



## Appeal Decisions

Inquiry held on 10 February 2009

Site visit made on 11 February 2009

by **R J Perrins MA MCM**

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

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Decision date:  
6<sup>th</sup> April 2009

### Appeal A Ref: APP/J1915/C/08/2073722

#### Units 6 & 8 Bircherley Green, Hertford SG14 1BN.

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Starbucks Coffee Co. (UK) Ltd. against an enforcement notice issued by East Hertfordshire District Council.
- The Council's reference is E/07/0548/B.
- The notice was issued on 7 April 2008.
- The breach of planning control as alleged in the notice is without planning permission a change of use of the units to a mixed A1/A3 use.
- The requirements of the notice are to cease the unauthorised use of the units.
- The period for compliance with the requirements is 1 month.
- The appeal is proceeding on the grounds set out in section 174(2) (a), (f) and (g) of the Town and Country Planning Act 1990 as amended.

**Summary of Decision: The appeal is allowed subject to the enforcement notice being corrected in the terms set out below in the Formal Decision.**

### Appeal B Ref: APP/J1915/A/08/2069820

#### Units 6 & 8 Bircherley Green, Hertford SG14 1BN.

- 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 Starbucks Coffee Co. (UK) Ltd. against the decision of East Hertfordshire District Council.
- The application Ref 3/07/2604/FP, dated 4 December 2007 was refused by notice dated 5 February 2008.
- The development proposed is a change of use of 1 No. Class A1 (retail) unit and 1 No. Class A3 (restaurant and cafes) to 1 No. mixed Class A1/A3 (Coffee shop).

**Summary of Decision: The appeal is allowed, and planning permission granted subject to conditions set out below in the Formal Decision.**

### The enforcement notice & preliminary matter

1. It is agreed that the red line on the notice plan does not include Unit 6 Bircherley Green, one of the units to which the allegation and requirements relate. The Council confirmed at the Inquiry that this was a clerical error. I accept that explanation and am satisfied that the appellant has not been misled. It is within my powers to correct the notice and to do so would not, to my mind, lead to any injustice to either parties.
2. A Statement of Common Ground was submitted at the Inquiry addressing; site description, planning history, the proposal and planning policy. It was

confirmed at the Inquiry that the statement represented the views of both parties.

### **The appeal on ground (a) and the deemed planning application**

#### **Main issue**

3. I consider the main issue in this case to be the effect of the use on the vitality and viability of Hertford town centre.

#### **Planning Policy**

4. The development plan for the area includes the East Hertfordshire Local Plan Second Review 2007 (LP). The most relevant policy of that plan is Policy STC2 which states that within primary shopping frontages, including Hertford, proposals for development or changes of use from shop (A1) use to non-shop (non-A1) uses will not be permitted. I have also had regard to PPS6 *Planning for Town Centres* 2005.
5. It is pertinent to note at this juncture that as part of the Local Plan Inquiry, the Inspector considered objections to the wording of Policy STC2 of the LP. He concluded that the retail predominance of primary frontages should be maintained. The policy sought to ensure that and he supported its rigid approach. A proposal that looks to introduce a non-retail option into the primary shopping frontage will need to demonstrate that other material considerations justify a departure from the policy, i.e. the flexibility inherent in Section 38(6) of the Planning Act.

#### **Reasons**

6. It is common ground that the development is contrary to Policy STC2. Therefore, I must consider whether there are material considerations that should tell in its favour and whether the benefits accruing from the proposed development would be sufficient to justify a departure from development policy.
7. Located within the primary shopping frontage of The Bircherley Green Centre a modern shopping centre situated to the north of Hertford town centre, the premises consist of two retail units. The units have been converted into one at ground floor level with an outdoor seating area to the north-east. The premises are situated opposite a supermarket and next door to a café. A walkway between the supermarket and the premises leads to the River Lea Navigation.
8. At the time of my inspection, on the ground floor, where there is no longer delineation between the units, there were about 14 tables and 40 chairs the majority of which were situated within Unit 6. Retail displays and a large sales counter, typical of these types of premises were positioned in Unit 8, where there was space for further seating. It was brought to my attention at the Inquiry that this area had been used for seating.
9. I have no reason to dispute that and it would be commensurate with the seating plan as refused under planning application Ref 3/07/2604/FP. The first floor is currently used for an office, a staff area and storage. It is agreed that

the current use is a mixed A1/A3 use with undisputed figures put forward by the appellant indicating that the A1 element accounts for 37% of current trade.

10. The appellant has submitted that the premises attracts footfall to the locality and to that end refers me to various surveys. Those surveys include details of patronage in Swindon and a customer survey in Exeter, I am unable to compare those locations to that found in Hertford and I give them no weight in the context of these appeals. However, I have no reason to dispute the findings of the patronage survey carried out in Hertford and whilst I accept the Council's view that it is not a survey in relation to every unit in the town centre. It is nevertheless, applicable to the case before me and the survey locations are well spread through the centre.
11. That survey shows that the footfall associated with the premises is similar to retail premises located in the main pedestrian part of the town centre. In addition the percentage of custom from passing footfall is comparatively high. I was also able to see from my site visits that the premises were well used. Given its location, in a corner of the shopping centre and situated on the periphery of the town centre I am in no doubt that the premises would be attracting visitors into this part of the town centre.
12. Furthermore, I accept that the Hertford Town Centre Survey carried out in June and July 2008 suggests that the main purpose for people visiting the town centre is for retail shopping. In addition only 8% of those surveyed were visiting primarily to visit a café or coffee shop. However, the survey, carried out when the appeal premises were operating, identifies that 57% of those surveyed visit coffee shops 2-3 times per month and of those 32% visit once a week.
13. To my mind that indicates, and supports the footfall findings, that coffee shops add to the activity within the town centre. In addition the survey identified that 76% of respondents consider the range of coffee shops to be "fairly good". Also, the majority of those surveyed did not agree that the replacement of a shop by a café or coffee shop would lead them to visit Hertford less often.
14. With respect to that question I have also considered the third party representations before me and made at the Inquiry. I am in no doubt that there is local concern regarding the current use of the appeal premises. However, I have to give little weight to the petitions submitted at the Inquiry. The majority of the signatories have been collected on pre-printed statements or headed petition forms which include unsubstantiated and emotive phrases regarding the current use. Or imply that the appellant is not subject to the same planning laws as others. In addition I have taken into account that the adjoining business 'Serendipity', where one of the petitions was collected, had been refused planning permission to use the same A3 premises. Although, it would have been open to the applicant to appeal as in this case.
15. I have also considered the current level of A1 provision and I accept that the number of multiple retailers seeking floorspace has increased over time, as identified by the Retail and Town Centres Study for East Herts which sought to assess the future retail requirements for the districts main settlements. However, that found that an appropriate balance had been struck with the level of provision at that time.

