The Planning Inspectorate

Appeal Decision

Hearing held on 9 February 2017
Site visit made on 9 February 2017

by Jonathan Price BA(Hons) DMS DipTP MRTPI

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

Decision date: 14th March 2017

Appeal Ref: APP/J1915/W/16/3156149
Home Farm, Munden Road, Dane End, Hertfordshire SG12 0LL

- 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 James Sapsed (Indegro Limited) against the decision of East Hertfordshire District Council.
- The application Ref 3/15/1080/FUL, dated 26 May 2015, was refused by notice dated 25 May 2016.
- The development proposed is construction and use of an agricultural storage lagoon.

Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by Mr James Sapsed (Indegro Limited) against East Hertfordshire District Council. This application is the subject of a separate Decision.

Preliminary Matter

3. The Council's decision related to the amount and type of additional traffic generated by the proposal and the effect of this on the rural character of the approach road, on the occupiers of homes along it and on the potential for conflict with other road users. The Council's refusal was not on highway safety grounds. However, this is a significant concern raised in representations made by 'Stop Lagoon at Dane End' (SLADE), the community group set up to represent the objections from interested parties from both Dane End and the surrounding villages. As highway safety relates to road character it forms part of the main issues in the appeal.

Main Issues

4. Whether the proposal would be appropriate in relation to:

   - The character of the roads leading to the site;
   - The living conditions of roadside occupiers, with particular regard to noise and vibration;
   - The safety and convenience of other highway users.

Policy context

5. The development plan comprises the East Herts Local Plan Second Review 2007 (EHLP). Paragraph 215 of the National Planning Policy Framework (the Framework) requires that due weight be given to relevant policies in this existing plan, according to their degree of consistency with the Framework.

6. The appeal site is located in farmland within the Rural Area beyond the Green Belt where, under EHLP Policy GBC3, agricultural development would be appropriate in principle. However, the proposal was refused as being contrary to EHLP Policy TR20, which concerns development generating traffic on rural roads. This policy seeks to resist development which would give rise to a significant change in the amount or type of traffic on rural roads which are poor in terms of width, alignment and construction. The intention of this policy is to prevent developments where the resulting increased traffic would have a significant adverse effect on the local environment, either to the rural character of the road or residential properties along it, unless this impact can be mitigated.

7. Policy TR20 is consistent with the core planning principles in the Framework to always seek a good standard of amenity for all existing occupants of land and buildings, to take account of the different roles and character of different areas and to recognise the intrinsic character and beauty of the countryside. Policy TR20 also reflects paragraph 32 of the Framework whereby decisions should take account of whether improvements can be undertaken within the transport network that cost effectively limit the significant impacts of development. However, the paragraph 32 also states that development should only be prevented or refused on transport grounds where the residual cumulative impacts are severe.

8. The Council has published and consulted on a pre-submission draft of the emerging District Plan and, under paragraph 216 of the Framework, weight can be given to its policies. This plan is at a relatively early stage and so the extent of any unresolved objections has yet to be established. Nevertheless significant weight is attached to emerging Policy TRA2, as this is consistent with paragraph 32 of the Framework in setting out how decisions should take account of whether safe and suitable access to the site can be achieved for all people.

9. Although not part of the development plan moderate weight is given to Hertfordshire County Council's Local Transport Plan of 2011, mainly in respect of this providing a consistent basis for the highway advice provided.

Proposal

10. The agricultural storage lagoon would occupy a site of nearly 1 hectare in the north-east corner of an arable field adjacent to Home Farm and to the west of Dane End village. The lagoon would have the capacity to accommodate up to 10,000 m^3 of bio-fertiliser, which would be provided by road tankers accessing the site from a new entrance on Munden Road, south of Home Farm.

11. The bio-fertiliser is a by-product of Anaerobic Digestion (AD). AD plants use waste food to produce power and the digestate by-product can be used as an organic alterative to synthetic agricultural fertilisers. The lagoon proposed is to

store the bio-fertiliser supplied from AD plants for later application to surrounding fields via an umbilical pipe system.

Amount and type of traffic

12. Deliveries of bio-fertiliser from the AD plant would be by tanker. The transport statement refers to a tanker payload of 29tn and so these would be heavy goods vehicles (HGVs).

13. The proposal is to provide the capacity to apply piped bio-fertiliser to approximately 600ha of surrounding farmland. The appellant estimates that currently the application of synthetic fertilisers to this area, taking place in the period March to April, amounts to around 36 HGV and 250 tractor movements.

14. The application of bio-fertiliser to this area would require up to 30,000tn of the material, which is approximately equivalent to three times the capacity of the proposed lagoon. The piped week-long bio-fertiliser applications would take place during three indicative periods each year – March, July/August and September. Based on a 6 day operation (Monday to Saturday), supplying the storage lagoon with 30,000tn of bio-fertiliser would involve 2-3 tanker deliveries per day during the non-spreading winter months (October to March) and a maximum of 4 deliveries per day in the two three-month periods between the spreadings.

15. The appellant translates this as 345 deliveries in the 6 month October - March period and 576 in the two three-month spring and summer periods, making an annual total of 921 deliveries and 1,842 tanker movements. These annual tanker deliveries would then displace the 36 HGV and 250 tractor movements involved in applying synthetic fertiliser in March/April.

16. Analysis of these figures is provided in the SLADE evidence. In summary, this discounts the highway benefits of the displacement of the 250 tractor movements, as this would have mainly taken place off-road and via field 'tram-lines'. Therefore, the argument is that this proposal would increase the hypothetical HGV movements significantly from 36 to 1,842. SLADE cite the higher figure of 1,002 total annual tanker deliveries (2,004 movements) provided by totalling the monthly breakdown set out in earlier correspondence from the appellant[1] to the highway authority.

17. SLADE also raises concerns that, as it calculates that the appellant has only secured access to 276ha of the assumed 600ha of farmland to be supplied with bio-fertiliser, there would be significant tankers movements involved in exporting surplus bio-fertiliser from the lagoon. Estimates of the potential additional tanker movements that might result from exports from the lagoon are provided by SLADE and I have had regard to these.

18. My conclusion is that is not possible to rely on an exact figure of the annual tanker movements that would arise from this proposal. Much would depend on the appellant achieving the stated business plan. Consequently, I am basing the decision on the proposed limit of 4 tanker deliveries (8 movements) per day (Monday to Saturday) with no export of bio-fertiliser from the proposed lagoon other than that piped. Excluding Sundays and Bank Holidays this provides 305 days whereby a maximum of 4 daily tanker deliveries (8 vehicular movements) would amount to up-to 2440 annual movements in a non-leap

[1] Letter from Create Consulting to HCC Highways 25 February 2015.

year. However, the evidence suggests that the 4 deliveries per day is the headroom sought and these would average out significantly fewer than this, with up to three deliveries in the winter months and up to four in the summer period.

Reasons

Character of the roads leading to the site

19. The proposal is that bio-fertiliser deliveries to the lagoon would be via a designated haul route from the main A602 to the south, along a 2.6km length of Sacombe Pound and Munden Road. This would provide the most direct route to the site from the A602 and avoid tankers passing through Dane End village. The junction of the A602 with Sacombe Pound is the subject of a proposed County Council safety scheme, although this depends on future funding being available. However, the highway authority would accept the additional traffic on this junction provided tanker deliveries were restricted to left in/left out manoeuvres.

20. The additional use of the A602/Sacombe Pound junction itself would have limited effect on overall road character. It is the character of the minor route leading from this junction to the appeal site which is the more relevant concern, in respect of its width, alignment, construction and provision for non-motorised users. The 2.6km approach road to the Munden Road lagoon access is of a variable width. In places it widens to beyond 7m and in places narrows to less than 5m. Although for the main part it is set to a 60 mph speed limit the perception of width would encourage significantly lower speeds, particularly when other vehicles are approaching and passing.

21. The width has encouraged the formation of informal widening in places, where larger vehicles have overrun the metalled carriageway and worn back the soft sides, as commonly seen in rural roads. There are points where vehicles, particularly larger ones, would have to slow down significantly to safely pass other road users and, at some points such as at Sacombe Bridge, would have to stop and give way to onward traffic.

22. I would not dispute the original highway objection[2] from SLADE, which notes that there are 17 points along the haul route where there are widths of between 5-5.5m, where cars and tankers would have to take particular care in passing, and a number of pinch points of below this where one vehicle would have to wait for the other to pass. There are a number of sections where forward visibility is restricted, as set out in Section 3.6 of this highway objection.

23. The road is mainly without separate footways although there are short sections of pedestrian pavement alongside the housing either side of Sacombe Bridge, where there is also a 30mph speed limit. The appellant's transport statement describes the road as lightly trafficked but well-used by farm vehicles, although no counts are provided. The SLADE transport evidence does provide traffic counts, taken at Munden Road and Sacombe Pound, showing in the region of 1,000 vehicle movements along the proposed haul route during the 12 hours period of its proposed use, with currently a small proportion of HGVs.

[2] WSP/Parsons Brinckerhoff October 2015

24. The County Council is responsible for the maintenance of the road and considers its construction, including that of the bridges, adequate to accommodate the traffic generated by this proposal. Regard has been given to the concerns of interested parties over the potential harm to the bridges. However, the highway authority has not indicated these structures would have a weight-bearing capacity inadequate to support the likely tanker movements involved.

25. The proposal involves no physical changes to the minor road leading to the site and so it would remain as it is at present in respect of width, alignment and construction. In regard to the adequacy of the road to accommodate this proposal the issues are quite finely balanced. My starting point is that the County Council as local highway authority does not wish to restrict permission subject to conditions, which include adherence to a Traffic Management Plan (TMP).

26. Agriculture is an expansive industry in respect of the land used and, unlike more spatially consolidated activities, is generally served by a wide network of roads, generally not up to the standard of purpose-built industrial estates. The route serving the proposed lagoon is consequently no different to many rural roads serving agricultural activities, which this proposal would comprise.

27. The County Council's Local Transport Plan discourages developments which place a significant amount of vehicular traffic on rural roads, unless these are within 1km of a distributor road and improvements are made to the route. The lagoon would be 2.6km from the A602. However, the proposal is for a maximum of 4 tanker deliveries per day which is not a high number of traffic movements relative to the likely daily total on this road.

28. Should the surrounding farms not use this amount of bio-fertiliser then deliveries of synthetic fertiliser would remain. In addition, if the lagoon was provided and the take-up of bio-fertiliser was lower than that planned, then the number of annual tanker deliveries would be commensurately fewer. The figures for the net additional HGV movements show a stark annual increase along this road. However, if the planned amount of bio-fertiliser were to be applied to this area of farmland, as an alternative to synthetic fertiliser, then regardless of whether it was piped directly to the proposed lagoon or delivered directly to the individual farms this would still involve HGV movements in this area.

29. The proposed lagoon would focus the delivery of bio-fertiliser, in whatever quantity required to meet local demand, along an identified haul route. However, there are some advantages in this taking the most direct route from the A602 which, whilst passing some housing, avoids tankers travelling through the main Dane End village.

30. Part of the concern, identified in the SLADE evidence, is over this proposal providing a local storage and distribution point for the bio-fertiliser produced by AD plants. However, the appellant is clear that the proposal would be for piped distribution only and would not involve any onward tanker exports.

31. Taking account of the fact that this proposal is an agricultural operation it would be appropriate in this location. The route between the A602 of the appeal site is direct and avoids areas with a significant amount of habitation. Whilst this minor road has clear deficiencies in respect of width and alignment

this is no different from many rural routes which must accommodate the normal amount of vehicular traffic involved in agriculture.

32. The relative increase in the vehicular use of this road would not be great but would involve a higher proportion of larger tanker vehicles. The proposal would give rise to a degree of change in the type and amount of traffic along this rural road which has deficiencies in width, alignment and construction. However, subject to a suitably enforceable TMP, the local highways authority considers this road adequate to accommodate the vehicular movements generated.

33. Subject to the proposed daily limit on tanker deliveries, I consider that the change in the amount and type of traffic arising from this proposal would not have a significant effect on the local environment, in respect of the rural character of the road. For this reason the proposal would not conflict materially with EHLP Policy TR20.

34. I am aware of no other major developments which would result in any significant cumulative increase in vehicle movements along the route in question. There might be a small increase in the incidence of vehicles having to slow or to stop temporarily to permit safe passage along the road. However, this would be unlikely to result in significant queuing or congestion. Consequently this proposal would not exceed the capacity of this road to accommodate the additional vehicular movements involved. Therefore, the proposal would gain support from paragraph 32 of the Framework, whereby development should only be prevented or refused on transport grounds where the residual cumulative impacts are severe.

Living conditions of roadside occupiers, with particular regard to noise and vibration.

35. Tankers using the proposed haul route would not pass through the main developed area of Dane End and this would avoid significant harm in this respect to occupiers in this village. The corollary to this is that those residents who live alongside the tanker route would bear the brunt of the impacts of the additional vehicle movements.

36. Whilst some of the homes affected are set reasonably well-back from the road, others are sited closer to it. For example, there would be a relatively greater degree of impact on Nos 2 and 4 Sacombe Pound due to these houses being close to the road, and to Home Farm Cottage, which is sited adjacent to the proposed new site access on the Munden Road.

37. Some occupiers, living adjacent the proposed haul road, would experience a relatively greater impact from the noise of passing tankers, and from hydraulic brake sound and vibration where vehicles slowed and stopped at pinch points, such as Sacombe Bridge. This harm has to be balanced against the existing effects of traffic on this road, the advantages of routing tankers away from the main areas of housing, the low frequency of additional vehicle movements and the general purpose of the highway, which includes supporting the local transportation needs of agriculture.

