Part 2, Class A of the Order shall be undertaken.

Appeal D

33. I take no further action in respect of this appeal.

K R Saward

INSPECTOR

The Planning Inspectorate

Appeal Decision

Site visit made on 18 January 2017

by D J Board BSc (Hons) MA MRTPI

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

Decision date: 17 February 2017

Appeal Ref: APP/J1915/W/16/3159881
Bucksbury Farm, Bucks Alley, Little Berkhamsted, Hertford, Herts

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under a development order.
- The appeal is made by Mr Greg Hitchins against the decision of East Hertfordshire District Council.
- The application Ref 3/16/1393/ARPN, dated 10 June 2016, was refused by notice dated 4 August 2016.
- The development proposed is change of use from agricultural use to C3 dwelling and associated operational development on a site close to Little Berkhamsted.

Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by Mr Greg Hitchins against East Hertfordshire District Council. This application will be the subject of a separate Decision.

Main Issues

3. The main issues are:

    - (a) Whether the building meets the requirements of the Town and Country Planning (General Permitted Development)(England) Order 2015 (hereafter the GPDO) so as to come within the scope of permitted development Class Q namely, that it was used solely for agricultural use as part of an established agricultural unit on 20 March 2013 (Schedule 2, Part 3, Q.1); and (b) Whether the proposals satisfy the prior approval requirements of the GPDO, as amended, 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), with particular regard to the location of the building.

Reasons

4. The application was refused by the Council on the basis that there was not sufficient information to demonstrate that the building had been used for agriculture and was so used for the purpose of a trade or business. For the purposes of Part 3 of the GPDO, an agricultural building is defined as a building used for agriculture and *which is so used for the purposes of a trade or business* and agricultural use refers to such uses. Class Q.1 refers to the site being used solely for an agricultural use *as part of an established agricultural unit*. Therefore it is necessary and reasonable for the applicant/appellant to adequately demonstrate that the requirements of Class Q.1 are met.

5. The proposal is supported by statutory declarations made by G Hitchins and A Fitzjohn. It is identified that the building was erected in 1991. The declarations also refer to the use of a piece of land close to the building as 'farmed land' and the use of the building in association with this activity. It is also submitted that the building has been used for storage for both hay and livestock feed.

6. The red line is draw tightly around the building and the area of land around it is within the blue line, much of which is woodland. The area described as 'farmed land' is located within this blue line area. The general planning definition of agriculture (in the Act) covers a wide range of matters. Accordingly, I accept that the production of hay from this area of land and referred to in the statutory declarations could be regarded as 'agriculture', albeit on a relatively small scale. However, that is only part of the relevant test that must be met.

7. There may be some agricultural activity on the 'farmed land' and the building may have been used for storage in some form. However, there is no specific information that relates to a trade or business or providing a link to the building. The evidence before me does not demonstrate that the building on site is used as part of an agricultural trade or business.

8. As such the development falls outside the permitted development right and therefore there is no need to make a determination on the prior approval matters. Nevertheless the Council's second reason for refusal refers to Criterion (e) regarding the location of the scheme. Criterion (e) requires the consideration of whether the location or siting of the building makes it otherwise impractical or undesirable for the building to change from agricultural use to a dwelling.

9. This has been further clarified through the Planning Practice Guidance (PPG) published on 5 March 2015[1]. This sets out that *'the permitted development right does not apply a test in relation to sustainability of location'* and that this is deliberate. Paragraph 109 goes on to provide guidance on what is meant by *'impractical or undesirable'* for the change to occur.

10. The Council refused prior approval on the grounds that the proposal would create a single isolated dwelling in the countryside, away from key services and infrastructure such as public transport, schools and shops. For these reasons it suggests that its location would make it undesirable for the proposed change of use to take place since it would amount to unsustainable development, contrary to the National Planning Policy Framework. I appreciate that the Council are concerned about the location of the site with regards to sustainability. However, I am mindful of the guidance of the PPG and place significant weight up on it.

Conclusion

11. The proposal would not meet the requirements of Part 3 Schedule 2 Class Q.1 (a) (ii) and therefore falls outside the permitted development right. Accordingly for the above reasons and having regard to all other matters raised I conclude that the appeal should be dismissed.

D J Board

INSPECTOR

[1] Reference ID: 13-108-20150305 & 13-109-20150305

The Planning Inspectorate

Appeal Decision

Site visit made on 18 January 2017

by Jonathan Price BA(Hons) DMS DipTP MRTPI

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

Decision date: 17th February 2017

Appeal Ref: APP/J1915/W/16/3161904
Millars One, Southmill Road, Bishop's Stortford, Hertfordshire CM23 3DH

- 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 S Webb against the decision of East Hertfordshire District Council.
- The application Ref 3/16/1654/FUL, dated 20 July 2016, was refused by notice dated 12 October 2016.
- The development proposed is conversion of existing premises into 11 flats.

Decision

1. The appeal is dismissed.

Application for costs

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

Main Issues

3. The main issues in this case are:

   - The effect on the local economy;
   - The effect on the local provision of sports and recreational facilities;
   - Whether the proposed flats would provide acceptable living conditions for future occupants, with particular regard to outlook and the provision of private amenity space;
   - Whether the proposal makes adequate provision for on-site car parking;
   - Whether the scheme makes adequate provision for any additional demand placed on local infrastructure, services and facilities.

Reasons

The proposal and its surroundings

4. The proposal relates to part of Millars One, a former Maltings building fronting onto Southmill Road, located south of and close to the town centre. This building is one three such former industrial buildings which have been converted to provide a complex of mixed uses. Millars One occupies the north-western side of the Maltings site and is of a comparable width and length to Millars Two, which is located in an equivalent position along the south-eastern

side. All three buildings have the elongated form typical of their former use, although Millars Three, which is the central unit, is the largest and of substantially greater width and height.

5. There is a pair of vehicular entrances to the site from Southmill Road, where there is parking at the front of the buildings. These access the two service roads which run between the buildings, which also have parking alongside, and reach a larger area of parking at the rear of the site. A bridge leads from the rear car park across the River Stort and provides unstepped pedestrian access from this site to other parts of the town, including the train station.

