



Appeal Decision

Site visit made on 30 June 2020

by Stephen Brown MA(Cantab) DipArch RIBA

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

Decision date: 21 July 2020

Appeal Ref: APP/J1915/X/20/3244345

Red Cottage, Track south from Lower Hatfield Road through Howe Green to Ashfield Farm

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is by Mr Kee against the decision of East Hertfordshire District Council.
 - The application ref. 3/19/1469/CLPO, dated 4 July 2019, was refused by notice dated 24 October 2019.
 - The application was made under section 192(1)(b) of the Town and Country Planning Act 1990 as amended (the Act).
 - The development for which a certificate of lawful use or development is sought is the erection of an outbuilding, creation of a vehicular access, creation of a hardstanding and installation of a gate.
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Decision

1. The appeal is dismissed.

Preliminary matters

2. For the avoidance of doubt, I should explain that in the context of an appeal under section 195 of the Town and Country Planning Act 1990 as amended (the Act), which relates to an application for a lawful development certificate, the planning merits of the proposed development are not relevant, and they are not therefore an issue for me to consider. My decision rests on the facts of the case, and on relevant planning law and judicial authority.

Background

3. The appeal site lies at the corner of a lane leading south from the B158 Lower Hatfield Road. Red Cottage stands in the southern part of the site with an asphalt drive leading from the access in the lane. There is a detached double garage and a glasshouse standing to the north of the house. The main garden area is planted with trees and lawn to the east and south of the house, and there is a swimming pool within a fenced compound. The northern part of the site is a paddock area with two stables buildings granted planning permission in 1984¹.
4. The proposed outbuilding would be L-shaped in plan, located near the north-eastern corner of the paddock. The leg of the L parallel to the eastern boundary would include a double garage, gym, entrance hall, shower and utility rooms,

¹ Decision notice ref. 3/84/0671/FP, dated 4 June 1984.

and a studio. It would be about 20 metres long by about 6 metres wide, increasing to about 7.5 metres wide for the double garage. The leg parallel to the northern boundary would be about 5.5 metres wide by about 10 metres long and be for a games room. I understand the footprint of the outbuilding would be between about 168 and 192 square metres², and that the footprint of Red Cottage is about 166 square metres.

Reasons

5. The main issue for me to determine is whether the Council's decision to refuse the grant of a LDC was well-founded. In that regard the principal question is whether the proposed outbuilding would be permitted development under the provisions of Classes E and F of Part 1, and Classes A and B of Part 2 to Schedule 2 of The Town and Country Planning (General Permitted Development) (England) Order 2015 as amended (the GPDO). In a case of this sort the burden of proof is upon the appellant to show that on the balance of probabilities this is the case.
6. Class E of Part 1 includes permission for the provision of any building within the curtilage of a dwellinghouse for a purpose incidental to the enjoyment of the dwellinghouse as such. Class F of Part 1 permits the provision within the curtilage of a dwellinghouse of a hard surface for any purpose incidental to the enjoyment of the dwellinghouse as such. There is no relevant preclusion from this allowance, but it is subject to conditions set out in paragraph F.2.
7. Class A of Part 2 to Schedule 2 of the GPDO includes amongst other things permission for the erection of a gate. Class B of Part 2 permits the formation, laying out and construction of a means of access to a highway which is not a trunk road or a classified road, where that access is required in connection with development permitted by any Class in Schedule 2 (other than by Class A of Part 2).
8. Looking first at the lawfulness of the proposed outbuilding, the two main considerations are whether the building would lie within the curtilage of Red Cottage, and whether it would be for a purpose incidental to the enjoyment of the dwellinghouse as such.
9. Regarding curtilage, in the High Court case of *Sinclair-Lockhart's Trustees*³ it was found that it is enough that land serves the purpose of the building in some necessary or useful manner, even though it need not be marked off or enclosed in any way. In the case of *Methuen-Campbell v Walters*⁴ it was found that for land to fall within the curtilage of a building, the former must be so intimately associated with the latter as to lead to the conclusion that the former, in truth, forms part and parcel of the latter.
10. The paddock area is separated from the garden by a post and rail fence with a mature hedge along a significant length of the boundary. Access to the paddock is through a 5-bar gate at the northern end of the access drive. The grass is relatively roughly cut – as compared with the lawns adjacent to the house. It appears to me that the paddock area is clearly demarcated from the gardens and drive around the house, and that character and appearance of that land is distinctly different from that of the house and its garden.

² The appellant's and the Council's estimates respectively.

³ *Sinclair-Lockhart's Trustees v Central Land Board* [1950] 1 P & CR 195.

⁴ *Methuen-Campbell v Walters* [1979] 1 QB 525.

11. Although the paddock land may be used by the present owner for exercising dogs, it is not a particularly necessary activity for that piece of land and only of marginal use since it could as well occur on the extensive garden area.
12. As a matter of fact and degree I do not consider the paddock area can be seen as so intimately associated with the immediate surroundings of the house that it forms part and parcel of that land. Nor does it serve the purpose of Red Cottage in any particularly necessary manner. As a matter of fact and degree it does not therefore fall within the curtilage of Red Cottage. For that reason I do not consider the proposed outbuilding or the hardstanding benefit from the provisions of Class E or Class F of Part 1 to Schedule 2 of the GPDO.
13. I appreciate that the 1984 planning permission was subject to a condition that the development should only be used for a purpose incidental to the enjoyment of the dwellinghouse within the application site and for no other purpose. However, in my opinion this condition placed a permanent limitation on the use of that particular development, it did not define the extent of the curtilage of the dwellinghouse.
14. I turn now to the second main consideration – whether, if the paddock were found to be within the curtilage of Red Cottage – the proposed outbuilding would be incidental to the enjoyment of the dwellinghouse as such. While size in itself is not determinative, the case of *Emin*⁵ suggests that the scale of activities is obviously important since the nature and scale of such activities could go beyond a purpose merely incidental to the enjoyment of the dwellinghouse as such and constitute something greater than a requirement related solely to that purpose. In that context the physical size of a building could be relevant in indicating the nature and scale of activities.
15. An outbuilding must be 'required for some incidental purpose' to be permitted development under Class E. It is necessary to identify the purpose and incidental quality in relation to the enjoyment of the dwellinghouse, whether the building is genuinely and reasonably required to accommodate the use and thus achieve that purpose, and whether it can be seen as ancillary or subordinate to the main use of the property as a dwellinghouse
16. In this case the principal spaces of the gym, studio and games room are of considerable sizes, but there is little indication of how these rooms are to be used. Almost half the area of the games room – itself about 50 square metres – is shown as a seating area, a use that could be expected to take place in the main house. The shower room, utility room and entrance hall are themselves elements that might be expected in the main house. There is no explanation or reasoning for the studio and gym, which together constitute about 50 square metres of floorspace. Furthermore, there is little explanation for introduction of a double garage, when there is already a double garage close to the house – albeit slightly smaller than that proposed. As a matter of fact and degree I do not see this building as ancillary or subordinate to the main house. This is accentuated by the introduction of the new road access, gate, and substantial area of hardstanding, indicating that the new building could be used entirely separately from Red Cottage.

⁵ *Emin v SSE & Mid Sussex District Council* [1989] JPL 909.