38. Having weighed these considerations, and accounting for a maximum of eight daily tanker movements causing intermittent rather than prolonged disturbance, there would not be the significant adverse effect on the local

environment, in respect of the living conditions of occupiers along this road, for the proposal to be contrary to EHLP Policy TR20.

39. The proposed TMP could incorporate measures to restrict tankers stopping for any period at or along the proposed new access adjacent to Munden Cottage and limiting speeds within the site to 20mph. Along with a requirement for appropriate landscaping, this could go some way to mitigate any harmful impacts of the tanker deliveries on these closest occupiers.

Safety and convenience of other highway users

40. The Council's decision relates to the potential conflict with tankers and other road users, although the concerns relate to issues of convenience and amenity rather than safety. However, the representations from SLADE, and those made independently from interested parties, do raise highway safety concerns both in respect of the new Munden Road entrance and the haul route.

41. The new tanker entrance onto Munden Road was required by the highway authority to overcome concerns with the original plan to serve the lagoon from the existing farm access at the junction of Green End Lane/Whempstead Lane. The highway authority is content with the design of the access, based on a swept path analysis of tankers entering and leaving the site, which provides 43m visibility in either direction onto Munden Road from a 2.4m setback. This meets the recommendations in Manual for Streets (MfS) for a design speed of 30mph along this road.

42. The highway authority had not required a Road Safety Audit (RSA) of the junction design, which for an access of this nature would not be mandatory. The SLADE concerns are that the visibility splays would be inadequate and should have been designed to recorded road speeds, as reflected in their own survey results. However, the MfS recommended distances provide a starting point and, taking account of the level of use proposed and the nature of the approach roads, I consider the visibility proposed at the new site entrance access to be adequate in respect of highway safety.

43. Regarding haul route safety both the appellant and SLADE provide evidence of road traffic accidents, but these show no clear correlation with particular parts of the minor road section. The junction of the A602 with Sacombe Pound is the subject of a proposed County Council safety scheme due to its accident record. There is no certainty over when this improvement might be carried out. Nevertheless, I am persuaded that the level of additional HGV movements resulting from the lagoon would be acceptable in highway safety terms in advance of this junction improvement. However, I agree with the highway authority that the tankers using the present junction would only be acceptable in highway safety terms if restricted to left in/left out manoeuvres.

44. Regarding the safety of the minor route section of the haul route I have considered the RSA[3] commissioned by SLADE. However, the recommendations for widening the road, including the bridges, or, failing that, providing passing places, road re-alignment and signalling would be disproportionate in relation to the level of additional HGV use proposed.

45. The width and alignment of this road, like many other rural routes, has the effect of moderating vehicles speeds to substantially below the 60mph, which

[3] Stage 1 Road Safety Audit Alpha Consultants January 2017

large sections are controlled to and which is not intended to be a target speed. Case law[4] has recently clarified that the severity test over residual cumulative transport impacts, referred to in paragraph 32 of the Framework, does not apply to matters of highway safety. Nevertheless, I consider that the width and alignment of this rural route would moderate the speed of traffic and demand caution and care from road users, particularly when responding to approaching traffic. As a consequence, I consider that the road would safely accommodate the increased level of HGV movements and that the proposal would satisfy both emerging District Plan Policy TRA2 and paragraph 32 of the Framework.

46. However, the additional vehicular movements resulting from this proposal, in the context of the characteristics of the road, would nevertheless raise issues of highway user conflict. Where development on rural roads would not be precluded under EHLP Policy TR20 there nevertheless remains a requirement for financial contributions for road improvement measures to assist cyclists and pedestrians, where deemed necessary and reasonably related to the scale of the proposal.

47. In the revised planning statement of February 2016 the appellant has proposed a permissive footpath alongside the Munden Road to connect with the ends of Little Munden footpaths Nos 6 and 28. It is evident that just prior to the Council's decision there had been discussions with the County Council's Countryside Access Officer over this offer and a range of enhanced mitigation options were recommended for improving footpath connectivity along this route, as set out in an email dated 21 March 2016[5].

48. It is clear that the Countryside Access Officer was seeking an undertaking to secure a connected public bridleway alongside the road, to give walkers and horse riders the option to avoid conflict with the additional amount of HGV traffic. The Council's decision would have curtailed further negotiation over these options and, due to the wide range of additional issues raised in the appeal, this matter was not discussed in detail at the hearing.

49. There are clearly existing conflict points between road users along the proposed tanker route. Paragraph 75 of the Framework states that local authorities should seek opportunities to provide better rights of way facilities by adding links to existing networks. The evidence is that a permanent right of way could be secured alongside the Munden Road which would be a measure proportionate with mitigating the impacts of the additional tanker traffic generated and a reasonable requirement for meeting the terms of EHLP Policy TR20.

50. For long-term security this mitigation would need to be in the form of a dedicated length of public bridleway. Because of the Order required to secure such mitigation, this would not be appropriately required through a condition. Consequently, as submitted, this proposal would not adequately mitigate the additional degree of conflict between HGVs and other road users, principally walkers and horse riders, to satisfy the aims of EHLP Policy TR20.

Enforceability of TMP and other conditions

[4] *Mayowa-Emmanual v Royal Borough of Greenwich [2015] EWHC 4076*
[5] From Tom Goldsmith Countryside Access Officer, Hertfordshire County Council to EHDC Planning.

51. This decision is based on the proposal being conditional upon the terms of an enforceable TMP. This would require no more than 4 tanker deliveries per day (Mondays to Saturdays and not Sundays or Bank Holidays) during agreed hours of operation and times of the day, using only the haul route proposed and vehicular movements being restricted to left-in/left out movements at the A602/Sacombe Pound junction. A further condition would also secure no onward export of bio-fertiliser from the lagoon, other than via umbilical pipe.

52. Consideration has been given to the concerns of SLADE that a TMP would not be enforceable through a condition and I have had regard to the separate appeal decision[6] which supports this view. However, in this case, the alternative option of a Traffic Regulation Order would not provide a practical means of enforcing the necessary vehicular management, as this would unreasonably restrict the rights of all road users. In my view a TMP, if suitably framed, could in principle be enforceable through a planning condition. The local highway authority confirmed its satisfaction with this approach at the hearing. However, as the full details of the TMP have not been provided, my decision can only be based on the principle of a condition adequately securing its requirements. Enforceability would depend on the precise terms of the TMP.

53. Paragraph 206 of the Framework requires that planning conditions should only be imposed where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects. I have considered the other conditions agreed by the main parties in the Statement of Common Ground (SoCG) and consider these would meet the required tests.

Other Matters

Environment and ecology

i. Ground water protection

54. The lagoon would be constructed in accordance with the Water Resource (Control of Pollution) (Silage, Slurry and Agricultural Fuel Oil) (England) Regulations 2010 (SSAFO). An environmental report[7] produced on behalf of SLADE raises concerns over the lagoon being sited above a chalk aquifer, with the risk of pollution to groundwater and the associated chalk stream this feeds, and relying solely on a sheet membrane liner. These concerns were accompanied by a review of complaints made to the Environment Agency and its other UK counterparts in respect of SSAFO regulated farm lagoons, obtained through a Freedom of Information request.

55. At the hearing the appellant rebutted these concerns and it was confirmed that the design and construction of the lagoon would meet SSAFO regulations by adhering to CIRIA C759 guidance over the construction and management of the lagoon, which forms part of the BSI PAS[8] 110 setting quality specifications for the use of anaerobic digestate bio-fertiliser.

56. I can find nothing in the complaints review that would clearly substantiate an objection to this particular proposal, which should in any case be considered on its own merits, or that its proposed construction or operation would fall below

[6] APP/Y3940/W/16/3147707
[7] AAe Environmental Limited
[8] British Standards Institution Publicly Available Specification

the required standards. There is not the evidence that the underlying geology would fail to support the lagoon and thus risk groundwater pollution. Therefore, there would be no material conflict with this proposal and the aims of EHLP Policy ENV20 over groundwater protection.

ii Biodiversity

57. The SLADE representations raise concerns over harm to biodiversity, particularly in respect of the lack of prior species surveys and effects on hedgerow habitat. The evidence suggests that the appeal site has modest biodiversity interest but that the hedgerows would support nesting birds and possibly slow-worms and/or Roman snails.

58. Planning conditions might prevent the removal of hedgerow during the bird nesting season and require a protected species survey and any necessary mitigation. Subject to this, the proposal would result in no material harm to biodiversity interests and therefore comply with EHLP policies ENV16 and ENV17.

Landscape and visual impact

59. Interested parties raise concerns over the harmful visual impact of the lagoon in the landscape. Regard has been given to these concerns and the evidence provided by SLADE through the reports commissioned from The Landscape Partnership.

60. The surrounding landscape is characterised by quite gently rolling farmland, interspersed by woodland and rural development. The lagoon would be sited in the corner of a higher part of a field where the land slopes down towards the south-west. The cut-and-fill construction would provide for a bunded feature of a relatively low profile. The bund would extend to screen the vehicle delivery area. Security fencing would be along the outer edges of the bunds so would not be visually intrusive.

61. Although the lagoon is of a geometric shape it would be an agricultural use adjacent to the existing farm complex to its east and would not comprise an unduly alien feature. Any material harm arising from the visual impact of the lagoon and its proposed entrance would be mitigated by the planting proposed and through further measures that might be appropriately secured through condition, such as requiring planting along the open section on the west side of the new access.

62. Any surplus material might be used to create a more rounded shape to the visible sides of the lagoon and this, along with the landscaping of unused areas of the site and the planting and maintenance of the bund slopes, would also be further matters appropriately addressed through conditions. The same would apply to measures to protect the trees along the southern site boundary during the construction of the new access.

63. At the hearing the appellant advised that only a limited amount of operational lighting would be required, with no constant illumination. Lighting would be a matter that could be adequately addressed through the condition agreed as part of the SoCG and, subject to this, the proposal would have no materially harmful impact in respect of reducing local dark skies and comply with EHLP Policy ENV23. The colour of the lagoon cover might also be the subject of the condition to help the development blend in acceptably with its surroundings.

64. Subject to the conditions referred to above, the lagoon would assimilate acceptably into the landscape and not give rise to any significant visual harm. Consequently this proposal would not conflict with EHLP policies GBC14 and ENV1, in respect to any material harm to landscape character, and would satisfy Policy ENV11 in protecting existing trees and hedges and by providing adequate replacement where required. There would consequently be no conflict with the principles of the Framework for planning decisions to take account of the different roles and character of different areas and recognising the intrinsic character and beauty of the countryside.

Flood risk

65. Part of the new access to the lagoon is within a Flood Zone 3 area. Any flooding of the access would result in the temporary cessation of its use. Were there any emergency issues to attend to during any period the lagoon access was flooded then there would be alternative means to reach the development.

66. The design, construction and operation of the new access should not impede the adjacent water course, such as to risk the flooding of adjacent upstream areas. I am not persuaded that this is likely to be the case. Consequently, this proposal would not conflict with EHLP Policy ENV19 in respect of development in areas liable to flood. Subject to compliance with the SSAFO regulations and associated guidance this proposal would satisfactorily address EHLP Policy ENV19 concerning surface water drainage.

Odour

67. There have understandably been concerns raised by interested parties over the lagoon giving rise to harmful odour effects. The evidence would not support a conclusion of any material harm in this respect. I am satisfied that, due to the crust forming nature of the bio-fertiliser, the provision of a cover, the potential to apply a neutraliser and the general quality standards for the production of digestate, a planning objection to the lagoon in respect of harm from unpleasant odour cannot be substantiated. However, in the event of a statutory nuisance there remains separate environmental health legislation that would appropriately address this.

68. Any odour resulting from the application of bio-fertiliser to the surrounding fields would be as a result of an agricultural operation falling outside the ambit of planning control and so this is not an issue that I can attach any weight to.

Agricultural issues

69. The agricultural report produced for SLADE sets out the legislative rules for the storage and application of bio-fertiliser, which relate to various issues including the intended crop, the 'strength' of the fertiliser and the area of spread. These controls largely exist separate to the planning considerations relevant to this proposal.

70. This evidence has been considered alongside concerns set out by SLADE that the appellant has insufficient buy-in from neighbouring farms to provide the land area to use the bio-fertiliser piped from the proposed lagoon, based on its proposed throughput capacity. However, limited weight can be given to this concern as the appeal should be judged primarily on its acceptability in land-use planning terms and the viability of the proposal would be a separate matter.

Conclusion

71. Having considered the case made by the Council, and paid full regard to the range of concerns raised by the considerable number of individual interested parties, and collectively through the SLADE representations, I have balanced the issues.

72. Weight is given to the benefits of the supply of anaerobic digestate as an alternative to artificial fertiliser and the broader advantages provided in respect of supporting sustainable development. The take-up in the supply of piped bio-fertiliser from the lagoon would be commensurate with a reduction in direct road deliveries of fertiliser, either artificial or otherwise. The lagoon use would be related directly to an agricultural demand and be appropriate in principle within an area where farming is the predominant land use.

73. The character of the haul route, in respect of width, alignment and construction, would dictate the behaviour of all responsible road users and an objection in highway safety terms is not substantiated. In the context of the existing use of the surrounding highway network, and the current agricultural activity this supports, the proposed road to the lagoon site would have the capacity to adequately accommodate the additional HGV traffic generated by the proposal. Subject to the conditions proposed in the SoCG there would be no material harm to the rural character of the road or the living conditions of occupiers alongside it.