16. In addition I have had regard to the Hertford Retail Assessment submitted by Tesco Stores Ltd in July 2008. The Council in particular draw my attention to the conclusion that Hertford has been subject to little retail investment in the last decade and few national stores have been attracted because of the limited number of larger units being available. I accept that view although the report concludes that Hertford is generally healthy, vital and viable.
17. Moreover, both studies were carried out when the appeal premises were trading. Also, it was evident from my site visits that the current economic climate is having an effect upon the town centre and the demand for retail units. I was able to see that a number of units, including Woolworths a large retail store and a large A3 premises in the same street were now vacant.
18. Nevertheless, it is a matter of common ground that within the Bircherley Green Shopping Centre the proportion of A1 use (90%) is high. In addition the Council accepted that the appeal premises, involving a change from separate A1 and A3 units to a mixed A1/A3 unit with 37% retail sales, made a marginal difference to that percentage. Within the Bircherley Green primary retail frontage there was not an issue regarding the provision of A1 use.
19. However, I must consider the provision within the whole of the town centre frontage. To that end there was some disparity between the parties prior to the Inquiry; the Council putting forward a figure of 66% and the appellant 74%. However, it was clear that there were some errors in the Council's evidence. They confirmed that their calculations had excluded Beauty Salons which had been counted as *sui generis* uses when there was no evidence of a change of use from A1. Taking that into account, the Council accepted that a figure of 76% was more realistic and reflected the percentage of A1 use for the Town Centre as a whole when calculated on a unit basis.
20. Moreover, it was clear that the Council had double counted and wrongly identified uses introducing further error. It is for these reasons that I must conclude the figure of 76% is a reasonable one upon which to base my judgement and that level of A1 provision within the primary frontage is consistent with the high level of retail uses that is sought in PPS6. In addition the Council accepted at the Inquiry that there had been no change in the character of the town centre since 2002 and their statement to that effect was incorrect.
21. The Council also accepted that a complementary role could be played by non-shopping activities which included coffee shops. Furthermore, one of the objectives of the Council's approach to shopping and retail developments is to promote town centres as diverse, multi-functional areas and this is consistent with national policy in PPS6.
22. I now turn to the issue of precedent and I do not accept that a decision to allow such a proposal would be a weakening of policy as each case must be considered on its individual merits. In this instance the material considerations I have identified justify a departure from policy. It does not follow that all future developments of a similar nature should be accepted. I have been directed to a number of previous cases including my own decision regarding a similar appeal in Bishops Stortford (ref: APP/J1915/C/08/208010). I do not have full details of the cases referred to but am, of course, fully aware of the

Bishops Stortford appeal. This does, in my opinion, add weight to my findings on precedent, in that the Bishops Stortford decision has had no bearing upon the conclusions I have drawn in this instance. The appeals before me have been decided upon their own merits applying local and national planning policy to the particular circumstances of the appeal premises and of Hertford town centre.

23. I have also taken into account the period in which the units were vacant and accept the Council's view that it was not for a significant time. In addition there is no reason to find that the current use would offer more employment than the previous uses of the two units. The numbers of third party objections are high and I have given them considerable weight. However, on balance these matters do not outweigh my findings on the impact of the use.
24. Finally, I have considered conditions and for consistency, I shall adopt the same approach which has been used in several previous successful appeals, and impose conditions which seek to define the use permitted and to preclude primary cooking of unprepared food. I have also considered the revised seating plan submitted with the appeals but given my findings above see no merit in referring to it.

### **Conclusions**

25. For the reasons given above and after considering all other matters raised, I conclude that the use benefits pedestrian flow and has not harmed the vitality and viability of Bishops Stortford town centre. The appeals should succeed and planning permission will be granted. The application deemed to have been made under section 177(5) of the 1990 Act as amended, will now relate to the corrected plan.
26. The appeals on grounds (f) and (g) do not therefore need to be considered.

### **Decisions**

#### **Appeal Ref: APP/J1915/C/08/2073722**

27. I direct that the enforcement notice be corrected:
28. by the deletion of the words "edged red" and the substitution of the words "edged black" in paragraph 2 of the notice;
29. by the substitution of the plan annexed to this decision for the plan attached to the enforcement notice;
30. Subject to these corrections I allow the appeal, and direct that the enforcement notice be quashed. I grant planning permission, on the application deemed to have been made under section 177(5) of the 1990 Act as amended, for the development already carried out, namely the change of use of the units to a mixed A1/A3 use on the land shown edged black on the plan annexed to this decision, subject to the conditions listed below:

#### **Appeal Ref: APP/J1915/A/08/2069820**

31. I allow the appeal, and grant planning permission for the change of use of 1 No. Class A1 (retail) unit and 1 No. Class A3 (restaurant and cafes) to 1 No.

mixed Class A1/A3 (Coffee shop) at 6 & 8 Bircherley Green, Hertford SG14 1BN in accordance with the terms of the application, Ref 3/07/2604/FP dated 4 December 2007, and the plans submitted with it, subject to the following conditions:

- 1) The premises shall not be used other than as a coffee bar serving coffee, other hot and cold drinks, sandwiches and similar light refreshments, for consumption on or off the premises.
- 2) No primary cooking of unprepared food shall be carried on within the premises. Only re-heated or cold food that has been prepared elsewhere shall be served within the premises.