17. Given my findings as to the curtilage and outbuilding it follows that the hardstanding too is not within the curtilage of Red Cottage, nor is it incidental to the enjoyment of the dwellinghouse as such.
18. Regarding the proposed access, I concur with the Council's view that it would be from an unclassified road, and to that extent might be permitted. However, given my finding that neither the outbuilding or hardstanding would be permitted development, the new access would not be required in connection with development permitted by any other Class in Schedule 2, and therefore precluded from the allowance.
19. Overall, I have found as a matter of fact and degree that the land in question is not within the curtilage of Red Cottage and does not benefit from permitted development rights under Part 1 of Schedule 2 to the GPDO. Furthermore, the proposed outbuilding and hardstanding cannot be regarded as being for a purpose incidental to the enjoyment of the dwellinghouse as such. It follows that the proposed road access is not required in connection with development permitted under one of the other Classes of Schedule 2. Although the proposed gate could be permitted, it would be part and parcel of the proposed access and hardstanding and be superfluous in the context of those elements not being permitted.
20. I conclude that on the balance of probabilities the proposed development would not be permitted under the provisions of the GPDO, and that the Council's decision was well-founded.

Conclusions

21. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of the erection of an outbuilding, creation of a vehicular access, creation of a hardstanding and installation of a gate was well-founded and that the appeal should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended.

Stephen Brown

INSPECTOR



Appeal Decision

Site visit made on 7 July 2020

by **J Bowyer BSc(Hons) MSc MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 13th July 2020

Appeal Ref: APP/J1915/W/20/3245001

Land Adjacent to 99 Dimsdale Crescent, Bishops Stortford, Hertfordshire CM23 5LW

- 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 Laurence De Grandis against the decision of East Hertfordshire District Council.
 - The application Ref 3/19/1558/FUL, dated 23 July 2019, was refused by notice dated 4 October 2019.
 - The development proposed was described as 'the construction of a 1.5 storey, semi-detached residential house at the application site. The house will comprise of 1 bedroom, along with en-suite and living space within the roof space area, with kitchen, toilet and living room facilities on the ground floor. GIA of 53.6 square meters.'
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Decision

1. The appeal is allowed and planning permission is granted for the erection of a dwelling at Land Adjacent to 99 Dimsdale Crescent, Bishops Stortford, Hertfordshire CM23 5LW in accordance with the terms of the application Ref 3/19/1558/FUL, dated 23 July 2019, subject to the conditions set out in the attached schedule.

Procedural Matters

2. The description of development in the banner heading above is taken from the application form. However, the Council altered the description on the decision notice to read 'erection of a new dwelling'. This provides a more succinct description of the proposal, and I have used it in my formal decision above.
3. The site address given on the application form was '99 Dimsdale Crescent, Bishops Stortford CM23 5LW', but the site boundary shown on the submitted site location plan is more accurately represented by the address stated on the Council's decision notice, and so I have used this address in the banner heading and my decision above.

Main Issues

4. The main issues are:
 - i) the effect of the proposal on the character and appearance of the area;
 - ii) the effect of the proposal on the living conditions of the occupiers of 5 The Hedgerows with particular regard to whether or not it would be overbearing; and
 - iii) whether or not living conditions for future occupiers of the dwelling would be acceptable, with particular regard to the provision of internal space.

Reasons

Character and Appearance

5. Near to the appeal site, Dimsdale Crescent comprises mostly terraced dwellings and flats which are typically arranged on stepped building lines around small cul-de-sacs. The high density of the layout and close-knit arrangement of the terraced buildings contributes a somewhat enclosed character along the street scenes, but this is balanced by areas of green space and parking between and around dwellings which provide for a degree of spaciousness.
6. The appeal site currently forms part of the garden to the side of 99 Dimsdale Crescent, an end-of-terrace dwelling at the head of a cul-de-sac. No 99, as well as 97 and 97A Dimsdale Crescent opposite have pedestrian-only access to their frontages to either side of a small grassed area set between the dwellings.
7. The main parties refer to previous proposals for a dwelling on the site which have been dismissed at appeal¹. Although I have not been provided with full details of these proposals, it is clear from the evidence before me that there have been changes to the dwelling which is now proposed, including a reduction in its overall scale and an increase in the set in from the boundary with 5 The Hedgerows to the side of the site.
8. No 97A is a fairly recent addition which I saw has extended the terrace opposite the appeal site. The similar position of the dwelling at the end of the cul-de-sac facing No 97A would not therefore harmfully unbalance the general arrangement of dwellings along the street. The front and rear building lines of the dwelling would also align with those of No 99, and matching materials and a pitched roof design are additionally proposed. Although not a common feature, there are other first floor dormers apparent in the street scene near to the appeal site, including at 85 and 87 Dimsdale Crescent. As a consequence, the proposed front dormer would not be a remarkable feature in the street scene, and the modest scale of both the front and rear dormers would sit comfortably within the host roofslopes.
9. The dwelling would occupy a smaller plot than others nearby, and it would be of reduced width. It would also be of lesser height than No 99. However, there is already some variation in the street scene through differing external finish materials and the stepped building line, as well as the mix of terraces and flats and as a consequence of past alterations. The stepped building line means that the roofline to dwellings on this part of Dimsdale Crescent does not appear uniform from the street scene, and while the difference is less pronounced than would be the case on the appeal site, the roof of No 97A is higher than its attached neighbour at No 97. Given these factors, I do not find that the reduced scale of the dwelling would cause it to appear overly conspicuous or jarring. Moreover, the siting of the dwelling at the end of the cul-de-sac beyond No 99 would provide significant screening from the street scene, limiting the visual impact of the development and its prominence.
10. I recognise that the dwelling would reduce open space between the side of No 99 and adjacent dwellings to the north on The Hedgerows. However, the development would not encroach onto the open space to the front of the site, and the set in from the boundary would provide sufficient spacing to the side of

¹ Appeal references APP/J1915/A/08/2075631 and APP/J1915/W/19/3221079

the dwelling to allow a suitable setting for the building, avoiding a cramped appearance. Together with its reduced height and width, there would be a discernible degree of space around the building, and separation to surrounding buildings would be maintained. As a consequence, I find that the existing spaciousness of the area would not be harmfully reduced.

11. I acknowledge that by virtue of its design and lesser scale, the appearance of the dwelling would differ from others nearby, but for the reasons above, I am satisfied that these differences would not cause it to appear obtrusive or discordant on the site. The dwelling would blend in with the overall street scene as a sympathetic addition to the area.
12. I therefore conclude on this main issue that the development would make effective use of the site while responding to constraints and the surrounding development without causing unacceptable harm to the character or appearance of the area. Consequently, and with regard to the material changes to the development from those considered as part of the previous appeal decisions, I find no conflict with Policy DES4 of the East Herts Development Plan 2018 (EHDP). Amongst other things, this policy includes a requirement that development respects or improves the character of the site and surrounding area and that it reflects and promotes local distinctiveness.

Living Conditions – Neighbouring Occupiers

13. The proposal would bring development closer to the boundary with 5 The Hedgerows to the north of the site, with the main parties indicating that the dwelling would be set around 14.5m from the main rear elevation of this neighbouring property. There are existing trees on the boundary of the site with No 5, but in the absence of substantive evidence as part of the appeal to demonstrate that these would be retained following development, I cannot assume that these would continue to offer screening to the site.
14. Nevertheless, the dwelling would be no deeper than 99 Dimsdale Crescent, aligning with its front and rear elevations and so would not increase the depth of development visible from this neighbouring building. While it would have a gable end, this is also a feature of the existing building at No 99, and the lesser height of the dwelling in comparison to No 99 would reduce the scale of the gable and the bulk of the upper part of the dwelling. Taken together with these factors, I am satisfied that the set in that is now proposed between the dwelling and the boundary with No 5 would be sufficient to avoid the development appearing overbearing, visually intrusive or unduly prominent in views from either the neighbouring building or its garden. As a result, and in light of the material changes made to the development, I find that harm to neighbouring living conditions identified within previous appeal decisions has been addressed.
15. For these reasons, I conclude on this main issue that the development would not be overbearing and there would be no unacceptable harm to the living conditions of the occupiers of 5 The Hedgerows. Accordingly, I find no conflict with policy DES4 of the EHDP which includes a requirement that development avoids significant detrimental impacts to the amenity of neighbouring occupiers.