74. Nevertheless, the road also provides for the needs of other users, including walkers, cyclists and horse riders. Whilst there are benefits in securing a tanker route that avoids the main areas of housing, this would focus and increase movement along a particular stretch of highway which would intensify the conflict with other road users. The lack of a detailed TMP, and also the means to secure a permanent bridleway/footpath alongside the road leading to the site, would fail to adequately mitigate for the impact of the additional road traffic that would result from this proposal.

75. It is for this reason, having carefully considered all other matters raised, that I conclude that the appeal should be dismissed.

Jonathan Price

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Mr James Sapsed	Indegro Limited
Sarah Simpson	Create Consulting Engineers Limited
Anna Becvar	Earthcare Technical
William Gilder	Transport consultant

FOR THE LOCAL PLANNING AUTHORITY:

Lisa Page	East Hertfordshire District Council
Oliver Sowerby	Hertfordshire County Council
Councillor Paul Kenealy	East Hertfordshire District Council

INTERESTED PERSONS:

Salvatore Amico	Attwaters Jameson Hill Solicitors
Damian Ford	TPA Transport and Highway Consultants
Paul Spackman	Agronomist
Carolyn Marlow	Chair of SLADE
Rebecca Legg	Local resident
Alastair Gresswell	Local resident
Gary Cowler	Local resident
Stuart Clarke	Local resident
Simon Marlow	Local resident
Russell Parkins	Local resident
Robert Hicks	Local resident

The Planning Inspectorate

Costs Decision

Hearing held on 9 February 2017
Site visit made on 9 February 2017

by Jonathan Price BA(Hons) DMS DipTP MRTPI

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

Decision date: 14th March 2017

Costs application in relation to Appeal Ref: APP/J1915/W/16/3156149
Home Farm, Munden Road, Dane End, Hertfordshire SG12 0LL

- 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 James Sapsed (Indegro Limited) for a full award of costs against East Hertfordshire District Council.
- The hearing was in connection with an appeal against the refusal of planning permission for construction and use of an agricultural storage lagoon.

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. This application is clearly on the basis of unreasonable behaviour in a substantive sense, in respect of the Council not having had sound reasons for refusing planning permission. In this case, the Council were entitled to consider the recommendation made by its officer and to arrive at a different conclusion and to refuse planning permission.

4. In this case there had been no objection raised by the local highway authority. However, I believe the Council had nonetheless substantiated its reasons for refusal. This was in respect of the change in the type and amount of vehicular traffic using roads of a constrained width and alignment. I do not consider it unreasonable for the Council to have considered that this proposal would impact harmfully upon the rural character of these roads and the living conditions of residential occupiers alongside and cause potential conflict with other highway users, and to have then concluded that, despite the views of the local highways authority, this conflicted with Policy TR20 of the Local Plan.

5. The costs incurred in addressing the wider environmental concerns raised by interested parties would not have been as a consequence of any unreasonable behaviour on the part of the Council, which confined its decision to those reasons which were considered capable of substantiation.

Conclusion

6. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated.

Jonathan Price

INSPECTOR

The Planning Inspectorate

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Development Control
East Hertfordshire District Council
Development Control
Wallfields
Pegs Lane
Hertford
SG13 8EQ

Your Ref: 3/16/0899/REM
Our Ref: APP/J1915/W/16/3160395
Further appeal references at foot of letter

22 March 2017

Dear Development Control,

Town and Country Planning Act 1990
Appeals by Chase New Homes Ltd
Site Address: Hunsdon Lodge Farm, Drury Lane, Hunsdon, Ware, Hertfordshire, SG12 8NU

I have received an email withdrawing the above appeals and you have also been notified.

I confirm no further action will be taken.

Yours sincerely,

Fran Littler
Fran Littler

Where applicable, you can use the internet to submit documents, to see information and to check the progress of cases through the Planning Portal. The address of our search page is - www.planningportal.gov.uk/planning/appeals/online/search

Linked cases: APP/J1915/W/16/3160398

The Planning Inspectorate

Appeal Decision

Site visit made on 22 February 2017

by D J Board BSc (Hons) MA MRTPI

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

Decision date: 21st March 2017

Appeal Ref: APP/J1915/W/16/3162774
Land off Park Road, Great Hormead, Hertfordshire

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Mr & Mrs M Moore against the decision of East Hertfordshire District Council.
- The application Ref 3/16/0710/FUL, dated 24 March 2016, was refused by notice dated 3 June 2016.
- The development proposed is the erection of three detached dwellinghouses with garages including a dedicated building to be used as a virtual village shop.

Decision

1. The appeal is dismissed.

Preliminary Matters

2. The Council advise that publication of the pre-submission version of the District Plan has been undertaken and consultation carried out. It therefore considers that the weight that can be assigned to emerging policies can be increased. However the detail of the responses to the consultation is yet to be considered. The plan remains one that has not been examined and found sound. For this reason I am unable to accord any significant weight to the policies.

Background and Main Issues

3. The appellants have undertaken a Phase I ecology report and additional survey work as required. In light of this the Council has confirmed it is not pursuing its second reason for refusal. The appeal is considered on this basis. Accordingly the main issues are:

    - Whether the provision of three detached dwellings would preserve or enhance the character or appearance of the Great Hormead Conservation Area (CA);
    - Whether the site is a suitable location for housing; and
    - The effect of the provision of the access road on the character and appearance of the area, with particular regard to existing trees and landscaping.

Reasons

Conservation Area

4. The site is currently laid to grass and located within the CA, a designated heritage asset. I have been provided with a Conservation Area Plan. This illustrates that the site is located to the eastern edge of the CA. The CA is generally characterised by the built form focussed along Horseshoe Hill and the B1038. The development then becomes more spacious toward the CA boundary with larger houses with space around them fronting the road and a number of open areas being evident beyond on its edge.

5. I appreciate that some of the dwellings within the village boundary would be close to the site. I also noted Willow Close to the south and beyond the CA boundary. Nevertheless the separation to the north and south would remain substantial and open fields would remain to the east. Overall the site has an open semi-rural character and contributes to the edge of the CA in this manner. Indeed being on the edge of the CA it provides a key transition and opens up to the wider agricultural landscape.

6. The scheme would introduce three substantial detached dwellings onto the site with access taken from Park Road. This would have no particular physical or visual affinity with the existing frontage development. In this regard the scheme would involve the piecemeal development of one existing piece of land which contributes to the distinctive, semi-rural character of the locality. I note that the appellants submit that the detail of the scheme would use quality materials and could be well landscaped. However, fundamentally, the scheme would be out of keeping with the character of the immediate locality and it would be inappropriate to its context. In this regard it would cause less than substantial harm to the CA.

7. I recognise that the development would provide support for local facilities, that the homes would be for the appellants and their extended family and that the scheme would provide habitat enhancements. I am also mindful that there would be no harm to ecology, archaeology or living conditions of existing or future occupiers. However, with paragraph 134 of the National Planning Policy Framework (The Framework) in mind, I am not persuaded that those considerations equate to the public benefits necessary to outweigh the harm that I have identified, or that the works are necessary to secure optimum viable use.

8. I therefore conclude that the proposal would not preserve or enhance the character of appearance of the CA. It would therefore be in conflict with policies ENV1 and BH6 of the East Herts Local Plan Second Review (LP) which amongst other things seek new development that would enhance the CA and that would reflect local distinctiveness and the existing pattern of development.

Location of the site

9. Whilst not in the reason for refusal both parties refer to LP policy GBC3 which refers to what development would be appropriate in rural areas beyond the green belt. In particular that outside of 'category 1' villages that development would be restricted. The appeal proposal would not fall within any of the types of development identified in the policy and Great Hormead is listed as a 'category 3' village within the LP. The appellant submits that the Council's Interim Village Hierarchy Study 2015 and Village Policy Discussion Paper set out the approach to distribution of development. In particular the removal of a 'fixed' and unduly restrictive approach. Nevertheless these documents are linked to the emerging plan and as such I afford them limited weight.

10. It is apparent that a five year supply of deliverable housing land cannot be identified in the area. There is no dispute between the parties on this issue. Paragraph 49 of the Framework states that in these circumstances relevant policies for the supply of housing should not be considered up to date. Paragraph 14 of the Framework states that there should be a presumption in favour of sustainable development. Where relevant policies are out of date permission should be granted unless the adverse impacts of doing so would significantly and demonstrably outweigh the benefits taking account of the Framework as a whole.

11. Park Road begins as a rural lane by the site and changes moving west into the main village of Great Hormead. Outside the appeal site there are no footways or street lighting but on the opposite side of the road there is a footpath that runs into the village. There is no station but there are bus services. The appellant points out that there is a good range of local facilities and amenities in Great Hormead. The village of Buntingford is also in close proximity with more service provision. In addition the proposals include a detailed scheme for a 'Virtual Village Shop' that would provide for the needs of future residents in an innovative and convenient manner and generate some employment.

12. There are some services in the village and connection to public transport but it is likely that to undertake day to day activities and meet day to day needs, such as shopping and employment, the occupants of the new dwelling would rely on the private car for some trips. However the location of the site would mean that there would be the option to use other modes such as walking, cycling or public transport. The site is as accessible to services as other dwellings in the settlement boundary and in the context of the district as a whole; the appeal site is in a relatively sustainable location. The scheme would contribute three dwelling to the supply of housing, that would not be isolated, and this does weigh in favour of the proposal.

Provision of the access road

13. The site would be accessed from Park Road. There is no dispute that this is unclassified and at the access point a un metalled road. The Local Highway Authority (LHA) did not object to the scheme but recommended conditions to be applied should the development go ahead. In particular that the access should be a minimum width of 3.1m with visibility of 2.4 x 25m.

14. The appellants point out that the access road is shown at 3.1m and the associated boundary treatments are annotated on the site plan. In addition it is submitted that the work to the site frontage would be limited to trimming back, a point noted by the Council. Nevertheless this does not resolve the matter of the existing trees along the length of the proposed access.

15. The existing trees and hedgerow contribute to the pleasant rural setting of the wider area. As such they contribute significantly to the character and appearance of the area. I appreciate that the trees are annotated on the site plan. However, there is no detailed survey information for the trees. Further, I note that the appellants' transport appeal statement identifies that there are methods of construction that could be adopted for the access. However, without appropriate information from a suitably qualified professional it is not possible to fully understand the impact of the full length of driveway and resultant material change on the root protection areas of the trees. As such it

is not possible to conclude that the scheme would not have an adverse effect on the long term health of the trees.

16. I therefore conclude that the provision of the access would have a harmful effect on the on the character and appearance of the area, with particular regard to existing trees and landscaping. Therefore it would be in conflict with LP policies ENV1, ENV2 and ENV11 in so far as they seek to retain and enhance existing landscape features.

Other matters

17. I note that the Parish Council raise no objection to the scheme. However this does not alter or outweigh my conclusions on the determining issues.

Planning Balance and Conclusion

18. The appeal proposal would provide three dwellings that would represent a benefit and there would be no harm to economic and social aspects of sustainable development from the location. However, the proposal would not represent a sustainable development when considered against paragraphs 7 and 8 of the Framework which require the economic, social and environmental dimensions of sustainable development to be considered together as it would not preserve or enhance the CA and would harm the character and appearance of the area, with particular regard to trees and landscaping.

19. LP policies ENV1, ENV2, ENV11 and BH6 seek new development that would enhance the CA and that would reflect local distinctiveness and the existing pattern of development In this regard they are not out of date and relevant to the consideration of matters of character and appearance and the CA. As such I have attached significant weight to the significant and demonstrable harm that the proposal would cause to the character and appearance of the area, that the proposal would not preserve or enhance the character or appearance of the CA and the resultant conflict with the development plan. Whilst there are other material considerations that do weigh in favour of the proposal these do not outweigh the clear conflict with the development plan.

20. Turning to consideration of the presumption in favour of sustainable development and that relevant policies for the supply of housing should not be considered up-to-date. In this case, the adverse impacts of granting permission would significantly and demonstrably outweigh the benefits such that the proposal would not represent sustainable development.

21. For the above reasons and having regard to all other matters raised I conclude that the appeal should be dismissed.

D J Board

INSPECTOR

The Planning Inspectorate

Appeal Decision

Site visit made on 22 February 2017

by S J Lee BA(Hons) MA MRTPI

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

Decision date: 17th March 2017

Appeal Ref: APP/J1915/D/16/3163189
1 Bakers Cottages, Broad Oak End, Hertford SG14 2JA

- 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 M & A Hoodless against the decision of East Hertfordshire District Council.
- The application Ref 3/16/1607/HH, dated 14 July 2016, was refused by notice dated 8 September 2016.
- The development proposed is single storey rear extension.

Decision

1. The appeal is dismissed.

Preliminary matter

2. While not referred to in the Council's decision notice or evidence, they have provided me with copies of a number of policies from the Pre-Submission Draft of the East Hertfordshire District Plan. I understand this was consulted on until 15 December 2016. However, as far as I have been made aware the plan has not been subject to Examination and thus I have given the policies little weight in my decision and have not referred to them below.

Main Issues

3. The main issues are:
   (a) Whether the proposal would be inappropriate development in the Green Belt having regard to the National Planning Policy Framework (the Framework) and any relevant development plan policies;
   (b) The effect on the openness of the Green Belt; and
   (c) Would the harm by reason of inappropriateness, and any other harm, be clearly outweighed by other considerations. If so, would this amount to the very special circumstances required to justify the proposal.

