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## Appeal Decisions

Site visit made on 18 December 2017

by **Peter Rose BA MRTPI DMS MCM**

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

Decision date: 8<sup>th</sup> January 2018

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### **Appeal A Ref: APP/J1915/Y/17/3179142**

#### **Little Thatch, Mill Lane, Anstey, SG9 0BL**

- The appeal is made under section 20 of the Planning (Listed Buildings and Conservation Areas) Act 1990 against a refusal to grant listed building consent.
  - The appeal is made by Catherine Lewis/Dr G Goymour against the decision of East Herts Council.
  - The application Ref: 3/17/0470/LBC, dated 20 February 2017, was refused by notice dated 19 April 2017.
  - The works proposed are to construct a single storey oak-framed extension with fully hipped roof to flank wall of west facing gable, offset from front elevation of host building and partially abutted to the N/W rear extension.
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### **Appeal B Ref: APP/J1915/W/17/3179148**

#### **Little Thatch, Mill Lane, Anstey, SG9 0BL**

- 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 Catherine Lewis/Dr G Goymour against the decision of East Herts Council.
  - The application Ref: 3/17/0469/HH, dated 20 February 2017, was refused by notice dated 19 April 2017.
  - The development proposed is to construct a single storey oak-framed extension with fully hipped roof to flank wall of west facing gable, offset from front elevation of host building and partially abutted to the N/W rear extension.
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## **Decisions**

1. **Appeal A** and **Appeal B** are each dismissed.

## **Main issues**

2. The main issues are:

(a) the effect of the proposed works upon the special architectural or historic interest of Little Thatch, a Grade II listed building and, in particular, whether the works would preserve the building or its setting or any features of special architectural or historic interest which it possesses, and;

(b) the effect of the proposed works upon the character or appearance of the Anstey Conservation Area (the Conservation Area) and, in particular, whether the scheme would preserve or enhance its character or appearance.

## **Reasons**

*Listed building*

3. The appeal site comprises an extended and detached thatched cottage set within an expanded plot. The site occupies a relatively exposed and elevated position at the junction of two local roads. It forms part of a modest cluster of buildings of varying forms and lies adjacent to relatively open land to the north and south.
4. The List Entry Description, dating from 1984, refers, amongst other things, to a seventeenth century house or earlier of timber framed construction and to a half hipped thatched roof and two eyebrow dormers at eaves level. The building was substantially damaged by fire in 2003, however, with only some of the rear wall structure at ground level surviving, and has since been rebuilt to reflect its historic form<sup>1</sup>.
5. Prior to the fire, the original scale of the dwelling had already been extended and altered as detailed in the appellant's *Design Statement*. These works included a number of additions and alterations to the rear, and expansion of the curtilage to make for a larger plot.
6. The significance of Little Thatch as a building of special architectural or historic interest relates to its heritage contribution as a traditional thatched roof rural cottage of originally more modest scale. Externally, this significance is expressed through its impressive vernacular, thatched form, and is particularly evident in views of its principal elevation from the south and in its western elevation to the side.
7. A single storey extension is proposed to the side, western elevation in order to provide a kitchen in-keeping with the needs of the existing enlarged dwelling and to improve associated access and circulation within this part of the house.
8. The proposal seeks to be consistent with the authentic replica cottage created following the fire, and would reflect vernacular architecture and traditional building techniques and materials.
9. The extension would be some 4.275 x 3.5 metres in plan, would be set back from the main front building line, and would display a hipped roof, hand-made clay tiles, English oak timber and feather-edged weather boarding. A new larger window would be created to the western elevation of the kitchen. Further boundary planting is also indicated<sup>2</sup>.
10. A front facing central window would be disguised behind oak louvres to create a simple rural façade. The central extension's existing downpipes would disappear from view, and the scheme would partially conceal a modern study/cloakroom extension behind.
11. The works would be confined to the western side of the building, and I note that none of that elevation survived the fire intact<sup>3</sup>. There would be some removal of internal non-original studwork, but the scheme would involve no significant loss of historic fabric, and the plan form of the existing house would remain largely unaffected.
12. Previous extensions have taken place mainly to the rear of the building, and the building has expanded well beyond its original form as a relatively small

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<sup>1</sup> Page 5 of Appellant's Design Statement and page 7 of Grounds of Appeal

<sup>2</sup> Page 11 of Design Statement

<sup>3</sup> Page 7 of Grounds of Appeal

- rural cottage to its current composition as a 4-bedroom house. The Council's calculation suggests that the cottage may already be twice the size of the original dwelling<sup>4</sup>, but I also note uncertainties raised by the appellant regarding the original form and earlier history of the house. Either way, I am satisfied the dwelling has been substantially extended over time.
13. The architecture of the existing extensions contrasts with the original form and design of the house but, due to the more secluded and enclosed positions of those elevations mainly to the rear, does not detract unduly from overall historic views of the house itself.
  14. The principal frontage is largely unaffected by the architecture of the rear extensions and, along with various internal features, encapsulates the significance of the building's historic form and design. The western side elevation, whilst not original, has a relatively plain and neutral form which very much complements the front façade and the building's overall significance, and contributes positively to wider public views in its elevated setting from adjacent roads and beyond.
  15. Notwithstanding its recessed position, relatively modest scale and vernacular style, the scheme would significantly increase the perceived width of the historically important front elevation. Further, even allowing for a degree of informality and spontaneity which may sometimes accompany incidental rural built form, the extension would appear as a relatively random addition to the building. The front timber louvres would also not relate well to the fenestration of the main elevations, and would be accompanied by extensive glazing within the rear elevation inconsistent with the original building.
  16. Hence, I find the proposal would add a conspicuous visual presence to otherwise relatively simple and uncluttered elevations and which serve to reinforce the wider historic form and design of the house. By reason of its scale and position, the scheme would thereby appear as a relatively discordant and prominent addition. It would also create a building yet further removed from the more limited scale of its historic form.
  17. Whilst I appreciate the appellant's suggestion that the importance of this house may, in part, relate to its ability to demonstrate how rural buildings develop historically, any such development must still have due regard to an asset's original architectural and historic significance. The reconstructed dwelling remains authentic in what it represents and displays architectural and historic characteristics consistent with its status.
  18. Section 16 of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the Act) places a duty upon the decision-maker, in considering applications for listed building consent, to have special regard to the desirability of preserving the listed building and any features of special architectural or historic interest which it possesses. A similar duty relating to planning permission is set out at section 66. There is a clear presumption in these duties that preservation is desirable, and I find that the special interest of Little Thatch as a Grade II listed building would be harmed in that regard.
  19. I therefore conclude that the proposed works would fail to preserve the special architectural and historic interest of Little Thatch as a Grade II listed building.

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<sup>4</sup> See third page of Council report in relation to Appeal B

Further, I find that the scheme would not accord with the development plan and, in particular, with Policy GBC3, Policy ENV1, and Policy ENV5 of the East Herts Local Plan Second Review April 2007 (the Local Plan). Amongst other things, these policies seek to limit extensions in the Rural Area Beyond the Green Belt so as not to disproportionately alter the size of the original dwelling or its character or appearance, and to reflect local distinctiveness. The Council's **Appeal B** decision notice also refers to Policy BH5 but this relates to unlisted buildings in Conservation Areas.

20. Policy ENV6 is also referred to in the Council's report of **Appeal B**, although not in its decision, but remains relevant. It states, amongst other things, that extensions should be to a design matching or complementary to the original building and its setting.
21. I consider these development plan policies to be broadly consistent with the *National Planning Policy Framework* (the Framework) which recognises that heritage assets, such as listed buildings and Conservation Areas, are an irreplaceable resource and requires them to be conserved in a manner appropriate to their significance<sup>5</sup>. The Framework further states that when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation<sup>6</sup>.

#### *Conservation Area*

22. Section 72 of the Act places a duty upon the decision-maker in considering applications for, amongst other things, listed building consent and planning permission, to pay special attention to the desirability of preserving or enhancing the character or appearance of Conservation Areas.
23. The appeal site lies at the northern end of the Conservation Area and, from my inspection of the site and its surroundings, the character and appearance of the local area would appear to reflect an open, largely undeveloped rural form but punctuated by a variety of historic buildings of local vernacular design. I also note that the appellant's *Heritage Impact Assessment* draws attention to the diversity of traditional buildings found in Anstey<sup>7</sup>, and that the Council's evidence refers to the adjacent roads as comprising locally historic routes<sup>8</sup>.
24. Whilst positioned away from the boundary and partly concealed by planting, the extension would still be visible in public views and would so have a limited impact upon the character and appearance of the wider Conservation Area. The visual harm to the listed building described would be reflected in such public views. This would have implications for the significance of the Conservation Area such that the scheme would fail to preserve or enhance its character or appearance in accordance with the duty under section 72.
25. I therefore find the existing contribution of the appeal site to the Conservation Area would be diminished, and that the scheme would not meet the expectations of the Act.

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<sup>5</sup> Paragraph 126

<sup>6</sup> Paragraph 132

<sup>7</sup> First paragraph

<sup>8</sup> See email from Simon Wood dated 23 March 2017

26. As with my findings in relation to the listed building, the proposal would similarly not accord with the same expectations of the Framework. Government policy also places great importance upon good design and upon the significance of local distinctiveness<sup>9</sup>.
27. I therefore conclude that the proposed works would harm the character and appearance of the Anstey Conservation Area and would generally not accord with the policies of the development plan already referred to above.

