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## Appeal Decision

Site visit made on 20 December 2016

**by Alex Hutson MATP CMLI MARborA**

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

**Decision date: 3 April 2017**

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**Appeal Ref: APP/J1915/W/16/3155696**

**Dutch Barn, Barwick Farm, High Cross, Ware SG11 1DB**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning approval required under Schedule 2, Part 3, Class Q of the Town and Country Planning (General Permitted Development) (England) Order 2015.
  - The appeal is made by Mrs Anne Peacock - Chaldean Estates Ltd against the decision of East Hertfordshire District Council.
  - The application Ref 3/16/0914/ARPN, dated 14 April 2016, was refused by notice dated 10 June 2016.
  - The development proposed is the conversion of the Dutch Barn into 2, 4 bedroom semi-detached houses.
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### Decision

1. The appeal is allowed and approval is granted under the provisions of Schedule 2, Part 3, Class Q of the Town and Country Planning (General Permitted Development) (England) Order 2015 for the conversion of the Dutch Barn into 2, 4 bedroom semi-detached houses at Dutch Barn, Barwick Farm, High Cross, Ware SG11 1DB in accordance with the terms of the application Ref 3/16/0914/ARPN, dated 14 April 2016, subject to the following conditions:
  - 1) The development hereby permitted must be completed within a period of three years from the date of this decision.
  - 2) The development hereby permitted shall be carried out in accordance with the following approved plans: 628/1-00 Rev PB; 628/1-01 Rev PB; 628/1-02 Rev PC; 628/1-03 Rev PC; 628/1-10 Rev PA; 628/2-00 Rev PB; 628/2-01 Rev PB; 628/2-02 Rev PB; 624/2-03 Rev PC; 628/2-04 Rev PC; 628/2-05 Rev PC; and 628/2-07 Rev PC.
  - 3) The presence of any significant unsuspected contamination that becomes evident during the development of the site shall be brought to the attention of the local planning authority. In such an event remediation measures shall be submitted to and agreed in writing by the local planning authority. The development shall thereafter be implemented in accordance with the measures agreed.

### Preliminary matter

2. The Council considers that the proposal accords with the requirements set out in Paragraph Q.1 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO) so is permitted development.
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There is no evidence before me to the contrary and I have determined the appeal on this basis.

### **Main issue**

3. The main issue is whether the siting or location of the agricultural building makes it otherwise impractical or undesirable for a change of use to a dwellinghouse under the provisions of Q.2(1)(e) of the GPDO.

### **Reasons**

*Whether the location or siting of the agricultural building makes it otherwise impractical or undesirable for a change of use to a dwellinghouse*

4. The agricultural building is located along a metalled lane and forms part of the Barwick Farm complex, which includes a number of residential dwellings.
5. The terms 'impractical' or 'undesirable' are not specifically defined within the GPDO. However, the Government's Planning Practice Guidance (PPG) sets out that a reasonable ordinary dictionary meaning should be applied in making a judgement. It advises that impractical reflects that the location and siting would "not be sensible or realistic", and undesirable reflects that it would be "harmful or objectionable".
6. The Council does not raise any specific concerns in respect of whether the location or siting of the agricultural building makes it impractical for a change of use to a dwellinghouse. Based on the evidence before me, I have no substantive reasons to take a different view on this matter. The Council refused the application for prior approval on the basis that the proposal was considered to represent unsustainable development in the countryside, given its location remote from services, facilities and public transport routes. I acknowledge that this would likely result in the reliance of any future occupiers of the proposal on the use of a private motor vehicle to gain access to any services and facilities in the wider area. It is therefore the Council's view that the location of the agricultural building makes it undesirable for a change of use to a dwellinghouse for this reason.
7. However, the PPG advises that permitted development rights do not require a test in relation to sustainability of location on the basis that many agricultural buildings will not be within settlements and any future occupiers may not be able to rely on public transport for their daily needs. Furthermore, that an agricultural building is in a location where the local planning authority would not normally grant planning permission for a new dwelling is not sufficient reason for refusing prior approval.
8. The PPG advises that the change of use of a building located adjacent to other uses such as intensive poultry farm buildings, silage storage or buildings with dangerous machines or chemicals, could be defined as 'undesirable'. Given that the agricultural building is not located adjacent to any such uses or buildings and that sustainability of location is not a matter to be taken into account, I conclude that its change of use to residential could not reasonably be defined as undesirable.
9. The Council raises the concern that the GPDO states that regard must be had to the National Planning Policy Framework (the Framework), so far as relevant to the subject matter of the prior approval, as if the application were a

planning application. I also note the Council's argument that the PPG, as guidance, conflicts with the policies of the Framework, most notably Paragraph 55, and that the unsustainable location cannot be mitigated.

10. However, I have had regard to a recent High Court Judgement<sup>1</sup> in respect of an appeal decision<sup>2</sup> which granted prior approval for the conversion of an agricultural building within East Hertfordshire to residential, notwithstanding its unsustainable location. The Judgement has held that whilst the Framework needs to be applied, as specified by the GPDO, this should be in the context of an understanding of what the particular Class seeks to achieve, and to that end the fact that an agricultural building is in a location where planning permission would not normally be granted for accessibility reasons will not amount to a sufficient reason for refusing prior approval. I afford significant weight to this Judgement, which supports my reasoning above and my decision to allow the appeal.
11. I therefore consider that the location and siting of the agricultural building would not make it otherwise impractical or undesirable for a change of use to a dwellinghouse and thus, would satisfy the provisions of Q.2(1)(e) of the GPDO.