*Richard Perrins*

Inspector



# Plan

This is the plan referred to in my decision dated: 6<sup>th</sup> April, 2009

by R J Perrins MA MCI

Land at: Units 6 & 8 Bircherley Green, Hertford SG14 1BN.

Reference: APP/J1915/C/08/2073722

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Scale: Not to Scale



**APPEARANCES**

**FOR THE APPELLANT:**

Stephen Morgan	Of Counsel, instructed by Pegasus Planning Group, 2-10 Kings Parade Mews, Clifton BS8 2RE.
He called	
James Tarzey BA(Hons) MRTPI	Partner, Pegasus Planning Group, 2-10 Kings Parade Mews, Clifton BS8 2RE.

**FOR THE LOCAL PLANNING AUTHORITY:**

Thomas Cross	Of Counsel, instructed by George Robertson Head of Legal Services, East Herts District Council.
He called	
Michael Chalk BSc (Hons) MSc	Planning Officer.

**INTERESTED PERSONS:**

Roger Duffield	Serendipity Foods Unit 10, Bircherley Green, Hertford SG14 1BN.
Richard Woolrych	32 Villiers Street, Hertford SG13 7BW.

**DOCUMENTS**

- 1 Statement of Common Ground.
- 2 Bundle of 161 signed objection statements.
- 3 Copy of submissions by Richard Woolrych.
- 4 18 Page Petition.
- 5 Copy of submissions by Roger Duffield.
- 6 Copy of three signed objection statements.





## Appeal Decisions

Hearing held on 17 March 2009

Site visit made on 17 March 2009

by **Frances Mahoney** DipTP MRTPI IHBC

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for Communities and Local Government

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Decision date:  
16 April 2009

### Appeal A: APP/J1915/E/08/2086963

#### Furneaux Pelham Hall, Furneaux Pelham, Hertfordshire SG9 0LB

- 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 Mr Adrian Brunner against the decision of East Herts Council.
- The application Ref 3/08/0084/LB, dated 13 January 2008, was refused by notice dated 14 April 2008.
- The works proposed are the erection of a single storey timber framed orangery.

### Appeal B: APP/J1915/A/08/2086961

#### Furneaux Pelham Hall, Furneaux Pelham, Hertfordshire SG9 0LB

- 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 Adrian Brunner against the decision of East Herts Council.
- The application Ref 3/08/0253/FP, dated 13 January 2008, was refused by notice dated 14 April 2008.
- The development proposed is the erection of a single storey timber framed orangery.

### Decision

1. I dismiss both Appeals.

### Main issues

2. The main issue in the case of both Appeal A and Appeal B is whether the proposed orangery would preserve the listed building, its setting or its architectural and historic interest, and, linked to that, whether it would preserve or enhance the character or appearance of the Furneaux Pelham Conservation Area.

### Reasons

3. Furneaux Pelham Hall is a late 16th century manor house, which along with much of the village and the intervening countryside make up the Furneaux Pelham Conservation Area. The Hall has been modified over time, but retains the stature and elegance of an historic country house. The south elevation of the house is particularly fine with three curvilinear gables, features which are then repeated on the western side elevation. The gables of this side elevation, although out of public view, are no less imposing than those of the south. The height, simplicity, extent and expanse of this red brick side wall of the house, punctuated by predominantly tall windows in a generally irregular pattern and finally crowned by the three moulded gables, are important features which I consider to be of special architectural and historic interest of this Grade II \* listed building.

4. The Appeals propose the addition of what is described as an orangery, constructed out of timber and glass to the western side elevation of the house. Other than the Victorian single storey wing, which is domestic and subservient in scale and follows the plane of the western elevation, it remains in a generally unaltered state. The proposed extension would cover the existing external kitchen door along with the tall narrow windows to the kitchen. It is the height of these windows that has dictated the height of the proposed orangery. The length of the proposed extension has been determined by the inclusion of the existing exterior door to give access to the new room and by the adoption of a design principle to achieve some sense of symmetry, lining the proposed central doors up with the apex of the gable on this end bay of the western elevation. The depth of the proposed extension has been influenced more by the appellant's requirements for a sizeable family room than by any particular feature or proportion of the listed building itself.
5. I do appreciate the restraints that the listed building imposes on the design of any extension on this elevation. However, I consider the design to be contrived. The combination of the height of the proposed orangery, its overall length and width along with the uncomfortable relationship between the proposed small paned lower glazed panels/doors with top opening windows and the existing windows of the house, would all serve to make the proposed extension an unsympathetic addition to the listed building, disrupting the fine uninterrupted lines of the western elevation. The scale and massing of the proposed orangery would dominate this important characterising elevation and would undermine the integrity of the building.
6. Therefore the proposed orangery would unacceptably harm the special architectural and historic interest of this listed building, and it would neither preserve nor enhance the character or appearance of the Furneux Pelham Conservation Area. Consequently, it would be in conflict with the terms of the legislative duty set out in Sections 16(2), 66(1) and 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 and Government guidance in *Planning Policy Guidance - Planning and the Historic Environment*. In addition the terms of the *East Herts Local Plan Second Review* policies BH10 and BH12, which interpret the guidance and legislative framework at a local level, and ENV1, ENV5 and ENV6 which aim for a complementary high standard of design, would be compromised.
7. The fact that the western elevation is well screened and hidden from public view I do not find to be justification for the harm I have identified. Such circumstances do not diminish the effect of the extension on the integrity of the listed building nor on the character or appearance of the Conservation Area. I have also considered the requirement of the appellant to provide a generously sized space to accommodate gatherings of his burgeoning extended family. However, I do not consider that such a need can justify the harm that would ensue from the proposal, even taking into account the primary use of Furneux Pelham Hall as a family home. Therefore, neither these nor any other matters raised outweigh my conclusion in this matter.