### **Other matters**

28. The appellant draws attention to various other listed buildings in the local area, in East Herts, and elsewhere, where extensions have been permitted<sup>10</sup>, and I am generally mindful of the importance of consistency in decision-making<sup>11</sup>. Reference is also made to other, larger scale housing developments elsewhere<sup>12</sup>. Whilst noting such references, each scheme would be fact and context sensitive and the particular reasons for the conclusions I have reached in this instance remain as described.
29. I also note reference made to a number of policies in the Council's emerging East Herts Draft Plan 2016 and which express not dissimilar aims to those set out in the development plan policies already described.
30. I note the background to the scheme and, in particular, the history of discussions with the Council, and various assessment of other options<sup>13</sup>.
31. Reference is made to the possible archaeological value of the site<sup>14</sup>, but no objection is raised by the Council in this regard, and I agree this matter could be dealt with by appropriate conditions should the scheme otherwise be found to be acceptable.
32. I have considered all other matters raised, but I find nothing of sufficient weight, individually or cumulatively, to dissuade me from the conclusions I have reached on the main issues.

### **Planning balance**

33. I find that the special interest of the designated assets would be diminished such that the proposed scheme would fail to preserve the listed building and would fail to preserve or enhance the character or appearance of the Conservation Area.
34. The Framework makes a distinction between a proposal causing substantial harm to the significance of a designated heritage asset and a scheme that would lead to less than substantial harm<sup>15</sup>. The government's *Planning Practice Guidance* (the Guidance) notes that works that are moderate or minor in scale are likely to cause less than substantial harm or no harm, although even minor works have the potential to cause substantial harm<sup>16</sup>. In this case, I find that the works would cause less than substantial harm, and the Framework requires

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<sup>9</sup> Paragraphs 56 and 60

<sup>10</sup> See Grounds of Appeal

<sup>11</sup> See, for example, *North Wiltshire DC v Secretary of State for the Environment* (1993)

<sup>12</sup> Page 10 of Grounds of Appeal

<sup>13</sup> See Design Statement

<sup>14</sup> See Simon Wood's email of 23 March 2017

<sup>15</sup> Paragraph 134

<sup>16</sup> Paragraph ID 18a-017-20140306

such a scale to be weighed against the possible public benefits of the scheme, including securing optimum viable use<sup>17</sup>.

35. There is no evidence that the existing dwelling could not continue as a viable family home in the absence of these particular works. The public benefits would principally involve creation for the local housing stock of a dwelling providing improved living conditions, and I acknowledge the enhanced quality of accommodation which would be created. Nonetheless, I find no overall public benefits sufficient to outweigh the greater harm which would arise from the scheme as a whole to the listed building and to the Conservation Area.
36. The duties arising under sections 16, 66 and 72 of the Act make strong presumptions against proposals incurring harm and thereby not preserving a designated asset. This is because the desirability of preservation is a consideration to which special attention must be paid as a statutory duty, and must be regarded as matters of considerable importance and weight in any planning balance. I find that the scheme would fall short of the expectations of these duties.
37. Further, I find the proposal would not accord with the development plan as a whole, and nor with the expectations for conserving and enhancing the historic environment, and of sustainable development<sup>18</sup>, set out in the Framework.

### **Conclusion**

38. For the above reasons, **Appeal A** and **Appeal B** are each dismissed.

*Peter Rose*  
INSPECTOR

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<sup>17</sup> Paragraph 134

<sup>18</sup> Paragraph 6



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## Appeal Decisions

Site visit made on 18 December 2017

by **Peter Rose BA MRTPI DMS MCM**

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

Decision date: 8<sup>th</sup> January 2018

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### **Appeal A Ref: APP/J1915/Y/17/3179142**

#### **Little Thatch, Mill Lane, Anstey, SG9 0BL**

- The appeal is made under section 20 of the Planning (Listed Buildings and Conservation Areas) Act 1990 against a refusal to grant listed building consent.
  - The appeal is made by Catherine Lewis/Dr G Goymour against the decision of East Herts Council.
  - The application Ref: 3/17/0470/LBC, dated 20 February 2017, was refused by notice dated 19 April 2017.
  - The works proposed are to construct a single storey oak-framed extension with fully hipped roof to flank wall of west facing gable, offset from front elevation of host building and partially abutted to the N/W rear extension.
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### **Appeal B Ref: APP/J1915/W/17/3179148**

#### **Little Thatch, Mill Lane, Anstey, SG9 0BL**

- 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 Catherine Lewis/Dr G Goymour against the decision of East Herts Council.
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## **Decisions**

1. **Appeal A** and **Appeal B** are each dismissed.

## **Main issues**

2. The main issues are:

(a) the effect of the proposed works upon the special architectural or historic interest of Little Thatch, a Grade II listed building and, in particular, whether the works would preserve the building or its setting or any features of special architectural or historic interest which it possesses, and;

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## **Reasons**

*Listed building*

3. The appeal site comprises an extended and detached thatched cottage set within an expanded plot. The site occupies a relatively exposed and elevated position at the junction of two local roads. It forms part of a modest cluster of buildings of varying forms and lies adjacent to relatively open land to the north and south.
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- rural cottage to its current composition as a 4-bedroom house. The Council's calculation suggests that the cottage may already be twice the size of the original dwelling<sup>4</sup>, but I also note uncertainties raised by the appellant regarding the original form and earlier history of the house. Either way, I am satisfied the dwelling has been substantially extended over time.
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  19. I therefore conclude that the proposed works would fail to preserve the special architectural and historic interest of Little Thatch as a Grade II listed building.

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<sup>4</sup> See third page of Council report in relation to Appeal B

Further, I find that the scheme would not accord with the development plan and, in particular, with Policy GBC3, Policy ENV1, and Policy ENV5 of the East Herts Local Plan Second Review April 2007 (the Local Plan). Amongst other things, these policies seek to limit extensions in the Rural Area Beyond the Green Belt so as not to disproportionately alter the size of the original dwelling or its character or appearance, and to reflect local distinctiveness. The Council's **Appeal B** decision notice also refers to Policy BH5 but this relates to unlisted buildings in Conservation Areas.

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21. I consider these development plan policies to be broadly consistent with the *National Planning Policy Framework* (the Framework) which recognises that heritage assets, such as listed buildings and Conservation Areas, are an irreplaceable resource and requires them to be conserved in a manner appropriate to their significance<sup>5</sup>. The Framework further states that when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation<sup>6</sup>.

#### *Conservation Area*

22. Section 72 of the Act places a duty upon the decision-maker in considering applications for, amongst other things, listed building consent and planning permission, to pay special attention to the desirability of preserving or enhancing the character or appearance of Conservation Areas.
23. The appeal site lies at the northern end of the Conservation Area and, from my inspection of the site and its surroundings, the character and appearance of the local area would appear to reflect an open, largely undeveloped rural form but punctuated by a variety of historic buildings of local vernacular design. I also note that the appellant's *Heritage Impact Assessment* draws attention to the diversity of traditional buildings found in Anstey<sup>7</sup>, and that the Council's evidence refers to the adjacent roads as comprising locally historic routes<sup>8</sup>.
24. Whilst positioned away from the boundary and partly concealed by planting, the extension would still be visible in public views and would so have a limited impact upon the character and appearance of the wider Conservation Area. The visual harm to the listed building described would be reflected in such public views. This would have implications for the significance of the Conservation Area such that the scheme would fail to preserve or enhance its character or appearance in accordance with the duty under section 72.
25. I therefore find the existing contribution of the appeal site to the Conservation Area would be diminished, and that the scheme would not meet the expectations of the Act.

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<sup>5</sup> Paragraph 126

<sup>6</sup> Paragraph 132

<sup>7</sup> First paragraph

<sup>8</sup> See email from Simon Wood dated 23 March 2017

26. As with my findings in relation to the listed building, the proposal would similarly not accord with the same expectations of the Framework. Government policy also places great importance upon good design and upon the significance of local distinctiveness<sup>9</sup>.
27. I therefore conclude that the proposed works would harm the character and appearance of the Anstey Conservation Area and would generally not accord with the policies of the development plan already referred to above.

### **Other matters**

28. The appellant draws attention to various other listed buildings in the local area, in East Herts, and elsewhere, where extensions have been permitted<sup>10</sup>, and I am generally mindful of the importance of consistency in decision-making<sup>11</sup>. Reference is also made to other, larger scale housing developments elsewhere<sup>12</sup>. Whilst noting such references, each scheme would be fact and context sensitive and the particular reasons for the conclusions I have reached in this instance remain as described.
29. I also note reference made to a number of policies in the Council's emerging East Herts Draft Plan 2016 and which express not dissimilar aims to those set out in the development plan policies already described.
30. I note the background to the scheme and, in particular, the history of discussions with the Council, and various assessment of other options<sup>13</sup>.
31. Reference is made to the possible archaeological value of the site<sup>14</sup>, but no objection is raised by the Council in this regard, and I agree this matter could be dealt with by appropriate conditions should the scheme otherwise be found to be acceptable.
32. I have considered all other matters raised, but I find nothing of sufficient weight, individually or cumulatively, to dissuade me from the conclusions I have reached on the main issues.

### **Planning balance**

33. I find that the special interest of the designated assets would be diminished such that the proposed scheme would fail to preserve the listed building and would fail to preserve or enhance the character or appearance of the Conservation Area.
34. The Framework makes a distinction between a proposal causing substantial harm to the significance of a designated heritage asset and a scheme that would lead to less than substantial harm<sup>15</sup>. The government's *Planning Practice Guidance* (the Guidance) notes that works that are moderate or minor in scale are likely to cause less than substantial harm or no harm, although even minor works have the potential to cause substantial harm<sup>16</sup>. In this case, I find that the works would cause less than substantial harm, and the Framework requires

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<sup>15</sup> Paragraph 134

<sup>16</sup> Paragraph ID 18a-017-20140306

such a scale to be weighed against the possible public benefits of the scheme, including securing optimum viable use<sup>17</sup>.