6. The proposal relates to a main central section of Millars One where an existing gymnasium use occupies two floors. The front part of the building, which is more domestic in scale, would remain as a restaurant/takeaway and the section immediately beyond this would remain a dance studio. A rear ground floor part of the building would stay occupied by another takeaway and the final section, outside the appellant's ownership and closest to the river, houses another restaurant.

7. The conversion would apply only to the parts of Millars One currently used as a gymnasium where the upper-floor would provide six one-bedroom flats and the ground-floor five two-bedroom flats. Five spaces at the front forecourt area of Millar One are indicated as providing the car parking for these 11 flats where cycle storage is also shown. The existing waste and recycling store situated at the rear of Millars Two is indicated as providing for the needs of this proposal.

Effect on the local economy

8. The proposal relates to premises within the urban area of Bishop's Stortford, where the principle of further residential development would be acceptable. However, this conversion to 11 flats should be assessed against the wider objectives in the East Herts Local Plan Second Review April 2007 (LP), where Policy EDE2 seeks to prevent the loss of employment sites, outside identified Employment Areas. From the supporting text it is clear that the aim of this policy is to support local employment opportunities and preserve a broad base to the town's economy. This policy aims to maintain a balanced mix of residential and employment uses in Bishop's Stortford which would contribute to the achievement of sustainable development, and be consistent with the aims of the National Planning Policy Framework (the Framework). Therefore Policy EDE2 should be given significant weight.

9. The various units in the Maltings provide accommodation for a mixture of small businesses which, whilst falling within a variety of planning use class categories, mostly provide employment. As a whole the Maltings complex provides a quite vibrant mix of small businesses and the loss of accommodation to flats would detract from this. Where the Council has recently permitted the conversion of parts of the Maltings to residential the evidence is that this has only related to upper-floor accommodation. I have taken account of the evidence provided over the viability of the present gymnasium operation. However, the conversion to residential flats would result in the loss of space with the potential to support an alternative employment provider, which would dilute the main use of these buildings in providing the accommodation for a mixture of small businesses.

10. The appellant refers to Policy ED1 of the Council's Pre-Submission Draft of the Local Plan (DLP) which specifies the protection of employment premises as applying to Use Classes B1, B2 and B8 but not D2 (Assembly and Leisure), which the current gymnasium use falls under. However, the Council has not relied on this emerging policy in its reason for refusal and, given this could yet be the subject of changes following consultation and examination, it can only be given limited weight.

11. Although the existing gymnasium use might currently employ only 4 part-time staff, its conversion to residential flats would result in the loss of an existing business, with a ground floor entrance and which forms part of an established mixed enterprise complex. The evidence provided does not persuade me that an alternative employment generating use to the current use has been fully explored.

12. The Council has previously allowed flats in the upper-floor parts of Millars Three. However, this proposal must be considered on its own merits and with regard to the balance between employment and non-employment uses on this site, recognising the synergies and mutual benefits provided by a concentration of mixed businesses and the advantages of a ground floor frontage along a main axis within this site. Having taken these factors into consideration I find that this proposal would conflict with the aims of LP Policy EDE2, in respect of preventing the loss of employment sites.

Effect on the local provision of sports and recreational facilities

13. LP Policy LRC1 resists the loss of sport and recreation facilities in order to promote health and well-being in the community, and this is consistent with aims set out in Section 8 of the Framework. Exceptions can be justified under this policy where there is suitable alternative provision in the locality, such that an existing sports and recreational was no longer needed and there was no viable demand for an alternative sort of facility.

14. The appellant's evidence persuades me that a number of modern fitness centres have emerged recently in this locality, with which the Millars One gymnasium is struggling to compete. Although there are representations from interested parties which contradict the appellant's view that this gymnasium is proving economically unviable, and failing to compete with more recent developments, the evidence persuades me that suitable alternative facilities are available in this area, which would exempt this proposal from being contrary to LP Policy LRC1. Only limited weight is given to emerging DLP policy CFLR8, although this sets out similar requirements to LP Policy LRC1, and so this would not alter my findings on this issue.

Living conditions for future occupants

15. The proposal is for flats and so it would not be expected for these units to have private outside space attached. However, there would be no outside space connected with the proposed flats, even of a shared nature. In the areas directly outside the front and rear walls of the Millars One building there are currently spaces that would allow vehicles to park right up to the doors and windows of the proposed ground-floor flats.

16. The flats would meet nationally-applied internal space standards and could be insulated against external noise. However, the lack of any communal outside

space connected with this accommodation, particularly given that those units proposed on the ground-floor might be suitable for small families, would not be compensated by access to nearby parks or recreation areas. This factor, coupled with the rather unsatisfactory situation whereby ground-floor flat windows would look out directly onto adjacent vehicle parking, persuades me that this scheme would not provide acceptable living conditions for its future occupants.

17. Consequently, this proposal would conflict with LP Policy ENV1 which seeks that development proposals respect the amenity of future occupants. This policy is consistent with the Framework principle that planning decisions always seek to secure a good standard of amenity for all existing and future occupants of land and buildings. Only limited weight is given to emerging DLP policy DES3 which would not alter my considerations over this issue.

Car parking

18. The proposed flats are located close to the town centre, the train station and bus services. Consequently, future occupiers would be relatively less dependent on the use of a private car to access employment, schools and other regularly required services and facilities, than residents of more remote locations.

19. I found the car parking provided in and around the Millars complex to be generally well used at the time of my mid-morning visit with limited spare capacity. Satisfactory access, parking and servicing arrangements comprise criterion 'c' in LP Policy ED2 over to allowing the loss of employment sites. The proposal shows five car parking spaces allocated for the 11 flats in the forecourt area at the front of Millars One. LP Policy TR7 applies the Council's parking standards, which for this proposal would require a maximum of 15 spaces, but allows some flexibility relating to the circumstances surrounding a proposal and its location. This flexibility was applied with the 24 flats permitted in Millars Three, which were allowed with 0.6 parking spaces per dwelling. This scheme would provide about 0.45 spaces per dwelling.