*Frances Mahoney*

INSPECTOR



# Appeal Decision

Site visit made on 9 March 2009

by **Philip Willmer** BSc Dip Arch RIBA

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Decision date:  
15 April 2009

## Appeal Ref: APP/J1915/A/08/2089255

### 15 The Brickfields, Ware, Hertfordshire, SG12 0AZ.

- 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 Michael Beswick against the decision of East Hertfordshire District Council.
- The application Ref 3/08/0639/FP, dated 2 April 2008, was refused by notice dated 27 May 2008.
- The development proposed is a two storey side and first floor front extension with garage.

### Decision

1. I allow the appeal and grant planning permission for a two storey side and first floor front extension with garage at 15 The Brickfields, Ware, Hertfordshire, SG12 0AZ in accordance with the terms of the application Ref 3/08/0639/FP, dated 2 April 2008, and the plans submitted therewith, subject to the following conditions:
  - 1) The development hereby permitted shall begin before the expiration of three years from the date of this decision.
  - 2) No development shall take place until samples of the materials to be used in the construction of the external surfaces of the building hereby permitted have been submitted to and approved by the local planning authority in writing. Development shall be carried out in accordance with the approved details.
  - 3) The development hereby approved shall not be commenced until the following have been submitted to and approved in writing by the local planning authority: detailed drawings at a scale not less than 1:50 to show the north, south, east and west elevations. Development shall be carried out in accordance with the approved details.

### Main Issue

2. I consider the main issue to be the effect of the proposed development on the character and appearance of the existing dwelling and street scene.

### Reasons

3. The Brickfields is a residential development that, having regard to the design of the dwellings and the layout, appears to date from the late sixties/early seventies. The properties are generally two storey, terraced, semi-detached or, as numbers 13 and 15, detached. I observed that a number of the houses on the development have been extended and altered.
4. Number 15 and the property opposite, number 34, both detached, stand at the entrance to Strawberry Fields that I took to be a private residential estate accessed from the hammer head. The entrance to the private estate is marked by brick piers on either side of the entrance.

5. The appellant proposes the construction of an attached double garage with a first floor extension partly over this and the existing flat roofed hall and porch. The form and design of the extension, with a long 'catslide' roof and pronounced dormer, takes its design clues from neighbouring properties, in particular numbers 24 and 26.
6. Numbers 13 and 15, which stand alone, are of an identical design and therefore any alteration to either one would impact on their symmetry. Further, the proposed extension would add noticeably to the mass of the host building and the extension would project in front of the existing house. Nevertheless, I believe that its design reflects the character and architectural style of the original development. In addition, in my opinion, the proposed extension would add to the visual interest and appearance of the existing house and thereby the estate, standing as it does in a prominent location at the gateway to Strawberry Fields.
7. Notwithstanding my findings, if the extension is to be well mannered and visually successful, not detracting from the architectural integrity of the house or the surrounding development, then the detailed design and choice of materials would need to be very carefully considered. Unfortunately, the drawings before me are both small scale and poorly drawn with little annotation. However, if I were minded to allow this appeal, then the submission of detailed elevational drawings and the selection of materials could be conditioned.
8. I appreciate that the proposal would diminish the visual impact of the conifer trees which have grown on the far side of the boundary fence. However, as the Council acknowledges the trees are in themselves of little intrinsic value. Furthermore, in my view, they would still provide a green backdrop to the house as extended and therefore there would be no significant detrimental impact on their amenity value. I note that planning permission has been granted for a single storey side extension to form a new double garage, Council reference 3/08/1396/FP. Accordingly, I do not consider that this proposal is likely to represent any greater threat to the well being of the conifers than that which has been allowed. Further, because the first floor addition would be set back just over 2.2 metres from the front wall of the ground floor garage addition, it would not, in my judgment, impact in any significant way on the open aspect of the entrance to Strawberry Fields.
9. I conclude in respect of the main issue that the proposed extension would have no detrimental impact on the character and appearance of either the host property or the street scene. It therefore accords with the objectives of Policies ENV1, ENV5 and ENV6 of the East Herts Local Plan Second Review April 2007 as they relate to the quality of development.
10. The Council is concerned about precedent for other extensions and additions to neighbouring properties. However, I have considered this appeal on its individual planning merits and found the design before me to be acceptable.
11. For the reasons given above and having regard to all other matters raised, I conclude that the appeal should be allowed. The Council has not suggested any conditions. However, in addition to the standard time condition I shall require detailed elevational drawings and materials to be approved prior to commencement of the development.

*Philip Willmer*

INSPECTOR



## Appeal Decisions

Hearing held on 11 March 2009

by **Ava Wood** DIP ARCH MRTPI

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Decision date:  
26 March 2009

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### Appeal Ref: APP/J1915/E/08/2082402

#### The Watermill, Luynes Rise, Buntingford, Hertfordshire SG9 9SG

- 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 Mr and Mrs Stephen Foster against the decision of East Hertfordshire District Council.
- The application Ref:3/08/0790/LB, dated 21 April 2008, was refused by notice dated 16 June 2008.
- The works proposed are conversion of garage to game/utility room and new triple garage with bedroom over.

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### Appeal Ref: APP/J1915/A/08/2082405

#### The Watermill, Luynes Rise, Buntingford, Hertfordshire SG9 9SG

- 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 Stephen Foster against the decision of East Hertfordshire District Council.
- The application Ref:3/08/0671/FP, dated 7 April 2008, was refused by notice dated 16 June 2008.
- The development proposed is conversion of garage to game/utility room and new triple garage with bedroom over.