Reasons

Inappropriate development within the Green Belt

4. The Framework establishes that new buildings within the Green Belt are inappropriate unless they meet one of a number of exceptions. These include the extension and alteration of a building providing it does not result in disproportionate additions over and above the size of the original building[1].

[1] See paragraph 89 of the Framework.

5. Policy GBC1 of the East Hertfordshire Local Plan Second Review (2007) (LP) also states that within the Green Belt, new buildings will be considered inappropriate unless, amongst other things, it is for a limited extension or alteration of an existing dwelling in accordance with Policy ENV5. Policy ENV5 requires an extension to be of a scale and size that would not, either by itself or cumulatively, disproportionately alter the size of the original dwelling. Whilst criterion (d) of Policy GBC1 does not reflect the exact wording of the Framework with regard to extensions, when read in conjunction with Policy ENV5, I am satisfied there is a broad consistency with the Framework and that significant weight can be given to these policies in the context of extensions to existing dwellings. Policy GBC1 is also consistent with the Framework insofar as inappropriate development in the Green Belt will only be permitted if 'very special circumstances' can be demonstrated[2].

6. In determining whether or not an extension or alteration would be disproportionate, the starting point must be the original size of the dwelling. Annex 2 of the Framework defines this as a building as it existed on 1 July 1948 or, if constructed after 1 July 1948, as it was originally built. The Council's evidence suggests the original floorspace of the dwelling was around 93 square metres (sqm). Two subsequent additions in the form of the annex and a two storey side extension have resulted in around 87 sqm of additional floorspace. These represent an increase of some 98% over and above that of the original building. The development itself would result in approximately 7.8 sqm of additional floorspace. This would take the cumulative increase to around 102% of the original dwelling. This clearly represents a significant increase in the size of the original building over time.

7. The appellant has provided two historic maps, ostensibly published in 1927 and 1947, which show a building in place on the site of the annex and that other out buildings existed on the site prior to 1948. However, they have not sought to specifically refute the Council's measurements regarding the size of the original building or provide alternative statistics. Therefore, with no other substantive evidence before me, I see no reason to not accept the Council's figures.

8. The appellant has suggested that the question of proportionality should not be based purely on quantitative matters, but should also take the effect on openness and rural character into account. Here they refer to Policy ENV5. However, I consider reference to these factors to be a separate limb to the consideration of extensions and alterations, rather than a consideration of proportionality itself. In any event, there is no provision within the Framework for the effect on openness or character to be factors considered in whether an extension or alteration is disproportionate. The question is fundamentally that of the relative cumulative size of any additions over and above the original building and I have limited my consideration of the issue to this factor only.

9. Therefore, while I recognise the overall increase in the size of the building as it is today would not be significant, the development would still contribute to an approximate doubling in size of the original dwelling. Irrespective of the fact that neither the Framework nor LP establishes a threshold for proportionality, this level of increase cannot be considered to be proportionate to the original dwelling size or within the spirit of the Green Belt exception. Consequently,

[2] See also paragraph 87 of the Framework.

when considered cumulatively with previous extensions, the development would result in disproportionate additions to the size of the original dwelling. Taking into account the requirements of Policy ENV5, the development would not reflect the exceptions set out in Policy GBC1 or those in paragraph 89 of the Framework. As such, the proposal would result in inappropriate development in the Green Belt. By definition, this is considered to be harmful to the Green Belt.

Effect on openness of the Green Belt

10. Paragraph 79 of the Framework states that openness is an essential characteristic of the Green Belt. Openness implies freedom from built development rather than the visual effect of the proposed alterations on the character and appearance of the surrounding area.

11. The development would result in the squaring off and bringing forward of the front wall of the existing link between the main dwelling and annex. The hipped roof glazed roof lantern would also lead to a small increase in the height of the building, though this would not extend across its full width or depth. Whilst the increase in footprint would be modest, it would extend into an area that is currently patio. This, coupled with the increase in volume of the built form, would still result in a small negative effect on openness. Consequently, there would be a degree of harm arising from this, in addition to that arising from the inappropriate nature of the development.

Other considerations

12. The Council have raised no concerns over the impact of the development on any other relevant factors, including any effect on the living conditions of neighbouring residents. The site is also within the designated Goldings Park Historic Garden, but there is no suggestion there would be any harmful effect on this heritage asset. I saw nothing to suggest I should come to a different conclusion on these matters. Nevertheless, an absence of harm is a neutral factor and does not weigh in favour of the development in terms of balancing the harm to the Green Belt identified above.

13. There would be some minor improvements to the external appearance of the dwelling as a result of the development. However, the part of the dwelling that is being replaced is not large or a prominent feature in the wider landscape. Furthermore, it is not of such a poor quality of design or construction to have a materially harmful impact on the character and appearance of the host dwelling or wider area. Therefore, I have given only limited weight to this factor.

14. No other benefits associated with the development have been identified.

Other matters

15. The appellant has suggested they have examples of appeal decisions where Inspectors have supported their view that a purely quantitative approach to assessing proportionality is not appropriate. Examples of these decisions have not been provided. Therefore, I am not able to confirm whether this is the case, or whether such appeals represent direct parallels to the appeal before me. In any event, I have considered the appeal on its own merits based on the evidence before me and my own observations.

16. In coming to my decision, I have had regard to the fact that the previous permission took the cumulative size of additions to 98% of the original building and this was considered acceptable by the Council. I do not, however, have the full details of this decision and thus do not know the policy context or reasons it was permitted. Nevertheless, this does not alter my view that the cumulative increase in the size of the building resulting from the proposal before me would be disproportionate.

Conclusion

17. In conclusion, I have identified that the proposal would result in inappropriate development in the Green Belt as defined by the Framework. It would also have some impact on the openness of the Green Belt. The development would, therefore, be harmful to the Green Belt and the Framework indicates that such harm should be given substantial weight.

18. As explained above, only limited weight can be given to other considerations cited in support of the proposal and this would not clearly outweigh the harm that I have identified. Consequently, the very special circumstances necessary to justify the development do not exist. In this regard, there would be conflict with LP policies GBC1 and ENV5 and paragraph 89 of the Framework. For this reason, I conclude that the appeal should be dismissed.

S J Lee

INSPECTOR

The Planning Inspectorate

Appeal Decision

Site visit made on 6 March 2017

by P Eggleton BSc(Hons) MRTPI

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

Decision date: 20th March 2017

Appeal Ref: APP/J1915/D/17/3166395
The Walled Manor, St Marys Lane, Hertingfordbury, Hertfordshire SG14 2LX

- 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 R Taylor against the decision of East Herts Council.
- The application Ref 3/16/1705/HH, dated 26 July 2016, was refused by notice dated 13 October 2016.
- The development proposed is a subterranean extension to form basement with swimming pool, parking area and two pedestrian glazing panels.

Decision

1. The appeal is dismissed.

Main Issues

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

Reasons

3. The proposal would result in a large subterranean basement under part of the enclosed garden of this dwelling. The Council's concern is that the proposal represents inappropriate development within the Green Belt. Policy GBC1 of the East Herts Local Plan Second Review 2007 advises that permission will not be given for inappropriate development unless very special circumstances exist that clearly outweigh the harm by reason of inappropriateness or any other harm. It accepts limited extensions or alterations to existing dwellings, in accordance with Policy ENV5, as not being inappropriate.

4. Policy ENV5 accepts extensions within listed settlements providing they would not harm the character and appearance or amenities of the dwelling or adjoining dwellings. Outside these settlements, in addition to the above, any addition should be of a scale and size that would itself, or cumulatively with other extensions, not disproportionately alter the size of the original dwelling nor intrude into the openness or rural qualities of the area. It should also be considered against Policy ENV6 which sets out design considerations.

5. The *National Planning Policy Framework* advises that new buildings should be regarded as inappropriate unless they fall within an exception set out in paragraph 89. This includes extensions of buildings provided that they do not result in disproportionate additions over and above the size of the original building. The Council's policies have clear similarities with those of the *Framework*, particularly with regard to the matters that are relevant to this development. However, they also differ from its requirements in a number of ways. I therefore afford moderate weight to them and greater weight to the requirements of the *Framework*. The Council's emerging District Plan is at an early stage but in any event, it requires that decisions be made in accordance with the *Framework* with regard to the Green Belt.

Inappropriateness and any other harm

6. The subterranean extension would accommodate parking for nine cars, a motorbike display area and a swimming pool. The Council advise that the floor space within the proposal would be in the order of 462sq.m. It also advises that the floorspace of the original dwelling was 400sq.m and this has already been extended by 65.5%. It is suggested that the increase overall would be 210%.

7. The above figures do not appear to be in dispute. In any event, the scale of the additional works when considered against the original size of the dwelling cannot reasonably be considered to be proportionate additions over and above the size of the original building. The proposal therefore represents inappropriate development in the Green Belt.

8. Although subterranean, the proposal would reduce the openness of the Green Belt as the works would result in development over a large area that has not previously been developed. It would therefore conflict with the fundamental aim of Green Belt policy which is to prevent urban sprawl by keeping land permanently open. I accept however, that as the works are closely related to the house; are within the garden area which itself is entirely enclosed by high walls; and would be subterranean with the open garden area reinstated above, the reduction in openness and the harm from it would be extremely limited and not significant overall.

9. Given the nature of the works, the proposal would not result in any harm to the character or appearance of the area or the amenities of adjacent land users.

Very Special Circumstances

10. It is accepted that in most respects, there would be no significant harm as a result of the proposal because of its subterranean character and position within the walled garden. This is however not a positive matter to be weighed in favour of the development but a matter that does not weigh against it. The proposal would provide the appellant with additional accommodation that would enhance the enjoyment of the property. The personal circumstances of individuals can weigh in favour of a proposal but no specific evidence has been put forward in this case and very limited weight can be afforded to the aspirations of the applicant with regard to this particular development.

11. The appellant makes reference to a recent permission which accepted a smaller subterranean extension at this property. The Council concluded that the

underground extension would be inappropriate development. The appellant advises that the Council accepted that the removal of the need for any above ground extensions, allowing the property to be extended without harming the openness of the Green Belt or falling foul of any of the purposes of including land with the Green Belt, represented very special circumstances that outweighed the harm from inappropriateness.

12. My understanding is that the original permission for the house removed permitted development rights for extensions and garden buildings. The planning history indicates that the Council successfully resisted a rear and side extension in 2015. A swimming pool was permitted but this permission has expired. Allowing underground accommodation may reduce the pressure for above ground development but I am not clear that without the permission granted by the Council, significant harm would have resulted. I accept that I do not have the full details of the determination that was made by the Council at that time.

13. Notwithstanding the above, as the Council has accepted a subterranean development of 177sq.m, this is a matter that weighs in favour of allowing a similar development. The approach to decision making should also be consistent. Although I do not have the full details, the Council's previous view as to the weight to be afforded to the benefits of the approved basement when balancing the considerations in support of the development against the substantial harm from inappropriateness, also provides weight in favour of a similar development. I am unclear however, what additional benefit there would be to a greater scale of development, other than to the living conditions and aspirations of the appellant.

14. Refence has been made to the proposed use of the basement and whether it would remain ancillary or incidental to the use of the dwelling house. A change of use has not been sought and an alternative use would require a different assessment. The lawfulness of the proposed use is not a matter before me and evidence as to this has not been submitted. I have therefore assessed the proposal on the basis of the details provided.

Conclusions

15. Substantial weight must be given to the harm from inappropriate development. Although I accept that when compared to the previously permitted basement, there would be no significant additional harm to openness and no other harm would result, the harm from inappropriateness would remain. I am not satisfied that there would be any further benefits to those previously accepted, other than those relating to the living conditions of the appellant. I do not accept that the harm from inappropriateness, in relation to a smaller basement, should be considered as being exactly of the same magnitude as for a larger basement, as appears to be suggested by the appellant. It would in my view, increase with the increasing scale of development beyond that accepted as not being inappropriate by the *Framework*.

16. Overall, there are a number of considerations that do not weigh significantly against the proposal such as the very limited impact on openness; the very limited conflict with the fundamental aim of Green Belt policy; the lack of any visual harm or harm to amenities. However, of more importance are the

considerations that weigh in favour of the proposal, such as the previous permission; the previous approach of the Council, including the potential for a reduction in pressure for above ground development; and the benefit that can be afforded to the aspirations of the appellant. I conclude, that these considerations when taken together are not sufficient to clearly outweigh the substantial harm that would result from inappropriateness.

17. The *Framework* is clear that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. Very special circumstances will not exist unless the potential harm to the Green Belt, by reason of inappropriateness and any other harm, is clearly outweighed by other considerations. As the considerations in this case do not clearly outweigh the harm from inappropriateness, the very special circumstances necessary to justify the development do not exist.

18. The proposal would be contrary to the requirements of the *Framework* and would also conflict with the Council's policies. I therefore dismiss the appeal.

Peter Eggleton

INSPECTOR

The Planning Inspectorate

Appeal Decision

Site visit made on 22 February 2017

by S J Lee BA(Hons) MA MRTPI

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

Decision date: 20th March 2017

Appeal Ref: APP/J1915/W/16/3161933
Land between 39A Upper Green Road and Mimram Drive, Tewin, Welwyn, Hertfordshire AL6 0LE

- 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 Norman Jackson against the decision of East Hertfordshire District Council.
- The application Ref 3/16/1783/FUL, dated 27 July 2016, was refused by notice dated 19 September 2016.
- The development proposed is the erection of one (1) dwelling house.

Decision

1. The appeal is dismissed.

Preliminary Matters

2. For the avoidance of doubt, I have used the address of the development given on the appellant's appeal form and the Council's decision notice. I consider this gives the fullest and most accurate description of the location of development.