#### *Other matters*

12. Whilst not cited as a reason for refusal, the Council raises a concern that the introduction of a residential use in this location would not represent an enhancement to the immediate setting of the site. However, in my judgement, the proposed changes to the agricultural building would be undertaken in a sensitive manner which would maintain its overall form and visual integrity with no harm arising to its setting or to the character and appearance of the area.

#### **Conditions**

13. I have had regard to the planning condition suggested by the Council in respect of contamination. I consider it reasonable and necessary in the interests of human health and the environment. However, I have added an additional part which I consider necessary in the event of any contamination that becomes evident. In addition, I have imposed a time limit condition in accordance with paragraph Q.2(3) of the GPDO. I have also imposed a condition specifying the relevant drawings as this provides certainty.

#### **Conclusion**

14. For the reasons set out above and having regard to all other matters, I conclude that the appeal should be allowed and approval granted.

*Alex Hutson*

INSPECTOR

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<sup>1</sup> East Herts v SSCLG [2017] EWHC 465 (Admin)

<sup>2</sup> Appeal Ref APP/J1915/W/16/3142497

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## Appeal Decisions

Site visit made on 2 March 2017

**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: 12 April 2017

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### **Appeal A: APP/J1915/C/16/3156110**

#### **3 Northgate End, Bishops Stortford, Hertfordshire CM23 2ET**

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
  - The appeal is made by Mr Luigi Forgione against an enforcement notice issued by East Hertfordshire District Council.
  - The notice was issued on 20 July 2016.
  - The breach of planning control as alleged in the notice is without planning permission, the installation of a new shop front.
  - The requirement of the notice is: remove the unauthorised shop front.
  - The period for compliance with the requirement is 4 Months.
  - The appeal is proceeding on the grounds set out in section 174(2)(a) of the Town and Country Planning Act 1990 as amended.
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### **Appeal B: APP/J1915/Z/16/3156111**

#### **3 Northgate End, Bishops Stortford, Hertfordshire CM23 2ET**

- The appeal is made under Regulation 17 of the Town and Country Planning (Control of Advertisements) (England) Regulations 2007 against a refusal to grant express consent.
  - The appeal is made by Mr Luigi Forgione against the decision of East Hertfordshire District Council.
  - The application Ref 3/16/1119/ADV, dated 13 April 2016, was refused by notice dated 13 July 2016.
  - The advertisement proposed is described as New shop Front with roller shutter.
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### **Summary of Decisions**

1. Appeal A is dismissed and the enforcement notice is upheld with a correction.
2. Appeal B is dismissed.

### **Appeal A**

#### *Preliminary Matter*

3. By s173(9) of the Act an enforcement notice must specify a period (which must have an ascertainable start and end date) after 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 period starts although it must not begin before the notice has taken effect and there is nothing within the notice to suggest that the period is to start at a later time after it becomes effective. I infer from the notice as a whole that the period commences after it takes effect and I shall correct the notice to clarify the position under powers in s176(1)(a) of the Act.
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*Main Issue and Reasons*

4. The main issue is the effect of the shop front on the character and appearance of the surrounding street scene and the Bishops Stortford Conservation Area (CA). As the appeal premises are within the CA a duty exists, when considering the grant of planning permission, to pay special attention to the desirability of preserving or enhancing its character or appearance.
5. 3 Northgate End is a two-storey mid-terraced property in the CA, to the north of the main shopping centre of the town. The upper frontage has traditional style sash hung windows with vertical and horizontal glazing bars.
6. There is a variety of shop front designs and materials used in the CA. However several of the shops in the vicinity have traditional shopfronts with stall-risers and pilasters or masonry around the windows. These make a positive contribution to the character and appearance of the CA.
7. No 5 has full height glazing, however it has several brick pilasters that project from the wall. These continue the design of the upper part of the façade and give the front an attractive appearance, ensuring that the glazing sits comfortably within the frontage.
8. The restaurant at No 7 and the cake decorators at No 7a have low stall risers and consequently the glazing in the frontages is nearly full height. However the expanse of glazing is not prominent at the restaurant because there are classical style columns in front with low railings in between and ornamental miniature bushes in the recessed area. No 7a has a recessed doorway such that the shopfront glazing wraps around one side and there are transom lights whose smaller panes of glass reflect the appearance of openings in the upper parts of the building's front elevation.
9. Furthermore the plinths are of a fairly uniform appearance in all three adjacent properties. By contrast the unauthorised shopfront at No 3 has no stall riser or plinths and comprises a large and unattractive steel and glazed frontage with an excessively tall fascia. This design is at odds with the host property and surrounding shopfronts. The "white flanking piers" on the appeal premises are insubstantial and in my view do not successfully frame the shopfront as supporting columns. This is because they lack any real articulation, in contrast to the brick and rendered piers of adjacent premises. The resulting expanse of metal and glass, taken with the top heavy fascia, is unsightly.
10. I have considered the examples provided of shop fronts in the wider area. Whilst they display a wide range of materials, colours and effects I disagree that they necessarily enhance the CA. Overall the units present an interesting and diverse street scene; however some detract from the distinctive traditional design of many of the shopfronts in the locality, through ill-coordinated fascias that have a harmful influence on the quality of the host buildings.
11. In any event, in the context of the immediate street scene, although the shop fronts at Nos 5, 7 and 7A differ in terms of size and proportions, they are generally sympathetic to their host buildings whilst retaining stall risers and plinths that contribute to the overall harmony of their appearance in the immediate environment.
12. Therefore I find that the shopfront by reason of its metal and glazed design that lacks stall risers and incorporates an excessively large fascia, is visually

incompatible with the host building, the surrounding street scene and the character and appearance of the CA.