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### Decision

1. I dismiss the appeals

### Main issue

2. The main issue applying to both appeals is the effect that the proposal would have on the special historic interest of The Watermill and on its setting.

### Reasons

3. The Watermill is listed as Grade II. The present occupants, Mr and Mrs Foster, have lived at the property for many years, and by all accounts have devoted considerable time and resources to its restoration. The results are undoubtedly successful, as the C17 thatched building, comprising the working part of the mill and the miller's house, retains much of its original character. The care with which the mill has been restored and is lived in demonstrate the appellants' dedication to its continued legacy and attest to their respect for its historic importance.
  4. The two storey modern extension to the rear of the mill, accommodating bedrooms on the first floor, the single storey garage to the east and the conservatory contribute successfully to the liveability of the property without
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significantly dominating or detracting from the original mill and house. The success of the composition, I believe, lies partly in the compactness of the group but also in the appearance of the garage as a modest outbuilding that neither impinges on the setting of the main range nor competes with it.

5. As part of the proposed scheme the garage would be upgraded for habitable use. When viewed from the front, its changed domestic appearance would draw the eye away from the listed watermill, and the garage would not maintain a secondary role in the grouping.
6. The extension incorporating the new triple garage with rooms above is of equal concern. While its height would be well below the ridge of the thatched roof, the new building would add considerably to the footprint and volume of modern extensions on the site. This cumulative adding of individual and variously styled buildings, albeit well considered in themselves, would shift the visual focus away from the building listed for its historic interest to the extensive, elongated grouping of new extensions occupying ever increasing parts of the plot. The Watermill is itself a substantial and tall building, but the overwhelming effects of the new works and building would render it less of a presence, to the detriment of its historic importance and setting.
7. The appeal site curtilage may be extensive and largely well screened from public views but lack of visibility does not justify works that are inherently harmful or unacceptable. In any case, I noted that the new building would be seen from the elevated footway on Aspenden Road and domination of the site by contemporary buildings would become an apparent feature of this setting.
8. Much has happened in the locality over many years to change the rural surroundings and waterways adjacent to the watermill. Nevertheless, its importance in the landscape remains undiminished and encroachment by new developments provides added incentive to preserve that which is of value and historic interest. For reasons I gave earlier, the proposed extension, combined with works to the existing garage, would erode the special historic interest of this listed building and unacceptably intrude on its setting.
9. Having come to these conclusions, it follows that the appeals scheme would not comply with Policies BH10 and BH12 of the E Herts Adopted Local Plan Second Review (LP) which look to protect the character, appearance and settings of listed buildings. Equally, it would fail when tested against LP Policy ENV1 and against advice in Planning Policy Guidance 15.
10. Earlier maps showing the presence of C19 outbuildings to the south east of the main range is immaterial, in my view, as my assessment focuses on the impact that the new proposal would have on the listed building in its current state and setting. No other matters raised are sufficient to override my conclusion on the main issue, or my decision that the appeals should fail.

*Ava Wood*  
Inspector



# Appeal Decision

Site visit made on 10 March 2009

by Philip Willmer BSc Dip Arch RIBA

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Decision date:  
15 April 2009

**Appeal Ref: APP/J1915/A/08/2091350**

**College Farm, Hailey Lane, Hailey, Hertford, Hertfordshire, SG13 7NX.**

- 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 Haileybury School against the decision of East Hertfordshire District Council.
- The application Ref 3/08/0726/FP, dated 16 April 2008, was refused by notice dated 2 July 2008.
- The development proposed is described as "change of use of traditional farm buildings to four dwellings with associated parking and separate amenity areas."

## Decision

1. I dismiss the appeal.

## Main Issues

2. I consider that there are two main issues. Firstly, whether the proposed development would be inappropriate development in the Green Belt and, if so, whether there are other considerations sufficient to clearly outweigh the harm. Secondly, the effect of the proposed development on the character and appearance of the host buildings, the setting of Harvey Cottage listed grade II and the surrounding area.

## Reasons

3. College Farm is a mixed group of traditional and more modern farm buildings accessed from, and sited on, the southern side of Hailey Lane. Between the appeal site and Hailey Lane is a thatched cottage identified as Harvey Cottage listed grade II. The area is rural in character with open fields to the south and the A10 trunk road to the east. While some of the buildings appeared to be used as stabling, the majority seemed redundant. The appellant proposes the removal of a number of the more modern and larger buildings, amounting to some 1,179 square metres, to facilitate the conversion of the smaller and more traditional buildings to form four self-contained units of residential accommodation together with private garden areas.

## Appropriateness

4. Planning Policy Guidance Note 2: *Green Belts* (PPG2) lists certain categories of development that are not inappropriate in the Green Belt. At paragraph 3.8 it advises that the re-use of buildings inside the Green Belt is not inappropriate development providing, amongst other things, that: it does not have a materially greater impact than the present use on the openness of the Green Belt and the purposes of including land in it; strict control is exercised over the extension of re-

used buildings, and over any associated uses of land surrounding the buildings which might conflict with Green Belt objectives; the buildings are of permanent and substantial construction, and are capable of conversion without major or complete reconstruction; and the form, bulk and general design of the buildings are in keeping with their surroundings.