20. The County Council finds no material harm to the safety and convenience of other road users arising from this proposal. There are no means to secure this proposal as a car free development and, notwithstanding the sustainability of this location, future residents might well have a private car. However, the additional demand from this proposal on available parking would be offset by the removal of that generated by the current gymnasium use. On balance, and given the existing use and the location of this proposal, I find no material conflict with LP policies EDE2 c. and TR7 in respect of car parking provision. Only limited weight is given to emerging DLP policy TRA3 which would not alter my findings on this issue.

Other Matters

21. The Council requires appropriate provision for the additional demand this proposal would make on local infrastructure, services and facilities. The appellant agrees a contribution is reasonable but has not provided a completed obligation to this effect. Despite this, the absence of the contribution forms the Council's fifth reason for refusal.

22. The potential contribution would make only a very limited positive benefit in the overall assessment of this proposal and so this issue has had no material bearing on my decision and I have found no need to reach a firm conclusion on this matter.

Conclusion

23. The proposal would help increase the supply of housing in a location suitable in principle which would be accessible, by means other than private car, to a wide range of the occupiers' daily requirements. Whilst weight is given to this, the number of residential units is relatively small and so the benefit made to overall housing supply is moderate. This benefit would be insufficient to outweigh the significant harm arising from the loss of premises suitable for a small business generating employment, appropriate within the existing mix of activities on the Maltings site, and from the unacceptable living conditions provided for future occupiers. For these reasons, this proposal would not be supported by the Framework as comprising sustainable development and, having taken into account all other matters raised, I conclude that the appeal should be dismissed.

Jonathan Price

INSPECTOR

The Planning Inspectorate

Costs Decision

Site visit made on 18 January 2017

by Jonathan Price BA(Hons) DMS DipTP MRTPI

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

Decision date: 17th February 2017

Costs application in relation to Appeal Ref: APP/J1915/W/16/3161904
Millars One, Southmill Road, Bishop's Stortford, Hertfordshire CM23 3DH

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
- The application is made by Mr S Webb for a full award of costs against East Hertfordshire District Council.
- The appeal was against the refusal of planning permission for conversion of existing premises into 11 flats.

Decision

1. The application for an award of costs is refused.

Reasons

2. The Planning Practice Guidance (PPG) advises that costs may be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process. Unreasonable behaviour described in the PPG can either be procedural, relating to the process, or substantive, relating to the issues arising from the merits of the appeal.

3. It is put that the Council behaved unreasonably in a substantive sense by refusing planning permission on employment policy grounds which had been inaccurately applied. The contention is that the proposal had not involved the loss of an employment use, as the existing gymnasium use is not defined as such under the Use Classes Order. The Council's decision on this issue related only to Policy EDE2 of its currently adopted development plan, which seeks to protect employment sites. I consider employment sites would not be restricted to those falling within the business class of the Use Classes Order. My decision on the appeal has supported the refusal of planning permission in regard to the application of Policy EDE2. Consequently the Council had substantiated its refusal reason in this part of the decision and therefore had not behaved unreasonably.

4. Paragraph 49 of the PPG gives examples of the types of behaviour which may give rise to a substantive ward against the Council, which includes not determining similar cases in a consistent manner. The case is made that the Council has been inconsistent in requiring parking provision towards the top end of the adopted standards, having previously allowed other developments in this vicinity, including the provision of flats in other parts of the Millars complex, with reduced standards due to the sustainable location.

5. The report to Committee acknowledged lower parking standards had been applied to previous approvals and that the site was in a sustainable location. However, the report also referred to concerns, expressed by interested parties and shared by the Council officer, over inadequate parking provision having since become a significant problem in the Millars complex. Whilst the Council should be consistent in its decisions, it is reasonable for decisions to reflect changing circumstances. Consequently, the decision to refuse planning permission, due to the proposal not meeting car parking standards and being likely to exacerbate current problems, was adequately substantiated and would not amount to unreasonable behaviour.

6. Unreasonable behaviour of a procedural nature has to relate to the decision leading to this appeal. That the Council are postponing a decision on a second proposal is not a matter relevant to this costs application. Therefore I cannot find unreasonable behaviour in respect of this particular matter. Regarding the appeal, the Council would have been entitled to rely on its Committee report rather than submit a separate appeal statement. The Committee report adequately substantiated the Council's decision and so the lack of a separate appeal statement would not amount to unreasonable behaviour in a procedural sense.

7. The applicant considers the Council behaved unreasonably by introducing two further reasons for refusal into the Committee report, without having first disclosed these and provided an opportunity for discussion and rebuttal. Paragraph 33 of the PPG confirms the expectation that all parties behave reasonably throughout the planning process and, whilst making it clear that costs cannot be claimed for the period leading up to the Council's decision, behaviour and actions at that time can be taken into account in the consideration of a subsequent appeal costs application.

8. The Committee report would have been available prior to the Council's decision and the fact the officer had introduced certain issues not previously discussed with the applicant would not be sufficient to amount to unreasonable behaviour. An award of costs has to be based on unreasonable behaviour and unnecessary or wasted expense in the appeal process. A completed planning obligation has not been produced with this appeal and so the costs of this have not been incurred. The inclusion of a reason for refusal relating to the loss of a leisure facility would not have been likely to have led to significantly more costs having been incurred or to have comprised unreasonable behaviour on the part of the Council.

Conclusion

9. For the reasons set out above I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated. I conclude therefore that an award of costs in this case is not justified.

Jonathan Price

INSPECTOR

The Planning Inspectorate

Appeal Decision

Site visit made on 9 February 2017

by Megan Thomas Barrister-at-Law

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

Decision date: 23 February 2017

Appeal Ref: APP/J1915/D/16/3162847
86 Mangrove Road, Hertford SG13 8AN

- 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 Colin Eccleshall against the decision of East Hertfordshire District Council.
- The application Ref 3/16/1765/HH, dated 29 July 2016, was refused by notice dated 21 September 2016.
- The development proposed is a single storey rear extension.

Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are

    - whether the proposal constitutes inappropriate development in the Green Belt having regard to the National Planning Policy Framework 'NPPF' and development plan policies,
    - its effect on the openness of the Green Belt
    - the effect of the proposal on the character and appearance of the area
    - if the proposal is inappropriate development, whether the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations and if so, whether there are very special circumstances justifying the proposal.

Reasons

Whether inappropriate development

3. The appeal dwelling is semi-detached and its semi-pair is no.88 to its south. The properties are situated on the west side of Mangrove Road within a row of other houses and are within the designated Green Belt. No.86 is two full storeys in height and also has accommodation in the roof space. At the rear there is a pitched roof dormer structure and a gable-ended two storey rear element with a room in the roof. There is also a rear single storey extension with roof lantern.

4. The appeal scheme consists of the erection of a single storey rear extension which would result in an addition about 1.8m in depth. It would extend across to the common boundary with no.88 Mangrove Road. It would be about 7.7m wide and about 3.1m high with a flat roof and would have a replacement roof lantern.

5. The NPPF sets out the national policy approach to development in the Green Belt. It indicates that in regard to the construction of new buildings in the Green Belt they should be seen as inappropriate development. There is an exception to this if the extension or alteration of a building would not result in disproportionate additions over and above the size of the original building.

6. The original building in this case has already been extended. The Council has indicated that increases in floorspace amount to about 93% but the 1948 plotting sheets show an outbuilding which is no longer present. The net increase in floorspace of the original dwelling is therefore estimated to be about 81%. The appellant does not dispute this.

7. I consider the proposal would result in a disproportionate addition over and above the size of the original dwelling. In coming to this view I have had regard to the recent appeal decision in relation to no.90 Mangrove Road (ref: APP/J1915/D/15/3137704) which granted a proposal which would result in a cumulative increase in floor area above the original dwelling of up to some 87%. However, there were distinguishing factors which led that Inspector to make that decision, amongst other things, his view that the appeal property would remain noticeably smaller than some of the other semi-detached properties and his view that visually it would be difficult to tell whether the size of the dwelling has increased as a result of the development. Neither of those factors apply to the proposal before me in my view.

8. I have had regard to other extensions to houses nearby and the depth and form of their projections from the main rear elevations of the houses. The appellant refers to the effect of the proposal to 'infill' any internally-facing courtyard on account of the single storey element at ground floor level projecting across the width of the dwelling, and contrasts the technical floorspace increase with actual impacts on character and appearance of the wider area. I have borne these factors in mind but they do not alter my view that the proposal would be cumulatively disproportionate in terms of NPPF policy.

9. Saved policy GBC1 of the East Herts Local Plan Second Review 'LP' indicates that limited extensions to dwellings in the Green Belt may be permitted if constructed in accordance with LP Policy ENV5. ENV5 requires extensions not to adversely affect the amenities of the dwelling and any adjoining dwellings to a significant extent and, outside the main settlements and larger villages, an extension to a dwelling will be expected to be of a scale and size that would either by itself, or cumulatively with other extensions not disproportionately alter the size of the original dwelling. Whilst the Council indicates that it has a desired increase in floor space limit of 60%, evidence has not been presented to indicate that this is adopted policy and LP paragraph 8.9.2 holds that it is not possible to state categorically what maximum, size of extension is likely to be permissible, given the wide range of existing dwelling types and sizes which comprise the rural housing stock.

10. On this first main issue, I conclude that the proposal would constitute inappropriate development in the Green Belt.

Impact on Openness

11. The NPPF confirms that inappropriate development is by definition harmful to the Green Belt. The essential characteristics of Green Belts are their openness and their permanence. Whilst there is a visual element to loss of openness in the sense that a loss of openness is perceived by the human eye, openness is essentially an absence of built development in the Green Belt and that is one of the essential characteristics which national policy seeks to protect. In this case, as a consequence of the increased footprint of built development and increased mass which would result from the proposal, there would be a loss of openness of the Green Belt.

Impact on character and appearance

12. The proposed extension would be at the rear of the house and, although it would be visible in private views, it would not be open to wide public view. Its proposed form, massing and bulk are not *per se* out of keeping with the existing house and with the use of appropriate sympathetic materials, it would not harm the character or appearance of the host dwelling or the wider area. In this respect the proposal would accord with LP policies ENV1, ENV5 and ENV6.

Would the harm by reason of inappropriateness, and any other harm, be clearly outweighed by other considerations and if so would this amount to very special circumstances required to justify the proposal.

13. NPPF policy indicates that substantial weight must be attached to inappropriate development by reason of its inappropriateness. In addition to this harm, there is harm to the openness of the Green Belt. There is a lack of harm to character and appearance of the dwelling and the wider area but I take these to be neutral factors. I have borne in mind that the proposal would improve the living accommodation and it would use available space within the land boundary. Overall however, harm is not clearly outweighed by other considerations and very special circumstances do not exist.

Conclusion

14. Having considered all relevant representations, for the reasons given, above I dismiss the appeal.

Megan Thomas

INSPECTOR

The Planning Inspectorate

Appeal Decision

Site visit made on 9 February 2017

by Megan Thomas **Barrister-at-Law**

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

Decision date: 23 February 2017

Appeal Ref: APP/J1915/D/16/3161211
The Brooms, 69 Lower Road, Great Amwell, Hertfordshire SG12 9SZ

- 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 G & D Edwards against the decision of East Hertfordshire District Council.
- The application Ref 3/16/1829/HH, dated 8 August 2016, was refused by notice dated 4 October 2016.
- The development proposed is first floor side extension incorporating alterations to roof.

Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are

    - whether the proposal constitutes inappropriate development in the Green Belt having regard to the National Planning Policy Framework 'NPPF' and development plan policies,
    - its effect on the openness of the Green Belt
    - the effect of the proposal, including the roof alterations, on the character and appearance of the area
    - if the proposal is inappropriate development, whether the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations and if so, whether there are very special circumstances justifying the proposal.