3. The submitted plans identified one of the neighbouring dwellings to the site as No 41 and referred to the dwelling as being under construction. During the site visit, I saw that the building referred to was complete and actually numbered No 1. Again, for the avoidance of any doubt I have referred to this building as No 1 in my decision below.

Main Issues

4. The main issues are the effect of the development on (i) the character and appearance of the area and (ii) the living conditions of the occupants of Country Spot, with particular regard to outlook.

Reasons

Character and Appearance

5. The appeal site is a long, vacant narrow strip of land between two detached dwellings. The area around the site is predominantly residential. There is little consistency in architectural styles in the area, though the majority are detached, well-proportioned dwellings set within generous plots. To one side of the site is a detached bungalow known as Country Spot. This is set well back from the roadside behind a large front garden, driveway and a detached garage. To the other side is 1 Mimram Drive. This is a large modern detached dwelling located at the front of a small gated cul-de-sac of other similar sized

dwellings. No 1 sits behind a more modest front garden and has its vehicular access to the rear. To the rear of the appeal site is a modern housing estate. The site is within a Category 1 Village, as defined by saved Local Plan[1] (LP) Policy OSV1, which states that infill housing development may be permitted provided that a number of criteria are met.

6. The dwelling would be set back some way from the roadside to allow for a parking and turning area. As a result, it would be located at something of a pinch point between the two existing dwellings, neither of which have a large amount of space between their side walls and the common boundary with the site. Whilst I recognise there is a variety of architectural styles in the vicinity of the site, its constrained nature has necessitated a particularly narrow and elongated form of development that does not reflect the broad proportions or orientation of the majority of existing housing in the area. The contrast in appearance between the development and other houses in the vicinity of the site, including and in particular No 1 itself, would be stark and jarring. As such, the development would introduce an overtly discordant feature into the street scene.

7. There would also be little space to either side of the development. When combined with its uncharacteristic narrow form, the dwelling would appear somewhat cramped and as a contrived attempt to squeeze a building into an overly constrained plot, with little regard to the prevailing character of the wider area. In this regard, it would not appear as either a natural or harmonious infill scheme. I find, therefore, that the proposal would result in an inappropriate, incongruous and over intensive form of development that would materially harm the character and appearance of the area.

8. Accordingly, there would be conflict with LP policies OSV1 and ENV1 which seek, amongst other things, development in Category 1 Villages to be sensitively designed and to respect the character of the village. I also consider that the proposal does not properly consider the physical constraints of the site in conflict with Policy HSG1. Whilst not referred to in the Council's decision notice, I also find conflict with Policy HSG7. This expects infill development within Category 1 Villages to be not obtrusive or over intensive and to complement the character of the local built environment.

9. There would also be conflict with the National Planning Policy Framework (the Framework) insofar as the development would not constitute good design or improve the character and quality of the area.

Living Conditions

10. I observed a front facing window in Country Spot relatively close to the common boundary with the site. There is currently a tall close-boarded fence between the appeal site and this property, which will already constrain the outlook from this dwelling to some extent. However, the top of the window is above the height of the fence and thus the occupants would enjoy some sense of openness from the direction of the development.

11. The development would extend beyond the front building line of Country Spot by some distance. When combined with the close proximity of the development to the common boundary, the development would encroach into

[1] East Herts Local Plan Second Review – April 2007

the outlook of the neighbouring occupants. I consider this would lead to an increased and unacceptable feeling of enclosure and confinement. This would tangibly diminish the enjoyment of the room for the occupants of this dwelling. Whilst the submitted plans show sight lines from Country Spot intersecting with only a small part of the proposal, I cannot be sure that these accurately reflect the position of the windows in that dwelling and these do not persuade me that there would not be an unacceptable impact.

12. The development would, therefore, result in an unduly dominant and intrusive feature that would materially harm the living conditions of the occupants of Country Spot. Accordingly, there would be conflict with LP policies OSV1 and ENV1 which seek, amongst other things, to ensure development respects and is not significantly detrimental to the amenity of nearby occupiers. I also find conflict with the Framework, which seeks to ensure a good standard of amenity for all existing occupants of buildings.

Other Matters

13. The Council have acknowledged that they cannot demonstrate a five year supply of deliverable housing sites. Paragraph 49 of the Framework states that in such circumstances, the relevant policies for the supply of housing should not be considered up-to-date. Paragraph 14 states that where relevant policies are out-of-date, planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.

14. Policies ENV1 and HSG7 relate primarily to the design of new development and infill housing within villages and thus are not policies relating to the supply of housing. They are not, therefore, automatically out of date by virtue of paragraph 49 of the Framework. I see no conflict in these policies with the Framework and consequently significant weight can be attached to them in my decision. Policies OSV1 and HSG1 are clearly relevant to the supply of housing. However, in the context of this appeal, the relevant elements of these policies relate to the specific details of the development and not the principle. These elements are also broadly consistent with the requirements of the Framework and thus I have still given these policies significant weight, though less than would be the case if a five year supply existed.

15. I have regard to the contribution of the development to the supply of housing in a village where the LP has identified infill housing as acceptable in principle. There would be some associated economic benefits for any nearby facilities that may exist and temporary benefits to the construction industry. I have also noted the comments relating to the need for smaller dwellings in the area, though I have no substantive evidence before me in relation to this issue. However, the benefits associated with one dwelling would not be significant and I have given them limited weight.

16. I have concluded that the proposal would be contrary to the development plan in relation to the effect of the development on the character and appearance of the area and living conditions of neighbouring occupants. I have also found conflict with the requirements of the Framework with regard to these issues. The proposal would therefore conflict with the environmental and social dimensions of sustainable development insofar as it would not create a high quality built environment. Taking all the above matters into account, I find the

adverse impacts of granting planning permission would significantly and demonstrably outweigh the benefits.

17. As a result, the application of paragraph 14 of the Framework does not indicate that permission should be granted and the proposal would not represent sustainable development. In the circumstances of this appeal, the material considerations considered above do not justify making a decision other than in accordance with the development plan.

Conclusion

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

S J Lee

INSPECTOR

The Planning Inspectorate

Appeal Decision

Site visit made on 6 February 2017

by David Troy BSc (Hons) MA MRTPI

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

Decision date: 01 March 2017

Appeal Ref: APP/J1915/W/16/3162109
2 Mayflower Close Hertingfordbury, Hertford SG14 2LH

- 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 B Musk against the decision of East Hertfordshire District Council.
- The application Ref 3/16/1843/FUL, dated 9 August 2016, was refused by notice dated 5 October 2016.
- The development proposed is demolition of existing house and erection of a detached five bedroom replacement dwelling.

Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are:

   (i) Whether the proposal would be inappropriate development in the Green Belt having regard to the National Planning Policy Framework and any relevant development plan policies;

   (ii) The effect of the development on the openness of the Green Belt;

   (iii) The effect of the development on the character and appearance of the area; and

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

Reasons

3. The appeal property comprises a detached two storey dwelling with a linked double garage on a large spacious plot in a small cluster of dwellings in the Metropolitan Green Belt on the western edge of the village of Hertingfordbury. The proposal is to replace the existing property with a two storey dwelling.

Whether inappropriate development in the Green Belt

4. Paragraph 89 of the National Planning Policy Framework (the Framework) establishes that new buildings within the Green Belt are inappropriate

development unless the development falls within a list of stated exceptions. One exception involves the replacement of a building provided that the new building is in the same use and not materially larger than the one it replaces.

5. This national guidance is to be read together with development plan policy, including Policies GBC1, HSG7 and HSG8 of the East Herts Local Plan Second Review (LP). These policies allow for the replacement of dwellings in the Green Belt where, amongst other things, the volume of the new dwelling is not materially larger than the dwelling to be replaced plus any unexpended permitted development rights (UPDR) excluding separate buildings.

6. The new building would in the same use as the one to be replaced. The Council and the appellant agree that the floorspace of the existing house measures about 218 sqm and the volume is 702.4 cubic metres. The Council state that the new replacement dwelling would amount to a floorspace of about 413 sqm and a volume of 2702.2 cubic metres. This would amount to increase in size of 1999.8 cubic metres or about 284% larger than the existing dwelling. The appellant, however, consider that the volume of the proposed dwelling would be lower at 1540 cubic metres. There is no information to confirm or deny the accuracy of the appellant's calculations but without allowing for further additions that could be carried out as permitted development, there is agreement that the volume of the proposal would be larger than the existing dwelling.

7. The main parties also agree that the existing house could be enlarged through the exercise of UPDR albeit there is a difference of opinion regarding the additional floorspace and volume that could be created in this way. The appellant considers that the Council has not fully taken into account the permissions that were obtained in 2016 for a part two storey/part single storey side and first floor side extensions to the existing dwelling[1], a single storey rear extension allowed under the prior approval notification process[2] and the side extension and dormers issued with a Lawful Development Certificate[3].

8. The Council estimates that the UPDR for the side and rear extensions would total 1295.7 cubic metre or about 108.5% larger than the existing dwelling and the dormers would add 45.5 cubic metres. The appellant considers that the Council have failed to take into account the planning permission for the side extensions that would add a further 350 cubic metres and would extend the floor area of the existing dwelling to about 470 sqm. However, the Council contends that the volume of the side extensions were not taken into account as Policy HSG8 refers only to UPDR. The Planning Practice Guidance (PPG) clearly makes a distinction between building works that can be carried out without having to make a planning application under the permitted development rights[4] and those where planning permission is needed and granted for 'development' which is set out in Section 55 of the Town and Country Planning Act 1990[5]. In this respect, I concur with the Council on the interpretation of Policy HSG8 and as such this would exclude the planning permission granted for the side extensions in this case.

[1] 3/15/2565/HH
[2] 3/16/0795/PNHH
[3] 3/16/0794/CLP
[4] PPG Paragraph: 016 Reference ID: 13-016-20140306
[5] PPG Paragraph: 001 Reference ID: 13-001-20140306

9. Clearly there is significant difference between the figures provided by the Council and the appellant. However, even taking the appellant's best case scenario (assuming that UPDR extensions were implemented) the volume of the existing dwelling including the dormer extensions would total about 1341 cubic metres, whilst the proposed dwelling would be about 1540 cubic metres. I take the view that such an increase in the volume of the building cannot reasonably be considered anything other than materially larger than the one it replaces and as such would conflict with the Framework and the development plan.

10. Consequently, the proposal would constitute inappropriate development in the Green Belt that is, by definition, harmful to the Green Belt and should not be permitted except in very special circumstances. It conflicts with the aims of the Framework and Policies GBC1, HSG7 and HSG8 of the LP, which are broadly consistent with the Framework on this approach to the Green Belt. In accordance with the Framework, I attach substantial weight to the harm arising due to the inappropriate nature of the development in this location.

Openness of the Green Belt

11. The fundamental aim of Green Belt Policy is to prevent urban sprawl by keeping land permanently open. The Framework advises at Paragraph 79 that openness and their permanence are essential characteristics of Green Belts. Openness is generally defined by an absence of built form.

12. The proposed replacement dwelling, by virtue of size and bulk, would result in an increase in the built form of the building which would compromise the sense of openness at the site. Consequently, I conclude that the development would result in harm to the openness of the Green Belt and as such would conflict with the aims of the Framework which seek to preserve the openness of the Green Belt. I give substantial weight to that harm.

Character and appearance of the area

13. The property forms part of a small cluster of predominantly two storey dwellings set in relatively spacious plots. The area is rural in character with open fields that slope away to the rear of the appeal site. The open character and appearance is further enhanced by the presence of mature landscaping and established trees within the surrounding gardens and countryside.

14. The proposal would involve the construction of a detached two storey dwelling with a pitched crowned roof with a ridge height of about 8.6 metres that would be set back from the road broadly in line with the adjacent dwellings.

15. The proposed dwelling by virtue of its greater height, scale and visual bulk would be substantial and stand out in the rural landscape considerably more prominently than the existing dwelling. The flat crowned roofed design of the proposed dwelling would be very much at odds with the more traditional pitched roof design of the other properties in the area. These shortcomings would be exacerbated by the hard edged appearance of the new parking area at the front of the appeal site and the proposal's prominent position, which would be visible from Mayflower Close. As such, I consider the development would result in an incongruous and out-of-keeping addition that would adversely harm the character and appearance of the area.

16. Consequently, I conclude that the proposal would have a harmful effect on the character and appearance of the area. The development would conflict with Policies ENV1, ENV2, OSV3 and HSG8 of the LP. These policies, amongst other things, seek to ensure that all development will be of a high standard of design to reflect local distinctiveness and the proposal respects the character, visual quality and landscape of the surrounding area; and that proposals for a replacement dwelling in the Green Belt are no more visually intrusive than the dwelling to be replaced. In addition, it would not accord with the Framework that development should seek to secure a high quality of design (paragraph 17); to respect the local character (paragraph 58); and to promote or reinforce local distinctiveness (paragraph 60).

Other considerations

17. I note the appellant's statement on the fallback position on the appeal site and the appellant's preference to build a replacement dwelling rather than the extensions. There is, however, a reasonable likelihood that the appellant would implement all or some of the extant permissions if the appeal is dismissed. Be that as it may, in my view the scale and massing of the proposed extensions would not be as substantial as the proposal now before me and would have more limited impact on the openness of the Green Belt and the character and appearance of the area than the proposed replacement dwelling. I therefore accord these matters moderate weight in making this decision.

