Appeal Decision

Inquiry held on 19 May 2009
Site visit made on 19 May 2009

by John Murray LLB, Dip.Plan.Env, DMS, Solicitor

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

The Planning Inspectorate
4/11 Eagle Wing
Temple Quay House
2 The Square
Temple Quay
Bristol BS1 6PN

☎ 0117 372 6372
email:enquiries@pins.gsi.gov.uk

Decision date: 12 June 2009

Appeal Ref: APP/J1915/X/08/2088009
Martins Nest, Braughing Friars, Ware, Hertfordshire, SG11 2NR

- 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 Mrs Edna Chapman against the decision of East Hertfordshire District Council.
- The application Ref 3/08/0169/CL, dated 20 January 2008, was refused by notice dated 6 May 2008.
- The application was made under section 191(1)(a) of the Town and Country Planning Act 1990 as amended.
- The use or development for which a certificate of lawful use or development is sought was described in the application in the following terms: "The property has been sub divided into two residential properties since 1983. Myself and my late husband living in one part and my daughter and her family in the other."

Summary of Decision: The appeal is allowed and a certificate of lawful use or development is issued, in the terms set out below in the Formal Decision.

Procedural matters

1. Notwithstanding the description in the application, the parties agreed that the use for which a lawful development certificate (LDC) is sought should be described as "The use of the bungalow as two separate dwellinghouses." In order to ensure compliance with section 191(5)(b) of the 1990 Act, I consider that any LDC issued should also refer to Class C3 of the Schedule to the Town and Country Planning (Uses Classes) Order 1987.

2. Although the LDC application bore the date 20 January 2008, the parties agreed that the application was not validly made until 29 January 2008. Accordingly, that is the appropriate date at which to consider whether the use had become immune from enforcement action and the Council confirmed that no enforcement notice or breach of condition notice has ever been issued in relation to that use.

Main issue

3. The appeal bungalow as a whole was previously known as Martins Nest. Now, one half is known as Martins Nest and the other half as Woodpeckers. The main issue is whether the bungalow was used as two separate dwellinghouses for a continuous period of at least 4 years prior to 29 January 2008.

Reasons

4. Section 55(3)(a) of the 1990 Act provides that the use as two or more separate dwellinghouses of any building previously used as a single dwellinghouse involves a material change of use of the building and of each part of it which is so used. Whether the use of Martins Nest as a single dwellinghouse changed to use as two separate dwellinghouses at any point is a question of fact and degree. As Circular 10/97 (Enforcing Planning Control: Legislative Provisions and Procedural Requirements) makes clear, whilst the onus of proof is firmly on the appellant, the standard of proof is simply the balance of probability.

5. The Council drew my attention to the judgement in *Grendon v First Secretary of State and Cotswold District Council [2007] JPL 275*, which referred to earlier authorities and indicated that, in determining whether a building is used as a separate dwellinghouse, regard must be had to: (i) the physical state of the premises; (ii) its actual user; and (iii) its intended user. In that judgement, the case of *Impey v Secretary of State [1980] 47 P & CR 157* was cited and this made it clear that none of the above factors is decisive on its own; these matters must be looked at in the round.

The physical state of the premises

6. In or about 1977, on the basis of planning permission Ref 3/538-77, Martins Nest was extended to provide an additional lounge, kitchen/dining room and bathroom. As extended, Martins Nest then had 4 bedrooms, 2 lounges, 2 bathrooms, a kitchen, a dining room and a separate kitchen/dining room. However, notwithstanding that there was a connecting door dividing a central hallway, occupants could move freely within the whole building.

7. Planning permission Ref 3/538-77 was subject to a condition requiring that the extension be used only in conjunction with the exiting dwelling, as residential accommodation, and not as a separate dwelling. Whilst breaches of condition would normally not be immune from enforcement action until 10 years have elapsed, the Council acknowledged that, having regard to *First Secretary of State v Arun District Council and Brown [2007] 1 WLR 523*, the appropriate period for immunity in respect of conditions of this nature is 4 years.

8. Though it previously had doubts, on the basis of the evidence provided with the LDC application and the written evidence submitted with the appeal, having heard the sworn oral evidence to the Inquiry, the Council accepted that a dividing wall was erected in about 1983 and that it has remained in place ever since. This wall physically subdivided Martins Nest, so that the western section had 2 bedrooms, a lounge, dining room, kitchen and bathroom and the eastern part comprised 2 bedrooms, a lounge, kitchen/dining room and bathroom.

9. As at 1983, when the dividing wall was erected, the western part of the bungalow was occupied by the appellant, her husband and her mother and the eastern section was occupied by the appellant's daughter Hilary, together with her husband and 2 young daughters. Each part of the building had its own external access door, at opposite ends of the building, and it was no longer possible to pass from one part to the other, without going outside. There were already 2 separate vehicular accesses and driveways, one serving each side of

the bungalow, though the extensive gardens were not and are still not physically separated.

10. Until 2008, the two parts of the bungalow did not have separate electricity or other utility supplies. Nevertheless, since 1983, each part has otherwise been physically separate and self-contained, with all the attributes of and capable of being occupied as a separate dwellinghouse.

Actual user

11. The affidavit submitted by the appellant with her LDC application stated that the subdivision of the bungalow effectively created 2 residential properties and that, since that subdivision, the 2 parts have been used separately, albeit by members of the same family. The appellant's son, Martin Chapman confirmed on oath that the separate halves of the property had been used independently since 1983. He explained that, the appellant's mother and husband sadly passed away in around 1984 and 1997 respectively, but the appellant continued living in the western half of the property. Hilary remained in the eastern half up to 2008, though, unfortunately, she separated from her husband in 2004 and, furthermore, her eldest daughter moved out in about 2003 and her youngest daughter left around 2007. Then, following her divorce, Hilary moved in with her mother in May 2008 and, at the same time, Martin and his family occupied the eastern half of the property, now known as Woodpeckers, having sold their former home. This arrangement facilitated Hilary's divorce settlement.

12. The Council could not provide any positive evidence to show that the actual use of the property had not been as 2 separate dwellings, but suggested that, as it was occupied by close family members, there would have been considerable interaction, particularly during the period after Hilary's separation. Furthermore, the Council contended that the sharing of utility and Council Tax liabilities, as well as a single postal address, necessitated considerable interdependence.