Reasons

Whether inappropriate development

3. The Brooms is a two storey detached property with a detached garage set in a spacious garden on the edge of the settlement of Great Amwell. It is within a semi-rural setting and within the Green Belt. Public views of it are not wide and there is some robust landscaping around the garden. To the south-west of the boundary lie the rear gardens of houses that front Lower Road. The house has a

two storey gabled element and some pitched roof dormer structures front and back.

4. The appeal proposal includes a first floor extension above the single storey ground floor element of the house at its south-eastern end. The roof above it would have two ridges with a small lead valley gutter in between. The scheme also proposes an enlargement of the main roof north-west of the main roof ridge across the width of the property and raising the eaves height from about 2.5m to about 4.4m. Four pitched roof dormer structures would be incorporated into the roof, resulting in a total of six dormers on the completed house. The new roof would be redesigned with an area of flat roof between two ridges.

5. The NPPF sets out the national policy approach to development in the Green Belt. It indicates that decision makers should regard the construction of new buildings as inappropriate development in the Green Belt, subject to some exceptions. New buildings includes building part of a structure and extending a building. One of the exceptions to inappropriateness relates to extending or altering a building provided that it does not result in disproportionate additions over and above the size of the original building.

6. The Brooms has already been extended. The Council has estimated the original floor space to be about 125 square metres. Extensions since then are said to total about 155 square metres. This would be an increase of about 124%. The appellants say they are not in a position to dispute those figures. The current scheme involves the provision of more floorspace, but no figure has been proffered by the appellants or the Council. In considering whether the building would be cumulatively disproportionately extended over and above its original size, I have borne in mind not only the numerical increase but also the configuration and nature of the extensions. The footprint of the building would not change but nevertheless there would be significant increases in eaves height and in the roof ridge over the existing single storey element. I have concluded that the proposal would constitute disproportionate additions over and above the original dwelling and therefore the development would be inappropriate development in the Green Belt.

7. Saved policy GBC1 of the East Herts Local Plan Second Review 'LP' indicates that limited extensions to dwellings in the Green Belt may be permitted if constructed in accordance with LP Policy ENV5. ENV5 indicates that outside the main settlements and category 1 and 2 villages, an extension to a dwelling will be expected to be of a scale and size that would either by itself, or cumulatively with other extensions not disproportionately alter the size of the original dwelling. In my view, the appeal site is outside the main settlements and category 1 and 2 villages. Whilst the Council indicates that it has a desired increase in floor space limit of 60%, evidence has not been presented to indicate that this is adopted policy and LP paragraph 8.9.2 holds that it is not possible to state categorically what maximum, size of extension is likely to be permissible, given the wide range of existing dwelling types and sizes which comprise the rural housing stock. However, given my finding in relation to disproportionality, the proposal would conflict with policies GBC1 and ENV5.

8. On this first main issue, I conclude that the proposal would constitute inappropriate development in the Green Belt and would be contrary to LP policies GBC1 and ENV5.

Impact on openness

9. The NPPF confirms that inappropriate development is by definition harmful to the Green Belt. The essential characteristics of Green Belts are their openness and their permanence. Whilst there is a visual element to loss of openness in the sense that a loss of openness is perceived by the human eye, openness is essentially an absence of built development in the Green Belt and that is one of the essential characteristics which national policy seeks to protect. I consider visual matters below. In this case, as a consequence of the increased bulk and massing of built development which would result from the proposal, there would be a loss of openness of the Green Belt.

Character and appearance

10. The enlargement of the roof would result in an area of crown roof with a flat section on top. The roof above the existing single storey section would have two pitched sections with a small flat valley gutter in between. Whilst the design is not ideal, it would not in my view be unacceptably harmful to either the host dwelling, given its current configuration, or to the wider area, given that it is a detached dwelling to which no particular local distinctiveness attaches. Furthermore, the proposed extensions and alterations would not be visible from many public vantage points.

11. Consequently, I conclude that in relation to the character and appearance of the host dwelling and the area, the proposal would not be unduly detrimental.

The Balancing Exercise

12. The appellants have highlighted the fact that some permitted development rights are available to them, albeit that some 'rights' will be subject to prior notification requirements and therefore may not be realised. The evidence leads me to conclude that there is a realistic prospect that the appellants would use any PD rights that they could, and I have had regard to these and allotted them moderate weight.

13. However, NPPF policy indicates that substantial weight must be attached to inappropriate development by reason of its inappropriateness. In addition to this harm, there is harm to the openness of the Green Belt. There is a lack of harm to character and appearance of the dwelling and the wider area but I take these to be neutral factors. I have borne in mind permitted development rights, the fact that the proposal would improve the living accommodation available to the occupiers, and also that the footprint would not be increased. However, the balancing exercise leads me to the conclusion that harm is not clearly outweighed by other considerations and very special circumstances do not exist.

Conclusion

14. Having considered all relevant representations including the appeal decision referred to, for the reasons given, above I dismiss the appeal.

Megan Thomas

INSPECTOR

The Planning Inspectorate

Appeal Decision

Site visit made on 9 February 2017

by Megan Thomas **Barrister-at-Law**

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

Decision date: 23 February 2017

Appeal Ref: APP/J1915/D/16/3161727
15 Chanocks Lane, Gilston CM20 2RL

- 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 S Lloyd against the decision of East Hertfordshire District Council.
- The application Ref 3/16/1838/HH, dated 9 August 2016, was refused by notice dated 3 October 2016.
- The development proposed is a single storey side extension.

Decision

1. The appeal is allowed and planning permission is granted for a single storey side extension at 15 Chanocks Lane, Gilston CM20 2RL in accordance with the terms of the application, Ref 3/16/1838/HH, dated 9 August 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 materials to be used in the construction of the external surfaces of the development hereby permitted shall match those used in the existing dwelling.

   3) The development hereby permitted shall be carried out in accordance with the following approved plans: 11980-S001 & 11980-P004.