13. The harm caused is contrary to Policies ENV1 and BH14 of the East Herts Local Plan Second Review 2007 which require development to be designed to a high standard to reflect local distinctiveness, and to be sympathetic to the scale, proportions, character, and materials of the structure, adjoining buildings, and the street scene. The shop front would also fail to comply with the National Planning Policy Framework (Framework), in particular Paragraph 17 which seeks to secure in all development a high quality design.
14. Considerable importance and weight is given to the desirability of preserving the character and appearance of a conservation area which is a designated heritage asset. The harm caused would be serious although given that it would affect a small part of the CA, it would cause less than substantial harm to its special interest and significance. As such paragraph 134 of the Framework requires the harm to be weighed against public benefits of the proposal; however there are none put forward that would outweigh the harm caused. Accordingly the appeal fails on ground (a).

#### *Conclusion on Appeal A*

15. For the reasons given above I conclude that the appeal should not succeed. I shall uphold the notice with a correction and refuse to grant planning permission on the deemed application.

#### **Appeal B**

16. The proposal is described as a new shop front with roller shutter but it is clear from the information supplied including the submitted plans that the application is for an externally illuminated fascia sign already in place. I have decided the appeal on the submitted information and what I have seen on my site visit.
17. The premises are in the Bishops Stortford Conservation Area (CA). Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires that special attention shall be paid to the desirability of preserving or enhancing the character or appearance of the CA, a duty that applies in advertisement appeals in so far as it relates to considerations of amenity.
18. As set out in the 2007 Regulations, the issues of amenity and public safety are the determining factors in advertisement appeals. The Council has no objection to the sign on the grounds of public safety.
19. Development Plan policies are not determinative of the appeal; however I have had particular regard to Policy BH15 of the East Herts Local Plan Second Review 2007. This policy requires advertisements in conservation areas, other than exceptionally, to be of an appropriate size necessary to convey their message, and of appropriate size and design in relation to the building or fascia. Any illumination should be discreetly sized and of a minimum level.
20. The Council deems the size of the lettering as appropriate to convey its message and regards as satisfactory the proposal to illuminate the sign by an external trough across the width of the fascia. I see no reason to disagree.
21. However from the submitted plans and what I have seen and read, the overall proportions of the new fascia would adversely affect the visual amenity of the

area. The depth of the sign is unsympathetic to those of adjacent premises and as such would obtrude into the street scene, causing harm to this part of the CA.

22. There is a wide variety of signage in the CA in terms of size of lettering, fascias, and colours and materials used. Although this variety can excite interest in the area I disagree that it necessarily enhances the CA, since some of the signage I saw is not well coordinated and detracts from the appearance of the locality. In this connection the examples of other consented advertisements in the area are noted but they do not provide a compelling reason to grant consent in this appeal.
23. I recognise that the fascia signs at Nos 5 and 7 are not fully horizontally aligned, however this does not overcome the harm to visual amenity caused by the excessive height of the proposed advertisement in relation to other signs in the immediate surroundings.
24. As a result the display of the advertisement would be detrimental to the interests of amenity.

### **Formal Decisions**

#### **Appeal A**

25. It is directed that the enforcement notice be corrected by inserting after "Months" the wording "after this notice takes effect". Subject to this correction the appeal is dismissed and the enforcement notice is upheld. Planning permission is refused on the application deemed to have been made under s177(5) of the 1990 Act as amended.

#### **Appeal B**

26. The appeal is dismissed.

*Grahame Kean*

INSPECTOR

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## Appeal Decision

Site visit made on 20 March 2017

**by Jonathan Price BA(Hons) DMS DipTP MRTPI**

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

**Decision date: 29<sup>th</sup> March 2017**

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**Appeal Ref: APP/J1915/W/16/3164347**

**26 and 28 Parker Avenue, Bengeo, Hertford, Hertfordshire SG14 3LA**

- 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 and Mrs Eddleston and Mr and Mrs Jackson against the decision of East Hertfordshire District Council.
  - The application Ref 3/16/1638/HH, dated 19 July 2016, was refused by notice dated 8 September 2016.
  - The development proposed is two-storey rear extensions and internal alterations.
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### Decision

1. The appeal is allowed and planning permission is granted for two-storey rear extensions and internal alterations at 26 and 28 Parker Avenue, Bengeo, Hertford, Hertfordshire SG14 3LA in accordance with the terms of the application, Ref 3/16/1638/HH, dated 19 July 2016, subject to the following conditions:
  - 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
  - 2) The development hereby permitted shall be carried out in accordance with the following approved plans: 12545-P002, 12545-P001-A, 12545-S001-A, 12458-P002-A, 12458-S001-A, 12458-P001-B.
  - 3) The extension to No 26 hereby permitted shall not be occupied until the windows at on the second floor bathroom window has been fitted with obscured glazing, and no part of that window that is less than 1.7 metres above the floor of the room in which it is installed shall be capable of being opened. Details of the type of obscured glazing shall be submitted to and approved in writing by the local planning authority before the window is installed and once installed the obscured glazing shall be retained thereafter.

### Main Issue

2. The effect of the proposed extensions at No 28 Parker Avenue on the character and appearance of that property.

### Reasons

3. The proposal relates to two-storey extensions to the rear of a semi-detached pair of houses, where the neighbours have teamed up to provide additions which would line up flush with each other at the rear. The dwellings are within a street of similar local authority-built, hipped-roofed semi-detached houses,
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spaciously arranged to a common pattern with small front gardens. Being at the rear, these proposals would not harm the pleasing architectural homogeneity of the street scene.