35. There is no evidence that the existing dwelling could not continue as a viable family home in the absence of these particular works. The public benefits would principally involve creation for the local housing stock of a dwelling providing improved living conditions, and I acknowledge the enhanced quality of accommodation which would be created. Nonetheless, I find no overall public benefits sufficient to outweigh the greater harm which would arise from the scheme as a whole to the listed building and to the Conservation Area.
36. The duties arising under sections 16, 66 and 72 of the Act make strong presumptions against proposals incurring harm and thereby not preserving a designated asset. This is because the desirability of preservation is a consideration to which special attention must be paid as a statutory duty, and must be regarded as matters of considerable importance and weight in any planning balance. I find that the scheme would fall short of the expectations of these duties.
37. Further, I find the proposal would not accord with the development plan as a whole, and nor with the expectations for conserving and enhancing the historic environment, and of sustainable development<sup>18</sup>, set out in the Framework.

### **Conclusion**

38. For the above reasons, **Appeal A** and **Appeal B** are each dismissed.

*Peter Rose*  
INSPECTOR

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<sup>17</sup> Paragraph 134

<sup>18</sup> Paragraph 6



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## Appeal Decision

Site visit made on 9 January 2018

**by Mrs H M Higenbottam BA (Hons) MRTPI**

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

**Decision date: 30 January 2018**

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**Appeal Ref: APP/J1915/Y/17/3181202**

**73 High Street, Hunsdon, Ware, Hertfordshire SG12 8NJ**

- The appeal is made under section 20 of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the Act) against a refusal to grant listed building consent.
  - The appeal is made by Corina Chatfield against the decision of East Hertfordshire District Council.
  - The application Ref 3/17/0662/LBC, dated 15 March 2017, was refused by notice dated 9 May 2017.
  - The works proposed are demolition of single storey extension and replacement part single storey, part two storey rear extension.
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### Decision

1. The appeal is dismissed.

### Main Issue

2. The main issue in this case is whether the proposed works would preserve the Grade II listed building known as 73 High Street Hunsdon (listed as 73 and 75 High Street, Hunsdon Stores and 77 High Street) or any features of special architectural or historic interest that it possesses.

### Reasons

#### *Significance of the heritage asset*

3. The appeal property is the southernmost dwelling in a group of what were four houses and is now three dwellings. This group dates from the 17<sup>th</sup> century with the southern end probably being earlier. The group are timber framed, clad with white weatherboarding over a redbrick plinth. The roof is red clay tile with a gable at the northern end but half hipped at the southern end. The roof is pierced with dormers, one of which is in the rear roof slope of the appeal property.
4. The statutory list description suggests that the building originated as a 3 unit central chimney house with two storey parlour at the south end and a floor inserted in the remainder with 2 dormers to light the upper floor. It retains that general appearance. No 73 has a low flush box sash window of 12/12 small panes under the eaves. To the rear of No 73 is a catslide outshut, weather boarded with a cement tile roof, which abuts the gable projection of No 75.

5. In recognition of its special architectural and historic interest as an entity the cottages are listed as a group. As such, and due to their prominent location, they also make a positive contribution to the special interest and significance of the Hunsdon Conservation Area. This is also recorded in the list description.
6. The appellant's Historic Building Appraisal and Impact Assessment (appellant's Assessment) challenges the interpretation of the buildings origins in the list description. The appellant's Assessment concludes that the building appears to have originated as a barn and not from domestic origin and that *'it might even be suggested that the rear cross-wing of the neighbouring property is in fact the original midstrey, though this could only be confirmed by further investigation'*.
7. The origins of the listed building are not clear and the appellant's conclusions may well be correct, as there are elements that would suggest that it may have been a barn that was then converted to dwellings.
8. The list description makes no mention of the rear outshut, but this of itself is not determinative as the description is intended to be largely for identification purposes. There is a slightly jowled post in the south-west corner of the outshut. A boarded partition divides the space into a kitchen and bathroom. Within the bathroom the timber structure of the wall to the rear projection of No 75 and the back wall of the historic core of No 73 are visible and comprise sole plates and regular but weathered studwork. The former rear wall of No 73 retains wattle grooves. From what I saw, including the weathering, it seems that the outshut is a secondary addition.
9. Whatever the true origins of the building the key attributes of special interest and significance of the building and group in my view, lie in the timber framing, simple form and age of the structure.

*The proposal*

10. The proposal is to demolish the existing single storey rear outshut and replace it with a part single and part two storey rear extension. In addition it is proposed to insert new partitions and create an additional opening at ground floor level. A second staircase would be created in the new extension to serve the first floor extension. The depth of the single storey element would be greater than the outshut it would replace.

*The effect of the proposed works*

11. The outshut is a later addition and is somewhat diminished by the use of concrete tiles. The proposal would result in the loss of the jowled post in the outshut and I note in the appellant's Assessment it is stated that this is likely to be re-deployed.
12. The single storey element would be deeper than the existing outshut and would abut the sheds at No 75. As a result, the roof pitch of the single storey element would be shallower than the existing outshut and would appear out of place. The double staggered gable within the catslide would introduce a complex rear roof form.

### *Considerations*

13. I accept that the demolition of the outshut would have a low to moderate impact on the significance of the listed building. However, its replacement with a deeper projection, with a shallower pitch to the catslide would harm the significance of the listed building. Although the appellant indicates on plan and the application form that tiles would match existing roof tiles, it is not clear whether that is the red clay tiles of the main roof or the concrete tiles of the outshut. Moreover, I am not satisfied that the shallow pitch of the catslide would allow appropriate clay tiles to be used. This adds to my concerns about the proposal. Furthermore, the complex roof form of the double staggered gables would be at odds with, and harm, the simplicity of the form of the listed building.
14. In the light of the above, I therefore find that the proposal would cause harm to the significance of No 73 and the group which form the listed building. Although I consider this harm would be less than substantial, it is nonetheless a level of harm to which significant weight should be attached. The proposal would fail to preserve the listed building or its features of special architectural and historic interest contrary to section 16(2) of the Act. Furthermore, it would fail to accord with the expectations of paragraph 132 of the National Planning Policy Framework (the Framework) which states that great weight should be given to the conservation of a designated heritage asset and any harm requires clear and convincing justification.

### *Planning Balance*

15. In accordance with paragraphs 133 and 134 of the Framework it is for the decision maker having identified harm to the designated heritage asset, to consider the magnitude of that harm. In this case I conclude this should be considered as less than substantial when considered in the context of the asset as a whole. In such circumstances the Framework requires that any identified harm is weighed against any public benefits the works might secure.
16. The proposed works would remove the damp outshut and improve substandard kitchen plumbing. This may result in benefits by maintaining the listed building, and thus ultimately be public benefits, but those benefits are modest and do not outweigh the harm I have identified
17. It is my statutory duty to consider the effects of the proposal on the character and appearance of the Hunsdon Conservation Area. The Council did not identify harm to the Conservation Area. However, in my view, it follows that if the special interest of a listed building within a conservation area, prominently located such as in this case, is materially diminished in a manner that is clearly visible then the character and appearance of the conservation area as a whole is similarly incrementally harmed. While this harm is less than substantial in the conservation area as a whole it would nevertheless fail to preserve it and would thus be in conflict with the requirements of section 72 of the Act.
18. Whilst the appellant has not commented on this matter, and I appreciate that my view differs from that of the Council, little would be gained from seeking further views given that the harmful impact on the listed building would, on its own, be determinative for the compelling reasons set out above.

19. A similar scheme was granted planning permission and listed building consent in 2008<sup>1</sup>. The permission and consent have now lapsed and cannot be implemented. I have nothing before me to indicate the basis on which the scheme was supported, but the Council record no specialist advice on the scheme was received at that time. I have assessed the proposal as it is today, in the context of the relevant guidance applicable now and on the evidence before me. I do not find the existence of that expired consent justifies the proposal before me which I have found to be harmful.

### **Conclusions**

20. I conclude that the works would fail to preserve the special architectural or historic interest of this Grade II listed building. In the absence of any public benefits to outweigh this harm I conclude the works would also conflict with the Framework. For these reasons, and having considered all matters raised, I conclude the appeal should fail.

*Hilda Higenbottam*

Inspector

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<sup>1</sup> 3/08/0271/FP & 3/08/0270/LB





## Appeal Decision

Site visit made on 13 December 2017

by **John Morrison BA (Hons) MSc MRTPI**

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

Decision date: 10<sup>th</sup> January 2018

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**Appeal Ref: APP/J1915/W/17/3183096**

**Land to the north of Pepper Hill House, Cautherly Lane, Great Amwell SG12 9RH**

- 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 Rose against the decision of East Hertfordshire District Council.
  - The application Ref 3/17/1099/FUL, dated 10 May 2017, was refused by notice dated 17 July 2017.
  - The development proposed is the erection of a two storey 4 bed dwelling and detached garage and repositioned vehicular access to the north of the existing residence of Pepper Hill House.
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### Decision

1. The appeal is dismissed.

### Application for costs

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

### Main Issues

3. There are four main issues. These are:
  - Whether or not the proposed development would be inappropriate development in the Green Belt;
  - The effect of the proposed development on the openness of the Green Belt;
  - The effect of the proposed development on the character and appearance of the area; and
  - If the proposed development would be inappropriate development, whether the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations so as to amount to the very special circumstances necessary to justify it.