18. I have considered the appellant's comments that since the previous planning refusal on the site[6], the size and massing of the proposed replacement dwelling have been reduced and the new dwelling redesigned to be more in keeping with the adjacent properties and the area. Whilst these features, together with the landscaping and boundary treatment, would assist in integrating the proposal with the area, these aspects do not overcome the adverse effects outlined above and are matters to which I attach only limited weight.

19. I have considered the appellant's comments regarding the context provided in the Framework and the local planning policies for good design and the importance of considering the local character and distinctiveness, but I find that the replacement dwelling does not achieve the standards the Framework and the local policies seek. I also note the appellant's need and the benefits to the family arising from the proposed additional accommodation. However, such circumstances are material considerations to which I can attach only limited weight in making this decision.

Very Special Circumstances

20. I have concluded that the proposal would be inappropriate development and would therefore, by definition, be harmful to the Green Belt. I have also concluded that the proposal would harm the openness of the Green Belt. Paragraph 88 of the Framework states that substantial weight should be given to any harm to the Green Belt. I consider the proposal would be harmful to the character and appearance of the area to which I attach significant weight.

21. Having considered all of the matters raised in support of the development, I conclude that, collectively, they do not outweigh the totality of the harm I have

[6] 3/15/1867/FUL

identified in relation to the Green Belt. Accordingly, very special circumstances do not exist and the development would be contrary to Policies GBC1, HSG7 and HSG8 of the LP and the Framework.

Conclusion

22. For the reasons given above, and having regard to all other matters raised, I conclude that the appeal should be dismissed.

David Troy

INSPECTOR

The Planning Inspectorate

Appeal Decision

Site visit made on 6 March 2017

by P Eggleton BSc(Hons) MRTPI

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

Decision date: 22nd March 2017

Appeal Ref: APP/J1915/D/17/3167327
41 West Street, Hertford SG13 8EZ

- 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 Dr C & Dr F Gripton against the decision of East Herts Council.
- The application Ref 3/16/2339/HH, dated 17 October 2016, was refused by notice dated 8 December 2016.
- The development proposed is a single storey side extension.

Decision

1. The appeal is dismissed.

Main Issue

2. The main issue is the effect on the living conditions of the residents of 39 West Street with regard to light and outlook.

Reasons

3. The proposal would result in a small side extension with a lean to roof. Although it would be a relatively modest addition and has been designed to respect the materials and simple detailing of the rear of the house, it would result in a high wall on the boundary.

4. The proposed wall would be within about 1.5 metres of the neighbours side facing kitchen window. The kitchen borrows light through the glass door of the utility room but the side facing window provides the only real outlook. This outlook is already constrained because of the garden fence and the two-storey rear element of the neighbouring property. The proposed wall would be an extremely dominant new feature that would be overbearing when near the window in the kitchen.

5. I appreciate that in some circumstances a kitchen may not be considered in the same light as a main habitable room. I also acknowledge that the outlook is already constrained and could be further constrained if a 2 metres high boundary fence were to be erected. However, even small negative changes to a room with an already limited outlook can have a proportionately greater impact. This would be the case in this situation and I consider that even the limited greater height above a 2 metres high fence would result in unacceptable harm to the neighbouring residents as a result of a reduction in their outlook from the kitchen.

6. The situation with regard to the dining room is slightly different as although the outlook is constrained by the kitchen wall, the garden fence and to some extent the rear element of the neighbouring property, it has an uninterrupted outlook directly to the rear. The proposal would reduce the outlook over the fence of the neighbouring property but I consider that this difference, particularly if a 2 metres high boundary were to be considered, would not materially alter the living conditions within that room with regard to outlook.

7. Concerns have been raised with regard to light and direct sunlight. The rear of the property benefits from a south-eastern aspect. Light and direct sunlight to the kitchen and dining room are constrained by the existing buildings. The appellants have provided a daylight and sunlight study. This is based on plans with a reference number that does not match those before me but I have no reason to believe that the study findings do not reflect the development proposed. The figures demonstrate that the kitchen and dining room have a relatively low vertical sky component and limited direct sunlight to their windows.

8. Some changes would undoubtedly occur and these may be noticeable to the residents, particularly with regard to direct sunlight at specific times. The relatively small amount of change is confirmed to some extent by the figures, although as with the considerations with regard to outlook, a percentage drop can be more noticeable when light levels and direct sunlight are already limited. However, I am not satisfied that the changes would be sufficient to materially harm the living conditions of the residents when within those rooms with regard to light or direct sunlight.

9. Overall, I am not satisfied that the changes with regard to light and direct sunlight would be unacceptably harmful but they would not be a positive feature of the development. The reduction in outlook would however be unacceptable in relation to the kitchen and would be contrary to Policies ENV1(d) and ENV5 of the East Herts Local Plan Second Review 2007 as the extension would fail to respect the amenities of the neighbouring residents. I acknowledge the appellants' view that Policy ENV1(d) refers to daylight, sunlight, privacy and overshadowing but I do not consider that this prevents an assessment with regard to outlook given that the policy also requires respect for the amenity of occupiers of neighbouring buildings. As these policies generally accord with the amenity requirements of the *National Planning Policy Framework*, I afford them considerable weight.

10. I accept that outside of a conservation area, permission would not be required for such an extension. However, I do not consider that this suggests that the amenities of residents should not be fully considered when a planning application is required.

11. Although not raised as a concern by the Council, this terrace has been identified as making an important architectural or historic contribution to the Hertford Conservation Area. I am required to assess whether the proposal would preserve or enhance the character or appearance of the conservation area; and to come to a balanced judgement with regard to the scale of any harm or loss of significance to this non-designated heritage asset.

12. The proposal would have no significant impact on the wider appearance of the conservation area. The historic form of these properties is however important and contributes to the overall character and significance of both the dwelling and the wider conservation area. The historic form of the building would remain entirely legible and the new works would be of a good quality design and of complementary materials. The works would have a neutral impact on the appearance of the conservation area and would not result in harm to its significance or that of the dwelling. I conclude that the works would preserve the character and appearance of the conservation area and would not result in harm to the non-designated heritage asset. The proposal would therefore satisfy the duties set out within the legislation and meet the heritage requirements of the *Framework*.

13. I have considered all the matters put forward by the appellants but I do not consider that they are sufficient to outweigh my concerns. I therefore dismiss the appeal.

Peter Eggleton

INSPECTOR

The Planning Inspectorate

Appeal Decision

Site visit made on 7 March 2017

by Graham M Garnham BA BPhil MRTPI

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

Decision date: 14th March 2017

Appeal Ref: APP/J1915/D/16/3166118
147 Bengeo Street, Bengeo, Hertford, SG14 3EY

- 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 P McKay against the decision of East Hertfordshire District Council.
- The application Ref 3/16/2356/HH, dated 19 October 2016, was refused by notice dated 8 December 2016.
- The development proposed is single and double storey rear extension incorporating a roof conversion.

Decision

1. The appeal is dismissed.

Procedural Matter

2. I have based my decision on the plans as listed on the Council's decision notice.

Main Issue

3. I consider that this is the effect of the proposal on the character and appearance of the building and the locality.

Reasons

4. The appeal property is a modest, 2 storey semi-detached house with a single storey outrigger to the rear that accommodates the kitchen and bathroom. It is proposed to widen the outrigger at ground floor level to the full width of the house; erect 2 floors of rear extension above part of it adjoining the host house; carry out a roof conversion, and other external works at the front.

5. The Council does not object to the single storey rear extension; installing new side windows and a small front velux; and creating a parking space with landscaping works in the front garden. I consider that all these works would be compatible with the character and appearance of the building and the locality, and have no reason to take a different view. Moreover, I see no objection to the principle of converting the roof space to living space. I shall focus the rest of my attention on the area of dispute, which is the double storey rear extension above the outrigger and the main roof slope.

6. The proposed first floor plan shows the rear extension going out about 3.5 metres from the existing main rear wall of the house. The first floor would accommodate a bedroom (the existing rear bedroom making way for a bathroom and staircase). An extension of this height would be clearly subordinate in height and scale to the main house, and similar to existing rear extensions on either side. However, it is proposed to add another floor above, which, together with the roof conversion, would create an en suite third bedroom at 2nd floor level. The resultant full-width extension of 3 storey height would have an eaves line significantly higher than that of the main roof. The ridge height of the extension would match that of the main roof, but it would be considerably longer. The extension would thus fail to appear subordinate in height and scale to the host house.

7. The extension would have a gable end to match that of the host house. The eaves line on the boundary would meet the roof slope of the attached house about half way up towards the ridge, and protrude outwards from it for a significant distance. I consider that this would add to the "top-heavy" appearance of the back of the house, and be at odds with the prevailing two-storey heights of existing rear extensions locally. These incongruities would be seen in oblique views from side roads to the north and south of the site. However, I consider that, because of proximity to the neighbouring house to the north, the enlarged side wall would not be generally visible or harm the character and appearance of the dwelling.

8. The appeal site is in the Hertford Conservation Area, a very large area which covers much of the older part of Hertford, including the town centre. The Council has provided no character appraisal or account of the heritage significance of the conservation area, against which I can consider the proposal. I have to rely on the conservation area boundary plan and my observations during the site visit. The site is near the northern extremity of the conservation area. Along the appeal side of Bengeo Street, only frontage buildings are included, suggesting that it is the street scene that is of importance. This is very mixed, and includes recent as well as earlier 20th century buildings such as the appeal property. Little of the extension could be seen from the road. Its relationship to the host house and nearby properties at the rear could be seen clearly only from public viewpoints outside the conservation area.

9. The appellant has referred to a house on Bengeo Street just south of the appeal site. This appears to have a pitched roof rear extension that has an eaves line higher than that of the main roof at the front of the house, and a ridge line above that of the main roof. There is some similarity of form between this development and the appeal proposal. However I have no details about this dwelling, which from external appearances looks like a more recent building. Hence I find it gives little support to the appellant's case. It serves as an example of the diversity of age, styles and qualities of the built development in this part of the conservation area.

10. The National Planning Policy Framework says that great weight should be given to the conservation of a heritage asset such as a conservation area. Where harm is "less than substantial", it should be weighed against the public benefits of the proposal. In this case, I consider that the harm I have identified in terms of the top of the rear extension is tangible, albeit small, in

the context of the wider conservation area. Nonetheless I consider this harm to be significant in so far as the unsatisfactory design and appearance of an addition to an older building would be expected to detract from the heritage quality of the area to some degree. Against this are the benefits to the appellant's family and to established social networks of being able to remain embedded in the local community. I regard this as a small but nonetheless material contribution to the social role of sustainable development, supporting the health of the local community. There is thus an identifiable public benefit. However, I consider this would not outweigh the evident harm to the heritage quality of the conservation area that I have identified above. Therefore I find that the balancing judgement set out in paragraph 134 of the Framework does not support the proposal.

11. I conclude on balance that the proposal would detract materially from the character and appearance of the building and the locality, to a small but significant extent. It would be contrary to Policies ENV1, ENV5, ENV6 & BH5 in the East Herts Local Plan Second Review (2007). Among other things, these require new development to be of a high design quality that reflects local distinctiveness, relates well to the surrounding townscape, and is sympathetic to the general character and appearance of the conservation area; and that extensions should complement the existing dwelling. The propsoal would also fall short in respect of the statutory duty to have special regard to the desirability of preserving or enhancing the character or appearance of the conservation area.

12. Thus planning permission should be withheld and I dismiss the appeal.

G Garnham

INSPECTOR

The Planning Inspectorate

Appeal Decision

Site visit made on 6 March 2017

by P Eggleton BSc(Hons) MRTPI

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

Decision date: 22nd March 2017

Appeal Ref: APP/J1915/D/17/3167238
38 Westmill Road, Ware SG12 0EL

- 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 B Boehmer against the decision of East Herts Council.
- The application Ref 3/16/2368/HH, dated 20 October 2016, was refused by notice dated 15 December 2016.
- The development proposed is a double storey rear extension and roof conversion incorporating a raised roof.

Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are the effect on the character and appearance of the area; and the effect on the living conditions of the residents of 12 Richmond Close with regard to outlook and privacy.

Reasons

3. The proposal would result in the infilling of the corner to the rear of this dwelling and the raising of the roof to accommodate first floor bedrooms. The dwelling is set well back from the road and is screened from public views by trees and other housing. The existing bungalow is of most design quality and the proposed changes in proportions would result in an improvement to its appearance. It would not detract from the character or appearance of the area and would satisfy the design requirements of Policies ENV1, ENV5 and ENV6 of the East Herts Local Plan Second Review 2007 (LP).

4. The development would be very close to the rear boundary of 12 Richmond Close. The existing house is already imposing because of the proximity of its roof to the fence and the changes in levels. It already dominates the rear garden of the adjacent property and limits the outlook from the rear windows, despite the depth of the garden. The proposal would increase the height of the eaves, which in itself, would increase the dominance of the built form as experienced by the neighbouring residents. The larger and higher roof, although sloping away, would add to this concern.

5. The proposal would unacceptably harm the living conditions of the residents of 12 Richmond Close with regard to the loss of outlook from their ground floor

rear facing rooms and their garden and it would therefore be contrary to the amenity requirements of LP Policies ENV1(d) and ENV5 as it would fail to respect the amenities of the neighbouring residents. I acknowledge the appellant's view that Policy ENV1(d) refers to daylight, sunlight, privacy and overshadowing but I do not consider that this prevents an assessment with regard to outlook given that it also requires respect for the amenity of occupiers of neighbouring buildings.