4. The extension to No 26 would be a simple hipped-roof rear addition, whereas that to No 28 would have to work around an existing dormer and two-storey rear and side extension. This necessitates a more complex roof design for the wider addition, involving an area of crown roof. This addition would be visible from some neighbouring properties but have little material impact on the character and appearance of the wider area. Although the nature of the crown roof design at No 28 would not be ideal in every situation, in this case it would not be visually prominent and the harm caused to that of the host building would be quite limited.
5. Consequently the additions to No 28 would not give rise to any material degree of conflict with the aims of Policies ENV1, ENV5 and ENV6 of the East Herts Local Plan Second Review 2007, or with those of the National Planning Policy Framework.

#### **Conditions and conclusion**

6. I have had regard to the conditions that have been suggested by the Council. Where necessary, and in the interests of conciseness and enforceability, I have altered these to better reflect the relevant parts of the Planning Practice Guidance. In addition to the standard condition limiting the life of the permission, it is necessary in the interests of certainty that a condition sets out the plans approved. In the interests of the privacy of the neighbouring occupiers at No 24 a condition also requires the second floor bathroom window at No 26 to be obscure glazed and high opening and retained as such. Subject to these conditions, and for the reasons given, I conclude that the appeal should be allowed.

*Jonathan Price*

INSPECTOR

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## Appeal Decision

Site visit made on 20 March 2017

**by Jonathan Price BA(Hons) DMS DipTP MRTPI**

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

**Decision date: 29<sup>th</sup> March 2017**

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**Appeal Ref: APP/J1915/W/16/3164962**

**77 Fore Street, Hertford, Hertfordshire SG14 1AL**

- 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 Wyndcrest Limited against the decision of East Hertfordshire District Council.
  - The application Ref 3/16/1675/FUL, dated 22 July 2016, was refused by notice dated 10 October 2016.
  - The development proposed is change of use of veterinarian practice (D1) to residential (C3) and creation of 4 No residential dwellings.
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### Decision

1. The appeal is dismissed.

### Main Issues

2. The main issues in this case are:
  - Whether the proposal would provide acceptable living conditions for future occupiers, with particular regard to outlook, outside living space and car parking arrangements.
  - The effects on the character and appearance of the area.
  - The effects on the living conditions of the neighbouring occupiers at 1 Bridewell Mews, with particular regard to outlook and daylight.

### Planning Background

3. The appeal site is within part of the densely-developed historic core of Hertford and comprises a courtyard area at the rear of frontage buildings along Fore Street, reached through an archway entrance between Nos 71 and 83. It is one of a number of historic rear courtyards along this street. The site was previously used by a veterinary practice and the largest building, occupying the western side, was approved<sup>1</sup> for conversion to three dwellings. This part of the development was nearing completion at the time of my visit. The remainder of the site was still under construction and the appellant has submitted plans showing this as approved to provide small, private outside living areas at the entrances to each of the three residential units, with individual parking bays adjacent.

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<sup>1</sup> Council reference 3/15/0258/FUL.

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4. These approved plans show the remaining eastern side of the site to be hard surfaced for access and vehicle manoeuvring space, some of which would be provided by the removal of a smaller single-storey building in the north-east corner of the site. This building has now been removed and had housed the reception and treatment rooms for the original veterinary practice. The building had been set forward of the tall rear wall of the site, where there had been a dog run behind, onto which the modern three-storey housing development to the north at Bridewell Mews closely abuts.
5. Prior to the approved residential development, an earlier scheme for four dwellings on this site has been refused by the Council and a subsequent appeal<sup>2</sup> dismissed, which had included a dwelling in the north-east corner of the site where the reception/treatment building then stood. This current appeal relates to a proposal to provide a fourth and single-storey dwelling within this north-east corner, with the associated re-arrangement of the internal courtyard.

### **Reasons**

#### *Living conditions for future occupiers*

6. The introduction of a fourth unit would result in a cramped and contrived arrangement of closely juxtaposed parking spaces and small, mostly irregularly-shaped outside living spaces without privately defined areas for each unit. These areas would be adjacent to a small vehicle turning area which would appear to require a number of movements to allow a car to turn and leave the site. The main east-facing ground-floor windows of the completed but unoccupied three units, serving main habitable rooms, would look out onto closely adjacent car parking spaces, and, in the case of the northern unit, directly across to the lounge window of the proposed fourth dwelling. This arrangement would consequently offer poor quality, un-secluded outlooks from all the dwellings, providing unacceptable living conditions for future occupiers.
7. The proposed fourth unit would have two bedrooms either side of the front door on its southern side, with high-level windows offering poor outlook. There would be minimal private space at the front of this dwelling where the two bedrooms would be close to the adjacent turning area and parking spaces, with the resulting disturbance to occupiers that would arise from their use. The lounge windows of the fourth unit would have oblique views of parking spaces and overlook the lounge of the existing unit opposite, across a hard surfaced communal area which would offer no private garden or seclusion for either dwelling.
8. I have considered the case made by the appellant and, whilst agreeing that high-density residential development would in principle be appropriate in this town centre location, do not consider that the new housing in Bridewell Mews and Providence Place, including the relationship of the latter with the smaller cottage style terrace at Nos 85-89, provide any material support to this proposal which should be considered on its own, individual merits. This proposal would provide a poor outlook for each of the four units, all lacking any significant private outside space. These undefined open areas would be interrupted by a prominent turning area and car parking spaces, where the

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<sup>2</sup> APP/J1915/A/14/2223864

parking and manoeuvring of vehicles would be inconvenient and cause disturbance to residents.