13. Martin Chapman was not living at the property throughout the relevant period, but on average, he had visited once a fortnight. In these circumstances, and given his close family connection, I consider that he could speak with authority about the manner in which the property had been used. He confirmed that, even during the relatively short period when Hilary and the appellant lived alone in their respective halves of the property, they had not generally shared meals together, particularly since Hilary had to go to work.

14. It seems inevitable to me that there will be significant interaction between a mother and daughter living next to each other and Martin Chapman conceded under cross examination that it was possible that his sister and the appellant had eaten together "more than occasionally" and the level of interaction would have been more than that normally expected between next door neighbours. However, this is not inconsistent with occupation of the building as 2 separate dwellinghouses. The Council's witness acknowledged that if a mother and daughter occupied adjoining semi-detached houses, the fact that they ate together, even on a daily basis, would not, on its own, change the use of that pair of houses to use as a single dwellinghouse. The sharing of utility bills, Council Tax bills, a single postal address and even a garden necessitates a

degree of cooperation, which might only be easily achieved among family members, but again, this does not mean that, on a day to day basis, the building was not actually occupied as 2 separate dwellinghouses. On the balance of probabilities, the evidence before me points to use of the bungalow as 2 separate dwellinghouses from 1983 onwards.

Intended user

15. Independent utility supplies, Council Tax registration, postal addresses and legal titles have only been secured within the last year or so, and this could suggest that the intention to subdivide the bungalow has only recently been formed. However, in her affidavit, the appellant stated that the dividing wall was erected to "stop the children moving from one side of the house to the other, and to provide some privacy for both parts of the family." Martin Chapman has explained that his grandmother was sadly suffering from senile dementia and her ability, and that of her grandchildren, to wander freely throughout the bungalow was causing difficulties. The Council suggested that evidence relating to privacy was "ambiguous". However, it seems to me that the construction of a permanent dividing wall in 1983 evidenced a clear and unambiguous intention to create 2 separate dwellinghouses for occupation by the 2 parts of the family; joint occupation of a single dwellinghouse being no longer practical. That separate occupation has continued to this day, albeit with a degree of interaction.

16. I drew Martin Chapman's attention to a letter written by him on 15 September 2008 in which he said he had recently made clear to a Council planning officer their "intentions to become (sic) separate dwellings..." During the Inquiry, he explained that he was referring to their intentions to "legalise" the separation. In the particular circumstances of this case, I am satisfied that the recent changes in relation to bills, the postal address and legal title merely recognised and formalised a factual situation that had existed for many years. Given the family connections, the need for cooperation over matters such as bills and post had not presented difficulties. However, it is not surprising that, as Hilary finalised the financial settlement in her divorce and Martin sold his previous home to move to the appeal property, it was felt necessary to formalise arrangements. I am not persuaded that these steps marked a crucial change in intentions, or the way in which the bungalow was used.

Conclusion

17. Factors such as the single utility bills, Council Tax registration, postal address, legal title and garden would normally suggest occupation of a building as a single dwelling, but they are not decisive. As a matter of fact and degree, having regard to the clear physical subdivision of the bungalow and the evidence of its actual and intended user, I am satisfied on the balance of probability that the bungalow was used as two separate dwellinghouses for a continuous period of at least 4 years prior to 29 January 2008. Accordingly, for the reasons given and having regard to all other matters raised, the Council's decision to refuse the LDC was not well founded and the appeal succeeds. I shall exercise the powers transferred to me under section 195(2) of the 1990 Act as amended. Given that this appeal essentially concerns the use of the bungalow, the parties agreed that the building should be specifically identified on the plan attached to the LDC, rather than the overall plot.

Formal Decision

18. I allow the appeal, and I attach to this decision a certificate of lawful use or development describing the existing use which I consider to be lawful.

J A Murray

INSPECTOR

DOCUMENTS SUBMITTED AT THE INQUIRY

1 Neighbour notification letters

The Planning Inspectorate
Temple Quay House
2 The Square
Temple Quay
Bristol BS1 6PN
☎ 0117 372 6372
email:enquiries@pins.gsi.gov.uk

Lawful Development Certificate

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 191
(as amended by Section 10 of the Planning and Compensation Act 1991)

TOWN AND COUNTRY PLANNING (GENERAL DEVELOPMENT PROCEDURE) ORDER 1995: ARTICLE 24

IT IS HEREBY CERTIFIED that on 29 January 2008 the use described in the First Schedule hereto in respect of the building specified in the Second Schedule hereto and hatched in black on the plan attached to this certificate, was lawful within the meaning of section 191(2) of the Town and Country Planning Act 1990 (as amended), for the following reason:

The time for taking enforcement action in respect of the use had expired and it did not constitute a contravention of any enforcement notice or breach of condition notice then in force.

Signed:

J A Murray

John Murray
Inspector

Date: 12.06.09
Reference: APP/J1915/X/08/2088009

First Schedule

Use of the bungalow as two separate dwellinghouses each within Class C3 of the Schedule to the Town and Country Planning (Uses Classes) Order 1987.

Second Schedule

The bungalow formerly known as Martins Nest and now known as Martins Nest and Woodpeckers, Braughing Friars, Ware, Hertfordshire, SG11 2NR.

NOTES

1. This certificate is issued solely for the purpose of Section 191 of the Town and Country Planning Act 1990 (as amended).

2. It certifies that the use described in the First Schedule taking place on the land specified in the Second Schedule was lawful, on the certified date and, thus, was not liable to enforcement action, under section 172 of the 1990 Act, on that date.

3. This certificate applies only to the extent of the use described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use which is materially different from that described, or which relates to any other land, may result in a breach of planning control which is liable to enforcement action by the local planning authority.