Living Conditions – Future Occupiers

16. The Council asserts that the internal area of the dwelling would not meet the suggested 70sqm for a two-bedroom, three-person dwelling or 79sqm for a

two-bedroom, four-person dwelling within the Government's Technical Housing Standards - Nationally Described Space Standards (NDSS). However, while there is a first-floor room to the front of the dwelling labelled on the floorplans as 'bed 2/study/dressing', the application form and Planning, Design and Access Statement both indicated that the dwelling would have one bedroom and I have considered the proposal accordingly.

17. There is disagreement between the main parties over the size of the dwelling; the Council suggests an internal area of approximately 49.8sqm, while the appellant suggests it would be around 53.6sqm. From the information before me, I am unable to draw any firm conclusions on the actual quantum of the internal area of the dwelling, but in either case, there would be a shortfall against the 58sqm for a one-bedroom two-person dwelling suggested within the NDSS. The Council has also raised concerns that minimum floor areas for bedrooms would not be met, although no quantitative assessment of any shortfall has been provided.
18. However, footnote 46 of the National Planning Policy Framework (the Framework) advises that policies may make use of the NDSS where the need for an internal space standard can be justified. The Council have confirmed that the EHDP does not include a policy relating specifically to internal space standards or compliance with the NDSS. In this context, while the NDSS may provide a useful indication of the reasonable size of dwellings, it is not an absolute requirement.
19. The dwelling would not necessarily be spacious, but it would nevertheless provide a usable and functional area for future occupiers, and the main bedroom would be supplemented by the additional first-floor accommodation to the front part of the dwelling. The rooms would be of practical shapes, and I see no reason that their dimensions or layout would make accommodating furniture or suitable access to space for storage unfeasible. Nor would the internal layout give rise to impractical or constricted circulation routes. Even taking a worst-case assessment of the dwelling's size as put forward by the Council, I am therefore satisfied that the internal environment would not be cramped and that the dwelling would offer comfortable living accommodation for future occupiers.
20. I therefore conclude on this main issue that the development would provide acceptable living conditions for future occupiers. Accordingly, I find no conflict with Policy DES4 of the EHDP which requires, amongst other things, rooms of appropriate size and dimensions in order to meet their intended function.

Other Matters

21. No parking is proposed for the dwelling. However, at the time of my visit, a large number of spaces were available on-street in the vicinity of the site and I saw no parking restrictions nearby or other indications of a high degree of local parking stress. There is no clear evidence before me that additional on-street parking would harm highway safety or cause congestion, and I therefore see no reason to take a different view to the Council and Highway Authority who have not raised concern in relation to parking.
22. Subject to maintenance of suitable boundary treatment, the dwelling's ground-floor windows would not result in overlooking to neighbouring sites. Outlook from the first-floor windows would be similar to those already available from 99

Dimsdale Crescent, and given existing views of neighbouring gardens from within surrounding buildings, the proposal would not result in a harmful loss of privacy. There is no firm evidence that suitable foul drainage to serve the dwelling could not be provided, and while I note comments referring to the effects of previous construction activity nearby, any impacts during development works would be short-term and could be mitigated by careful construction management secured by an appropriately worded condition.

23. Existing trees on the boundary of the site are not protected. The Council has raised no objection in relation to the effect of the proposal on trees subject to appropriate conditions, and from the evidence before me, I see no reason to reach an alternative view.
24. I am satisfied that none of the other matters raised, either individually or collectively, would result in harm that would justify dismissal of the appeal, and the comments by interested parties do not alter my findings on the main issues.

Conditions and Conclusion

25. I have considered the Council's suggested conditions. Where necessary, I have altered these to ensure compliance with the tests outlined at paragraph 55 of the Framework or for clarity.
26. In addition to the standard time limit condition, I have imposed a condition specifying the approved plans for the avoidance of doubt and in the interests of certainty. To safeguard the character and appearance of the area and the living conditions of neighbouring occupiers, conditions are required prior to the commencement of development to agree details of protection for trees and construction management. The appellant has agreed to these conditions.
27. A condition relating to external materials for the development is necessary in order to ensure a satisfactory appearance. The application form indicates that materials should match 99 Dimsdale Crescent and given the surrounding context I see no justification for requiring samples to be submitted. I have therefore altered the Council's suggested condition to require the use of external materials to match No 99. A condition is also necessary to require details of landscaping in the interests of the character and appearance of the area, although I have altered the Council's suggested conditions in order to avoid duplication and to secure the implementation of the agreed details.
28. A condition is also suggested to remove permitted development rights from the dwelling. I am mindful of the guidance at paragraph 53 of the Framework that planning conditions should only restrict national permitted development rights where there is clear justification to do so. However, given the relationship of the proposed dwelling to its plot and neighbouring buildings, a condition to prevent the construction of extensions is necessary in this case in the interests of the character and appearance of the area and the living conditions of neighbouring and future occupiers.
29. Subject to these conditions, and for the reasons given above, I conclude that the appeal should be allowed.

J Bowyer

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plan: Existing and Proposed plans dated 5 July 2019.
- 3) The materials to be used in the construction of the external surfaces of the development hereby permitted shall match those used in the existing dwelling at 99 Dimsdale Crescent in accordance with the application form.
- 4) No site clearance, preparatory work or development shall take place until a scheme for the protection of trees on and immediately adjoining the site to be retained (the Tree Protection Plan) and the appropriate working methods (the Arboricultural Method Statement) in accordance with paragraphs 5.5 and 6.1 of British Standard BS 5837: Trees in relation to design, demolition and construction - Recommendations (or in an equivalent British Standard if replaced) has been submitted to and approved in writing by the Local Planning Authority. The scheme for the protection of the retained trees shall be carried out as approved. Any trees that, within a period of 5 years after completion of the development are damaged, die or become seriously diseased or defective shall be replaced in the next planting season in accordance with details which have first been submitted to and approved in writing by the Local Planning Authority.
- 5) No development shall take place until a Construction Method Statement has been submitted to and approved in writing by the Local Planning Authority. The Statement shall provide for:
 - a) the parking of vehicles of site operatives and visitors;
 - b) loading and unloading of plant and materials;
 - c) storage of plant and materials used in constructing the development; and
 - d) delivery and construction working hours.

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

- 6) No development above ground level shall take place until details of both hard and soft landscape proposals have been submitted to and approved in writing by the Local Planning Authority. These details shall include:
 - a) means of enclosure;
 - b) planting plans;
 - c) schedules of plants, noting species, planting sizes and proposed numbers/densities as appropriate; and
 - d) an implementation programme.

The landscaping works shall be carried out in accordance with the approved details. Any trees or plants that, within a period of 5 years after planting are removed, die or become seriously damaged, diseased or defective shall be replaced in the next planting season with others of similar size and species.

- 7) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that Order with or without modification), no enlargement, improvement, addition or other alteration as defined within Class A of Part 1 of Schedule 2 of the Order shall be carried out to the dwelling hereby permitted.