9. Policy HSG7 of the East Herts Local Plan Second Review 2007 (LP) requires infill housing development, where permitted, to be well-sited in relation to the remaining surrounding buildings and not to appear obtrusive or over intensive. The proposed fourth dwelling on this site, and the re-arranged open space, parking and turning areas, would provide a cramped and over-intensive development overall, and would conflict with this policy. This arrangement would not respect the amenity of future occupants and consequently conflict with the aims of LP Policy ENV1. The scheme would not satisfy the core principles in the National Planning Policy Framework to always seek to secure high quality design and a good standard of amenity for all existing and future occupants of land and buildings.

#### *Character and appearance*

10. The new dwelling recreates the pitched-roof design of the former reception/treatment building and provides a flat-roofed extension to the rear of this, surrounded by a parapet wall just below the front ridge height. The result is a building of little architectural merit. However, the Council has found it would have little impact upon the Conservation Area, thereby preserving its character and appearance. Given that this building would be built up to and replace high walls and be surrounded by taller buildings, and be inconspicuous from views through the access from Fore Street, there would be little visual harm to the character and appearance of the area generally. There would consequently be no material conflict with the aims of LP Policy ENV1 in this regard.

#### *Living conditions of neighbouring occupiers*

11. The parapet wall of the new dwelling would rise up to around the height of the present timber fence above the rear boundary wall, beyond which is the ground-floor kitchen window and adjacent outside patio area to 1 Bridewell Mews. This neighbouring occupier has not raised an objection to this proposal. Compared to the impact the existing wall with fence above has on daylight to and outlook from these parts of this neighbouring dwelling, the proposed dwelling would provide adequate respect to the amenity of any future occupants. Consequently this scheme would result in no material conflict with the aims of LP Policy ENV1 and retain acceptable living conditions for any future neighbouring occupiers of No 1.

#### **Conclusions**

12. However, for the reasons set out, this proposal would not provide acceptable living conditions for future occupiers of the appeal development as proposed, with regard to offering reasonably good quality outlooks, conveniently-sized and personally useable outside living spaces and convenient and undistruptive arrangements for the manoeuvring and parking of vehicles. Consequently, having taken into account all other matters raised, I conclude that the appeal should be dismissed.

*Jonathan Price*

INSPECTOR

## Appeal Decision

Site visit made on 21 March 2017

**by Michael Evans BA MA MPhil DipTP MRTPI**

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

**Decision date: 7 April 2017**

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**Appeal Ref: APP/J1915/D/17/3169030**

**31 Brickendon Green, Brickendon SG13 8PB**

- 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 Winpost Limited against the decision of East Herts Council.
  - The application Ref 3/16/2417/HH was refused by notice dated 8 December 2016.
  - The development proposed is described on the planning application form as a 'two storey side extension, single storey rear extension and new dormer with internal alterations'.
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### Decision

1. The appeal is dismissed.

### Preliminary matters

2. The biodiversity consultee, Hertfordshire Ecology (HE) has raised matters which were not addressed in the Council's report or in the representations made on behalf of the Appellant. In the interests of fairness the main parties have been given the opportunity to comment on this issue.
3. The description of development given on the application form refers to a single storey rear extension. This can more accurately be described as a first floor extension, as stated on the Council's decision notice and on the appeal form.

### Main issues

4. The main issues in this appeal are:
    - Whether the proposed development amounts to inappropriate development in the Green Belt for the purposes of the National Planning Policy Framework (The Framework) and the development plan.
    - Whether the proposal would preserve or enhance the character or appearance of the Brickendon Conservation Area, within which the site is located.
    - The implications of the proposal for biodiversity, having regard to Government policy in Circular 6/2005 Biodiversity and Geological conservation – Statutory obligations and their impact within the planning system.
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## **Reasons**

### **Green Belt**

5. The appeal concerns a semi-detached dwelling located within the Green Belt where Government policy in the Framework identifies development that would not be inappropriate. The extension or alteration of a building is not inappropriate provided that it does not result in disproportionate additions over and above the size of the original building. East Herts Local Plan Second Review, April 2007, Policy GBC1 identifies limited extensions to existing dwellings as not being inappropriate in the Green Belt.
6. Ground and first floor extensions to the dwelling at the appeal site were permitted by the Council in 2010 but have not been built and the permission has expired. There is no evidence of any other enlargement and so the property, as existing, can reasonably be considered to comprise the original dwelling for the purpose of applying Green Belt policy in the Framework.
7. The Council indicates that the floor area of the existing dwelling would be increased by about 60%. However, The Framework places no specific threshold on any increase in size and my attention has not been drawn to any development plan or other Council policies that seek to do so. In these circumstances considering whether there would be disproportionate enlargement must be a matter of judgement.
8. The length of the extension to the side would only be about half of that of the existing dwelling. It would also be no higher and project no further rearwards or forwards than the existing property. The rear dormer addition would be a fairly small feature with a significant area of uncovered roof slope in the side extension around it. The first floor extension would be built on the existing cat-slide roof, being set back from its ground floor level eaves and significantly below the main ridge. The dormer and first floor addition would also have hipped roofs, further limiting their relatively modest bulk.
9. In these circumstances, I consider that the proposal would not result in disproportionate enlargement of the original dwelling, while also comprising limited extensions. It is therefore concluded that the proposal would not be inappropriate development in the Green Belt in the terms of the Framework and development plan.
10. The Council also contends that there would be a loss of openness to the Green Belt and refers to the increase in footprint of 33 sq m. However, the identification of enlargement that would not be disproportionate in the Framework and limited extensions in the development plan as not being inappropriate represents an implicit acknowledgement that such development would not be considered detrimental to the openness of the Green Belt.
11. I have considered the representations of the Appellant in relation to the Council's approach to the effect on the Green Belt, having regard to Local Plan Policy ENV5, planning permissions granted at other sites at Brickendon Green and on appeal at no. 42 Brickendon Lane. However, I have found the development to be acceptable in relation to Green Belt policy in the Framework and Policy GBC1 anyway.