Plan

This is the plan referred to in the Lawful Development Certificate dated: 12.06.09

by John Murray LLB, Dip.Plan.Env, DMS, Solicitor
Land at: Martins Nest and Woodpeckers, Braughing Friars, Ware, Hertfordshire, SG11 2NR

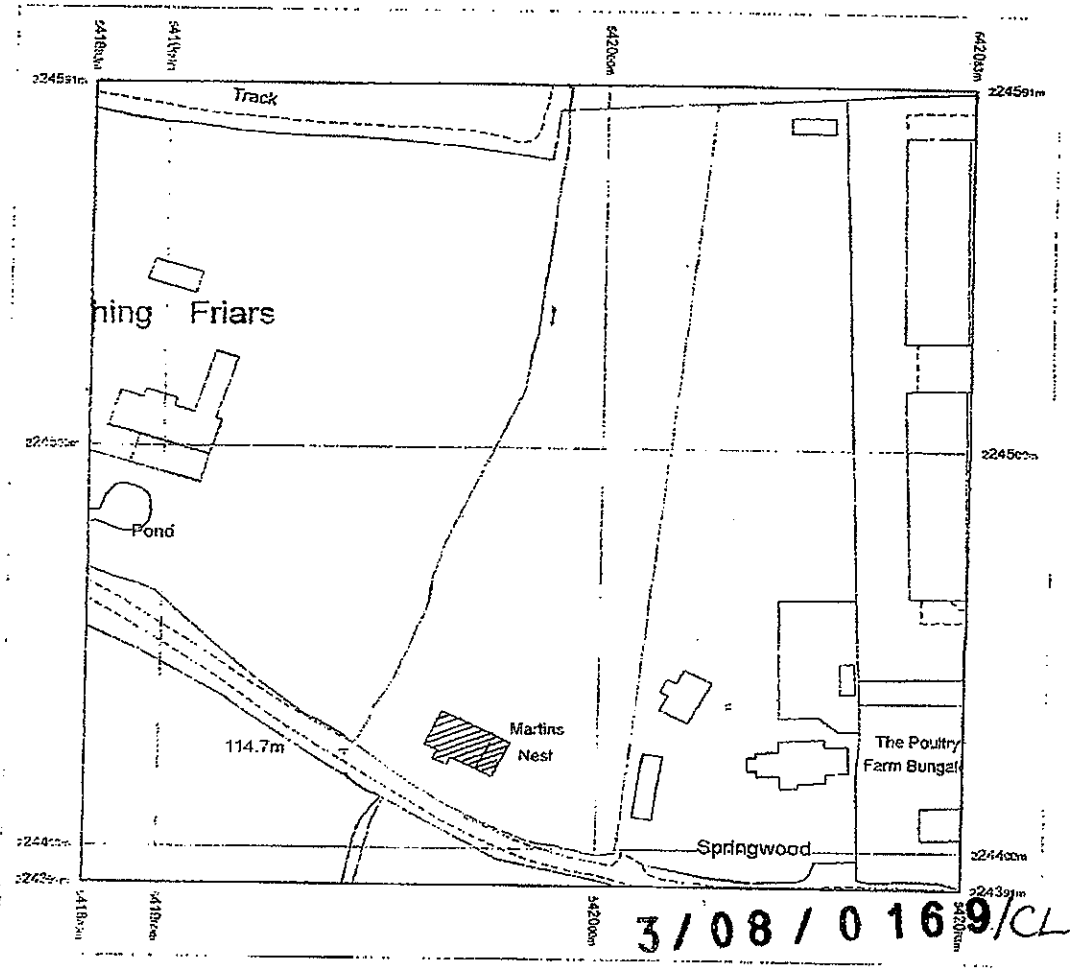
Reference: APP/J1915/X/08/2088009

The Planning Inspectorate
4/11 Eagle Wing
Temple Quay House
2 The Square
Temple Quay
Bristol BS1 6PN
☎ 0117 372 6372
email:enquiries@pins.gsi.gov.uk

Scale: Do not scale

Ordnance Survey®

OS Sitemap™



3/08/0169/CL

Produced 20.04.2007 from the Ordnance Survey National Geographic Database and incorporating surveyed revision available at this date. © Crown Copyright 2007.

RECEIVED 2 9 JAN 2008

Martins Nest, SG11 2NR

Appeal Decision

Hearing held on 21 April 2009
Site visit made on the same day

by Isobel McCretton BA(Hons) MRTPI

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

The Planning Inspectorate
4/11 Eagle Wing
Temple Quay House
2 The Square
Temple Quay
Bristol BS1 6PN

☎ 0117 372 6372
email:enquiries@pins.gsi.gov.uk

Decision date:
11 June 2009

Appeal Ref: APP/J1915/A/08/2091156
12 Maidenhead Street, Hertford SG14 1DR

- 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 Slades against the decision of East Hertfordshire District Council.
- The application Ref. 3/08/0644/FP, dated 1 April 2008, was refused by notice dated 30 May 2008.
- The development proposed is alterations to existing shop and development of 4 flats above.

Decision

1. I allow the appeal, and grant planning permission for alterations to existing shop and development of 4 flats above at 12 Maidenhead Street, Hertford SG14 1DR in accordance with the terms of the application, Ref. 3/08/0644/FP, dated 1 April 2008, and the plans submitted with it, subject to the following conditions:

   1) The development hereby permitted shall begin not later than three years from the date of this decision.

   2) Prior to the commencement of above ground development, detailed drawings and sections of all new doors, windows and roof eaves at a scale of not less than 1:20 shall be submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details.

   3) No development shall take place until samples of the materials (including a sample board) to be used in the construction of the external surfaces of the building hereby permitted have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.

   4) Prior to the commencement of development details of facilities for the storage and removal of refuse shall be submitted to and approved in writing by the local planning authority. The facilities shall be provided prior to the first occupation of any of the flats hereby approved and thereafter shall be permanently retained for use by the occupiers.

   5) No development shall take place, including any works of demolition, until a Construction Method Statement has been submitted to, and approved in writing by, the local planning authority. The approved Statement shall be adhered to throughout the construction period. The Statement shall provide for:

a) the parking of vehicles of site operatives and visitors, loading and unloading of plant and materials

b) storage of plant and materials used in constructing the development

c) the erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate

d) a scheme for recycling/disposing of waste resulting from demolition and construction works.

6) No works of demolition, site preparation and construction and no plant or machinery shall be operated on the site other than between 07.30 - 18.30 hours Monday to Friday, 07.30 - 13.00 hours on Saturdays and at no time on Sundays or public holidays.

7) The dwellings hereby approved shall achieve Level 3 of the Code for Sustainable Homes. No dwelling shall be occupied until a final Code Certificate has been issued for it certifying that Code Level 3 has been achieved.

Main Issues

2. The main issues in this case are whether or not the proposed development would preserve or enhance the character or the appearance of the Hertford Conservation Area; whether or not an adequate standard of accommodation would be provided for future occupiers in terms of daylight, outlook and amenity space; and whether or not the proposals would accord with objectives for sustainable, energy efficient development.