Main Issues

2. The main issues are

   - whether the proposal constitutes inappropriate development in the Green Belt having regard to the National Planning Policy Framework 'NPPF' and development plan policies,
   - its effect on the openness of the Green Belt
   - the effect of the proposal on the character and appearance of the area
   - if the proposal is inappropriate development, whether the harm by reason of inappropriateness, and any other harm, is clearly outweighed

by other considerations and if so, whether there are very special circumstances justifying the proposal.

Reasons

Whether inappropriate development

3. The appeal site is a two storey detached dwelling with 3 bedrooms and no first floor bathroom, set in a large plot in the open countryside outside the settlement of Gilston. Harlow is the nearest town. The property dates from the mid-nineteenth century and sits behind a hedge in the south-western corner of the plot. There is also a detached garage within the plot. Entrance into the dwelling is from a pitched roof single storey element on its eastern side. There are no cheek by jowl neighbours.

4. The appeal scheme is for a single storey side extension on the western elevation which would extend northwards in line with the existing northern flat-roofed single storey extension. It would have a double pitched roof with the gable ends facing west. Part of it would be a similar development form to a structure that was certified as lawful by a Certificate of Proposed Lawful Development dated September 2015 to which I refer below.

5. There is a Certificate of Lawful Proposed Development granted on appeal in March 2016 for the erection of an outbuilding to replace the garage.

6. In June 2015, planning permission (ref 3/15/0659/HH) (a renewal) was granted for a wrap-around two storey side and rear extension on the north and east sides of the house. That extension would stretch northwards for a distance of about 8m beyond the side wall of the eastern front porch, and would be positioned forward of its eastern wall. It would run behind the house on its northern side for about 10m, before joining the flat roofed section at the western end. The permission includes a first floor above this single storey section. This permission remains unimplemented but is extant.

7. In September 2015 the Council granted a Certificate of Proposed Lawful Development for the erection of a small single storey extension at the western end of the house. This would be about 3.8m long and about 4.07m deep, with a low pitched roof and a ridge line below the first floor window. It would extend the existing lounge and be built in matching bricks and slates. It is stated by the appellant that this extension was viewed by the Council as within permitted development rights.

8. In January 2016 the Council granted another Certificate of Proposed Lawful Development for a small single storey extension to replace the existing entrance porch on the eastern elevation. This would be about 4m long and about 3.2m wide with a low pitched roof. A comparison between the June 2015 planning permission for the two storey side and rear extension shows that this replacement extension would project eastwards for the same distance as that extension.

9. The NPPF sets out the national policy approach to development in the Green Belt. It indicates that decision makers should regard the construction of new buildings as inappropriate development in the Green Belt, subject to some exceptions. New buildings includes building part of a structure and extending a

building. One of the exceptions to inappropriateness relates to extending or altering a building provided that it does not result in disproportionate additions over and above the size of the original building.

10. The floorspace which would be additional to what has been granted (and is extant) or deemed lawful under certificates would be about 15 sqm. The Council indicate that the proposal before me would be about a 22% increase above the floorspace of the original dwelling. The Council also indicates that the June 2015 planning permission allows about an 83% increase above the original dwelling's floorspace. The appellant has not disagreed with these figures. Considering extensions on a cumulative basis, and also taking into account the configurations and locations of those proposed additions and their impact on the dwelling, I conclude that the proposal would result in cumulatively disproportionate additions over and above the size of the original dwelling.

11. Saved policy GBC1 of the East Herts Local Plan Second Review 'LP' indicates that limited extensions to dwellings in the Green Belt may be permitted if constructed in accordance with LP Policy ENV5. ENV5 indicates that outside the main settlements and category 1 and 2 villages, an extension to a dwelling will be expected to be of a scale and size that would either by itself, or cumulatively with other extensions not disproportionately alter the size of the original dwelling. Whilst the Council indicates that it has a desired increase in floor space limit of 60%, evidence has not been presented to indicate that this is adopted policy and LP paragraph 8.9.2 holds that it is not possible to state categorically what maximum size of extension is likely to be permissible, given the wide range of existing dwelling types and sizes which comprise the rural housing stock. Given my finding in relation to disproportionality, the proposal would conflict with policies GBC1 and ENV5.

12. On this first issue, I conclude that the proposal would constitute inappropriate development and would be contrary to LP policies GBC1 and ENV5.

Impact on Openness

13. The NPPF confirms that inappropriate development is by definition harmful to the Green Belt. The essential characteristics of Green Belts are their openness and their permanence. Whilst there is a visual element to loss of openness in the sense that a loss of openness is perceived by the human eye, openness is essentially an absence of built development in the Green Belt and that is one of the essential characteristics which national policy seeks to protect. I consider visual matters below. In this case, as a consequence of the increased footprint of built development that would result from the proposal, there would be a loss of openness of the Green Belt.

Impact on Character and appearance

14. The proposal is a simple single storey extension with a double pitched roof. It would be subservient to the main building and would not project further northwards than the existing northern extension. With the use of appropriate materials (which can be secured by planning condition), it could complement the character and appearance of the host dwelling. Notwithstanding that, its location near the mature hedge would screen it from most public views.

15. Furthermore, the planning history of the appeal site reveals that there are extensions which could be lawfully implemented and I am satisfied from the evidence that there is a real likelihood of extensions being carried out. I have therefore considered the impact against the fallback position as set out in the evidence. Overall, I consider that proposal would round off the development that has been permitted or certified, and would improve the appearance of both the western and northern elevations of the dwelling.

Would the harm by reason of inappropriateness, and any other harm, be clearly outweighed by other considerations and if so would this amount to very special circumstances required to justify the proposal.

16. NPPF policy indicates that substantial weight must be attached to inappropriate development by reason of its inappropriateness. In addition to this harm, there is harm to the openness of the Green Belt. However, given the fallback development, the additional mass that would be allowed pursuant to the proposal before me is small and I attribute very little weight to the loss of openness in this particular case. There would be an improvement to the appearance of the host dwelling, given the fallback position. This is a positive factor in favour of planning permission. The appellant has referred to the ability of the proposal to link the small certificated western single extension to the existing kitchen. The proposed development would also facilitate a direct link from the enlarged kitchen into the rear garden. The house is an unusual one in having a particularly constrained configuration and awkward circulation. The link that the proposal would facilitate, and the improvement in the quality of living conditions for the family is therefore given substantial weight in this particular case.