## Reasons

### *Inappropriate Development in the Green Belt*

4. Both the Framework<sup>1</sup> and the development plan<sup>2</sup> set out that the construction of new buildings in the Green Belt should be regarded as inappropriate development. Inappropriate development is, by definition, harmful to the Green Belt. Paragraph 89 of the Framework sets out exceptions to this. One such exception is the limited infilling or the partial or complete redevelopment of previously developed sites (brownfield land), whether redundant or in continuing use (excluding temporary buildings), which would not have a greater impact on the openness of the Green Belt and the purpose of including land within it than the existing development.
5. There are therefore, as far as I read it, two distinct strands to this exception. Limited infilling and previously developed land. It is upon both that the proposed development is predicated. I shall take each in turn.
6. There is an implicit limitation to the infilling exception. Critically that it is limited and as a single dwelling I could not convincingly argue that the proposed development would not be limited. There is little additional assistance from either the development plan or the Framework as to what is to be taken as infilling. Only that, with regard to saved Policy OSV2, it is small scale and is not harmful in a number of respects. Infilling to me suggests such being the filling of something of a defined and limited gap such as a vacant part of a street scene or noticeable empty area between existing built development. The development of a more substantial, open and mostly undeveloped area of land that happens to be in close proximity to or between other buildings (such as in the case of the appeal site a substantial garden), would not automatically be construed as infilling. This, for me, is where the distinction lies.
7. The appeal site is the extensive grounds to a private dwelling. It contains mature landscaping and trees, bounded by a mix of brick walls, fencing and hedges. It is laid mostly to grass. Close to the proposed dwelling is an outdoor swimming pool, a single storey building associated with it, a raised terrace and a tennis court. There is another dwelling and it's associated, also substantial, curtilage to the north. Pepper Hill House appears to be the first of three dwellings in extensive grounds to the west side of Cautherly Lane, running north to Hillside Lane. Scattered low density development lies to its opposite side. The development of a large and open garden in this context, which happens to fall between one dwelling and its neighbour, would not read to me as being infill in the context of my above reasoning. It would, in essence, be stretching the definition of infill development too far. To clarify therefore, I would not consider the appeal scheme to be infilling for the purposes of the Framework.
8. The appellant has offered up a case law example<sup>3</sup> which, for the purposes of the Framework's identification of what constitutes previously development land, investigates the definition of it in the Framework's glossary. Previously developed land is defined as "*land which is or was occupied by a permanent*

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<sup>1</sup> The National Planning Policy Framework 2012

<sup>2</sup> Saved Policy GBC1 East Herts Council Local Plan Second Review 2007

<sup>3</sup> C1/2016/1664 Dartford Borough Council and the Secretary of State for Communities and Local Government (17 March 2017)

*structure, including the curtilage of the developed land.....This excludes.....land in built up areas such as private residential gardens....”*

9. The case law provided by the appellant establishes that, since private residential gardens features as one of a 'such as' list that follows the identification of land in built up areas, then it concerns land within private residential gardens, in built up areas and accordingly excludes them from the definition of previously developed land. Separating them from land within private residential gardens that is not within a built up area. Therefore, one can legitimately conclude, following the findings of the identified case law example, that private residential gardens within built up areas are excluded from the definition of previously developed land.
10. The question therefore remains, is the appeal site a private residential garden within a built up area or outside of one? The appeal site is a large garden, related to an existing dwelling. Whilst Great Amwell is not a traditional nucleated settlement arranged around an historic core, the appeal site, the dwellings around it and the way in which the lane to access it connects to the village means it could be legibly read as a part of Great Amwell.
11. The adopted development plan does not provide for a settlement envelope which is unhelpful. I note from the evidence that the proposed replacement plan locates the appeal site outside of a defined envelope but this is still emerging as policy. The appellant's declared objection to this indicates to me that they too see the appeal site as being part of the village. Indeed, in their communications to the Council during the consideration of the planning application, the appellant considered the appeal site to be within the village and in their submission maintains this to be the case.
12. I accept that there is a difference in terms in coming to a view on this. On the one hand we have a village which is an entity, identifiable as itself which can have areas of open space as much as it can have buildings. And a built up area which could be taken to be a collection or cluster of built form alone. To my mind however, the term built up area in a planning policy context is a means to differentiate between a settlement and what may be the more open and undeveloped countryside. In essence, it is for me to consider whether the appeal site falls within the built extremities of the village which is, for the purposes of identification, the built up area.
13. The appeal site is part of a more open area of land, and an area of low density built form generally. Nonetheless, there is nothing before me to dissuade me from considering it part of the village and thus part of its, mainly, built up area. On the edge of the village the appeal site may be, but a legible part of it, it is nevertheless.
14. With this in mind, the appeal site is a residential garden but one within a built up area. Taking into account the case law example, these are excluded from the definition of previously developed land. Taking this together with my earlier findings, I do not consider that the appeal site, and the development thereof, would fall within the exceptions of paragraph 89. The proposed development would therefore be inappropriate and thus, in accordance with paragraph 87, harmful to the Green Belt by definition.

### *The Openness of the Green Belt*

15. Openness is an essential characteristic of the Green Belt. Openness has both a visual and spatial aspect. The latter can be taken to mean the absence of built form. In addition, and notwithstanding my findings above regarding one of the exceptions to the construction of new buildings not being inappropriate, paragraph 89 also sets out this exception would only be not inappropriate, in effect, so long as it would not have a greater impact on the openness of the Green Belt and the purpose of including land within it than the existing development.
16. The appeal site is a garden and the proposed development would be in close proximity to the ancillary residential uses that I have alluded to above. It would be somewhat secluded inside the garden owing to mature landscaping and its overall extent. Nevertheless, the dwelling would be relatively large, over two storeys and be developed on the garden, as well as, and not instead of, the existing development. As something wholly new, and substantial in scale, the proposed dwelling would therefore result in a net reduction in the Green Belt's openness. Whilst in the visual sense this would be a contained effect for the reasons I have mentioned, in terms of the spatial aspect of the Green Belt's openness this would be unavoidable.
17. Taking into account the above, and even if one were to disagree on my findings of whether or not the proposed development would be inappropriate on the grounds of if it were to be infill or the development of previously developed land, it would clearly harm the openness of the Green Belt and also therefore be inappropriate by virtue of this fact.
18. Harm to openness would be, in this case, in addition to that caused by the proposed development's inappropriateness.

### *Character and Appearance*

19. The Council do not appear to object to the appeal scheme in design terms and there is nothing compelling before me to disagree. The mainstay of the Council's concerns in this respect however stem from the alterations that would be made to the mature boundary landscaping as it falls along Cautherly Lane. This would be managed to create a revised point of access off the lane for the proposed dwelling. Mature overhanging trees and verges define the character and appearance of what is a single width unlit lane, garnering a sense of seclusion and narrowness.
20. The removal of some of the cover to the lane facing boundary would alter its appearance at the point of change in the short term. However, this would be a contextually small area of the lane that would change, and marginally so in my view. Moreover, I am content that a reasonably worded planning condition could require additional enhancement landscaping to the lane boundary to assist in assimilating the new access into the lane going forward. I am therefore satisfied that the proposed development would not be harmful to the character or appearance of the area.
21. In respect of this main issue therefore, there would not be conflict with Policy OSV2 of the Local Plan<sup>4</sup> or section 7 of the Framework. These Policies seek to ensure that, amongst other things, new development is of a high quality and

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<sup>4</sup> East Herts Council Local Plan Second Review 2007

contextually appropriate design and appearance and respects the character and quality of areas.

### *Other Considerations*

22. Pepper Hill House is a grade II listed building. The dwelling would be erected within its curtilage and thus its effect on the building and its setting must be considered.
23. Pepper Hill House appears to have its origins from the 18<sup>th</sup> century but from the evidence suggests it could be an early 19<sup>th</sup> century reconstruction. It is arranged over two storeys and has an imposing effect in its plot. The light finished stucco exterior supports a series of sharp and projecting gable roofs with cusped and pierced bargeboards. Other features such as octagonal corner turrets, tall square chimneys and lattice work to the casement windows show many traditional features are retained. As well as the quality of its build and architecture, the building appears to have some historical significance to the village with it said to have been a former coaching inn on the route between Cambridge and London.
24. I have no additional details before me as to the building's historic curtilage but it does seem clear from the plans that the proposed dwelling would be located some considerable distance away, in and amongst more modern domestic additions such as the tennis court, raised terrace and outdoor swimming pool as well as a pool house. Between the house and the proposed site is also a large detached garage with rooms above served by dormer windows. The evidence before me does allude to the historic curtilage having been much smaller and the more modern development further away adds credence to this assumption. The resulting dwelling would be wholly independent from Pepper Hill House in access and curtilage terms.
25. The appeal site is not within the Conservation Area boundary. This has been confirmed by the Council and I have been provided with a corroborative plan. I note the views of local residents in regard to the effect the proposed development would have on the character of Cautherly Lane as it is outside of the appeal site and from which a new access would be created for the dwelling. I have acknowledged in my earlier findings that there would be some effect here but that the lane would still be sufficiently landscaped to retain its overall character and appearance and that any successful scheme could, theoretically, provide for enhancement landscaping to go some way to mitigating any effect the new access would have.
26. With these factors in mind, I would conclude that the proposed development would not be unduly harmful to the listed building, its significance or setting or indeed the Conservation Area. Thus the scheme would, in respect of this particular matter, follow the approaches advocated by section 12 of the Framework which seeks to ensure, amongst other things, the appropriate protection and management of the historic environment.

### **Conclusions**

27. It would seem that the Council are currently unable to demonstrate the supply of housing sites that is required by the Framework. This would therefore, following on from paragraph 49, engage the tilted balance for the presumption in favour of sustainable development that is set out by paragraph 14. There

are two limbs to the tests of paragraph 14 (in respect of the tilted balance), one being that planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies taken in the Framework as a whole; or specific policies in the Framework indicate development should be restricted.