Reasons

Character and Appearance/Conservation Area

3. The appeal property is a mid-terrace shop unit situated within the Hertford Conservation Area and the primary shopping frontage of the town centre. The property (like the adjoining unit at no.10 which is of similar design) dates from about the 1920s. It originally had a flat roof but a more modern 'mansard' addition with long sloping rear roof was built in the 1970s, the space originally being used as a sales area but is now principally used for storage. No. 10 remains flat-roofed. To the other side no.14 is a larger property with a pitched roof and dormer set behind a brick parapet. No.10 stands alongside the entrance to Dolphin Yard to the rear which is part of a current redevelopment scheme which will include residential accommodation and a library, making this part of Maidenhead Street a more important focus within the town centre. It is proposed to remove the existing first floor addition to the appeal property and to construct 2 floors of residential accommodation comprising 4 studio flats, along with internal alterations to the retail unit to relocate the staircase and provide a new shop front/access to the flats.

4. I consider that the design of the proposed development would, unlike that of the existing building, stand comfortably in the street scene, helping to close down the rather incongruous gap at nos. 10 and 12 where the single storey shop units interrupt the predominantly 3-storey building line which encloses

Maidenhead Street. The front gable would reflect that at no.14 and is a feature found in one form or another on a number of buildings throughout the Conservation Area. The age, size and design of the properties in the Conservation Area vary considerably, with no overall distinctive style. The repetition of one gable/dormer at the appeal site would not, in my opinion, harm the overall variety of design in the street scene.

5. There would be a long ridged roof running to another gable at the rear. While the proposal would result in a considerable expanse of brick wall on the flank this would, to some extent, be relieved by detailing in the brickwork. In any event, in the views available from Maidenhead Street are limited and this wall would be set behind no.10. There are few vantage points from which it would be seen in its entirety. The rear elevation, with a balcony and roof terrace, would provide an attractive residential façade which would relate acceptably with the existing and proposed development around Dolphin Yard.

6. The need to provide access to the flats would reduce the width of the shop front, but to some extent this would be compensated for by the angling of the display window. Overall the proposal would enable a more practicable shop floor layout than that which currently exists.

7. The Council has no objection in principle to the development of the site but considers that there should be a comprehensive redevelopment of no.10 and no.12 to make a focal point at the entrance to Dolphin Yard. However the appellants' attempts to engage the owner of that property in a combined scheme have been unsuccessful. I acknowledge that the combined development of both sites would be a preferable, but I agree with the appellants' view that it would be unreasonable to frustrate development of the appeal site indefinitely. The Council's conservation advisor has outlined various ways in which he considers the scheme could be improved e.g. with the introduction of a lantern or glazing to the main roof and removal of the front dormer, but I have to consider the proposal before me. The proposed scheme, while providing what is, to my mind, a satisfactory development of no.12 in its own right, would not preclude redevelopment of no.10 at a future date, and would not, in my opinion, harm the character and appearance of the Conservation Area. At present nos.10 and 12 detract from the street scene in Maidenhead Street and redevelopment of no.12 as proposed would go some way to re-establishing the pattern of development along the frontage.

8. I conclude that the proposed development would preserve and enhance the character and appearance of the Hertford Conservation Area. As such it would accord with policies ENV1, BH6 and STC1 of the East Herts Local Plan Second Review (2007) which, among other things, require a high standard of design which reflects local distinctiveness, complements the existing grain of development, relates well to the massing and height of adjacent buildings, and makes effective use of upper floors in the town centre.

Living Conditions

9. The development would provide 4 studio flats and, as they would all be single aspect, the Council is concerned about light and ventilation. A central stairwell would be lit by 2 roof lights. The rear units would each have 2 windows and although the Council argues that no allowance is made for development at the

rear of no.10, as far as I am aware there is no extant planning permission for that site. The 2 front units would look out over Maidenhead Street. However this is a pedestrianised area and any future occupiers would be aware of the town centre location. Although it is likely that there would be evening activity in the vicinity, there is no evidence before me to show that this would create unacceptable living conditions.

10. All flats would have to comply with the Building Regulations in respect of ventilation and daylight and, as the appellants have shown, the requirements would be more than met.

11. As far as amenity space is concerned, there would be a small balcony for flat 3 and a patio area for flat 2. The other 2 units would not have access to private space. However there is open space in easy walking distance of the appeal site and lack of amenity space is not unusual in high density town centre locations. I do not consider this a reason to dismiss the appeal.

12. I conclude that the proposal would provide satisfactory living space for future occupiers and would accord with Local Plan policy ENV1 in this respect.

Sustainability

13. The Council contends that the layout would give rise to additional need for artificial lighting and ventilation which would affect the energy performance of the building. As set out above, the window areas would more than meet Building Regulations standards and, although cross ventilation would be desirable, there is no evidence that it would become necessary to install air conditioning. Besides, the overall energy performance of the building relies on much more than these 2 factors and the Council has not produced any substantiated evidence that the energy performance of the building would be so inefficient such that the appeal should fail in this regard. Moreover the proposal would provide 4 new units of accommodation in a highly sustainable town centre location. I therefore conclude that the proposal would not conflict materially with objectives to achieve sustainable development.

Conditions

14. I have considered the need for conditions in the light of the advice in Circular 11/95: *The Use of Conditions in Planning Permissions* and those discussed at the Hearing. I agree that because of the location within the Conservation Area it is necessary to require prior approval of the details of windows, doors and eaves, and a sample board of materials. To ensure adequate provision for future occupiers I consider it necessary to require details of refuse storage and removal and, to meet the objectives of sustainable development, it is reasonable to require that the flats meet level 3 in the Code for Sustainable Homes.

15. Because of the busy town centre location it is also reasonable to require a construction management statement including details of parking and materials storage areas and to protect the amenity of nearby residents by restricting working times.

16. As set out above, I do not consider it would be reasonable to prevent the commencement of development until planning permission is in place for the redevelopment of no.10.

Conclusion

17. For the reasons given above I conclude that the appeal should be allowed.

Isobel McCretton

INSPECTOR

Documents Submitted at the Hearing:

Document 1 Council's letters of notification

Drawings:

A1-6 Drawings submitted with the planning application (H1836/101A, 104A, 111, 112, 113, 114)

Appeal Decision

Site visit made on 25 March 2009

by Shaun J Greaves BA(HONS) DipURP MRTPI

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

The Planning Inspectorate
4/11 Eagle Wing
Temple Quay House
2 The Square
Temple Quay
Bristol BS1 6PN

☎ 0117 372 6372
email:enquiries@pins.gsi.gov.uk

Decision date: 11 June 2009

Appeal Ref: APP/J1915/A/08/2084000
Gatesbury Mill, Wickham Hill, Braughing, Hertfordshire, SG11 2PA

- 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 Andrew Oakley against the decision of East Hertfordshire District Council.
- The application Ref 3/08/0734/FP, dated 17 April 2008, was refused by notice dated 23 July 2008.
- The development proposed is a swimming pool building.