Appeal Decision

Site visit made on 7 July 2020

by J Bowyer BSc(Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13th July 2020

Appeal Ref: APP/J1915/W/20/3244655

17 Mangrove Drive, Hertford SG13 8AW

- 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 Bernard Gardner against the decision of East Hertfordshire District Council.
 - The application Ref 3/19/1843/FUL, dated 9 September 2019, was refused by notice dated 1 November 2019.
 - The development proposed is to demolish existing double garage and replace with a new dwelling within the curtilage of 17 Mangrove Drive.
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Decision

1. The appeal is allowed and planning permission is granted to demolish existing double garage and replace with a new dwelling within the curtilage of 17 Mangrove Drive at Land Adjacent to 17 Mangrove Drive, Hertford SG13 8AW in accordance with the terms of the application, Ref 3/19/1843/FUL, dated 9 September 2019, subject to the following conditions:
 - 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
 - 2) The development hereby permitted shall be carried out in accordance with the following approved plans: BG17A-LM Issue A, BG17A-EV Issue B, BG17A-FP Issue B and BG17A-LS Issue B.
 - 3) No development above ground level shall take place until details of all external facing materials have been submitted to and approved in writing by the Local Planning Authority. The development shall be implemented in accordance with the approved details.
 - 4) The dwelling hereby permitted shall not be occupied until a plan indicating the position, design, materials and type of boundary treatment to be erected has been submitted to and approved in writing by the Local Planning Authority. The boundary treatment shall be carried out in accordance with the approved details prior to first occupation of the dwelling and shall thereafter be permanently retained.
 - 5) The dwelling hereby permitted shall not be occupied until the first-floor windows in the side elevation have been fitted with obscure glazing in accordance with details of the type of obscure glazing which have first been submitted to and approved in writing by the Local Planning Authority, and no part of those windows that is less than 1.7 metres above the floor of the room in which it is installed shall be capable of being opened. Once installed, the approved obscure glazing shall thereafter be permanently retained.

Procedural Matters

2. The Council's decision notice identifies the site as 'Land Adjacent to 17 Mangrove Road', but it is clear from the submitted plans and my visit that the appeal relates to land adjacent to 17 Mangrove Drive which is the address given on the application form. I have therefore used this address in my decision above, and considered the appeal accordingly.
3. The Council's delegated report on the application indicated that the site was within an area designated as the 'Green Finger of Hertford'. However, the Council confirms that this was an error and the designation was removed from the site on adoption of the East Herts District Plan 2018 (EHDP) and I have determined the appeal on this basis. In this regard, I note reference within the Council's report to Policy CFLR2 of the EHDP, but as this relates to development within designated Local Green Spaces, it is not of direct relevance.

Main Issues

4. The main issues are (i) the effect of the proposal on the character and appearance of the area, and (ii) the effect of the proposal on the living conditions of the occupiers of 17 Mangrove Drive with particular regard to whether or not it would be overbearing.

Reasons

Character and Appearance

5. The appeal site includes part of the garden to 17 Mangrove Drive, as well as a detached single-storey garage between this dwelling and the neighbour at 15 Mangrove Drive. Mangrove Drive is a cul-de-sac comprising a mix of semi-detached and detached dwellings of varied scales and designs which are set on an irregular building line along the southern side of the street. The gaps between buildings vary in size, but typically afford views towards a backdrop of fairly generous rear gardens with established planting. To the northern side of Mangrove Drive, a boundary of mature vegetation provides separation to open land beyond, with further open areas around No 17 and its attached neighbour at 19 Mangrove Drive which are at the end of the street. Together, these factors contribute a spacious character to the street scene overall.
6. The proposed dwelling would be set back in comparison to both Nos 15 and 17. However, there is no uniform building line along the street which would be disrupted, and in the immediate vicinity of the appeal site, 11 and 11A Mangrove Drive are set notably forward of No 15 as well as 9A Mangrove Drive to their rear. In this context, the position of the development relative to neighbouring buildings would not appear unusual or jarring, and the set back of the dwelling would further reduce its prominence in views along Mangrove Drive. In my view, the position of the dwelling at an intermediate angle between the orientations of both No 15 and the pair at Nos 17 and 19 would also help to form a visual connection, linking between the different angles of these adjacent buildings. For these reasons, the siting of the dwelling would not result in an incongruous or unsympathetic addition in the street scene.
7. I accept that the dwelling would have a somewhat elongated footprint, and that both the dwelling and its plot would be of lesser width than nearby properties. Nevertheless, buildings on Mangrove Drive are not consistent in their form, scale or design. The height and pitched roof form, as well as the scale and

placement of fenestration to the front elevation of the dwelling would be broadly similar to Nos 17 and 19. The building would have a simple design, but I find that its appearance would sit comfortably in the context of the mixed surrounding architecture. Given the diversity in the street scene, I also see no reason that the size of the dwelling would cause it to appear conspicuous or striking here.

8. While smaller than those of immediate neighbours, the garden to the rear of the proposed dwelling as well as the retained garden to No 17 would remain relatively generous. Separation between the dwelling and neighbouring buildings would not be markedly different to that apparent around other buildings along Mangrove Drive and would retain opportunities for views from the street scene through to the garden backdrop and open land beyond the site. Spacing to the boundaries would also be sufficient to provide a suitable setting for the dwelling, and would increase towards the rear. Given these factors, the dwelling would not appear cramped on the site, or detract from the generally spacious character of the street scene and area.
9. For these reasons, I am satisfied that the proposal would make effective use of the site while responding to constraints without resulting in overdevelopment and I conclude on this main issue that the character and appearance of the area would not be unacceptably harmed. Consequently, I find no conflict with Policy DES4 of the EHDP which includes a requirement that development respects or improves the character of the site and surrounding area and reflects and promotes local distinctiveness.

Living Conditions

10. The development would extend some way beyond the rear elevation of 17 Mangrove Drive, but would be set in appreciably from the proposed boundary. No 17 is also set in from the boundary with its rear elevation orientated to angle slightly away from the proposed dwelling, and existing planting provides for separation between the patio to its rear and the boundary. In conjunction with the fairly modest scale of the development with a pitched roof form that would reduce in height towards the rear, these factors would limit the visual impact of the dwelling as seen from No 17. Furthermore, given the fairly generous depth of the garden to this neighbour beyond the dwelling, a significant sense of openness and unobstructed outlook would be retained avoiding an undue sense of enclosure.
11. I am therefore satisfied that the development would not be overbearing or dominant in views from No 17 or its garden, and would not result in unacceptable harm to the living conditions of the occupiers of this neighbour. The greater separation between the dwelling and 15 Mangrove Drive would similarly ensure that the development would not be visually intrusive or result in a loss of outlook for occupiers of this property.
12. Accordingly, I conclude on this main issue that the proposal would comply with Policy DES4 of the EHDP which requires, amongst other things, that development avoids significant detrimental impacts on the amenity of neighbouring occupiers.