### **Conservation Area**

12. The fairly small pitched roof dormer in the east facing elevation would contrast with the fairly wide flat roofed dormer extension in the attached dwelling at no. 30. The first floor extension above the catslide would also not reflect any similar feature of the adjoining property. However, despite not matching the neighbouring house, these features would be fairly modest in size, forming particularly subordinate features. The proposal would result in the pair of semis having broadly similar lengths due to a previous side extension to no. 30. While acceptable in itself, I do not consider this a significant benefit as the overall building has a fairly balanced form anyway due to the hipped roof ends of each dwelling.
13. As a result, there would be no detrimental impact on the architectural quality of the host dwelling and pair of properties, or in relation to the Conservation Area as a whole. However, I am not persuaded that the development is of such high quality that they would be enhanced. While the character and appearance of the Conservation Area would not be enhanced it would, nevertheless, be preserved. There would be no conflict with Government policy in the Framework, where it is indicated that great weight should be given to the conservation of designated heritage assets.

### **Biodiversity**

14. The comments of HE raise matters concerning the potential effect on Protected Species and the need for a Bat survey. Despite the Council not considering this issue in its report, not requesting a Bat survey and there being no biodiversity reason for refusal, this is an important material consideration to which I must have regard.
15. In Circular 6/2005 it is stated that, "it is essential that the presence or otherwise of protected species, and the extent that they may be affected by the proposed development, is established before the planning permission is granted, otherwise all relevant material considerations may not have been addressed in making the decision. The need to ensure ecological surveys are carried out should therefore only be left to coverage under planning conditions in exceptional circumstances, with the result that the surveys are carried out after planning permission has been granted. However, bearing in mind the delay and cost that may be involved, developers should not be required to undertake surveys for protected species unless there is a reasonable likelihood of the species being present and affected by the development".
16. Neither of the main parties consider that there is a reasonable likelihood of Bats being present. The Appellant criticises the lack of more detail in relation to the information from HE regarding the presence of Bats in the area and says there is no evidence of them being recorded at the appeal property, while the Council considers it unlikely that the building has potential as a roost.
17. Nevertheless, HE indicate that the property is in a rural location close to semi-natural habitats, including scrub, grassland, woodland, ponds and drains. Despite the absence of more detail, the evidence of the relevant consultee is that there are records of Bats and Great Crested Newts in the area. In relation to Great Crested Newts it is suggested that measures should be taken during construction to suitably safeguard them. The expert advice of HE is that bats

will roost in buildings if conditions are suitable and I do not accept the Council's assertion that this is unlikely in this instance.

18. I consider that on the basis of the expert evidence, there is a reasonable likelihood of Bats being present. I take this view even though there is no specific record of their presence at the appeal site itself and it would be the purpose of a survey to establish this. Moreover, because of the significant modification that would occur to the existing roof, if Bats are present they may well be affected. Even if HE's assessment is solely desktop based, as the Council suggests, it is, nevertheless, the only expert evidence available to me on this matter.
19. The Appellant refers to planning permissions elsewhere in the vicinity and the appeal decision at no. 42 Brickendon Lane where there is no mention of Bats. I do not have the Council's reports on these cases and details of who was consulted but I also note that in this instance there is no reference in the report to this matter. In any event, I must consider this appeal on its own merits and based on the evidence available to me.
20. It has not been shown that there are any exceptional circumstances in this case and dealing with the matter by means of a condition would not be acceptable. I conclude that there is conflict with Circular 6/2005 due to the lack of a Bat survey, which should be carried out prior to the granting of permission. In the absence of such a survey it will not have been possible to ascertain the likely impact on Bats. As a result the interests of biodiversity would potentially be harmed, even if the effect on Great Crested Newts could be suitably addressed by a condition.

### ***Conclusion***

21. The proposal would have no adverse effect on the Green Belt or the Conservation Area. However, it would not be acceptable having regard to the interests of biodiversity and Government policy in Circular 6/2005. Taking account of all other matters raised, it is therefore determined that the appeal fails.

*M Evans*

INSPECTOR



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## Appeals Decision

Site visit made on 2 March 2017

**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: 12 April 2017

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**Appeal A Ref: APP/J1915/C/16/3157342**

**Appeal B Ref: APP/J1915/C/16/3157343**

**The Cottage, Green End, Dane End, Ware, Hertfordshire SG12 0NY**

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
  - The appeals are made by Mr Craig Stevens and Mrs Joanna Stevens against an enforcement notice issued by East Hertfordshire District Council.
  - The notice was issued on 28 July 2016.
  - The breach of planning control as alleged in the notice is the erection of an unauthorised two storey rear extension.
  - The requirement of the notice is: remove the unauthorised two storey rear extension as hatched in red on the attached plan PD1.
  - The period for compliance with the requirement is 6 Months.
  - Appeal A is proceeding on the grounds set out in section 174(2)(a) and (f) of the 1990 Act. Appeal B is proceeding on the ground set out in section 174(2)(f) of the 1990 Act. Since the prescribed fees have not been paid within the specified period for Appeal B, the appeal on ground (a) and the application for planning permission deemed to have been made under section 177(5) of the Act as amended in relation to that appeal have lapsed.
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### Summary of Decision

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

### Costs Application

2. An application for costs was made by Mr Craig Stevens and Mrs Joanna Stevens against the decision of East Hertfordshire District Council. This application is the subject of a separate Decision.