Decision

1. I dismiss the appeal.

Main issues

2. I consider that the main issues relating to this appeal are the effect of the proposed development on: (a) the setting of the listed building, and (b) the character and appearance of the surrounding countryside.

Reasons

Setting of the listed building

3. Gatesbury Mill is a detached dwelling which is a Grade II listed building in an isolated location within the open countryside.

4. It is proposed to erect a detached single-storey pool building about 17.5m to the north of the dwelling on a hard-surfaced area adjacent to an existing outbuilding that is used as a residential annex to the main house. The proposed building would be within the immediate setting of the listed building and clearly visible from it.

5. The listed building is set within gardens and there is a pond to the south east of the dwelling. As well as the residential annexe there is an outbuilding to the north-east of the dwelling. I consider that whilst the outbuildings are relatively large they do not dominate or detract from the setting of the listed building due to their simple and traditional design.

6. Policy BH12 of the adopted East Herts Local Plan Second Review 2007 (LP) seeks to resist development that would fail to preserve or enhance the setting of listed buildings.

7. The proposed pool building would be of a significantly different design to the existing outbuildings. Given the width and depth of the proposal, it would be significantly larger than the adjacent annexe and the size of the footprint would be similar to that of the dwelling.

8. I consider that the design of the proposed building would not reflect the appearance of the existing outbuildings in the vicinity, particularly due to the use of a shallow hipped roof and floor-to-ceiling glazing. Although measures have been taken to minimise the height of the building, including setting it below existing ground levels by 0.7m, it would nevertheless be of a size, scale and design that would significantly affect the setting of this listed building. The building would appear prominent within this setting and be at odds with the design of existing outbuildings that form the existing setting of the listed building.

9. I note the appellant considers that the proposal would improve the setting of the listed dwelling, partly because it would replace a clutter of timber buildings, equipment and stored materials that detract from the setting of the listed building. However, the untidy appearance of this area could be remedied without the need to erect the proposed building. Therefore I consider that the current untidy appearance of the site does not justify the erection of such a large and permanent building that fails to preserve the setting of the listed building.

10. For the reasons given above I conclude that the proposal would fail to preserve or enhance the setting of the listed building and conflict with LP Policy BH12.

Character and appearance of the countryside

11. LP Policy GBC3 applies a policy of restraint to development in such locations within the Rural Area Beyond the Green Belt, but allows for limited extensions or alterations to existing dwellings in accordance with LP Policy ENV5. This policy requires outbuildings to be of scale and size that would either by itself, or cumulatively with other extensions, not disproportionately alter the size of the original dwelling nor intrude into the openness or rural qualities of the surrounding area.

12. The proposed building would be set into the ground with the land rising to the north. The building would be screened from wider views to the south and east by existing buildings. The appeal site is in an isolated location about 350m from the highway at the end of a private drive and the proposal would not be visible from any public vantage points. It would not therefore in my opinion be particularly prominent from wider views within the surrounding countryside.

13. Whilst I take the view that the proposal would be disproportionate to the scale and size of the original dwelling, I consider that it would not intrude into the openness or rural qualities of the surrounding area. For these reasons I conclude that the proposal would not be harmful to the rural character and appearance of the surrounding countryside and therefore not conflict with the aims of LP Policies GBC3 and ENV5.

Other matters

14. The appellant has indicated that were it not for the fact that Gatesbury Mill is a listed building the proposed building would be permitted under relevant provisions of the Town and Country Planning (General Permitted Development) Order 1995 (as amended) (GPDO). Be that as it may, planning permission is required for the development subject of the appeal, and so I have considered the appeal as I must on its own planning merits.

15. I note that the proposal would be significantly smaller than a scheme that was refused previously by the Council. However, I have considered the proposal on its own merits.

Conclusion

16. Notwithstanding my conclusions on the second issue, the objections I have identified concerning the harm to the setting of the listed building in my judgement constitute convincing reasons why planning permission should be withheld. Having regard to all other matters raised, I conclude that the appeal should not succeed.

S J Greaves

INSPECTOR

Appeal Decision

Hearing held on 26 March 2009
Site visit made on 26 March 2009

by Mrs H M Higenbottam
BA (Hons) MRTPI
an Inspector appointed by the Secretary of State for Communities and Local Government

The Planning Inspectorate
4/11 Eagle Wing
Temple Quay House
2 The Square
Temple Quay
Bristol BS1 6PN

☎ 0117 372 6372
email:enquiries@pins.gsi.gov.uk

Decision date:
4 June 2009

Appeal Ref: APP/J1915/A/08/2090763
65 North Road, Hertford, Hertfordshire SG14 1NF

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a grant of planning permission subject to conditions.
- The appeal is made by Mr Vincent Teo against the decision of East Hertfordshire District Council.
- The application Ref 3/08/0940/OP, dated 21 May 2008, was approved on 27 August 2008 and planning permission was granted subject to conditions.
- The development permitted is outline planning permission (all matters reserved) for the demolition of the existing buildings and the erection of five houses with associated parking.
- The conditions in dispute are Nos 4, 5 and 6.
- Condition 4 states: *Any dwellings that are subsequently proposed on this site through the submission of reserved matters shall not exceed two storeys in height. For the avoidance of doubt no such dwellings should include any residential accommodation in the roof space.*
- Reason: *To ensure that the development is properly related to the scale of surrounding developments in accordance with policy ENV1 of the East Herts Local Plan Second Review April 2007.*
- Condition 5 states: *Notwithstanding the provisions of Article 3 of the Town and Country Planning (General Permitted Development) Order 1995, the enlargement improvement or other alteration of any dwellinghouse as described in Schedule 2, Part 1, Class A of the Order shall not be undertaken without the prior written permission of the Local Planning Authority.*
- Reason: *To ensure the Local Planning Authority retains control over any future development as specified in the condition in the interests of amenity and in accordance with policy ENV 9 of the East Herts Local Plan Second Review April 2007.*
- Condition 6 states: *Notwithstanding the provisions of Article 3 of the Town and Country Planning (General Permitted Development) Order 1995, the provision within the curtilage of the dwelling of any building, enclosure or swimming pool as described in Schedule 2 Part 1 Class E of the Order shall not be undertaken without the prior written permission of the Local Planning Authority.*
- Reason: *To ensure the Local Planning Authority retains control over any future development as specified in the condition in the interests of amenity and in accordance with policy ENV 9 of the East Herts Local Plan Second Review April 2007.*

Application for costs

1. At the Hearing an application for costs was made by Mr Vincent Teo against East Hertfordshire District Council. This application is the subject of a separate Decision.