Other Matters

13. Given its siting and orientation, windows to the front and rear of the dwelling would not overlook windows or the patios immediately to the rear of neighbouring dwellings, and views to the rear parts of neighbouring gardens would be similar to those already available from existing dwellings. Subject to the use of obscure glazing to the first-floor windows at the side of the dwelling which can be secured by condition, the proposal would not result in a harmful loss of privacy for neighbouring occupiers.
14. The Council indicate that parking would be provided to meet the required standards. Given the scale of the development, it is unlikely to result in a significant increase in vehicle movements and there is no firm evidence to suggest that it would lead to harm to highway safety or unacceptable levels of traffic on Mangrove Drive or in the surrounding area. Nor is there clear evidence that local services have insufficient capacity to meet needs generated by the proposal, or that the development would not be occupied as a dwelling.
15. I acknowledge that a previous application for a dwelling on the site was refused by the Council¹, but from the information before me, there have been material changes to the development now proposed. I also note comments referring to past increases in the number of dwellings nearby and permission which has been granted for a detached dwelling to the side of 19 Mangrove Drive², as well as proposals for development on land to the north of Mangrove Drive. However, there is no cap on additional housing coming forward within the area, and these factors do not alter my assessment of the merits of the appeal proposal.

Conditions and Conclusion

16. I have considered the Council's suggested conditions. Where necessary, I have altered these to ensure compliance with the tests outlined at paragraph 55 of the Framework, and in the interests of clarity or brevity.
17. In addition to the standard time limit condition, I have imposed a condition specifying the approved plans for the avoidance of doubt and in the interests of certainty. To ensure a satisfactory appearance, a condition relating to the external materials of the development is necessary. I have also attached conditions to secure implementation of suitable boundary treatment and the use of obscure glazing to first-floor side windows. These are referred to within the Council's report on the application, and I agree that they are necessary in the interests of the living conditions of neighbouring occupiers.
18. Subject to these conditions, and for the reasons given above, I conclude that the appeal should be allowed.

J Bowyer

INSPECTOR

¹ Application reference 3/19/0915/FUL

² Application reference 3/19/0102/FUL



Appeal Decision

Site visit made on 7 July 2020

by **J Bowyer BSc(Hons) MSc MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 15th July 2020

Appeal Ref: APP/J1915/W/20/3244954

Eden House, Fanshaws Lane, Brickendon, Hertfordshire SG13 8PG

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Miss S Malik against the decision of East Hertfordshire District Council.
 - The application Ref 3/19/1957/FUL, dated 23 September 2019, was refused by notice dated 19 November 2019.
 - The development proposed is demolition of existing barns and their replacement with a new 3 bedroom dwelling with associated parking and access.
-

Decision

1. The appeal is dismissed.

Procedural Matters

2. While the application form refers to the site location as on Fanshawes Lane, the Council's decision notice and the appeal form both refer instead to Fanshaws Lane. I have therefore used this spelling which is consistent with street signage at the junction with Brickendon lane in the banner heading above.
3. The Council's report on application reference 3/19/1957/FUL raised concerns that the demolition of the main barn on the site would result in the loss of a non-designated heritage asset, and that the development would not preserve or enhance the Brickendon Conservation Area (CA). In accordance with section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the Act), I have a statutory duty to pay special attention to the desirability of preserving or enhancing the character or appearance of the CA. While not included as a reason for refusal of the application, the main parties have also had the opportunity to make further representations in respect of these matters and I am therefore satisfied that no party would be prejudiced by my consideration of them as part of my main issues below.

Main Issues

4. The appeal site is within the Green Belt. Accordingly, the main issues are:
 - i) Whether or not the proposal would be inappropriate development in the Green Belt;
 - ii) the effect of the proposal on the openness of the Green Belt;
 - iii) the effect of the proposal on the character and appearance of the Brickendon CA, including with regard to the demolition of the main barn on the site, a non-designated heritage asset; and
 - iv) if the development would be inappropriate, whether the harm by

reason of inappropriateness, and any other harm, is clearly outweighed by other considerations so as to amount to the very special circumstances necessary to justify it.

Reasons

Whether Inappropriate Development in the Green Belt

5. The appeal site is located amongst a small cluster of buildings accessed from Fanshaws Lane and includes two single-storey barns, as well as a pond and areas of gravel and soft landscaping. The barns are positioned on either side of the gated access onto the site close to the boundary with the lane and comprise a wider main barn towards the western part of the site and a more modern barn with a sheet-metal roof towards the pond at the east. A mobile home is currently present to the rear of the site. The fairly dense woodland and open fields which surround the appeal site and nearby buildings results in a secluded and distinctly open and rural character to the area which is reinforced by the simple design and modest scale of the buildings on the site.
6. The main parties advise that planning permission has previously been granted on the site in 2016 for extension and conversion of the main barn to a dwelling¹, and subsequently in 2017 for the replacement of the more modern barn with a garage and 2 open-fronted car ports². The appeal before me proposes instead to replace the existing buildings with a dwelling on the north west part of the site.
7. Within the Green Belt, policy GBR1 of the East Herts District Plan 2018 (EHDP) outlines that applications will be considered in line with the provisions of the National Planning Policy Framework (the Framework). Paragraph 145 of the Framework identifies that, with certain exceptions, the construction of new buildings is inappropriate in the Green Belt. These exceptions include the replacement of a building, provided the new building is in the same use and not materially larger than the one it replaces.
8. Both main parties indicate that works to extend and convert the main barn to a dwelling have commenced, although the building was in visibly poor condition and was clearly not in residential use at the time of my visit, and works to extend the building above ground level were not evident. I also saw no indication that works had commenced in relation to the permission for the replacement garage, and I do not know whether this permission remains extant. Notwithstanding the implementation of permission for conversion of the main barn to a dwelling, these factors cast doubt in my mind that the use of the existing barns has, in reality, been altered to residential. However, I recognise that the use of the buildings was not an issue raised by the Council and so may not have been fully addressed by the appellant.
9. Be that as it may, to be considered an exception to inappropriate development, the Framework also requires that a replacement building is not materially larger than the one it replaces. Although approval may have been given which would increase the area of buildings on the site, these are not currently present and I cannot be certain that they will be realised. I have therefore considered the replacement building against those to be replaced as they currently exist.

¹ Application reference 3/15/2476/FUL

² Application reference 3/17/0018/FUL

10. Notwithstanding some slight differences in the exact measurements referred to by the main parties, the evidence of both parties suggests that the main barn currently has an area of around 53sqm, that the more modern barn has an area of around 55sqm, and that the proposed dwelling would have an area of approximately 140sqm. While floor area is only one factor which affects whether a building is materially larger, on this basis, the dwelling would be significantly and materially larger than the area of the main barn at the west of the site as it currently exists.
11. Although I have not been provided with full details of the case, the appellant suggests with reference to a High Court judgement³ that there is no reason in principle why the exception for replacement buildings at paragraph 145 of the Framework cannot apply to a group of buildings as opposed to a single building. However, even taking the 2 existing buildings together, the development would result in an increase in floor area of around 32sqm or 30%. In addition, the dwelling would be of increased height than the existing buildings and would also extend the maximum depth of built form from the street frontage. In combination with the increase in floor area, these factors would in my view result in a dwelling materially larger than the currently existing buildings on the site.
12. Accordingly, even if I were to find that the replacement building would be in the same use, the development would not satisfy the requirements at paragraph 145 of the Framework. I therefore conclude that the proposal would constitute inappropriate development which the Framework states is, by definition, harmful to the Green Belt. This does not mean the potential fallback position under the previous approvals is not relevant, but it is something which should be more properly considered in the context of other considerations, and I return to this matter below.