5. The proposed development would, from my observations on site, lead to some minor rebuilding of part of the proposed units 2, 3 and 4. However, by inspection of the drawings, I see that the overall floor area and mass of those buildings would not be changed in any significant way. I also note that the scheme design proposes the introduction of a first floor within the roof void of unit 1; while this would change the open character of the barn it would not in itself impact on the Green Belt. Overall the proposal would represent a substantial reduction in the total mass of buildings on the site. Providing, therefore, that future extensions were strictly controlled, a matter that could be conditioned, I do not consider that the proposed conversions alone would have a materially greater impact than the present use on the openness of the Green Belt and the purposes of including land in it.
6. The buildings, the subject of this appeal, although evidently requiring some repair and maintenance, are nevertheless from what I saw of permanent and substantial construction. Indeed overall it was clear to me that for farm buildings of this age they have generally been well maintained.
7. My attention has been drawn to the structural survey submitted by the appellant. From this I note that the buildings were found to be structurally sound and capable of being converted into domestic dwellings. The Council, while not challenging the findings, draws attention to the fact that there has been no inspection of the foundations or timbers and indeed some further inspections are recommended. From what I saw, and based on my experience, I have no doubt that the development may lead to some underpinning of the existing foundations and the replacement of decayed timbers. However, in my opinion, these works are normal for this type of project, as would be upgrading walls, floors and roofs to meet Building Regulations, and would certainly not, if carefully detailed and specified, necessarily result in substantial reconstruction as asserted by the Council. Furthermore, I do not consider the works proposed to units 2, 3 and 4, because of their scale and likely extent, would be so substantial as to be defined as works of major or complete reconstruction.
8. The Council states in its evidence that it considers the buildings are of a form and design that is in-keeping with the surrounding area. What I saw was a range of traditional vernacular farm buildings in a countryside setting; therefore, I do not disagree with its assessment in this case.
9. The development would involve a change to the character of the area by the formation of private garden areas. In my view, providing that landscaping as well as the erection of ancillary structures, fencing, and domestic paraphernalia etc were strictly controlled, a matter that could be conditioned if I were minded to allow this appeal, then this change would not impact on the openness of the Green Belt.
10. I conclude that the proposed development would not be inappropriate development in respect of the guidance in PPG2. I shall therefore now consider other relevant development plan policies and material considerations



11. Policies GBC1 and GBC9 of the East Herts Local Plan Second Review April 2007(LP) generally accord with the guidance in PPG2. However, Policy GBC9 goes on to set out other criteria against which proposals should be considered including whether the building is worthy of retention and it is unable to facilitate uses other than residential, such as business re-use, leisure, tourism, community or other purposes compatible with the rural area.
12. These four buildings are not in themselves of special architectural or historic interest. However, they are nevertheless typical agricultural buildings designed and built to fulfil their original function to a pleasing scale and agricultural aesthetic. Although now mainly redundant, they nevertheless, in my opinion, continue to contribute to the local character in accordance with the advice at paragraph 17 of Planning Policy Statement 7: *Sustainable Development in Rural Areas* (PPS7). Accordingly, I consider that their loss would detract in a small but material way from the overall character, as well as to some extent from the local history of the area.
13. Government policy as set out in PPS7 supports the re-use of appropriately located and suitably constructed existing buildings in the countryside. However, re-use for economic development purposes will usually be preferable.
14. From the appeal papers I see that the appellant through their agent has advertised all of the buildings, amounting to some 24,000 square feet in total to let, subject to planning, including the four buildings the subject of this appeal, for a period in excess of 15 months. This was by way of an advertisement board placed at the entrance to the site facing the public highway (which remained in place for some 12 months), limited advertising in *The Observer* and *Guardian* newspapers on two occasions in February 2007 and once in the *Mercury* in May 2007, the details were also posted on the agent's own website from January 2007. In my opinion this would not appear to be either a particularly extensive or exhaustive exercise. Further, I do not consider that the advertising of all of the buildings is necessarily directly comparable with the more modest residential proposal for only four of the buildings before me. Nevertheless, I note that the Council has not challenged the advertising per se.
15. In my experience, while buildings of this type can of course be expensive to convert and may not as suggested suit all potential occupiers, many such buildings make very acceptable and interesting commercial accommodation for a wide variety of end users who, because of a pleasant rural location, ease of parking etc., value them accordingly. Further, depending on the uses permitted and the size of the units commercial conversions do not necessarily, as asserted by the appellant, generate greater vehicle movements, leading to a harmful impact on nearby residential occupiers particularly when reconciled against the former farm use.
16. Turning to their potential to satisfy other forms of use, the appellant sights building costs and distance from the A10 as impediments to tourist uses, and layout and location for their unsuitability for leisure or community use. I do not consider this opinion based evidence either substantive or conclusive. For instance, based on my experience, tourist uses may take many forms other than simply the provision of 'motel type' accommodation highlighted in the evidence, and any number may well be better suited to these forms of building and location. Similarly, there appears to have been little consideration given to the use of the buildings for leisure or community use.

17. Although, therefore, the buildings have been marketed for a reasonable period of time, based on the limited evidence before me I consider that the re-use for economic development purposes or any of the other uses set out in Policy GBC9 has not been satisfactorily explored. It is therefore premature for me to conclude that a residential conversion is the only viable option for their re-use. In reaching this conclusion I am mindful that two small work units/workshops are proposed adjacent to units 3 and 4. As the appellant offers no reason for them and having regard to their limited size in comparison to the overall scheme, which is primarily residential, I consider that they would not serve any meaningful business need. Their inclusion does not overcome or weigh significantly in my findings in this case.
18. I conclude that the proposed development would not be inappropriate development; nevertheless, it would not accord with the objectives of LP Policy GBC9 (II) criterion (b) or the advice in PPS7 in terms of the re-use of buildings in the countryside.