Decision

2. I allow the appeal, and vary the planning permission Ref 3/08/0940/OP for outline planning permission (all matters reserved) for the demolition of the existing buildings and the erection of five houses with associated parking at 65 North Road, Hertford, Hertfordshire SG14 1NF granted on 27 August 2008 by East Hertfordshire District Council, by deleting conditions 4, 5 and 6.

Background and Main issues

3. Outline planning permission has been granted for the demolition of the existing buildings and the erection of five houses with associated parking at the appeal site. It was confirmed at the Hearing that notwithstanding comments in the Planning Supporting Statement (dated May 2008), submitted with the planning application 3/08/0940/OP, that all matters were reserved for later consideration.

4. Upper limits for the height for each Plot were stated within the Design and Access Statement (DAS) in Section 4 *Scale Parameters.* There is no dispute between the parties as to the proposed heights or numbers of storeys of plots 3, 4 and 5, which are located to the rear of the site.

5. The dispute arises in relation to Plots 1 and 2 which are stated in the DAS to be 2.5 storeys and with a maximum height to ridge level of approximately 8.6m. However the disputed condition (4) seeks to limit this part of the development to two storeys in height, with no residential accommodation in the roofspace.

6. In light of the above I consider that the main issues in this case are;

   - whether Condition 4, limiting the height of development on plots 1 and 2 to two storeys is necessary and reasonable in the light of the character and appearance of the area; and

   - whether there are any exceptional circumstances which would justify the restriction of permitted development rights (Conditions 5 and 6).

Reasons

Plots 1 and 2

7. In 2006 an appeal (reference APP/J1915/A/05/2010421) for outline planning permission for the erection of 5 dwellings at the appeal site, with matters of design, external appearance and landscaping reserved, was dismissed. In that case the Inspector considered the proposal would detract from the leafy and regular character and appearance of this part of North Road. At paragraph 21 of the Decision it is noted that the indicative plans showed 2 storey dwellings with accommodation within the roof space and that the Inspector accepted that the footprints of the houses would be sufficiently large, even if the number of storeys were limited.

8. The appeal site is steeply sloping with approximately a 9m increase in levels from the front to the back of the site. Some properties within the immediate area are two storey with accommodation within the roof space. In particular 61 North Road, adjacent to the appeal site, has accommodation within the roof space i.e. 2.5 storeys of accommodation. To my mind development of up to

2.5 storeys fronting onto North Road, would not harm the character or appearance of the area.

9. The wording of the condition and the evidence submitted by the Council does not seek to limit the height of Plots 1 and 2, only the number of floors of accommodation. This would not necessarily result in a reduction of height of the proposed dwellings. It is therefore unclear how the condition in its current wording would achieve a 'proper' relationship in terms of scale to surrounding properties.

10. As the intention of the Council is apparently to restrict development to a lower height, the wording of Condition 4 fails to require this and is imprecise.

11. Although the indicative plans indicate ridge heights of marginally less (8.59m) than the stated maximum height of 8.6m, I am satisfied that they demonstrate to me that development of a maximum height of up to 8.6m to ridge could be accommodated on Plots 1 and 2. Such a development would respect the height of the adjacent property i.e. No 61. I consider that dwellings of this height on Plots 1 and 2 would not be out of character or harm the appearance of this part of North Road. I am not therefore persuaded that the Council's apparent desire to limit the height of the development below that level is necessary or reasonable.

12. If the disputed condition were removed, the height of the development would not be uncontrolled. This is because the scale of the details of the development would have to be within the upper limit stated in the planning application at outline stage (i.e. 2.5 storeys and with a maximum height to ridge level of approximately 8.6m).

13. I find that Condition 4 is imprecise, unreasonable and unnecessary and it therefore fails to meet the tests set out in Circular 11/95. Removing Condition 4 would not conflict with Policy ENV1 of the East Herts Local Plan Second Review April 2007 (LP) which requires development to relate well to adjacent buildings and to the surrounding townscape.

Restrictions of Permitted Development Rights

14. Conditions 5 and 6 remove permitted development rights (pd) under Schedule 2, Part 1 Classes A and E of the Town and Country Planning (General Permitted Development) Order 1995 (as amended). Policy ENV9 (II) states conditions may be imposed in appropriate cases withdrawing specific classes of permitted development. The preamble to the policy refers to withdrawing permitted development rights to retain control over the appearance of a site.

15. Circular 11/95 *The Use of Conditions in Planning Permissions* advises that conditions restricting permitted development rights should only be imposed exceptionally. The Circular gives examples of circumstances where it may be possible to justify the imposition of such a condition (paragraph 88). In particular it recognises that in an area of housing at unusually high density such restrictions may be justified so as to avoid overdevelopment by extensions.

16. The Council have produced no evidence to demonstrate any exceptional circumstances to justify the removal of pd rights. The existing development within the area demonstrates a wide variety of extensions, alterations and buildings within gardens. In the previous appeal decision the Inspector noted that outbuildings around the rear of the site resulted in a less spacious character than might be expected. I concur with this view. These existing outbuildings are part of the character of the area and are not prominent in public views of the appeal site. Furthermore, the existence of such outbuildings would not, to my mind, amount to a justification for restricting pd for outbuildings on the appeal site.

17. The density of the appeal proposal is 10.8 dwellings per hectare (dwph). In my view, it is unreasonable to generally restrict pd rights under Class A or E, when the density of the development is significantly below the national indicative minimum density set out in Planning Policy Statement 3 *Housing* of 30 dwph.

18. Furthermore, the proposal is in outline with all matters reserved for later consideration. Therefore the relationship between each of the plots and existing dwellings has yet to be determined. In my view, the blanket removal of pd rights under Class A or E without a particular planning purpose or potential harm identified is unreasonable, unjustified and unnecessary. If the details of the development lead to a need to restrict pd rights, this could be done at that stage.