Openness of the Green Belt

13. The Framework identifies that the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open, and the essential characteristics of Green Belts are their openness and permanence. With regard to openness, the Planning Practice Guidance makes it clear that this has both a spatial and visual dimension⁴.
14. The width of the building along the access lane would be broadly comparable to the total combined width of the 2 existing buildings along this frontage. However, the spacing between the existing buildings breaks up their overall mass and visual impact. In contrast, the consolidation of the built form within a single building together with the increased height of this larger building would result in a greater overall bulk, taking up more space. Despite existing fencing to the frontage of the site, the increased dimensions of the dwelling would still be apparent and would increase the prominence of the development on the site, particularly in views along the access lane.
15. As a consequence, there would be a modest loss of openness in both spatial and visual terms which would cause harm to the Green Belt in addition to that already identified by reason of inappropriateness.

³ Tandridge District Council v Secretary of State for Communities and Local Government and Jason Syrett

⁴ Paragraph: 001 Reference ID: 64-001-20190722

Character and Appearance of the Brickendon CA

16. The appellant has not provided a formal assessment of the significance of heritage assets that may be affected by the development. However, in addition to the location of the site within the Brickendon CA, the Council indicate that the main barn was formerly an outbuilding associated with the nearby listed building of Fanshaws as part of the Long Leys site, although not within its curtilage. The appellant has not challenged the Council's description of the barn as a non-designated heritage asset, and I also note that the Brickendon Conservation Area Appraisal Plan 2 Management Plan (BCAMP) additionally highlights the barn as an 'unlisted building to be protected from demolition'.
17. The barn's simple design with a weatherboard exterior and a pantile roof reflects its rural location and historic use, and I find that the architectural interest of the building together with its historic interest in association with the listed building make a positive contribution to its significance. On this basis, I agree that it warrants consideration as a non-designated heritage asset within the Brickendon CA. Moreover, the modest scale of both existing buildings on the site retains a significant degree of openness, and I find that the simple design of the buildings, in keeping with the rural character and appearance of this area, further contributes positively to the significance of the CA.
18. The proposal would result in the total loss of the non-designated heritage asset main barn from the site. Although still single-storey, the replacement dwelling would be of greater height, size and overall bulk and mass than both existing buildings on the site. The proposal would also result in a single building of much greater width than the 2 existing buildings, set very close to the frontage of the site where it would be highly visible along the street frontage where it would be urbanising and would detract from the existing open appearance.
19. In addition, the proposed design of the building with extensive areas of glazing and external materials of white render and vertical metal sheet cladding would not reflect the traditional vernacular materials that I saw to other buildings nearby, and would be out of keeping in the rural area.
20. While I recognise the existing appearance of the main barn, for these reasons I find that the replacement dwelling would detract from the predominantly open and semi-rural character of the site, and would cause harm, rather than preserving or enhancing the CA. This harm would be in addition to the loss of the non-designated heritage asset barn.
21. The harm to the CA would be localised, and as such would be less than substantial in the terms of paragraph 196 of the Framework. Consequently, the harm should be balanced against the public benefits of the proposal. In accordance with paragraph 197 of the Framework, a balanced judgement is also required having regard to the loss of the main barn as a non-designated heritage asset and its significance. I return to these considerations in my planning balance below.

Other Considerations

22. The development would provide an additional dwelling, although this benefit would also be delivered should the existing barn be extended and converted to residential use in accordance with the existing permission. In any case, the contribution to the general supply of housing would be limited by the small

- scale of the development, and given these factors, I afford moderate weight to this public benefit of the proposal.
23. There is no dispute between the parties that works have commenced on the site to implement the conversion of the main barn to a dwelling. I am uncertain whether or not permission for replacement of the more modern barn with a garage and car ports remains extant. However, the Council have not suggested that there has been any material change in circumstances which mean that this would no longer be considered acceptable. I therefore consider that the previous approvals for development represent a fallback position which is an important material consideration.
 24. There are some minor variations in the areas suggested for the buildings on the site by the main parties. However, even taking the appellant's figures, the proposed dwelling would have an area of only around 2sqm less than the total area of the 2 buildings approved under the earlier permissions.
 25. Against this limited reduction in area, the evidence before me indicates that the dwelling would be of greater height than the approved buildings. In comparison to these approved buildings which would have spacing between them helping to break up their bulk and mass, the appeal proposal would also concentrate development within a single building. This would result in a wide expanse of continuous development along the site frontage and would increase the appearance of bulk. Notwithstanding the small reduction in floor area, I find that the appeal proposal would result in a building with an overall scale, bulk and mass that would be materially larger than the approved buildings, and that the visual impact of the building would increase appreciably in comparison to the fallback position. It would accordingly reduce openness and detract from the rural character and appearance of the site, and I cannot agree with the appellant that the proposed single building would improve openness.
 26. I acknowledge that the extension and conversion of the main barn to a dwelling under the fallback position would entail significant works to the structure of the existing building. Nevertheless, the details before me indicate that materials would match the existing main barn. Its overall form and simple appearance would be largely retained externally, particularly in views along the street frontage. In contrast, the appeal proposal would result in the total loss of the non-designated heritage asset, and I have found that the design and materials of the dwelling would be urbanising and somewhat out of keeping with the area.
 27. For these reasons, I find that the appeal proposal would cause greater harm to the openness of the Green Belt and the rural character and appearance of the CA than the fallback position under the earlier approvals. It would also result in the loss of a non-designated heritage asset which the BCAMP highlights should be protected from demolition. The fallback position does not therefore offer a direct comparison for the development, and notwithstanding a slight reduction in the floor area of the dwelling, does not weigh in favour of the proposal.
 28. I acknowledge the existing condition of the main barn on the site and concerns that repairs and improvements to the access road are being delayed pending the completion of works on the appeal site. However, there is no firm evidence that the building's condition poses a significant risk, nor that the extant permission for its extension and conversion which would secure its future could

not be implemented in the absence of the appeal proposal. This limits the weight that I afford to these matters.

Other Matters

29. There are a number of mature trees near to the appeal site, including a large Oak to the front of the site between the proposed new access to the site and the dwelling. The Council advise that conditions suggested in the event that the appeal is allowed would enable suitable consideration of the impacts of development and safeguards to ensure the long-term retention of this tree and I have no reason from the information before me to reach an alternative view. However, this is a neutral factor and does not weigh in favour of the proposal.
30. The Council have not raised specific concern that the development would cause harm to the setting or significance of the nearby listed building. Given the separation of the appeal site and the nature of the development, I am satisfied that the proposal would have a broadly neutral impact, thus preserving the building and its setting in accordance with section 66(1) of the Act.

Planning Balance and Conclusion

31. Drawing matters together, the development would cause harm to the Green Belt by virtue of inappropriateness, and would cause some further modest harm to its openness. In accordance with the Framework, I give this harm substantial weight. The development would additionally cause harm to the character and appearance of the Brickendon CA. The harm to this designated heritage asset is a matter that attracts great weight having regard to paragraph 193 of the Framework and the statutory duty under section 72(1) of the Act. The loss of the non-designated heritage asset on the site further weighs against the proposal.
32. Against this, the provision of a dwelling would add to the supply of housing. However, this benefit would also be delivered by the potential fallback position. Given that I have found that the appeal proposal would result in greater harm to the Green Belt and to both designated and non-designated heritage assets than the fallback, this factor does not weigh in favour of the proposal.
33. I have also noted comments submitted in support of the proposal. However, I find that the other considerations, either individually or collectively, do not in this case clearly outweigh the harm that I have identified so as to amount to the very special circumstances necessary to justify the development in the Green Belt. Similarly, public benefits would not outweigh the harm to the CA as a designated heritage asset, nor the loss of the non-designated heritage asset.
34. The proposal would therefore conflict with the Framework. It would also conflict with Policy GBR1 of the EHLPP, and there are no material considerations which would outweigh the conflict with the development plan. Accordingly, and for the reasons given above, I conclude that the appeal should be dismissed.