17. I conclude therefore that the harm by reason of inappropriateness and any other harm is clearly outweighed by other considerations and there are very special circumstances to justify the proposal.

Conditions

18. In order to protect the character and appearance of the host property, I impose a condition requiring the materials to be used in the external surfaces of the development to match those used in the existing building.

19. In the interests of certainty, I also impose a condition which requires the development to be carried out in accordance with the approved plans.

Conclusion

20. Having considered all relevant representations, for the reasons given, above I allow the appeal.

Megan Thomas

INSPECTOR

The Planning Inspectorate

Appeal Decision

Site visit made on 23 January 2017

by D. M. Young BSc (Hons) MA MRTPI MIHE

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

Decision date: 21 February 2017

Appeal Ref: APP/J1915/W/16/3163330
Land rear of 138 Hertingfordbury Road, Hertford SG14 2AL.

- 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 C Johnson (Willowmead Construction Limited) against the decision of East Hertfordshire District Council.
- The application Ref 3/16/2009/FUL, dated 24 August 2016, was refused by notice dated 28 October 2016.
- The development proposed is a new detached dwelling.

Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are, firstly, the effect of the development on the character and appearance of the area and, secondly, the living conditions of neighbouring occupiers with particular regards to privacy and outlook.

Reasons

Character and appearance

3. The appeal site is located to the rear of No 138, a modest semi-detached property positioned a short distance north of the A414 Hertingfordbury Road and accessed by a small cul-de-sac of the same name. The site rises up sharply away from the host property with a narrow rear garden comprising a series of plateaus accessed by sets of steps. As a result of the topography the site commands far reaching views over the top of those dwellings fronting Hertingfordbury Road.

4. The surrounding area is residential and characterised by pairs of traditional semi-detached dwellings and small groups of terraces which are generally of a similar scale and share a common relationship with the street. There is however considerable variety in relation to external appearance and facing materials. Immediately east in a backland location is a modern three-storey residential development containing three townhouses.

5. The proposed dwelling would be sited towards the top of the plot and would be accessed by a private driveway from Valeside following the removal of the existing garage. The dwelling would be split into various levels with the staggered south facing and northern elevations rising to 2.5 and 1.5 storeys respectively.

6. Rather than the principle of a dwelling in this location, it is the detailed design with which the Council takes issue. Whilst the design has much to commend it, I share the Council's concerns on a number of matters. The dwelling with its strong vertical emphasis would be decidedly different from anything else in the vicinity. This incongruence would be exacerbated by the roof form which would be particularly uncharacteristic and also the large, featureless side elevation facing the recently completed townhouse development.

7. I note the appellant's argument that the dwelling would be largely concealed. However, as I saw on my site visit, due to its elevated position it would in fact be visible in gaps between dwellings from Hertingfordbury Road particularly in the winter months. In any event, the argument that the dwelling would be out of public view is not a good one in principle, as it could be oft-repeated to the overall detriment of the character and appearance of the area.

8. In my view as a direct consequence of its anomalous proportions, roof design, and elevated position the dwelling would have a stark visual appearance. Based on the foregoing, I conclude that the development would conflict with Policies HSG7 and ENV1 of the "*East Hers Local Plan Second Review 2007*" (the LP). Collectively these seek new development to adhere to the highest standards of design which reflects local distinctiveness and relates to the massing and height of adjacent buildings.

Living conditions

9. Although no windows would face 140 Hertingfordbury Road or its rear garden, there is little doubt that the dwelling would be highly conspicuous in rearward views from habitable room windows given the relative differences in ground levels.

10. I accept that the development would be in a built-up location where some intrusion into views is inevitable. However, the side wall and front elevation of the dwelling would loom large close to the shared boundary. Whilst the landscaping along the boundary would ameliorate the impact to some extent, large portions of bland masonry would still be visible from the rear garden. Although the Council do not allege any loss of light, the dwelling would inevitably result in an oppressive outlook from the rear garden where it would appear as an overbearing and dominant structure unlike any other in view. This would significantly diminish the enjoyment of the garden for the occupiers of No 140.

11. Whilst I understand the appellant's point that the occupiers of No 140 have not themselves objected, the "*National Planning Policy Framework*" (the Framework) requires me to protect the amenity of all future and existing occupants of land and buildings.

12. The development would rob No 138 of most of its garden. Accordingly, it is paramount that what remains is useable and private. To this end, the site topography would result in direct overlooking from the upper floor, habitable room windows into the residual garden of No 138. The appellant alleges that the level of overlooking would be similar to that which exists elsewhere in the vicinity. However, whilst I noted the proximity of the townhouses to the rear of Nos 132-134 when I conducted my site visit, I was unable to ascertain the level of intervening landscaping between the buildings. Consequently, there is insufficient evidence before me to demonstrate that the level of overlooking is

comparable to the appeal scheme. That being the case I have assessed the scheme before me purely on its own merits.

13. The trees to which the Council's Officer Report refers appear to have been felled. Accordingly, I find no evidence to suggest future occupiers of the development would experience an outlook dominated by trees.

14. On the second main issue I therefore conclude that the development would unacceptably harm the living conditions of the occupiers of Nos 138 and 140 with particular regards to privacy and outlook respectively. This would conflict with Policies HSG7 and ENV1 of the LP which state that new development should not appear obtrusive and respect the amenity of neighbouring occupiers. The proposal would also conflict with advice in paragraph 17 of the Framework.

Conclusion

15. For the reasons given above, I conclude that the appeal should be dismissed.

D. M. Young

Inspector

The Planning Inspectorate

Appeal Decision

Site visit made on 9 February 2017

by Megan Thomas Barrister-at-Law

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

Decision date: 17 February 2017

Appeal Ref: APP/J1915/D/16/3164565
10 Carde Close, Hertford SG14 2EU

- 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 S & N Eden against the decision of East Hertfordshire District Council.
- The application Ref 3/16/2073/HH, dated 12 September 2016, was refused by notice dated 8 November 2016.
- The development proposed is "removal of existing roof and replaced with first floor extension to create accommodation."