### Preliminary Matter

3. 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 does not state when the six month period starts. The period for compliance must not begin before the notice has taken effect and there is nothing within the notice to suggest that the period begins 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.
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## **Ground (a) and the deemed application for planning permission**

### *Main issue and policy background*

4. The main issue is the effect of the unauthorised extension on the character and appearance of the main property and the surrounding area.
5. The appeal site is in an area designated in Policy GBC2 and the Proposals Map of the East Herts Local Plan Second Review 2007 (LP) as Rural Area Beyond the Green Belt. Policy GBC3 restricts planning permission in such areas to, among other matters, limited extensions or alterations to existing dwellings in accordance with LP Policy ENV5.
6. Policy ENV5 requires extensions to dwellings to be of a scale and size that, taken on its own or together with other extensions, do not disproportionately alter the size of the original dwelling or intrude into the openness or rural qualities of the surrounding area. The reasoned justification (RJ) for this policy includes that the Council is concerned about the effect of extensions on the character and appearance of an existing dwelling, including in relation to adjoining dwellings and the wider area.
7. In addition LP Policy ENV1 requires development to be designed to a high standard to reflect local distinctiveness. The policy also requires development to respect living conditions of neighbouring occupiers.
8. Although these LP policies pre-date the National Planning Policy Framework (Framework) they are in my view consistent with the aims of high quality design espoused in that document, in particular section 7, and are accorded significant weight.
9. The draft East Herts District Plan has only recently been submitted for independent examination. I have considered relevant draft policies but as there is no certainty they will remain as drafted their weight is slight.

### *Reasons*

10. The appeal site is bounded by the gardens of a small cluster of cottages whilst to the south-east it is adjacent to open countryside. Since it was originally erected, the host dwelling has been altered and extended to a significant degree.
11. A previous appeal decision<sup>1</sup> refused permission to add an upper floor to the existing single storey rear projection from the main section of the house. The unauthorised two-storey extension is located at the rear to one side of the house. It is broadly comparable in size to the previous appeal proposal, being narrower but over two storeys. The decision is a material consideration in this appeal. The Inspector noted that the proposed extra gross floor area, taken with other extensions that have occurred, would increase the floor area of the building to over twice its size when first converted to a dwelling. He concluded that this would be a disproportionate increase, contrary to LP Policy ENV5.
12. It is accepted by the appellants that the roof of the constructed two-storey rear extension does not comply with the plans submitted with the application for a Lawful Development Certificate (LDC) that was granted in 2015 under Ref 2/14/2308/CL. However they suggest that there is no significant difference as,

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<sup>1</sup> APP/J1915/D/10/2139562

having amended the roof pitch from a mono to a dual pitch design, the development is more in keeping with the roofscape of the existing house.

13. It is also suggested that in any event the rear extension as built would benefit from permission granted by the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO) save that, as is now accepted, the extension has been erected with a depth of 3.5m from the rear elevation of the original dwellinghouse. This breaches the limitation in Class A.1(h)(i) of Part 1 of Schedule 2 to the GPDO that the enlarged part of the dwellinghouse, having more than a single storey, must not extend beyond the rear wall of the original dwellinghouse by more than 3m.
14. The extension would also breach the limitation set out in Class A.1(d) that the height of the eaves of the part of the dwellinghouse enlarged, improved or altered must not exceed the height of the eaves of the existing dwellinghouse. From the drawing provided by the appellants that is attached to the notice, it is evident that the eaves of the extension are higher than those of the existing dwelling. This position now appears to be acknowledged by the appellants who in their final comments state that the eaves height should be reduced by 0.6m.
15. The increase in depth of the extension represents slightly more than 16% of the depth that would have been tolerated as permitted development, with a commensurate increase in the bulk of the building at ground and first floor levels. Taken with the alterations to the roof, the differences between what has been built and what might be permitted, in my judgement add significantly to the disproportionate effect of the extension.
16. The overall design of the extension as I saw it has resulted in a prominent and overpowering addition to the main dwelling. There has been a material increase in footprint and volume from the original, which taken with the previous additions to the property, amount to a disproportionate increase over and above the size of the original dwelling, detracting considerably from its character and appearance, contrary to the aims of LP Policy ENV5.
17. I turn to the effect of the extension on the wider area. The main house is in a large plot and the extension is a considerable distance from the boundaries, however the building maintains a commanding presence in the locality.
18. The Inspector in the previous appeal decision found that although the main building "is located towards the centre of a large plot of land it has become a large structure which has a substantial urbanising effect, and which diminishes the openness and rural qualities of the area". I have read or seen nothing in this appeal that causes me to disagree with that view. The extension only serves to detract further from the rural openness of the surroundings.
19. Part of the RJ to Policy ENV5 which restricts extensions in rural areas, relates to the need to maintain supplies of smaller properties. The appellants rightly point out that previously permitted extensions have established the house as a 4 bedroomed property. However it is clear from the RJ, as from the policy itself, that disproportionate additions constitute inappropriate development, whether or not there is an effect on housing supply in the district. This aspect of the policy is neutral upon, and does not positively support the appellants' case.