J Bowyer

INSPECTOR



Appeal Decision

Site visit made on 20 July 2020

by **D M Young JP BSc (Hons) MA MRTPI MIHE**

an Inspector appointed by the Secretary of State

Decision date: 31 July 2020

Appeal Ref: APP/J1915/W/20/3246979

Land adjacent to residential parking area, Ashdale, Bishops Stortford, Hertfordshire

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr Simon Farrugia against the decision of East Hertfordshire District Council.
 - The application Ref 3/19/2157/FUL, dated 21 October 2019, was refused by notice dated 23 December 2019.
 - The development proposed is the erection of a single garage.
-

Decision

1. The appeal is allowed and planning permission is granted for the erection of a single garage at Land adjacent to residential parking area, Ashdale, Bishops Stortford, Hertfordshire in accordance with the terms of the application, Ref 3/19/2157/FUL, dated 21 October 2019, subject to the following conditions:
 - 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
 - 2) The development hereby permitted shall be carried out in accordance with the following approved plans: 1915ASH_1000, 1915ASH_1100 Rev A, 1915ASH_1230, 1915ASH_1240 and 1915ASH_1340.
 - 3) Prior to first use of the development hereby approved, details of soft landscaping shall be submitted and approved in writing by the local planning authority. The landscaping shall be implemented in accordance with the approved details.
 - 4) The garage hereby approved shall be used for the housing of private vehicles or personal storage and shall not be used as living accommodation or for any commercial activity without the express consent of the local planning authority

Main Issue

2. This is the effect of the development upon the character and appearance of the area.

Reasons

3. The application site is a thin strip of land sandwiched between Ashdale and Villiers-sur-Marne Avenue. The proposed garage would be a simple flat-roofed structure measuring 5.2m (length) x 3.6m (width) x 2.5m (height).

4. Villiers-sur-Marne Avenue is a residential distributor road that runs through the wider Thorley Park housing estate to the west of Bishops Stortford town centre. From my observations, the area surrounding the appeal site lacks distinction and I can see nothing inherently sensitive about the Villiers-sur-Marne Avenue street scene or the wider Thorley Park estate that would preclude small scale additions such as the appeal scheme.
5. When viewed from Villiers-sur-Marne Avenue, the houses on Ashdale and associated parking areas were all visible and the existing low-level hedges on the appeal site perform a limited screening role in that regard. As I travelled south along Villiers-sur-Marne Avenue and notwithstanding some intermittent areas of landscaping, most notably on the eastern side of the road, the area retains a strong suburban character with built development of one form or another readily apparent.
6. I have noted the requirements of Policy HOU12 of the "*East Herts District Plan 2018*" (the LP). Part II of the policy states that the Council will seek to ensure the retention of amenity land/open space/landscaped areas around housing developments and planning permission for the enclosure of such land into gardens will not usually be given. However, in this case the appeal proposal does not concern the enclosure of the land for a garden. This policy is therefore of limited relevance to the appeal scheme. I have therefore considered the development against the more general advice in Policy DES4 which amongst other things, seeks a high standard of design and layout to reflect and promote local distinctiveness.
7. Although it would be a simple and unassuming structure, the garage would be visible from Villiers-sur-Marne Avenue. However, as I have already set out, the character and appearance of the area is unremarkable and not subject to any special designation. Accordingly, I do not see visual exposure as a particular impediment in this instance. The proportions of the garage would be relatively modest, and it would simply be seen against the backdrop of existing built development on Ashdale. Compensatory landscaping to the eastern elevation and/or careful management of the highway hedges would both assist in softening the visual impact of the development in the long-term.
8. Based on the foregoing, I am satisfied that whilst there would be some change to the character and appearance of the area, the level of change would be modest and would not bring the development into conflict with Policies DES3, DES4 and HOU12 of the LP.

Other Matters

9. Local residents have expressed a wide range of concerns including but not limited to the following; parking, noise disturbance, loss of light, privacy and security. However, I note that these matters were carefully considered by the Council at the application stage. Whilst I understand the concerns of local residents, there is no compelling evidence before me which would lead me to conclude differently to the Council on these matters.
10. Whether a right of access exists is a private matter and not a material planning consideration to which I can ascribe any degree of weight.
11. I have noted concerns that the development could set a precedent for other similar proposals. However, the fear of precedent, is seldom a good or

sufficient reason, in itself, to refuse development proposals, especially in circumstances where I have found the proposal to be acceptable on its merits. Moreover, no specific examples of other comparable developments have been provided. In these circumstances I am giving very limited weight to these arguments.

12. I have attached conditions covering time limits and specifying the approved plans in the interests of proper planning and to provide certainty. To ensure the satisfactory appearance of the development I have attached a landscaping condition. I have however amended the conditions supplied by the Council to ensure they are commensurate to the scale of development. To protect the amenity of neighbouring occupiers, I have imposed a condition to ensure the garage is only used for car parking and/or domestic storage. The external materials are shown on the submitted plans and detailed in Section 7 of the Application Form. A separate materials condition is therefore unnecessary.

Conclusion

13. Based on the foregoing and having regard to all other matters raised, I conclude that the appeal should succeed.

D. M. Young

INSPECTOR



Appeal Decision

by Chris Forrett BSc(Hons) DipTP MRTPI

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

Decision date: 02 July 2020

Appeal Ref: APP/J1915/D/20/3247068

9 Gerard Avenue, Bishops Stortford, Hertfordshire CM23 4DU

- 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 Kevin Stockdale against the decision of East Hertfordshire District Council.
 - The application Ref 3/19/2207/FUL, dated 7 October 2019, was refused by notice dated 7 January 2020.
 - The development proposed is an open covered lean-to at the rear of the property.
-

Decision

1. The appeal is dismissed.

Procedural Matters

2. In response to travel restrictions currently in place due to the COVID-19 pandemic I consider that this appeal can be determined without the need for a physical site visit. Both the Appellant and the Council have agreed to the appeal proceeding on this basis. This is because I have been able to reach a decision based on the information already available, supplemented by additional photographs supplied by the Appellant.
3. The application form contains a long description of the development, including some background information which led to the submission of the planning application. The Council described the proposal on its decision notice as the 'retention of covered lean-to extension', whilst the Appellant on their appeal form described the proposal as 'the development is an open covered lean-to to be added to the rear of the property. This will be open to the front and roof is a laminated glass'.
4. I consider that both the Councils decision notice description and the Appellants appeal form description provide for an accurate and succinct description of the proposal. Whilst it is clear that the development has already been carried out, although helpful, it is not necessary to refer to this in the description of the proposal. I have therefore used a shortened version of the Appellants appeal form description of the proposal in my decision.