*Character and appearance*

19. Minor alterations, including the insertion of doors and windows, are proposed to the units. In my opinion these alterations have been designed sensitively and would not impact on the architectural integrity of the host buildings. The insertion of a floor into unit 1 will change the sense of openness within the barn. However, as it is not a building of special architectural and historic interest, I do not consider that this work would be detrimental to its architectural veracity and certainly would not affect the external appearance in any significant way. In addition to the removal of most of the more utilitarian buildings and structures, which is to be welcomed, I see from the application drawings that the appellant proposes some works of alteration to the form and thereby the appearance of units 2, 3 and 4. I shall consider each in turn.
20. Unit 2: the reformation of the eastern gable end of the milking parlour is proposed, it having been removed when the building was extended in the past. In my view the design for this is sympathetic to the character and form of the host building.
21. Unit 3: the lean-to outshot to the north would be rebuilt and the appellant proposes forming a new pitched roof over. This would change the roof form and lead to a slight increase in the overall height. However, in my opinion this would have no detrimental impact on the appearance or architectural integrity of the host building. Further, as this unit is some 10.0 metres or so from the neighbouring property, Harvey Cottage, a grade II listed building, I do not consider that the minor alteration to the building would impact in any significant way upon its setting. Further, as identified by the Council, the removal of the two dilapidated store buildings on the boundary which is part of this appeal would enhance the visual amenity in this location.
22. Units 3 and 4: the scheme design allows for the removal of the existing canopy linking the two buildings and its replacement with two covered cart shed parking bays and two small workshops behind the existing east facing wall. An alternative roof form is proposed. However, while different from the existing it would nevertheless, in my view, appear more subservient and traditional than the existing.
23. I conclude in respect of the second main issue that the development would have no detrimental impact on the appearance of the buildings to be retained, the

surrounding rural area or the setting of Harvey Cottage. In this respect the proposal would accord with the objectives of LP Policy GBC9.

**Conclusions**

24. I have concluded that the proposed development is not inappropriate. Furthermore, I do not consider that it would cause any demonstrable harm to the character and appearance of the host buildings, the wider rural area or the setting of Harvey Cottage, listed grade II. However, I am not content that the appellant has satisfactorily established that re-use of the buildings for economic development and other purposes is not viable. To my mind, having regard to the advice in PPS7 and LP Policy GBC9, this is a compelling objection. I note from the appellant's evidence that the Council is currently experiencing difficulty in meeting its five year land supply. In my opinion the provision of just four units here is unlikely to have a significant material impact on any under supply and therefore I have given this consideration little weight.
25. I have considered all other matters raised, but none change my overall conclusion, reached on the planning merits of the proposal, that the appeal should not succeed.

*Philip Willmer*  
INSPECTOR



# Appeal Decision

Site visit made on 10 March 2009

by **Philip Willmer** BSc Dip Arch RIBA

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

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Decision date:  
26 March 2009

**Appeal Ref: APP/J1915/A/08/2091022**

**The Sun and Harrow Public House, Fanhams Road, Ware, Hertfordshire, SG12 7DQ.**

- 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 Mrs J Harrison against the decision of East Hertfordshire District Council.
- The application Ref 3/08/1340/FP, dated 10 July 2008, was refused by notice dated 22 October 2008.
- The development proposed is described as "demolition of public house and erection of replacement residential block consisting of 12 No. two bedroom flats."

## Decision

1. I dismiss the appeal.

## Main Issues

2. I consider that there are three main issues. Firstly, whether the proposal would result in the loss of an employment and community facility. Secondly, the effect of the proposed development on the character and appearance of the area by reason of its design. Thirdly, whether a planning obligation to secure the provision and improvement of local infrastructure and facilities is necessary.

## Reasons

3. The Sun and Harrow public house is a two storey detached property located on a prominent corner at the junction of Fanhams Road and King George Road. I saw that there is a paved customer parking area to the front with a large garden to the rear. The site falls away from Fanhams Road so that the beer cellar is set under the ground floor but accessed from the rear garden, thereby making the property appear a little taller when viewed from the rear.
4. The public house is located in a predominately residential area characterised by two storey dwellings laid out as either short terraces or pairs of semi-detached houses. It is situated in the built up settlement of Ware where the Council advises there are no objections to the principle of development.
5. The appellant proposes the demolition of the public house and the erection of a three storey block of twelve, two bedroom flats along with off-road parking, refuse storage and landscaping.

*Employment and community facility*

6. LP Policy EDE2 advises that outside identified employment areas development that would cause the loss of an existing employment site, or one that was last in employment use, will only be permitted subject to, amongst other things, that the retention of the site or premises for employment use has been explored fully without success, evidence of which must be provided. Prior to closure the premises may have only been providing employment on site for the landlady. If thriving I believe that it would have or could provide employment for additional staff as well as those employed in servicing and maintaining it.
7. LP Policy STC8 seeks to restrain the loss of, along with other things, public houses. In determining the significance of the loss consideration will be given to, amongst other things, if there is clear evidence that it is not possible for the use to continue as a viable business. The public house was, I consider, built as a communal facility to serve the surrounding development. Although, therefore, it may not be part of a recognised 'local centre' and the town centre might well be within easy walking distance, these factors do not in my mind diminish its community value.
8. I understand from the appellant's evidence that at the time the application was submitted she was finding it difficult to maintain the financial viability of the business. Furthermore, in the light of the current economic climate she has since found it necessary to close the public house, indeed I saw that it is now occupied as a single dwelling house. However, in my experience, due to many external factors the downturn in business described is not unique. Many publicans have found it necessary to try to alter their business model to respond to the changes that have occurred and the challenges that now face the trade.
9. The appellant has given no indication of what if any measures have been considered or were taken to respond to falling profits. I appreciate that a vibrant and busy public house on this site may have some additional impact on the living conditions of neighbouring residential occupiers. However, it already exists and this should not therefore alone be a reason to not develop the business and thereby to maintain it as a going concern.
10. Although it is stated that the business is not financially viable, the appellant has not submitted any audited figures to substantiate this assertion. In addition, I note that the appellant has not attempted to market the business either before or since closure to establish whether a new owner could be found to continue or develop the business for existing or new uses.
11. Having regard to the limited evidence submitted in support of the contention that the public house is no longer viable, I consider that there is insufficient evidence for me to conclude that the business is, as suggested by the appellant, not viable. The proposal therefore does not accord with the requirements of the development plan policies to which I have referred.