*Other Matters*

20. The materials used reflect those used in some parts of the dwelling as already extended and I do not consider that there would be conflict with LP Policy ENV6 in that regard.
21. The concerns of interested persons have been considered, including those alleging overshadowing of the garden of Chauffeurs Cottage. However from what I saw during my visit I am satisfied that the separation distances involved between the properties are not such that the extension causes significant loss of sunlight or daylight as to be oppressive to the neighbouring residents.

*Conclusion on ground (a)*

22. I conclude that the two-storey rear extension, taken together with previous extensions to the property has resulted in a disproportionate addition to the original dwellinghouse that causes substantial harm to the character and appearance of the host dwelling. Its increased size, bulk and massing, as compared with what might be erected under permitted development rights, materially detracts from the character and appearance of the main house. In addition the development has caused harm in terms of its detrimental effect on the rural openness of the locality.
23. The harm caused fundamentally conflicts with the aims of LP Policies GBC3 and ENV5 described earlier. It would also fail to comply with the aims in Policy ENV1 and the National Planning Policy Framework, in particular Paragraph 17, of securing in all development a high standard of design.
24. Accordingly the appeal fails on ground (a).

**Ground (f) – that the steps required to be taken are excessive**

25. The issue on this ground is whether the steps required by the notice exceed what is necessary to remedy the breach of planning control, or, as the case may be, to remedy any injury to amenity caused by the development. The aim of the notice in requiring complete removal of the extension, is clearly to remedy the breach of planning control pursuant to s173(4)(a) of the Act.
26. For the reasons I have described it is inappropriate to grant planning permission for the extension as erected. It is suggested that the notice should require the extension to be altered to reduce its depth to 3m to bring it under the provisions of the GPDO and the roofline altered to lower the eaves height by 0.6m. The dual pitched roof would be retained but it is not fully explained how its appearance in terms of degree of pitch and/or the overall height would alter as a result of the reduction in depth of the extension. In addition some changes to fenestration details, for instance the upper floor window openings might be required as envisaged by the appellants, but no details are provided.
27. The alternative remedy put forward lacks clear details, and is not an obvious solution to remedy the breach of planning control identified in the enforcement notice. If a notice is issued to remedy a breach of planning control, it is not appropriate on an appeal on ground (f) to explore whether lesser steps would achieve the alternative purpose of remedying injury to amenity. Once the notice is complied with the appellants might seek an alternative solution whether by a planning application by or relying on permitted development rights.

**Overall Conclusion**

28. For the reasons given above I conclude that the appeals should not succeed. I shall uphold the notice with a correction and refuse to grant planning permission on the deemed application.

**Formal Decision**

29. It is directed that the enforcement notice be corrected by inserting after "Months" the wording "after this notice takes effect". Subject to this correction the appeals are dismissed and the enforcement notice is upheld. Planning permission is refused on the application deemed to have been made under s177(5) of the 1990 Act as amended.

*Grahame Kean*

INSPECTOR

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## Costs Decision

Site visit made on 2 March 2017

**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: 12 April 2017**

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### **Costs application in relation to Appeals Ref: APP/J1915/C/16/3157342 and 3157343**

#### **The Cottage, Green End, Dane End, Ware, Hertfordshire SG12 0NY**

- 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 Mr Craig Stevens and Mrs Joanna Stevens for an award of costs against East Hertfordshire District Council.
  - The appeals were made against an enforcement notice alleging the erection of an unauthorised two storey rear extension.
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#### **Decision**

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

#### **Submissions of the Applicants**

2. The application is for a full award of costs.
3. The Council acted unreasonably in serving the applicants with a copy of the enforcement notice without offering the opportunity to apply for planning permission to retain the "as built" extension.
4. The applicants also offered to engage with the Council by considering how the property could be altered to allow retention of the rear extension with no net gain to volume on the site, or to comply with the permitted development legislation but the Council declined to engage with any such options.
5. As a result the applicant has suffered undue stress and expense in the appeal process which could have been avoided.

#### **Submissions of the Council**

6. The Council's practice is not to invite applications to retain development where, as was considered in this case, there is unlikely to be a favourable outcome. An application could always have been submitted in which case a fee would still have been payable by the applicants.
  7. No options were presented to the Council for alterations to the property. The applicants at any time could have altered the extension so as to comply with the permitted development legislation but it is not open to Council by way of an enforcement notice to direct an extension be built to a given specification.
  8. Weight was given to the possibility that a rear extension could be built in this location but the Council acted properly in considering the degree of harm caused by the development. Consequently the Council behaved reasonably.
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## **Reasons**

9. Circular 3/2009 has been replaced by advice contained in the Planning Practice Guidance (PPG). It 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.<sup>1</sup> 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.<sup>2</sup>
10. In the Appeal Decision I found that the differences between what might be permitted development and the unauthorised extension were not minimal or insignificant as claimed. The submitted correspondence shows that the Council did engage with the applicants and clarified that it was open to them to submit plans for an amended scheme to determine its acceptability. However no clearly articulated alternative development was submitted or agreed upon that would have prevented the appeal being made.
11. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated.

*Grahame Kean*

INSPECTOR

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<sup>1</sup> Paragraph: 030 Reference ID: 16-030-20140306

<sup>2</sup> Paragraph: 048 Reference ID: 16-048-20140306