28. The appeal scheme would provide for a single dwelling which would be positive for an undersupply albeit owing to its scale such a contribution would be small in the grand scheme. The additional benefits associated with it would therefore be equally limited. I have found harm in respect of the effect that the proposed development would have on the Green Belt, harm to which substantial weight<sup>5</sup> should be ascribed. When placing the limited nature of the scheme's benefits alongside this harm therefore, I can only conclude that, in this case, they would be significantly and demonstrably outweighed. In any event, the effect of development on the Green Belt in terms of inappropriateness and openness are clearly defined policy objectives of the Framework and, evidently and taking into account my findings, such a policy would indicate that the proposed development should be restricted. Accordingly, the appeal scheme would not be sustainable development for which the presumption in favour would apply.
29. I have found harm to the Green Belt in terms of both the proposed development being inappropriate and that it would cause harm to the spatial aspect of its openness. As I have set out above, this harm should be ascribed substantial weight. Whilst there are other considerations before me on which I have found the appeal scheme to be acceptable, this represents a lack of harm which is neutral and consequently cannot be used to weigh against harm. As a consequence, the very special circumstances that are required to justify development in this light have not been demonstrated.
30. For the above reasons, the proposed development would conflict with saved Policies GBC1 and OSV2 of the Local Plan and section 9 of the Framework. Together, and amongst other things, these policies seek to protect the Green Belt from harmful development in the interests of maintaining its openness.
31. Whilst having regard to all other matters raised, it is for these reasons that the appeal is dismissed.

*John Morrison*

INSPECTOR

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<sup>5</sup> Paragraph 88 of the Framework



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## Costs Decision

Site visit made on 13 December 2017

**by John Morrison BA (Hons) MSc MRTPI**

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

**Decision date: 10<sup>th</sup> January 2018**

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### **Costs application in relation to Appeal Ref: APP/J1915/W/17/3183096 Land to the north of Pepper Hill House, Cautherly Lane, Great Amwell SG12 9RH**

- 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 and Mrs Rose for a full award of costs against East Hertfordshire District Council.
  - The appeal was against the refusal of an application for planning permission for the erection of a two storey 4 bed dwelling and detached garage and repositioned vehicular access to the north of the existing residence of Pepper Hill House.
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### **Decision**

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

### **Reasons**

2. Planning Practice Guidance (PPG) advises that, irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary expense in the appeal process.
3. It also makes it clear that costs cannot be claimed for the period during the determination of the planning application although all parties are expected to behave reasonably throughout the planning process. Although costs can only be awarded in relation to unnecessary or wasted expense at the appeal or other proceeding, behaviour and actions at the time of the planning application can be taken into account in determining whether or not costs should be awarded.
4. There are five strands to the applicant's case for an award for costs. These are: a) preventing or delaying development which should clearly be permitted, having regard to it being in accordance with the development plan, national policy and any other material considerations; b) a failure to produce evidence to substantiate each reason for refusal on appeal; c) vague, generalised or inaccurate assertions about the proposal's impact, which are unsupported by any objective analysis; d) acting contrary to, or not following, well-established case law; and e) not determining similar cases in a consistent manner. I shall take each matter in turn, in the same order although some do overlap.
5. I have set out my own views on the planning merits of this case in a separate decision. Having regard to how the Council have approached the scheme and made their own conclusions, they appear to have done so with regard to the

development plan and indeed the national policy situation as it is set out by the Framework<sup>1</sup>. They have explained their stance in this context in what I would consider to be sufficient if not extensive detail. With this in mind, I cannot agree with the applicant that in so doing the Council have prevented or delayed development which should clearly (my emphasis) have been permitted. Green Belt policy is very restrictive since it seeks to achieve strict objectives of principle in keeping land permanently open. Development is only permitted in certain, very special, circumstances. Circumstances which, in the Council's view were not prevalent in this case.

6. My views aside, the Council have explained reasons why they do not consider the appeal scheme to be infill development. I acknowledge the applicant does not agree with this which is arguably par for the course in an appeal situation. Nonetheless, they have sought to draw a distinction between what may be infill and the situation of the appeal site. In addition, the Council do not state conclusively that infill must only be where there is development on three sides, recognising the Local Plan's guidance on the matter.
7. The applicant refers to two other schemes, named as Longridge and The Firs. Both are referred to in the Council's evidence and they have explained why, as well as the details of each case being available, they do not relate precisely to the appeal scheme. The former appears to have been a series of extensions which is not mutually comparable with one for the erection of a dwelling. My reading of that appeal decision finds that the Inspector in that case<sup>2</sup> considered the appeal site to be within the village and that the policy provisions in respect of disproportionate extensions would not apply. In the case of the latter, the Council set out why they considered it to be infill. In this case with reference to the logic of the site's immediate surroundings.
8. Contrary to the applicant's assertion, the Council have referred to the current housing supply situation in their evidence. Indeed it is mentioned in the delegated officer report. In so doing, the Council recognise a limited benefit arising out of a single dwelling and accordingly infer that it would not outweigh the harm that it would cause. They appear therefore to have taken account of this matter as a material consideration.
9. On the matter of brownfield land, and whether indeed the appeal site could be considered such, the Council's treatment is light. There is no obvious engagement with the case law to which the applicant refers in their evidence. Their costs rebuttal sets out that they have detailed it in the report but I can find no explicit mention of it. This is obviously regrettable given that it is somewhat integral to the applicant's case.
10. Be this as it may, the Council do say that the scheme would not meet with any of the other points in paragraphs 89 or 90 of the Framework. These are the detailed exceptions to inappropriate development in the Green Belt. This is again light touch and more akin to a box ticking exercise but it nonetheless suggests that the issue of brownfield land was in the mind of the decision maker. The detailed setting out of the case law in the appeal statement of behalf of the applicant does not add anything that wasn't presented before and the Council clearly had other concerns with regard to the scheme even if they had conceded, which implicitly they did not, on the matter of brownfield land.

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<sup>1</sup> The National Planning Policy Framework 2012

<sup>2</sup> PINS reference APP/J1915/D/14/2217104



Despite the light treatment of this matter, I cannot see how therefore the Council have caused the applicant wasted time or additional expense in recycling the argument of the site being brownfield land for the benefit of the appeal.

11. On the matter of evidence to substantiate each reason for refusal, the applicant refers to the Council's allegation of harm to the openness of the Green Belt and the character and appearance of the lane. On the matter of openness, the Council's delegated report sets out that the amount of development, in terms of its floor area, volume and height would exceed the amount of built development on the site. In this context, there would inevitably be an adverse impact on the openness of the Green Belt. The Council do accept in their evidence that the site is somewhat secluded in visual terms and thus the visual aspect of the Green Belt may not be as obviously affected. However, just because a given development may have a restricted visual effect, its very presence would still reduce openness given that it also has a spatial aspect to it as I have set out in my separate decision. Whilst not explicit, the Council appear here to have made a similar distinction.
12. The Council have also set out that the design of the dwelling and its suitability for the plot in appearance terms would be acceptable in its street scene context. This is however taken in isolation as a consideration of the design alone on its own merits and it does not automatically follow that for this reason its harm to the Green Belt would reduce. In essence, the comments quoted by the applicant in their claim for costs refer purely to the design of the dwelling and not its effect on the Green Belt. The two matters are separate considerations. Recognising however that the design of a dwelling in terms of its size, volume and floor area in this case would harm the openness of the Green Belt.
13. With regard to alleged vague or inaccurate assertions about the proposals' impact, the applicant refers to the consideration of openness as sweeping. I do not agree. Again, perhaps the use of language in the Council's report is not as tight as it should be, but it nonetheless spells out that the extent of additional building would be substantial in context and that by virtue of this it would, by its very being, reduce the openness of the Green Belt.
14. The applicant downplays the Council's view on the effect of the access on the character and appearance of the lane since it is not in the Conservation Area. Be this as it may, this does not absolve the decision maker from conducting an assessment of the visual effects of this aspect of the scheme. Whilst I have disagreed on this matter in my separate decision, the Council is at liberty to form a view on how the removal of some boundary green cover may have a harmful effect on the appearance of the lane and its existing characteristics. They seem to have done so with regard to comparing the existing context with how the proposed access would sit with it.
15. As I have alluded to above, the Council have given light touch to the matter of case law in their evidence. This is with regard to both the interpretation of brownfield land and the matter of their housing supply situation. Consequently I cannot agree with the applicant that they have wilfully refused to acknowledge it as a consideration. In addition, given their other concerns I cannot see how, even if they had explicitly mentioned it, it would have lead them to a different conclusion given the other harms they have identified.

Thus, if it was the applicant's wish, the scheme would still have ended up at appeal. The same arguments on both matters have been recycled in the applicant's evidence for my benefit. I cannot agree therefore that the Council's actions have lead the applicant to unnecessary expense or wasted time.

16. I have noted above that the Council made reference to and formed a view on the relevance of other examples of development in the area. This is in the context of the applicant's allegation that the Council have not determined the appeals scheme consistently. I am satisfied, based on what I have seen that the Council have drawn distinctions between these two examples and the appeal scheme. Such that they would not justify the granting of planning permission at the appeal site, for the appeal scheme. This highlights that each development proposal is considered on its own merits.
17. For the reasons I have set out above, I find that unreasonable behaviour resulting in unnecessary expense, as described in PPG, has not been demonstrated and that an award of costs is not justified in this case.