6. Concerns have also been raised by neighbouring residents with regard to overlooking. The roof lights within bedroom 4 would allow views from a very close distance into the garden of number 12. This would unacceptably harm the living conditions of those residents with regard to privacy. As these are the only windows to that room, it would not be practical to have them obscure glazed. This adds to my main concerns. There would also be views from the large central rear facing first floor window and Juliet balcony towards the gardens of other Richmond Close properties. There is some vegetation that would help to provide a screen and views would be from an angle. However, this relationship, given the nature of the window, is not a positive feature of the design.

7. Overall, the proposal would improve the appearance of the dwelling. It would however, also result in unacceptable harm to the living conditions of the residents of 12 Richmond Close. The polices that seek to protect the amenities of the neighbouring residents generally accord with the requirements of the *National Planning Policy Framework* and can be afforded considerable weight. I have considered all the matters put forward by the appellant and I have also had regard to the views of Ware Town Council. However, I do not consider that these matters or the benefits to the design are sufficient to outweigh my concerns. I therefore dismiss the appeal.

Peter Eggleton

INSPECTOR

The Planning Inspectorate

Appeal Decision

Site visit made on 6 March 2017

by P Eggleton BSc(Hons) MRTPI

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

Decision date: 22nd March 2017

Appeal Ref: APP/J1915/D/17/3166870
Rushmead, London Road, Spellbrook, Hertfordshire CM23 4AU

- 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 K Miyako against the decision of East Herts Council.
- The application Ref 3/16/2447/HH, dated 1 November 2016, was refused by notice dated 23 December 2016.
- The development proposed is demolition of existing conservatories and erection of single storey rear extension.

Decision

1. The appeal is dismissed.

Main Issues

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

Reasons

3. The proposal is for a large single storey rear extension that would extend across the full width of the house. It has already been erected and I have therefore treated the proposal as being retrospective.

Inappropriateness and any other harm

4. The Council's concern is that the works represent inappropriate development within the Green Belt. Policy GBC1 of the East Herts Local Plan Second Review 2007 advises that permission will not be given for inappropriate development unless very special circumstances exist that clearly outweigh the harm by reason of inappropriateness or any other harm. It accepts limited extensions or alterations to existing dwellings, in accordance with Policy ENV5, as not being inappropriate.

5. Policy ENV5 accepts extensions within listed settlements providing it would not harm the character and appearance or amenities of the dwelling or adjoining dwellings. Outside these settlements, in addition to the above, any addition

should be of a scale and size that would itself, or cumulatively with other extensions, not disproportionately alter the size of the original dwelling nor intrude into the openness or rural qualities of the area. It should also be considered against Policy ENV6 which sets out design considerations.

6. The *National Planning Policy Framework* advises that new buildings should be regarded as inappropriate unless they fall within an exception set out in paragraph 89. This includes extensions of buildings provided that they do not result in disproportionate additions over and above the size of the original building. The Council's policies have clear similarities with those of the *Framework*, particularly with regard to the matters that are relevant to this development. However, they also differ from its requirements in a number of ways. I therefore afford moderate weight to them and greater weight to the requirements of the *Framework*. The Council's emerging District Plan is at an early stage but in any event, it requires that decisions be made in accordance with the *Framework* with regard to the Green Belt.

7. Information regarding the original dwelling is not conclusive. However, the appellant considers that the original house should be considered as the two storey element and a ground floor addition. The 1970 map suggests this ground floor element extended across much of the rear. This would accord with the planning history which describes an infill application in 1972. However, no details of this have been provided. On this basis, the additions made to the property over and above the size of the original dwelling would represent the infill ground floor addition, the first floor addition and the new ground floor element which is the subject of this appeal.

8. The appellant suggests that the dwelling was about 89sq.m in area in 1948 and that this proposal would amount to a cumulative increase in floor area of 86%. It is accepted that if an infill development took place, this figure may be slightly higher. The Council consider the increase to be 97%. A volumetric calculation would have been helpful to provide a further measure of scale. However, although I accept that the first floor addition is of limited overall size and the new ground floor extension is of modest height, I am not satisfied that the additions could reasonably be described as proportionate, over and above the size of the original building. The development therefore represents inappropriate development in the Green Belt.

9. This dwelling sits within a row of properties, some of which have significant development beyond the general rear building line. The extensions to this property are closely related to the original built form. In these circumstances, the works result in only very limited harm to the openness of the Green Belt and the fundamental aim of Green Belt policy which is to prevent urban sprawl by keeping land permanently open. I do not find this harm to be significant but this lack of harm is a neutral rather than a positive feature of the development.

10. The extension, although of a considerable depth and with some design shortcomings, such as it being a greater width than the structure to which it is attached, is of a form that would generally be accepted to the rear of residential properties in an area such as this. Although it is possible to view parts of the flank walls of the extension from the road, it has an extremely limited prominence. It does not detract from the character or appearance of the area. It is set in from the boundaries and given its height and the position

of the surrounding dwellings, it does not have a significant impact on the living conditions of those residents.

11. Overall, the proposal represents inappropriate development in the Green Belt but it does not result in any significant additional harm.

Very Special Circumstances

12. The extension replaced two modern conservatories. I am satisfied that the extension is likely to have resulted in an improvement to the appearance of the rear of the dwelling, improved accommodation and substantially improved thermal qualities. These considerations provide weight in favour of the development.

13. The appellant suggests that there should be equity with regard to decisions in relation to other nearby properties. A number of developments have been referred to. Hillview is to the south. The appellant advises that this had a single storey extension permitted which was 6.4m deep by the full width of the dwelling. The officer report accepted that it would increase the area of the dwelling by 97%. This is directly comparable with the Council's calculation in relation to this proposal. The Council accepted that the potential for an extension with regard to the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO) represented very special circumstances given the lack of any other harm. This decision was in 2015 and was therefore subject to the same local and national policies.

14. In relation to the nearby White Cottage, a replacement dwelling was permitted in 2016. It was considered that the new larger dwelling represented inappropriate development but that the permitted and potential lawful extensions to the existing dwelling, allowable by virtue of the GPDO, represented a fall-back position that outweighed the harm from inappropriateness. A replacement dwelling is not considered under the same provisions as an extension and the report does not indicate the increase in scale, other than to say it would be significantly larger than 20%. However, I acknowledge that the Council's view with regard to the permissible extensions is a material consideration relevant to this case.

15. Reference is made to Westwoods which I understand was a replacement dwelling which then also had an extension accepted to its garage. The supporting information is not entirely clear as to the percentage increases in size that were being considered. I am not certain the developments are directly comparable.

16. In order to compare this proposal with the examples above, the fall-back position with regard to lawful extensions must be established. This requires that what was and what remains of the original dwelling is clearly established. I find the evidence of the appellant to be limited but persuasive with regard to the existence of a rear addition. There is support for the view that it was retained and no evidence, such as building regulations records, to suggest that it was rebuilt. There is however no clear evidence as to the extent of the infill.

17. I am not able to reach a lawful determination as to what could be built under the provisions of the GPDO as there is clearly the potential for evidence to emerge as to the exact nature of the history of works at the property.

However, if I accept the appellant's view, subject to no negative results from a neighbour notification process, an 8 metres deep extension could be added to the original ground floor addition. On this basis, I would have to accept that the current extension, which would not be as deep but would be wider, would result in little discernible difference in terms of the scale of development. On the basis of the Council's approach with regard to Hill View and White Cottage, this would be a consideration that would provide considerable weight in favour of this development.

18. However, it is for the appellant to establish the lawfulness of proposed development. If established, it is for the decision maker to determine the likelihood of such development taking place in order to consider it as a realistic fall-back position. Then it must be considered whether the benefits of the alternative scheme, compared to those of the fall-back position, together with any other considerations would be sufficient to clearly outweigh the harm from inappropriateness.

19. In this case, the fall-back position has not been clearly established and a number of matters remain unresolved. The weight I can afford it is therefore reduced substantially. Accordingly, the weight I can afford to the Council's approach in relation to Hill View and White Cottage, is also diminished.

Conclusions

20. I have not found there to be any significant harm to openness or any other harm other than that relating to inappropriate development. The *Framework* is clear that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. Substantial weight should be given to any harm to the Green Belt. Very special circumstances will not exist unless the potential harm to the Green Belt, by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations.

21. The development has resulted in improvements to the appearance of the rear of the property compared to the previous additions and has undoubtedly improved the quality of the accommodation and importantly the buildings thermal qualities. The lack of concern from neighbouring residents is also a positive consideration. The works have been constructed but I am unable to consider this as a benefit within my assessment.

22. The lack of any certainty with regard to a lawful fall-back position limits the weight that I can afford to the approach previously adopted by the Council with regard to Hill View and White Cottage. With this unresolved, I find that the harm to the Green Belt, by reason of inappropriateness, would not be clearly outweighed by other considerations. On the basis of the current evidence, very special circumstances do not therefore exist and the proposal would conflict with the requirements of the *Framework* and the Council's policies. I therefore dismiss the appeal.

Peter Eggleton

INSPECTOR

The Planning Inspectorate

Appeals Decision

Site visit made on 1 March 2016

by Grahame Kean B.A. (Hons), PgCert CIPFA, Solicitor HCA

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

Decision date: 21 March 2017

Appeals Ref: APP/J1915/C/16/3154375 and 3154376
24 Cublands, Hertford, Hertfordshire SG13 7TS

- 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 Mrs Joanne Ruskin and Mr Scott Ruskin against an enforcement notice issued by East Hertfordshire District Council.
- The enforcement notice was issued on 27 June 2016.
- The breach of planning control as alleged in the notice is without planning permission the construction of a dormer window on the front roof slope fronting a highway.
- The requirement of the notice is: remove the unauthorised front dormer window.
- The period for compliance with the requirement is three months.
- The appeals are proceeding on the ground set out in section 174(2)(c) of the Town and Country Planning Act 1990 as amended.

Summary of Decision

1. The appeals are dismissed and the enforcement notice is upheld with a correction.

Application for Costs

2. An application for costs was made by Mrs Joanne Ruskin against the decision of Hertfordshire District Council. This application is the subject of a separate Decision.

Procedural Matter

3. The appellants say it is unfair and contrary to human rights legislation not to hold a hearing of the appeal. The appropriate procedure has been kept under review and I am satisfied that the advice allegedly given by the Council before preparing its appeal statement is not a determining factor in the appeal. It is established in case law that the requirement for a fair hearing set out in Article 6 of the European Convention of Human Rights need not necessarily involve an oral hearing. I have visited the site and consider the written material from both main parties sufficient to decide the appeal.

Compliance period

4. By s173(9) of the Act an enforcement notice must specify a period (which by definition must have an ascertainable start and end date) at the end of which any steps are required to have been taken or any activities are required to have ceased. The notice is imprecise as to when the three month period starts. Critically, the period for compliance of the notice must not begin before the notice has taken effect. There is nothing within the notice to suggest that it

might be interpreted in that way or that the period is to begin at a later time after it becomes effective. It is reasonable to infer from the notice read as a whole that the period commences after the notice takes effect and I will correct the notice to clarify the position under powers in s176(1)(a) of the Act.

The appeals on ground (c) that the matters alleged are not a breach of planning control

Reasons

5. 24 Cublands is a terraced house oriented approximately on a north to south axis having a north facing elevation. It is undisputed that this is the principal elevation for the purposes of applying relevant parts of the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO).

6. The dispute between the parties centres on the application of Class B.1(c) of Part 1, Schedule 2 to the GPDO. An enlargement of a dwellinghouse consisting of an addition or alteration to its roof is not permitted if— "(c) any part of the dwellinghouse would, as a result of the works, extend beyond the plane of any existing roof slope which forms the principal elevation of the dwellinghouse and fronts a highway". The other requirements in Class B.1 are met.

7. The GPDO does not define a highway as such, however under s329(1) of the Highways Act 1980 a footway is included in the definition of a highway as "a way comprised in a highway which also comprises a carriageway, being a way over which the public have a right of way on foot only." Further, in the section of the GPDO entitled "Interpretation of Part 1", it is stated that for the purposes of the GPDO "highway" includes an unadopted street or a private way.

8. Government Technical Guidance[1] is published to assist in the application and interpretation of the GPDO. It advises on page 16 that the extent to which an elevation of a house fronts a highway depends on factors such as:

   (i) the angle between the elevation of the house and the highway. If that angle is more than 45 degrees, then the elevation will not normally be considered as fronting a highway;

   (ii) the distance between the house and the highway - in cases where that distance is substantial, it is unlikely that a building can be said to front the highway. The same may be true where there is a significant intervening area of land in different ownership or use between the boundary of the curtilage of the house concerned and the highway.

9. It seems to me that in assessing this matter as I have to do, on a fact and degree basis, apart from proximity and angle of view, inter-visibility is also relevant.

10. Raynards Way/Vixen Drive are highways that converge on a roundabout with an adjoining footway that follows the curve of the road down and alongside Vixen Drive. I saw that the principal elevation of the appeal property faces the roundabout across an amenity area of land which is heavily vegetated at the far end from No 24. Views of No 24 and adjoining properties are largely obscured from the roundabout end including from the footway (or footpath) that cuts across the amenity land. Distances to No 24 from the roundabout

[1] The DCLG Permitted Development for Householders: Technical Guidance 13 April 2016

and the footway in front have been variously estimated as some 24 to 30m away. From this distance and considering the nature of the intervening land I am not persuaded that the property "fronts" that part of the path or road.