Decision

1. The appeal is dismissed.

Main Issue

2. The main issue in the appeal is the effect of the proposal on the character and appearance of the host dwelling and the area.

Reasons

3. The appeal site is a detached single storey bungalow located along the northern side of a small cul-de-sac on the north western outskirts of Hertford. The cul-de-sac contains about 18 detached dwellings which are a mixture of single and two storey in size. Some have dormer windows.

4. The proposal is to remove the existing roof and have a first floor extension resulting in a building which would appear similar to a two storey or chalet style bungalow. There would be two front dormers with pitched roofs in the front elevation of the new roof. The scheme would not increase the footprint of the existing bungalow, however, the Council are concerned that the eaves height would increase and that the bulk and massing of the proposal would harm the existing dwelling and the area.

5. Having considered this carefully, I take the view that proposal would result in an overly bulky building given its plot size and the proximity of neighbouring dwellings. The appearance of the host dwelling would be harmed. As the dwelling is part of a short row of closely-situated and similar dwellings, I consider it is important to keep the eaves heights at similar levels and I have noted the success of the scheme at no.6 Carde Close which has provided first

floor accommodation. The proposal in this case, at no.10, would in my view result in a building that was too prominent and incongruous given the scale and size of its neighbouring dwellings. I consider that the rhythm of the row of dwellings would not be adequately maintained.

6. I conclude therefore that the proposal would harm the character and appearance of the host dwelling and the area. It would not accord with policies ENV5, ENV1 or ENV6 of the East Herts Local Plan Second Review 2007.

Other Matters

7. Given the locations and orientations of walls and windows, I do not consider that the living conditions of the occupants of nearby dwellings would be harmed with regard to privacy, outlook, light or otherwise.

Conclusion

8. Having taken into account all relevant representations made, for the above reasons, I dismiss the appeal.

Megan Thomas

INSPECTOR

The Planning Inspectorate

Appeal Decision

Site visit made on 6 February 2017

by J L Cheesley BA(Hons) DIPTP MRTPI

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

Decision date: 8th February 2017

Appeal Ref: APP/J1915/D/16/3165290
17 Apsley Close, Bishop's Stortford, Hertfordshire CM23 3PX

- 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 Allan against the decision of East Hertfordshire District Council.
- The application Ref 3/16/2219/HH was refused by notice dated 23 November 2016.
- The development proposed is a side two-storey extension and rear single-storey extension.

Decision

1. The appeal is allowed and planning permission granted for a side two-storey extension and rear single-storey extension at 17 Apsley Close, Bishop's Stortford, Hertfordshire CM23 3PX in accordance with the terms of the application, Ref 3/16/2219/HH, dated 28 September 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 materials to be used in the construction of the external surfaces of the development hereby permitted shall match those used in the existing building.

   3) The development hereby permitted shall be carried out in accordance with the following approved plans: 4071.P.001, 4071.P.002, 4071.P.003, 4071.P.004, 4071.P.005, and 4071.P.006.

Main Issue

2. I consider the main issue to be the effect of the proposal on the character and appearance of the surrounding streetscene.

Reasons

3. Saved Policy ENV1 in the East Herts Local Plan Second Review (2007) seeks to ensure that new development is of a high standard of design to reflect local distinctiveness. This includes complementing the existing grain of development.

4. Saved Local Plan Policy ENV5 allows extensions to dwellings in Bishop's Stortford provided that the character, appearance, and amenities of the

dwelling and any adjoining dwellings would not be significantly affected to their detriment.

5. Saved Local Plan Policy ENV6 seeks to safeguard the character and appearance of the streetscene and prevent residential extensions creating a visually damaging terracing effect by applying a general rule of a 1 metre gap at first floor level.

6. The policies referred to above are broadly in accordance with the National Planning Policy Framework as far as they meet the Framework's core principles; particularly that planning should be taking account of the different roles and character of an area and should be seeking to ensure high quality design.

7. The appeal site lies within a primarily residential area comprising predominately semi-detached two-storey dwellings. Many of the dwellings have been extended close to the side boundaries, creating a strong terracing effect. I consider this terracing effect is the overriding characteristic of the streetscene in Apsley Close.

8. The proposal includes a two-storey side extension which would leave a small gap, some 0.1 metres in width, to the side boundary. This would clearly not be in accordance with the general rule of a 1 metre gap at first floor level. It would be set back from the front elevation and set down from the main roof ridge. In my opinion, this would appear as a subservient addition. Due to the small side gap, I consider that the proposed side extension would emphasise the existing terracing effect of other side extensions in the streetscene.

9. Whilst the proposal would add to the existing terracing effect created by other side extensions on neighbouring properties, I do not consider that this would be visually damaging as it would be in keeping with the overriding character and appearance of this area.

10. I have determined the appeal before me in accordance with the development plan. The Framework advises that proposed developments that conflict with the development plan should be refused unless other material considerations indicate otherwise. In this particular instance, the material considerations I have identified above indicate that whilst the proposal would not accord with the general rule of a 1 metre gap at first floor level specified in Local Plan Policy ENV6, the existing character and appearance of the streetscene would be safeguarded in accordance with the objective in this policy.

11. The proposal includes a single-storey rear extension. The Council has not raised concern regarding the rear extension. From my observations; this would be a discrete addition, in keeping with the prevailing character and appearance of the rear garden environment.

12. For the above reasons and having taken into consideration all matters raised, I conclude that the proposal would not have an adverse effect on the character and appearance of the surrounding streetscene. Thus, the proposal would be in accordance with saved Local Plan Policies ENV1, ENV5 and ENV6.

13. The Council has suggested standard time, materials and plans conditions. I consider such conditions to be reasonable and necessary.

J L Cheesley INSPECTOR