*John Morrison*

INSPECTOR



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## Appeal Decision

Site visit made on 22 November 2017

by **J Gilbert MA (Hons) MTP MRTPI**

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

Decision date: 9<sup>th</sup> January 2018

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**Appeal Ref: APP/J1915/W/17/3181236**

**Land at Winters Lane, Winters Lane, Walkern SG2 7NZ.**

- 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 Cadena Land Limited against the decision of East Hertfordshire District Council.
  - The application Ref 3/17/1225/FUL, dated 24 May 2017, was refused by notice dated 20 July 2017.
  - The development proposed is erection of 4 No. 4 bed dwellings comprising 2 detached and 2 semi-detached together with garaging, curtilage parking, communal bin store and landscaping plus the provision of 2 vehicular passing places along Winters Lane.
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### Decision

1. The appeal is allowed and planning permission is granted for erection of 4 No. 4 bed dwellings comprising 2 detached and 2 semi-detached together with garaging, curtilage parking, communal bin store and landscaping plus the provision of 2 vehicular passing places along Winters Lane at Land at Winters Lane, Winters Lane, Walkern SG2 7NZ in accordance with the terms of the application, Ref 3/17/1225/FUL, dated 24 May 2017, subject to the schedule of 13 conditions provided at the end of this decision.

### Application for costs

2. An application for costs was made by Cadena Land Limited against East Hertfordshire District Council. This application is the subject of a separate decision.

### Procedural Matters

3. The description of development on the application form and the decision notice refers to parking places on Winters Lane, while the description of development on the appeal form and plan 1080-066D refer to passing places. I have used the description of development on the appeal form as it more accurately represents the proposed development.
4. The Council referred to planting plans OS 1249-16.3A D (dated 19 May 2017) and OS 1249-16.3A E (dated 22 May 2017) in their decision notice. Both predate the application's submission to the Council. I have referred to OS 1249-16.3A E only as this plan is dated after OS 1249-16.3A D. OS 1249-16.3A E makes a minor amendment to the proposed hedge adjacent to the frontage of the site with Winters Lane.

## **Main Issue**

5. The main issue is the effect of the proposed development on the character and appearance of the area, including the Walkern Conservation Area and the setting of the grade II listed building at the White Lion public house.

## **Reasons**

### *Character and appearance*

6. Walkern is a largely linear village running on a roughly north-south alignment with a series of narrow lanes branching east and west off the High Street. Much of the village lies within the Walkern Conservation Area. The River Beane is situated east of the High Street. The land falls from the High Street down towards the river and rises again beyond the river. There is predominantly 20<sup>th</sup> century development to the rear of the historic core of High Street properties to both the east and west, though there is a greater level of development to the western side. To the east, the streets of residential development are shorter, with a number of fields separating the houses from the river. Beyond the village on all sides, the land largely consists of farmland crossed by trees and hedgerows. Views back into Walkern from Bassus Green Road are of a well-treed village set in countryside.
7. On the corner of the High Street and the northern side of Winters Lane, the grade II listed White Lion public house dates from the 16<sup>th</sup> century, with later alterations. Much of its importance appears to stem from its quality of external and internal architectural detail and the extent to which that detail has survived, though altered. To the rear of the public house, there is a fenced beer garden and a further rectangle of land which separates the beer garden from the appeal site, which was formerly within the same ownership as the public house. There are trees and vegetation within the rectangle of land and a row of conifers which form a hedge to the appeal site. Only glimpses of the open countryside beyond the village are visible from the rear of the public house due to the presence of vegetation on the rectangle of land and the appeal site. When standing in Winters Lane next to the public house, views down the narrow lane are limited to the vegetation on the appeal site's frontage.
8. Winters Lane runs eastwards from the High Street and crosses the River Beane before meeting Bockings and Bassus Green Road. A number of single-storey detached red and brown brick houses are situated on the lane's southern side up to the junction with Totts Lane. Views of the appeal site from the lane are limited by mature vegetation and gates along the site's frontage.
9. The appeal site consists of 2 fields adjoining Winters Lane's northern side. Apart from the vegetated site frontage, the westernmost field is surrounded on 3 sides by coniferous hedging. This field has been used for the storage of building materials for a number of years<sup>1</sup> and contains a caravan, a number of timber sheds, the remains of a brick structure, heaps of wooden pallets, hardcore, and soil. The easternmost field is more open to the surrounding fields with lower, more limited hedging and fencing between it and the fields to the north and east, and a single outbuilding. It has a low timber fence separating a paddock from the gated access.

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<sup>1</sup> 3/86/1219/EU Certificate of Lawful Development for Existing Use of the land for the open storage of building materials.

10. The proposed development comprises 2 detached and 2 semi-detached houses which would be located on the appeal site's western field. The houses would be accessed from a single vehicular access point off Winters Lane. Each house would have a detached double garage, and further parking spaces. The eastern field would provide landscaped open space. Passing places on Winters Lane would also be provided as part of the proposed development, with one located in front of the proposed houses and one situated on the frontage of the eastern field.
11. The significance of the Walkern Conservation Area is strongly informed by its pattern of development along and behind the High Street, with narrow lanes running from the High Street with areas of open space in between High Street properties and immediately behind them. The appeal site has previously been the subject of a number of planning applications and subsequent appeals. Both the 2009 and 2013 appeals<sup>2</sup> considered the character and appearance of the area and concluded that the site was a key contributor to the Conservation Area's open rural nature at the village's northern end. Since these appeals, the Council has adopted the Walkern Conservation Area Character Appraisal in December 2016, which includes a Character Appraisal Map (Map 2). Map 2 denotes a number of important open spaces to be protected. The appeal site does not fall within this group of open spaces, though the eastern field is marked as being an area of archaeological significance. Furthermore, the appeal site is not identified as being part of any important views to be protected or to contain any trees or hedgerows which contribute positively to the Conservation Area.
12. The proposed houses would be intermittently visible within the surrounding area. At close range, they would be visible from Winters Lane and the public footpath adjacent to the appeal site's eastern boundary. They would also be visible to some extent from the White Lion public house and its beer garden, and across the open land towards Church End and from the west beyond the river. While the appeal site forms part of the larger open space to the rear of the High Street, Winters Lane, the river, and Church End, intervisibility between the appeal site and surrounding land is limited by the presence of trees and other vegetation on the appeal site's boundaries. This forms a generally effective screen from the majority of public viewpoints and reduces the appeal site's openness in relation to the surrounding area. Moreover, with a detailed programme of replacement native planting and active management of proposed soft landscaping, the proposed development could provide vegetation more in keeping with its wider context than the existing coniferous hedging. This would, in my view, respect the character of the wider area and would not cause harm to the setting of the listed White Lion public house.
13. In addition to the views of the appeal site being limited by vegetation, the site remains in established use for the storage of building materials. The glimpsed views of the site from the west on Bassus Green Road are presently of a caravan and timber sheds, which are in poor condition, and heaps of pallets. Though the previous appeals make no reference to the tall hedging currently surrounding the westernmost portion of the appeal site, both make reference to the presence of building materials. As noted by the Inspector who dealt with

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<sup>2</sup> APP/J1915/A/09/2105972, decision issued 25 November 2009, and APP/J1915/A/13/2194736, decision issued 19 September 2013.

the 2013 appeal on the site, I have no reason to suppose that the site does not still have a lawful use for storage of building materials.

14. Given the current use and degraded condition of the land, I consider that residential development of the appeal site would not be more negative in its effect on the character and appearance of the area than the existing use and would not cause harm. In my view, the proposed houses would represent a neutral development which would leave the character and appearance unharmed, that is to say, preserved.
15. The Council has referred to the size, bulk and massing of the proposed houses and their garages as having a potentially significant and urbanising impact upon the site. While I recognise that the introduction of the proposed houses would represent a change in the level of development on the site, they would be set back from the lane behind the landscaping and vehicular access and would have well-proportioned rear gardens. Their alignment would be in keeping with the alignments of older properties in the Conservation Area, running parallel with the road, rather than creating a more suburban cul-de-sac arrangement as set out in the previous withdrawn application<sup>3</sup>. Furthermore, the bulk and massing of the buildings would not be out of character with residential properties on Winters Lane or the nearby High Street, which vary considerably in their proportions.
16. In terms of the proposed development's design, the proposed houses are sufficiently varied to provide some interest within the street scene, with a range of different architectural features employed on the proposed detached and semi-detached houses respectively. While the proposed development does not seek to replicate the design of the existing bungalows on Winters Lane, the proposed houses are relatively simple in design and at 2 storeys in height are generally respectful of the scale of buildings within the wider Conservation Area. Though the Council considers that they would not reflect the range and style of dwellings within the wider area, I consider that sufficient attention to detail in terms of the palette of materials put forward to address the materials condition would result in the proposed houses appearing sufficiently different from one another to support the existing variety of housing within the wider Conservation Area.
17. Access to the proposed development would be by means of an improved access opposite No 6 and 2 passing places would be installed on Winters Lane opposites Nos 4 and 12. With native hedging proposed along the site's frontage, I do not consider that the amendments to the existing access or the insertion of passing places would materially detract from the character of the area. While local residents are concerned about the opportunistic parking of vehicles within the passing places, the proposed development provides an appropriate level of on-site parking. Furthermore, I do not have any substantive evidence of parking problems within the area which would lead me to conclude that the insertion of passing places is likely to lead to parking within them.
18. In concluding on this main issue, I find that, in accordance with the expectations of the Planning (Listed Buildings and Conservation Areas) Act 1990, anticipating the development permitted, the setting of the listed building at the White Lion public house and the character and appearance of the

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<sup>3</sup> 3/16/2389/FUL.

Walkern Conservation Area would be preserved. For the same reasons, the proposed development would accord with paragraph 132 of the National Planning Policy Framework (the Framework), which confirms that great weight should be afforded to the conservation of designated heritage assets, including their setting. The proposed development would also accord with policies ENV1 and BH6 of the East Herts Local Plan Second Review April 2007 (the Local Plan).