11. However the distance between the footway and No 24 reduces as one walks down Vixen Drive. The appeal property becomes clearly visible at closer quarters, from an angle which is less than 45 degrees. No 24 is the second terraced house along from the edge of the footway and is in a prominent position that looks out not only directly over the amenity space in front but also over a section of the footway and carriageway of Vixen Drive. The road is an arterial route but has a proximate and visible relationship with No 24 and No 23, the house in between, where open railings define the edge of the boundary with the footway and the distance from No 24 across the intervening land belonging to No 23 is relatively short. The footway at this point is to my mind read in the same street scene as the closest frontages that include No 24.

12. Therefore, applying the Technical Guidance, and from my experience of walking the footway, I consider that the distances and angles involved, whilst taking account of the degree of inter-visibility, are such that the appeal premises front a highway, being the footway within Vixen Drive.

13. The appellants say it is for the Council to prove that candidate roads and footpaths are highways. Although they set out clearly and comprehensively what is known about the separate path immediately in front of No 24 that leads from Cublands, it is unnecessary to conclude as to its highway status in light of my finding as to Vixen Drive. The footway along Vixen Drive is outside the residential estate in which the appeal premises lie and to all intents and purposes it appears to be a way along which the public pass and repass without any specific hindrance. From what I have seen and read I regard the footway and the carriageway of this part of Vixen Drive as a highway for the purposes of applying the relevant legislation and guidance in this appeal.

14. In the appeal statement it is said that as the intention of the GPDO is to allow minor extensions, it follows that a wide interpretation to bring "unobjectionable distant development" within its control would be wrong. However in assessing what is "unobjectionable" a planning merits criterion would be introduced. This would be an inappropriate test to apply to the development itself. The issue is rather whether its host elevation, being a principal one, fronts a highway.

15. By the same token, since, in an appeal on ground (c) the planning merits of the development are not relevant to the issue of whether there has been a breach of planning control, I am unable to take into account representations about the effect of the dormer on living conditions of nearby residents.

16. The comments of the parties relating to the appeal decisions on The Ridge and Saunders Lane are noted. However I do not have full details of those particular cases and such information as has been provided does not assist me in the fact and degree assessment I have to make in this appeal. The fact that the property in this appeal does not share its address with the highway it fronts, is not in my view a decisive factor, considering the legislation and guidance.

Conclusion on ground (c) appeals

17. The dormer has been constructed on the front roof slope of the property without express planning permission. It does not benefit from a permission

granted in the GPDO because it is on a principal elevation of a dwellinghouse which, as a matter of fact and degree, fronts a highway. The development is therefore in breach of planning control and the appeals on ground (c) fail.

Conclusion

18. For the reasons given above I conclude that the appeals should not succeed. I shall uphold the enforcement notice with a correction.

Formal decision

19. It is directed that the period for compliance in the enforcement notice be corrected by inserting after "three months" the wording "after this notice takes effect".

20. Subject to this correction the appeals are dismissed and the enforcement notice is upheld.

Grahame Kean

INSPECTOR

The Planning Inspectorate

Costs Decision

Site visit made on 1 March 2016

by Grahame Kean B.A. (Hons), PgCert CIPFA, Solicitor HCA

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

Decision date: 21 March 2017

Costs application in relation to Appeal Ref: APP/J1915/C/16/3154375
24 Cublands, Hertford, Hertfordshire SG13 7TS

- The application is made under the Town and Country Planning Act 1990, section 174, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
- The application is made by Mrs Joanne Ruskin for an award of costs against East Hertfordshire District Council.
- The appeal was made against an enforcement notice alleging: without planning permission the construction of a dormer window on the front roof slope fronting the highway.

Decision

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

Submissions of the Applicant

2. The application is for a full award of costs.

3. The Council acted unreasonably in presenting no evidence of highway status which was a key issue. Without such evidence the enforcement notice should not have been issued. The applicant was left guessing at how the Council was to put its case and expense was incurred in anticipating its case and attempting to respond to it when it should have been clear from the outset. The applicant has had to anticipate which of the three potential "candidate highways" were relevant to the issue of whether the principal elevation of her dwellinghouse fronted one or more of them for the purposes of the GPDO, and make her case on each scenario in the appeal.

4. As a result the applicant has incurred unnecessary or wasted expense in the appeal process.

Submissions of the Council

5. The Council's case was clearly set out in its appeal statement and since the breach was reported it consistently advised the applicant that the dormer window fronted a highway. The determining factors relevant to the case were set out in the officer's report. It denies offering no evidence of highway status, stating that there was just a difference of opinion between the parties as to what constitutes a highway and whether the dormer fronts a highway. Consequently the Council did not behave unreasonably.

Reasons

6. Planning Practice Guidance (PPG) advises that costs may be awarded where a party has behaved unreasonably, and the unreasonable behaviour has directly

caused another party to incur unnecessary or wasted expense in the appeal process.[1] For enforcement action, local planning authorities must carry out adequate prior investigation. They are at risk of an award of costs if it is concluded that an appeal could have been avoided by more diligent investigation that would have either avoided the need to serve the notice in the first place, or ensured that it was accurate.[2]

7. The Council had put forward arguments relating to other "candidate" highways and I recognise that it did not investigate the status of each route as thoroughly as did the appellant. However it is for appellants to decide how to present their case and it would be unreasonable to have restricted the Council as to the number of possibly relevant highways.

8. The view that the Council came to regarding Vixen Drive, namely that it was a highway and that the principal elevation of the appeal property fronted that highway for the purposes of the permitted development legislation, was a conclusion that was arrived at before the notice was issued and only after giving the applicant time to reflect whether a planning application should be submitted. It was moreover a view that was supported in the Appeal Decision.

9. Although highway status was clearly relevant, I was satisfied on the balance of probabilities that Vixen Drive was a highway for the purposes of applying the relevant legislation and guidance in the appeal, based on my experience of walking the route and all that I had seen and read. It is also apparent from the way the appellants put their case that even if the Council had earlier identified Vixen Drive as relevant, it would not have prevented the appeal being made.

10. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in PPG, has not been demonstrated.

Grahame Kean

INSPECTOR

[1] Paragraph: 030 Reference ID: 16-030-20140306
[2] Paragraph: 048 Reference ID: 16-048-20140306

~~Dave~~ - 605526
PXS

The Planning Inspectorate

Appeal Decision

Site visit made on 4 January 2017

by Iwan Lloyd BA BTP MRTPI

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

Decision date: 2 March 2017

Appeal Ref: APP/TPO/J1915/5292
30A Mangrove Road, Hertford, Hertfordshire SG13 8AL

- The appeal is made under regulation 19 of the Town and Country Planning (Tree Preservation) (England) Regulations 2012 against a refusal to grant consent to undertake work to a tree protected by a Tree Preservation Order.
- The appeal is made by Mrs Lucy Clover against the decision of East Hertfordshire District Council.
- The application Ref: 569906 & P/TPO 562, dated 19/02/2016, was refused by notice dated 14/04/2016.
- The work proposed is to fell plane tree T1.
- The relevant Tree Preservation Order (TPO) is (No. 6) 2011 P/TPO 562 No. 30 Mangrove Road, Hertford, Herts', which was confirmed on 26/10/2011.

Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are; the amenity value of the London Plane tree and the likely impact of felling it on the amenity of the area, and, in the light of the above whether the proposal is justified having regard to the reasons put forward in support of it.

Reasons

Amenity value

3. The London Plane is mature some 24m in height situated to the north of No. 30A Mangrove Road, a recently constructed dwelling allowed on appeal[1] and adjacent to Hagsdell Lane public footpath. The residential area to the west of Mangrove Road is located within a Conservation Area. The tree forms one of four mature London Plane trees alongside the footpath.

4. The tree is heavily clad in ivy and the appellant's arboriculture report (AR) indicates that the tree leans by some 10 degrees towards the public footpath. In considering the application the Council has granted a reduction in lateral branches encroaching on No. 30A allowing a clearance of 3m, together with widespread cleaning of the crown by removal of dead branches and the removal and severance of the ivy after die-back has occurred to allow inspection of the basal and trunk.

[1] APP/J1915/A/10/2128283 allowed 19/11/2010

5. The tree is individually protected in the TPO as T1, and therefore affords protection as a specimen of amenity value, despite its current condition clad in ivy and a somewhat entangled crown. The tree has a lean towards the footpath but it still provides visual importance and dominance when seen from the adjacent footpath and the road. In the context of the conservation area and for receptors walking on the path, it positively adds to the wooded and sylvan character of the area. Its stature is sufficient to be appreciated from the roadside and footpath and therefore affords moderate amenity value despite its current appearance, but with appropriate management through the implementation of the consent for remedial works to the tree, its visual amenity as a tree worthy of protection would be retained.

6. I therefore conclude that the London Plane tree has a continued positive impact on the amenity of the local environment and its enjoyment by the public. Felling the tree would diminish and materially harm the amenity of the area.

Justification

7. The appellant indicates that there are signs of structural weakness in the protected tree. These signs of movement are noted as progressive because of the entangled crown. The appellant notes that the ivy prevents a detailed examination of the tree and increases the likelihood of failure due to the greater sail volume of the canopy. The outside of the lean had a hollow sound and the appellant believes that the ivy has delaminated from the trunk which is consistent with signs of progressive movement. The AR indicates that there is evidence of a wasps nest beneath the ivy which is consistent with the presence of a cavity. Furthermore, the AR indicates that due to the thickness of the ivy stem that removal would be detrimental to the structural stability of the tree because it now provides support. The appellant contends that given these signs of structural weakness the tree is at risk of failure which is situated near a public footpath used by pupils of the local school.

8. The AR does not provide diagnostic evidence of the extent of the cavity or an assessment of the residual thickness of the trunk and basal area of the tree. I could see no obvious signs of cracking which would indicate some form of progressive lean and movement. In my view, the risk of failure has not been properly quantified and evaluated based on evidence about the structural integrity of the tree and whether movement has recently occurred following completion of the property, No. 30A. I would have considered that established and modern investigation techniques could have been deployed to establish the extent of the cavity, the remaining residual thickness of the trunk and any uplift of the soil around the basal area indicating movement.

9. I would agree with the Council that based on the evidence presented there are few signs of progressive movement from when the tree was protected under the TPO provisions and following completion of No. 30A. I conclude that the available evidence does not provide the convincing grounds that would quantify the risk of structural failure. The evidence provided with this appeal does not indicate at present that the tree is an immediate risk of falling. Whether or not there is a high risk of the tree falling should be assessed on the basis that there is a present danger. I have no evidence to support the claim that the tree is immediately dangerous and hence needs to be felled.

10. I concur with the Council that removal of the ivy would place the tree in a managed condition and there is presently a paucity of evidence indicating that

the ivy provides structural support for the tree, or that removal of the lateral branches on the opposite side of the lean would cause it to fall.

11. The fear of a tree falling is understood, and the adjacent footpath is within the striking range of this tree. The fall of a tree may not be even due to an unobserved inherent defect in the tree. Healthy trees may be uprooted in severe winds. However trees have a built-in safety factor whereby they are usually able to withstand much stronger mechanical loading than occurs under normal conditions, although that is sometimes not enough to prevent them from falling. However, if this argument succeeds then every protected tree would have to be felled which might be dangerous, particularly when the risk of injury and damage is high.

12. In relation to falling branches, a tree will shed branches and debris, this factor is a natural characteristic of all trees. Dead wood can be removed under the TPO exemption. As indicated remedial works to the tree granted by the Council should provide a managed solution to the fear of falling branches.

13. I note that the appellant indicates that the tree is incompatible with its location and that it dominates the garden creating an oppressive atmosphere. A tree of this size will cast a shadow, but that is the consequence of living in a property situated close to trees. The retention of the tree was an argument in favour of granting permission for the property as now completed, and the owners/occupants of the dwelling would have been aware of the implications and the constraints of living close to a protected tree.

14. I therefore conclude that based on the available evidence as presented there are insufficient grounds to justify felling this protected London Plane tree.

Conclusions

15. I conclude that the London Plane tree has a moderate amenity value and its removal is not justified based on the available evidence presented with this appeal.

16. I conclude having considered all other matters raised that the appeal should be dismissed and that consent to fell the protected tree should be refused.

Iwan Lloyd

INSPECTOR

The Planning Inspectorate

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Mr Paul Stevens, Landscape Officer
East Herts Council
Environmental Services
Wallfields, Pegs Lane
Hertford
Herts, SG13 8EQ
operations.admin@eastherts.gov.uk

Your Ref: 569906 & TPO 562

Our Ref: APP/TPO/J1915/5292

Date: 02/03/17

Dear Mr Stevens

THE TOWN AND COUNTRY PLANNING (TREE PRESERVATION) (ENGLAND) REGULATIONS 2012, SI No. 605
APPLICATION FOR CONSENT TO CARRY OUT WORKS TO PROTECTED TREES
APPELLANT: MRS LUCY CLOVER
SITE: 30A MANGROVE ROAD, HERTFORD, HERTS SG13 8AL

I enclose a copy of our Inspector's decision on the above appeal following the site visit on 4 January 2017.

The appeal decision is final unless it is quashed following a successful challenge in the High Court on a point of law (see enclosed leaflet). If the challenge is successful the decision may be quashed but the case will probably be returned to the Secretary of State for re-determination. However, if it is to be re-determined, it does not necessarily follow that the original decision on the appeal will be reversed.

Please note that the Planning Inspectorate is not the administering body for High Court challenges. If you would like more information on the strictly enforced deadlines for challenging, or a form to lodge a challenge, please contact the Administrative Court on 020 7947 6655.

If you have any complaints or questions about a decision, or about the way we have handled the appeal write to:

Customer Quality Team
The Planning Inspectorate
4D Hawk Wing
Temple Quay House
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Bristol BS1 6PN

Phone No. 0303 444 5884

Or visit:

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