19. I therefore find that there are no exceptional circumstances to justify the imposition of Conditions 5 and 6, which are unreasonable. Removing Conditions 5 and 6 would not, in my view, conflict with LP Policy ENV9.

Conclusion

20. For the reasons given above I conclude that the appeal should succeed. I will vary the permission by deleting the disputed conditions (Conditions 4, 5 and 6).

Hilda Higenbottam

Inspector

APPEARANCES

FOR THE APPELLANT:

Mr H Fairbrass BTP MRTPI	Agent acting for the appellant
Mr Teo BSC	Director of Thinklogic Ltd, appellant
Mr D McDonnell BSc	Design Consultant, Thinklogic Ltd

FOR THE LOCAL PLANNING AUTHORITY:

Mr M Chalk MSc BSc Licentiate Member RTPI	Town Planning Officer, East Hertfordshire District Council
Mr T Hagyard BA MA Town Planning MA Urban Design MRTPI	West Team, Development Control Team Manager, East Hertfordshire District Council

DOCUMENTS AND PLANS SUBMITTED AT THE HEARING

1 Drwg No 12-15 revision A Proposed Highway Drawing
2 Preamble to Policy ENV9
3 Comments on Council and Third Party Statements submitted by Appellant
4 Appeal decision reference APP/J1915/A/05/2010421
5 Extract from the Planning Encyclopaedia pages 39501 – 39516
6 Minutes of the 27 August 2008 Development Control Committee

Costs Decision

Hearing held on 26 March 2009

Site visit made on 26 March 2009

by Mrs H M Higenbottam

BA (Hons) MRTPI

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

The Planning Inspectorate
4/11 Eagle Wing
Temple Quay House
2 The Square
Temple Quay
Bristol BS1 6PN

☎ 0117 372 6372
email:enquiries@pins.gsi.gov.uk

Decision date:
4 June 2009

Costs application in relation to Appeal Ref: APP/J1915/A/08/2090763
65 North Road, Hertford, Hertfordshire SG14 1NF

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
- The application is made by Mr Vincent Teo for a full award of costs against East Hertfordshire District Council.
- The hearing was in connection with an appeal against the grant subject to conditions of planning permission for outline planning permission (all matters reserved) for the demolition of the existing buildings and the erection of five houses with associated parking.

Summary of Decision: The application is allowed in the terms set out below in the Formal Decision and Costs Order.

The Submissions for Mr Vincent Teo

1. The application is for a full award of costs and refers to paragraph 20 of Annex 3.

2. The Council have failed to heed the advice in Circular 11/95. Conditions should only be imposed when they are necessary and reasonable. They should be enforceable, precise and relevant both in planning terms and to the proposed development. Conditions which fail to meet these criteria may lead to an award of costs.

3. The planning application was in outline with all matters reserved. The Council were not entitled to consider or seek to control the scale or height of the development. The Council were only considering matters appropriate to the outline application. In the previous appeal the Inspector concluded that matters of design could not be controlled and an award of costs against the Council was made accordingly.

4. Despite the previous appeal the Council imposed Condition 4 which 'cut across' the stated scale parameters, when they had no power to do so. This amounts to unreasonable behaviour. The imposition of the condition is unlawful and therefore unreasonable.

5. Furthermore, Condition 4 prevents the use of the roofspace for residential use and would prevent water storage tanks, heating equipment or the storage of any domestic items. This it totally unwarranted, unenforceable and unreasonable. It is also unrelated to the control of scale of the proposed development.

6. The wording of condition 4 is imprecise and vague. There is no indication of what a 'storey' is.

7. In relation to Conditions 5 and 6 the Council have displayed a total disregard for the advice contained in Circular 11/95. Paragraph 10 of the Circular advises against the use of reasons such as to maintain control over the development because of the vagueness of the wording and that there is no proper justification for the condition. Yet both reasons for these conditions use virtually that wording.

8. Paragraphs 86-88 of Circular 11/95 counsels against the removal of permitted development rights other than in exceptional circumstances. The Council have failed to refer to any exceptional circumstances such as to warrant the conditions. Both conditions and their reasons fail to meet the criteria set out in the Circular.

The Response by East Hertfordshire District Council

9. In relation to not having regard to Circular 11/95, just because there is no specific reference, it does not mean no regard was had to the advice within the Circular. Officers are fully trained and well versed with the advice.

10. In relation to the reasons for conditions the Council thought there was a need for each condition.

11. The Council realised the outline application was submitted with the scale parameters stated. The Council was concerned with the overall indicative heights. It was considered preferable to impose a condition rather than refuse the planning application. Circular 11/95 states that conditions should be used to overcome harm rather than refuse a planning application.

12. In relation to the wording of Condition 4, reference to storeys is commonly used within planning. A storey is a floor within a building. There is no problem with the interpretation of the term. However, the Council do accept that the condition could have referred to habitable accommodation in place of residential use. This could have helped to clarify things and would have been more precise than residential use.

13. In relation to Conditions 5 and 6 the Council consider it is a necessity. The previous Inspector acknowledged that the area was leafy and spacious and considered the previously proposed development would detract from this. Having regard to the density of the proposals and bearing in mind the previous Inspectors comments in relation to existing outbuildings and the character of the area, Conditions 4, 5 and 6 were considered to be a necessity.

14. Even if the conditions are considered to be unnecessary it is not unreasonable for the Council to seek such controls, in the light of objections and the previous appeal decision.

Conclusions

15. I have considered this application for costs in the light of Circular 8/93 and all the relevant circumstances. This advises that, irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved

unreasonably and thereby caused another party to incur or waste expense unnecessarily.

16. Condition 4 sought to limit the development to a maximum of two storeys with no residential use of the roof space. The condition therefore did not limit the maximum height of the development and therefore would not have effectively achieved the Council's apparent intention. In addition the Council have accepted that reference to 'residential use' within the condition was imprecise.

17. I am not convinced that it would be unlawful, as suggested by the appellant, to impose a condition seeking to limit the maximum height of the development to a level below that set out in the scale parameters which were part of the outline application. However, this is not a central consideration in this case as I concluded in my appeal decision that Condition 4 was not precise, reasonable or necessary. I also concluded that 2.5 storey dwellings with maximum ridge heights of 8.6m on Plots 1 and 2 (as set out in the Design and Access Statement) would not harm the character or appearance of the area.