Main Issue

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

Reasons

6. The appeal property is located on the east side of Gerard Avenue which is in a residential area of Bishops Stortford. The property is a semi-detached dwelling which has been previously extended at the rear with a two-storey extension¹. As noted by the Council, the property has also had a conservatory added to the rear of the two-storey extension. The Council consider that this is unauthorised although this is disputed by the Appellant.
7. Notwithstanding that, the Appellant has provided a photograph which is dated 25 March 2015 which clearly shows the conservatory. Whilst I am inclined to agree with the Council that the conservatory would not have been permitted development and would require planning permission, given that four years have passed since that date it would appear that the conservatory is immune from enforcement action. That said, this is not a matter before me.
8. The lean-to canopy has been erected to the side of the conservatory across the rear of the previous two-storey extension. The lean-to also extends beyond the side wall of the dwelling. The roof of the lean-to appears to sit just above the conservatory roof in a similar plane. The lean-to also includes a solid side wall to the boundary with 8 Gerard Avenue.
9. As noted by the Appellant, the lean-to roof for the patio is a simple structure and I consider that this does not, in principle, raise any significant concerns including how the roof relates to the conservatory. I also consider that the simple nature of the structure does not result in an excessive amount of development at the property, principally owing to its lightweight and minimal bulk.
10. However, the as-built structure extends beyond the side wall of the extended house and from the evidence before me is visible from the street as well as the rear of neighbouring properties. To my mind, this element of the structure does not relate well to the host dwelling and this harm is compounded by the solid side element in proximity to the boundary with No 8. Whilst the Appellant has suggested that this part of the structure could be removed/altered, this is not the proposal before me. To that end, I cannot give that suggestion any significant weight in my decision.
11. For the above reasons the development would harm the character and appearance of the area and would conflict with Policies HOU11 and DES4 of the East Herts District Plan (2018) which amongst other matters seek to ensure that extensions to existing buildings are of a high standard of design which are appropriate to the character and appearance of the existing dwelling and the surrounding area. It is also at odds with the overarching design aims of the National Planning Policy Framework.

Conclusion

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

Chris Forrett

INSPECTOR

¹ Following planning permission reference 3/13/1798/FP dated 27 November 2013



Appeal Decision

Site visit made on 14 July 2020

by **Diane Lewis BA(Hons) MCD MA LLM MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 20 July 2020

Appeal Ref: APP/J1915/X/20/3247721

40 Maze Green Road, Bishops Stortford CM23 2PJ

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Mr and Mrs Vincent against the decision of East Hertfordshire District Council.
 - The application Ref 3/19/2558/CLPO, dated 16 December 2019, was refused by notice dated 4 February 2020.
 - The application was made under section 192(1)(b) of the Town and Country Planning Act 1990 as amended.
 - The development for which a certificate of lawful use or development is sought is erection of a garage extension.
-

DECISION

1. The appeal is dismissed.

REASONS

Main issue

2. The main issue is whether the refusal by the local planning authority to issue a certificate is well-founded and more specifically whether the proposed garage extension would extend beyond a wall which forms the principal elevation of the original dwellinghouse.

Permitted development rights

3. Within the Town and Country Planning (General Permitted Development) (England) Order 2015 (the GPDO) article 3 grants planning permission for the Classes of development described as permitted development in Schedule 2. In addition to several standard limitations set out in article 3, exceptions, limitations and conditions are defined separately for each Class of permitted development in Schedule 2.
4. Part 1 of Schedule 2 concerns development within the curtilage of a dwellinghouse. The enlargement, improvement or other alteration of a dwellinghouse is permitted development under Class A of Part 1. The circumstances when development is not permitted by Class A are set out in paragraph A.1. The difference of opinion between the appellants and the Council focuses on A.1(e)(i), which states that development is not permitted

when the enlarged part of the dwellinghouse would extend beyond a wall which forms the principal elevation of the original dwellinghouse.

5. Technical Guidance on Permitted development rights for householders¹ provides an explanation of the rules on permitted development within Part 1, what the rules mean and how they should be applied in particular sets of circumstances. The guidance includes the meaning of terms that are used in but are not defined by the GPDO. One of these terms is principal elevation, which is usually understood to be the front of the house².
6. The Technical Guidance also confirms that a principal elevation may include more than one wall facing in the same direction, for example, where there are large bay windows on the front elevation, or where there is an 'L' shaped frontage. In such cases, the guidance is that all such walls will form the principal elevation and the line for determining what constitutes 'extends beyond a wall' will follow these walls.

Site and proposal

7. The two storey detached house was built on a corner plot as a replacement dwelling pursuant to a planning permission granted in 2014. The main access serving the site is on Maze Green Road, with a secondary access onto Matching Lane. The building line of the front (southern) elevation is not consistent but is staggered, partly because the attached garage is set back behind the front part of the house.
8. The proposal is to extend the garage forwards, with a much smaller extension to the side. The front plane of the extended garage would be sited just behind the adjoining front wall of the main house. In summary, the appellants' case³ is that the attached garage, located some distance behind the principal elevation, does not form part of the principal elevation. On the other hand, the local planning authority concluded that the extension would be beyond the existing garage elevation within the principal elevation and hence be outside permitted development rights.

Assessment

9. The principal elevation of the house is the south elevation facing Maze Green Road, the highway where the main access point is sited. Within this elevation is one of the main architectural features, a projecting full height gable feature containing the main entrance porch and picture windows above. Additional elements form part of this elevation and contribute to its appearance as the front of the house - the pitched roof with inset dormers, the front walls punctuated by windows either side of the gable and the front of the double garage with its doors and hipped roof above. All these elements are illustrated on the plan of the existing south elevation submitted by the appellants. By contrast, the elevation facing Matching Lane is a side facing gable wall

¹ Permitted development rights for householders Technical Guidance September 2019 Ministry of Housing, Communities and Local Government

² The Technical Guidance states that "In most cases the principal elevation will be that part of the house which fronts (directly or at an angle) the main highway serving the house (the main highway will be the one that sets the postcode for the house concerned). It will usually contain the main architectural features such as main bay windows or a porch serving the main entrance to the house. Usually, but not exclusively, the principal elevation will be what is understood to be the front of the house. There will only be one principal elevation on a house. Where there are two elevations which may have the character of a principal elevation, for example on a corner plot, a view will need to be taken as to which of these forms the principal elevation."

³ The case as set out in the application and in the grounds of appeal/statement of case.

containing secondary obscure glazed windows at the upper level and with no particular architectural features of interest.

10. Therefore the principal elevation includes more than one wall facing in the same direction, reflecting the ground floor layout and the roof forms. I include the front wall or face of the attached garage, having taken into account it is designed as a subsidiary element, recessed behind the main residential building and at a slightly lower level. The site visit confirmed in my mind that it contributes to the principal elevation, with reference to the meaning of this term set out in the Technical Guidance. On this key matter I agree with the Council rather than the appellants.
11. Referring back to the specific wording of paragraph A.1(e)(i), the phrase used is "would extend beyond a wall which forms the principal elevation". The choice of the unqualified words 'a wall' indicates that where the principal elevation comprises more than one wall, the restriction applies when the proposed addition would come forward of any component wall, not only the wall that is the furthest forward. The bay window example illustrated in the Technical Guidance addresses such a situation and, whilst not exactly the same, is a useful comparator to the appeal site.
12. This straight forward reading of the rule in the GPDO and the Technical Guidance support a conclusion that the proposed extension would not be permitted development. The test is not whether the proposed extension would be beyond the 'forward most' part of the principal elevation. I do not accept the interpretation put forward by the appellants on this point.

Conclusions

13. The proposed garage extension would come forward of the existing front wall of the garage within the principal elevation. Therefore the enlarged part of the dwellinghouse would extend beyond a wall which forms the principal elevation of the original dwellinghouse. That being the case and based on paragraph A.1(e)(i) in Part 1 of Schedule 2, the proposal would not be permitted development.
14. For the reasons given above the Council's refusal to grant a certificate of lawful use or development in respect of a garage extension at 40 Maze Green Road, Bishops Stortford is well-founded and the appeal should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended.

Diane Lewis

Inspector