19. Policy ENV1 states amongst other things that development will be of a high standard of design and layout to reflect local distinctiveness, and that the impact of any loss of open land on the character and appearance of the locality should be considered. Policy BH6 confirms, amongst other matters, that new developments in or adjacent to a Conservation Area will be permitted where they are sympathetic to the general character and appearance of the area, and important views within, into, and out of the Conservation Area or its setting are respected.

#### *Planning Balance*

20. The appellant has submitted evidence consisting of data from the Council's 2016 Annual Monitoring Report (AMR) which confirms that the Council is unable to demonstrate 5 year Housing Land Supply (HLS). The AMR indicates that HLS in East Hertfordshire is between 3.1 and 3.6 years with 20% buffers employed in both calculations due to past undersupply. These figures use the Sedgfield and Liverpool methods respectively, which are common approaches to establishing the level of housing supply in an area. The Council has confirmed these figures in their officer report. I have therefore had regard to the extent of the shortfall and the range of figures provided.
21. In these circumstances, paragraph 49 of the Framework applies which states that relevant policies for the supply of housing should not be considered up to date where HLS cannot be demonstrated. Paragraph 14 of the Framework states that where relevant policies are out of date, 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 whole or specific policies in the Framework indicate development should be restricted. The amount of weight to be given to development plan policies is a matter of planning judgement for the decision maker. Being out of date does not mean that a policy carries no weight.
22. Walkern is classified as a Category 1 Village where policy OSV1 of the Local Plan permits certain forms of development. As the appeal site lies directly outside the confines of the village boundary of Walkern defined by the Local Plan, policy OSV1 is not relevant in this instance. The appeal site falls within the Rural Area beyond the Green Belt where inappropriate development is restricted under policy GBC2 of the Local Plan other than for purposes set out in policy GBC3 of the Local Plan, none of which would apply to the proposed development. However, the strict application of policies GBC2 and GBC3 would prevent improvements to the existing shortfall in the supply of housing. As a result of this, I afford the conflict with them limited weight in this decision, especially as the proposed development lies immediately adjacent to the settlement boundary.
23. Reference has been made to both the pre-submission East Herts District Plan and the emerging Walkern Neighbourhood Plan, which does not allocate the

appeal site for development. I am aware that the pre-submission East Herts District Plan has been submitted for examination and has not yet been adopted. I consequently give this plan very limited weight in this instance. The pre-submission Walkern Neighbourhood Plan was recently subject to consultation and is likely to be submitted for examination in January 2018. As the Walkern Neighbourhood Plan has not yet been examined, I do not know the extent to which there are unresolved objections to the plan. Thus the amount of weight I afford to the emerging Walkern Neighbourhood Plan is also very limited.

24. Paragraph 49 of the Framework states that housing applications should be considered in the context of the presumption in favour of sustainable development. Whilst outside the settlement boundary defined in the Local Plan, this proposed development would nonetheless be located opposite existing houses and within easy walking distance of its services and facilities. Environmental benefits include the visual improvements to a site used to store building materials, improved landscaping in the form of native hedgerows, and the introduction of 2 passing places on Winters Lane. Although some reliance on the private car is to be expected for some journeys, the proposed development would provide 4 houses with the social benefits of introducing more housing suitable for families to the village, and the economic benefits of work for the local construction industry during the construction phase and greater demand for local services and facilities in the longer term. I attach modest weight to these benefits.
25. In environmental terms, the proposed development would involve the loss of a field within a wider area of fields to the rear of the High Street. I have already discussed the effect of the proposed development on the Conservation Area and the listed White Lion public house above. The intrinsic environmental qualities of the field are limited due to its existing use and its coniferous hedging. Furthermore, the eastern field would remain more open than the western field and would be subject to landscaping enhancements.
26. Land at Froghall Lane on Walkern's western side has planning permission for up to 85 homes<sup>4</sup>. While I note local residents' concerns regarding the extent of development proposed in and around Walkern and east of Stevenage, there remains an undersupply of housing within East Hertfordshire and the proposed development would contribute 4 further houses providing family accommodation to the overall requirement for the supply of housing. Although I note that the emerging Neighbourhood Plan does not identify 4 bedroom houses as being in demand in the village, I have limited information on the level of need for 4 bedroom homes across East Hertfordshire and consider that the proposed houses could assist in meeting the housing shortfall across the district.
27. Whilst the 4 houses proposed would make only a modest contribution to the supply of housing, it would nonetheless provide a positive benefit in a district where there is a shortfall in housing land supply of up to 1.9 years. The proposed development would not harm the character and appearance of the village. Therefore there would be no adverse effects in this respect to significantly and demonstrably outweigh the benefits this proposal would offer. Under the presumption in favour of sustainable development, the proposal

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<sup>4</sup> APP/J1915/W/15/3127807, decision issued 22 February 2016.



would therefore gain support through paragraph 14 of the Framework. In this case, it is a material consideration which outweighs the conflict with the development plan as a whole and indicates that planning permission should be granted for development that is not in accordance with it.

### **Other Matters**

28. Local residents have raised a range of further concerns regarding loss of vegetation and wildlife from the site, use of Green Belt land, effects on the River Beane Area of Outstanding Natural Beauty (AONB), and local roofline restrictions. Whilst I recognise the importance of maintaining the character and appearance of the area and maintaining and enhancing biodiversity, the land does not lie within either the Green Belt or an AONB as far as I am aware, and the Council has not notified me of any protected species on the site or any specific roofline restrictions in the locality. I acknowledge that there may also be some concern about the precedent effect of the proposed development. However, each application and appeal is considered on its own merits.
29. Although I note concerns about traffic congestion along the High Street, the need for heavy traffic to bypass Winters Lane, and the narrowness of Winters Lane and the damage previously done to the house at 33 High Street due to vehicles turning, I have little substantive evidence that traffic movements resulting from the proposed development would be significant enough to warrant dismissal of this appeal. Furthermore, the highways authority has not objected to the proposed development. The Council considers that the proposed development would not have a detrimental effect on the living conditions of neighbouring occupiers or the future occupiers of the appeal site, or upon the safety and operation of the surrounding highway network. Subject to conditions to address access and parking, I concur with the Council's view. Though I acknowledge concerns raised regarding the effect of the proposed development on the public footpath, I do not consider that the proposed development would impinge on the use of this footpath, which is subject to protection under separate legislation.

### **Conditions**

30. It is necessary to specify conditions confirming the approved plans to ensure certainty and require approval of the materials, and hard and soft landscaping for the proposed development in the interests of visual amenity. The Council's suggested conditions for refuse storage, boundary treatments, hard and soft landscaping, car parking, access road and driveways have been amalgamated. While the appellant does not consider a refuse storage condition necessary, the siting of the refuse storage area would indicate that it would be visible from both the houses on the appeal site and the road. Furthermore, the Council contends that insufficient space is shown for bins. As such, it is necessary that its appearance and size is controlled in the interests of visual amenity and practical use in the future. Conditions 6, 7 and 9 are necessary to ensure that appropriate vehicular access, visibility splays, and passing places are provided in the interests of highway safety.
31. It is also necessary to impose conditions relating to contamination of land and/or groundwater and a programme of archaeological work as the appeal site has previously been used to store building materials with the associated potential for contaminants to be present, and it also lies in an area of archaeological significance. Given the site's constrained highway access, I

consider it necessary to require the submission of a Construction Method Statement to ensure that the construction stage of development does not affect highway safety. This condition and the proposed condition on the operation of plant and machinery have been combined as they both aim to ensure that the impact of construction is minimised. I have restricted permitted development rights as I consider it necessary to control any potential detrimental effect of future extensions on the character and appearance of the area. Surface water drainage is conditioned to ensure that surface water from the development is managed appropriately, while the arboricultural works are also subject to a condition to ensure that retained trees are safeguarded during construction.

32. Materials and landscaping details do not need to be submitted prior to commencement of development as they are not necessary to prevent ground preparation works from taking place. However, the Construction Method Statement, site access, passing places, contamination and archaeological conditions are pre-commencement conditions as they involve elements that need to be addressed before construction works begin. I have not included conditions on ground levels or restriction of further accesses, as I do not consider these conditions necessary.

### **Conclusion**

33. At the heart of the Framework is a presumption in favour of sustainable development. I find the proposed scheme would accord with that expectation having regard to the development plan and to the Framework as a whole. For the reasons given above, and having taken account of all other matters raised, this appeal should be allowed.

*J Gilbert*

INSPECTOR

### **Schedule of 13 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 approved plans listed 1080-001 B; 1080-101 C; 1080-066 D; 1080-410 A; 1080-411 A; 1080-412; 1080-413; OS 1249-16.4D; OS 1249-16.3A E; OS 1249-16.3B D; OS 1254-16.2A B; OS 1254-16.2B B.
- 3) No development shall take place, including any works of demolition, until a Construction Method Statement has been submitted to, and approved in writing by the local planning authority. The Statement shall provide for:
  - i) phasing of the development of the site, including all highway works;
  - ii) methods of accessing the site including construction vehicle numbers and routing;
  - iii) location and details of wheel washing facilities; and
  - iv) associated areas for parking and storage of materials clear of the public highway; and
  - v) delivery, demolition, and construction working hours.

The approved Construction Method Statement shall be adhered to throughout the construction period for the development.