*Character and appearance*

12. The Council has raised a concern about the overall density of the development being, according to its evidence, approximately 100 dwellings per hectare which would be considerably higher than that of the existing low density housing surrounding the site. Providing new development is of a high quality design Government advice seeks to encourage the efficient use of land in sustainable locations. Accordingly, I do not consider the density of the proposal, in itself, to be harmful. However, in this case it has, I believe, led to a poor layout with amenity space only to the front and side of the block and car parking and refuse storage to the rear. In addition, the layout would afford little opportunity for the introduction of screening and landscaping. Furthermore, the existing public house use of the site may well at present generate some noise and general disturbance for neighbouring residential occupiers. However, in my view, the location of access, parking, turning and bin/re-cycling storage for twelve flats to the rear of the site, as proposed, may well have a greater detrimental impact than the present use on the living conditions of the immediate neighbours. In this respect I find the overall layout of the site poor.
13. Planning Policy Statement 1: *Delivering Sustainable Development* (PPS1) at paragraph 33 advises that '*good design ensures attractive, usable, durable and adaptable places and is a key element in achieving sustainable development. Good design is indivisible from good planning.*'
14. Planning Policy Statement 3: *Housing* (PPS3) at paragraph 37 states that '*new development should be of high quality inclusive design and layout...and be informed by its wider context, having regard not just to neighbouring buildings but to the townscape and landscape of the wider locality...The key test should be whether a development positively improves the character of an area and the way it functions.*'
15. The proposed development would replace a building which, although similar in scale and form to the surrounding housing, was placed on the site to be a prominent accent building in the street scene. I note that the proposed flats would be a storey higher than the existing building and neighbouring residential properties. This increase in height may not, however, subject to the quality of the design, be inappropriate. Indeed a taller building here may well add significantly to the visual interest of the character and appearance of the surrounding area.
16. In my opinion, although the design of the proposed building incorporates some vernacular architectural features, would be constructed of traditional building materials, and adopts a fairly traditional form and character it is, nevertheless, typical of many similar developments of this form and scale that could be found anywhere.
17. The designer, who has adopted a vernacular rather than a more imaginative contemporary design approach, appears to have had little regard to developing the design so that the building might better integrate and compliment the character and appearance of the surrounding area. Furthermore, other than making the building taller he has failed, in my view, to take the opportunity

that the development of this site affords, being highly visible in the local area, to design a building with special distinctiveness that would positively improve the character of the area and the way it functions.

18. As identified by the Council the building design incorporates a number of features, such as irregular and segmented elevations, balconies accessed via French doors, decorative brick banding etc which, in the context of a traditional design on this site, appear inappropriate and therefore incongruous.
19. I conclude in respect of the second main issue that the proposed development because of its design would have a detrimental visual impact on the character and appearance of the area contrary to the advice in PPS1 and PPS3 as reflected in Policies ENV1 and HSG7 of the East Herts Local Plan Second Review April 2007 (LP) as they relate to the quality of development.

#### *Infrastructure contributions*

20. Infrastructure contributions totalling £12,603.00 have been sought. This figure is made up as follows: £7,875.00 towards sustainable transport; £2,340.00 towards nursery education facilities; £684.00 towards childcare facilities; £156.00 towards youth facilities; £1,548.00 towards library facilities.
21. In addition, the Council is seeking to impose a requirement on the developer to provide a fire hydrant if, at a later date, it is found that extra hydrants are necessary. I appreciate that for safety reasons and having regard to the scale of development proposed that a fire hydrant may be found necessary when the scheme is considered in detail and in consultation with other agencies. As there is no certainty of its need I do not believe, however, that it should form part of a section 106 obligation at this stage.
22. Circular 05/2005 *Planning Obligations* states at paragraph B9 that "developers may reasonably be expected to pay for or contribute to the cost of all, or part of, additional infrastructure provision which would not have been necessary but for their development". However, at paragraph B35 it indicates that "standard charges and formulae should not be applied in blanket form regardless of actual impacts".
23. My attention has been drawn to *Planning obligations guidance-toolkit for Hertfordshire*, Hertfordshire County Council requirements January 2008. From this I see that in addition to requiring measures to ensure safe access and egress to a development, not as the Council has indicted in its evidence a consideration in this case, there is a standard charge for residential development in respect of, amongst other things the promotion of sustainable transport measures/schemes. However, there is no indication as to how or where the money is to be spent, nor how it is related to the development.
24. In respect of nursery education and childcare provision, while I appreciate that this development may impact on nursery and childcare places in Ware, and the demand for such facilities is forecast to increase, I have not been provided with details of the present provision so that I might assess the pressure or otherwise that this proposal would have on existing local facilities.

25. Turning to youth provision, from the evidence I see that this sum is 'likely' to be used to enhance the curriculum programme. It seems to me, therefore, that the sum requested is not required as a direct result of this development. The appellant is of the view that only the £1,548.00 contribution towards library services would be, in line with LP Policy IMP1, fairly and reasonably related in scale to the proposed development. However, the sum sought for library provision is again only 'likely' to be pooled and used towards the re-provision of the library in the High Street. It therefore seems to me that there is no certainty that the required contributions fairly and reasonably relate in scale and kind to this development. The weight that I can give these considerations is therefore reduced.
26. Although some additional facilities might arise, in direct proportion to the population increase resulting from the development, the local planning authority has not shown why each contribution is necessary or, to my mind, provided adequate justification for such requirements as a result of this proposal. On the basis of the limited evidence before me, therefore, I am not convinced that the contributions are fair or justified in the context of the advice set out in Circular 05/2005, specifically that in paragraph B5 of Annex B thereof.
27. I have found, in respect of the third main issue, that the financial contributions identified may not be required to alleviate the potential impact of this development on local infrastructure. However, for the reasons given above and having regard to all other matters raised, I nevertheless conclude that this appeal should be dismissed.

*Philip Willmer*  
INSPECTOR