- 4) No development shall take place within the site shown outlined in red on the Site Location Plan 1080-001 B until a programme of archaeological work has been implemented in accordance with a written scheme of investigation which has been submitted to and approved in writing by the local planning authority. This condition will only be considered to be discharged when the local planning authority has received and approved an archaeological report of all the required archaeological works and, if appropriate, a commitment to publication has been made.
- 5) No development shall take place until a scheme to deal with contamination of land and/or groundwater has been submitted and approved by the local planning authority and until the measures approved in that scheme have been fully implemented. The scheme shall include all of the following measures unless the local planning authority dispenses with any such requirement specifically and in writing:
  - i) A desktop study carried out by a competent person to identify and evaluate all potential sources and impacts of land and/or groundwater contamination relevant to the site. The requirements of the Local Planning Authority shall be fully established before the desktop study is commenced and it shall conform to any such requirements. Copies of the desktop study shall be submitted to the local planning authority without delay upon completion.
  - ii) A site investigation shall be carried out by a competent person to fully and effectively characterise the nature and extent of any land and/or groundwater contamination and its implications. The site investigation shall not be commenced until (a) a desktop study has been completed satisfying the requirements of paragraph (i) above; (b) the requirements of the local planning authority for site investigations have been fully established; and (c) the extent and methodology have been agreed in writing with the local planning authority. Copies of a report on the completed site investigation shall be submitted to the local planning authority without delay on completion.
  - iii) A written method statement for the remediation of land and/or groundwater contamination affecting the site shall be agreed in writing with the local planning authority prior to commencement and all requirements shall be implemented and completed to the satisfaction of the local planning authority by a competent person.
- 6) Prior to the commencement of any development, full design details of the proposed vehicular access shall be submitted to and be approved in writing by the local planning authority. The development shall be undertaken in accordance with the details as approved and the access shall be completed prior to the first occupation of any dwelling.
- 7) Prior to the commencement of any development, details of the arrangements for the adoption of the proposed passing places under Section 38 of the Highways Act 1980 (as shown on plan 1080-066 D) shall have been submitted to and approved in writing by the local planning authority.
- 8) Prior to construction above slab level, samples of the external materials to be used in the construction of the development hereby permitted shall be

submitted to and approved in writing by the local planning authority.  
Development shall be carried out in accordance with the approved materials.

- 9) Concurrent with the construction of the access, visibility splays of 2.4m by 43m shall be provided and permanently maintained in each direction within which there shall be no obstruction to visibility above 600mm in height above the carriageway level.
- 10) Prior to the occupation of the dwellings, surface water drainage works shall have been implemented in accordance with details that have been submitted to and approved in writing by the local planning authority. Before these details are submitted, an assessment shall be carried out of the potential for disposing of surface water by means of a sustainable drainage system, and the results of the assessment shall be provided to the local planning authority. Where a sustainable drainage scheme is to be provided, the submitted details shall:
  - i) provide information about the design storm period and intensity, the method employed to delay and control the surface water discharged from the site and the measures taken to prevent pollution of the receiving groundwater and/or surface waters; and
  - ii) include a timetable for its implementation; and
  - iii) provide a management and maintenance plan for the lifetime of the development which shall include the arrangements for adoption by any public authority or statutory undertaker and any other arrangements to secure the operation of the scheme throughout its lifetime.
- 11) Prior to the occupation of the dwellings, details of both hard and soft landscape works shall be submitted to and approved in writing by the local planning authority. These details shall include:
  - i) boundary treatments;
  - ii) refuse storage;
  - iii) hard surfacing materials, including the access road, driveways and car parking areas; and
  - iv) soft landscaping, including proposed finished levels or contours; planting plans with schedules of plant species, plant sizes and proposed planting numbers/densities; written specifications (including cultivation and other operations associated with plant and grass establishment) and a programme of implementation.

The hard and soft landscaping works shall be carried out in accordance with the approved details before any part of the development is first occupied. The hard and soft landscaping shall be retained on site thereafter. Any trees or plants which die, become seriously damaged or diseased, or are removed, within a period of 5 years from planting, shall be replaced in the next planting season with others of similar size and species.

- 12) Notwithstanding the provisions of The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended)(or any order revoking and re-enacting that Order with or without modification), no development as specified in Schedule 2, Part 1, Classes A, B, C and E shall be erected other than that which is expressly authorised by this permission.

- 13) The Arboricultural Impact Assessment (Ref OS 1254-16-Doc1 Rvs A) submitted with the application and the recommendations contained therein shall be implemented in full.



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## Costs Decision

Site visit made on 22 November 2017

**by J Gilbert MA (Hons) MTP MRTPI**

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

**Decision date: 9<sup>th</sup> January 2018**

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### **Costs application in relation to Appeal Ref: APP/J1915/W/17/3181236 Land at Winters Lane, Winters Lane, Walkern SG2 7NZ.**

- 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 Cadena Land Limited for a full award of costs against East Hertfordshire District Council.
  - The appeal was against the refusal of planning permission for erection of 4 No. 4 bed dwellings comprising 2 detached and 2 semi-detached together with garaging, curtilage parking, communal bin store and landscaping plus the provision of 2 vehicular passing places along Winters Lane.
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### **Decision**

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

### **Procedural Matter**

2. The description of development on the application form and the decision notice refers to parking places on Winters Lane, while the description of development on the appeal form and plan 1080-066D refer to passing places. I have used the description of development on the appeal form as it more accurately represents the proposed development.

### **Reasons**

3. The national Planning Practice Guidance (PPG) advises at paragraphs 29 and 30 that, irrespective of the outcome of the appeal, costs may only 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.
4. According to paragraph 31 of the PPG, unreasonable behaviour in the context of an application for an award of costs may be either procedural in relation to the process; or substantive in relation to the issues arising from the merits of the appeal.
5. The applicant submits that the Council has acted unreasonably with regard to paragraph 49 of the PPG and the substance of the matter under appeal on 4 main grounds. Firstly, that the Council prevented or delayed development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations. Secondly, that the Council failed to produce evidence to substantiate each reason for refusal on appeal. Thirdly, that the Council made vague, generalised

- or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis. Finally, that the Council acted contrary to, or not following, well-established case law.
6. With regard to the first ground for costs, the Council referred in their officer report to the pre-submission East Herts District Plan having been submitted for examination and a pre-submission Walkern Neighbourhood Plan having been subject to consultation with the aim of submitting it for examination in January 2018. Paragraph 216 of the National Planning Policy Framework (the Framework) allows decision-takers to give weight to relevant policies in emerging plans according to a number of criteria including the stage of preparation. I afforded the emerging Local and Neighbourhood Plans very limited weight in my decision on the appeal.
  7. It was evident from the officer's report that the Council considered paragraphs 49 and 14 of the Framework in respect of the level of housing land supply within the district and the requirement to grant permission except where any adverse impacts of doing so would significantly and demonstrably outweigh the benefits. The officer's report also confirmed that the Council considered the proposed development would result in significant harm to the character of the area and that the benefits of the proposed development in terms of the provision of 4 houses and 2 passing places on Winters Lane did not outweigh the harm caused. While the balancing exercise could have been addressed more clearly and I consider that the emerging planning policies were insufficient to weigh against the appeal proposal overall, the Council was entitled to come to the decision that it did.
  8. Furthermore, while the applicant contends that the Council did not take into account the benefit of the loss of much of the land covered by a lawful development certificate for the storage of building materials, the officer report confirmed that consideration was given to this matter under the heading "The revocation of the lawful use of the site." Although I have allowed the appeal, I recognise that this is a matter of judgement. As such, the Council reached a different decision based on their consideration of the effect of residential use of the appeal site, rather than for the storage of building materials.
  9. In terms of substantiating the reason for refusal and the use of vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis, the Council did not provide an appeal statement. However, the Council's officer report is relatively detailed with a reasonable level of analysis of the relevant issues. I therefore consider that the Council was not obliged to submit an appeal statement to defend their reason for refusal, and their reliance on the original officer's report does not automatically diminish their case on the merits of the scheme or strengthen the applicant's grounds for costs.
  10. Although the Council's response to the applicant's costs claim confirms that the conservation officer did not comment on the planning application, the case officer included the conservation officer's comments made with regard to a previous withdrawn application in the officer report. As such, the applicant has highlighted the apparent difference of opinion between officers of the Council. While I acknowledge that the Council's case officer did not reach the same findings as the Council's conservation officer, the decision is one which is a matter of judgement. The case officer in this instance did not accept the

professional advice of their fellow officer and made a case for the contrary view. As such, even though I have allowed the appeal, I consider that the Council provided a reasonable basis for their position.

11. Additionally, the applicant has not provided any detailed information on how the Council's deficiencies in producing evidence to substantiate the reason for refusal resulted in them incurring unnecessary costs. No details of actual expenditure are required but the kind of expense or time should be identified in broad terms to assist the parties in settling the amount. As stated above, the Council did not prevent or delay development that should have clearly been permitted. Therefore, the applicant would have had to deal with an appeal regardless of the Council's substantiation of evidence and would have had to incur necessary costs.
12. In respect of acting contrary to, or not following, well-established case law, the applicant asserts that the first reason for refusal refers to policies which are clearly out of date and that the reason for refusal improperly fails to focus on paragraph 14 of the Framework. The applicant refers to 2 allowed appeals<sup>1</sup> for residential development at Froghall Lane and Beecroft Lane in Walkern to substantiate their concerns. While the appeal decisions provided by the applicant are capable of being material considerations in the decision-making process, they are not case law as they are not court judgments. No case law has been provided by the applicant.
13. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires planning applications to be determined in accordance with the development plan unless material considerations indicate otherwise. The Framework is an important material consideration. Therefore, I do not find that the Council acted unreasonably in terms of how they applied local policies or used the Framework as a material consideration to determine the planning application.
14. For the reasons set out above, I cannot agree that the Council has acted unreasonably in this case. As such, the applicant has not incurred unnecessary costs or wasted expense in the appeal process.

### **Conclusion**

15. I therefore conclude that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated. Therefore, no award of costs is made.

*J Gilbert*

INSPECTOR

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<sup>1</sup> APP/J1915/W/15/3127807, decision issued 22 February 2016, and APP/J1915/W/15/3138282, decision issued 18 April 2016.