18. In relation to Conditions 5 and 6 no exceptional circumstances to justify the imposition of the conditions were produced by the Council. I concluded in my appeal decision that the conditions were unreasonable, unjustified and unnecessary.

19. In this case, I have concluded that the imposition of Conditions 4, 5 and 6 fail to meet the tests set out in Circular 11/95. As such I consider the imposition of the conditions was unreasonable for the reasons set out in my appeal decision. Thus I find that unreasonable behaviour resulting in unnecessary expense, as described in Circular 8/93, has been demonstrated. I therefore conclude that a full award of costs is justified.

Formal Decision and Costs Order

20. In exercise of my powers under section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990 as amended, and all other powers enabling me in that behalf, I HEREBY ORDER that East Herts District Council shall pay to Mr Vincent Teo, the costs of the appeal proceedings, such costs to be assessed in the Supreme Court Costs Office if not agreed. The proceedings concerned an appeal under section 78 of the Town and Country Planning Act 1990 as amended against the grant subject to conditions of planning permission for outline planning permission (all matters reserved) for the demolition of the existing buildings and the erection of five houses with associated parking on land at 65 North Road, Hertford, Hertfordshire SG14 1NF.

21. The applicant is now invited to submit to East Herts District Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount. In the event that the parties cannot agree on the amount, a copy of the guidance note on how to apply for a detailed assessment by the Supreme Court Costs Office is enclosed.

Hilda Higenbottam

Inspector

Appeal Decision

Site visit made on 14 April 2009

by David Brooks DipTP MRTPI

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

The Planning Inspectorate
4/11 Eagle Wing
Temple Quay House
2 The Square
Temple Quay
Bristol BS1 6PN

☎ 0117 372 6372
email:enquiries@pins.gsi.gov.uk

Decision date: 8 June 2009

Appeal Ref: APP/J1915/A/09/2096222
Bowlers Green House, Bowlers Mead, Buntingford, Hertfordshire, SG9 9DE

- 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 Precious against the decision of East Hertfordshire District Council.
- The application Ref 3/08/1184/FP, dated 23 June 2008, was refused by notice dated 12 December 2008.
- The development proposed is a triple garage and gym to replace existing triple garage.

Procedural Matter

1. The appellants and the Council have acknowledged that the plan number referred to in the Council's Decision Notice and in the appeal statement was incorrect. I have determined this appeal on the basis that plan no 8875/P/002A was the plan on which the Council's decision was based.

Decision

2. I allow the appeal, and grant planning permission for a triple garage and gym to replace existing triple garage at Bowlers Green House, Bowlers Mead, Buntingford, Hertfordshire, SG9 9DE in accordance with the terms of the application, Ref 3/08/1184/FP, dated 23 June 2008, and the plans submitted with it, subject to the following conditions :

   1) The development hereby permitted shall begin not later than three years from the date of this decision.

   2) The materials to be used in the construction of the external surfaces of the triple garage and gym hereby permitted shall match those used in the existing adjoining dwelling.

   3) The use of the building hereby permitted shall be restricted to purposes incidental to the enjoyment of the dwellinghouse within the application site and for no other purpose.

Main issue

3. The main issue is the effect of the development on the character and appearance of the area in terms of the scale and design of the building.

Reasons

4. The appeal site is located in a predominately residential area of Buntingford. Bowlers Green House is a substantial detached dwelling in grounds, built in an Arts and Crafts style with frontages and access to Bowlers Mead to the south

and Bowling Green Lane to the east. The triple garage and gym would replace an existing flat roof triple garage located to the north of the dwelling. The building would occupy virtually the same footprint as the existing building but have a pitched roof with 3 small dormer windows in the southern roof slope to light space within the roof space identified as a games room. The external design would feature brick and render walls, tiling and other design features, such as exposed rafter feet, to match the existing adjoining dwelling.

5. The northern and eastern areas of the garden of Bowlers Green House are enclosed by a substantial hedge on the northern boundary (with a public footpath and school playing fields beyond) and a 2m high close boarded screen fence on a brick plinth on the boundary with Bowlers Mead. The existing flat roof garage is therefore hardly seen from any public vantage point whereas the proposed triple garage and gym, with its pitched roof would clearly be visible over the boundary fence.

6. I consider however, that as the appearance of the building would match that of the adjoining dwelling in terms of design and materials that the building would not look out of place or cause harm to the character and appearance of the locality. It would be of a scale proportionate to the dwelling and located in a position, and of a size, that would be typical of garages or other ancillary buildings that might have been constructed concurrently with the dwelling.

7. For the reasons given above, and taking all other matters into account, I conclude the proposals would not result in harm to the character and appearance of the locality and would not be contrary to policy ENV1 of the East Herts Local Plan Second Review 2007 and that the appeal should be allowed.

8. The Council has suggested conditions which I consider is appropriate to maintain the character and appearance of the area and to prevent the use of the building for other purposes not related to the residential use of the site. I have however, made amendments to the suggested conditions to ensure compliance with Circular 11/95 : The Use of Conditions in Planning Permissions.

David Brooks

INSPECTOR

Appeal Decision

Site visit made on 27 April 2009

by Ian Radcliffe BSC (Hons) MCIEH DMS

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

The Planning Inspectorate
4/11 Eagle Wing
Temple Quay House
2 The Square
Temple Quay
Bristol BS1 6PN

☎ 0117 372 6372
email:enquiries@pins.gsi.gov.uk

Decision date:
4 June 2009

Appeal Ref: APP/J1915/A/09/2096373
12a Gypsy Lane, Great Amwell, Hertfordshire SG12 9RN

- 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 Whittle against the decision of East Hertfordshire District Council.
- The application Ref 3/08/1374/FP, dated 25 July 2008, was refused by notice dated 31 October 2008.
- The development proposed is the demolition of the existing residential property and the erection of a detached replacement dwelling.

Preliminary matter

1. Great Amwell is a village that lies within the Metropolitan Green Belt. Policy GBC1 of the adopted East Herts Local Plan Second Review, in line with national policy, maintains a presumption against inappropriate development in the Green Belt. In relation to replacement dwellings the Council has excluded development within category 2 villages from the provisions of Green Belt policy. Both the council and appellant agree that Great Amwell is a category 2 village.

2. Policy HSG7 of the Local Plan advises replacement dwellings in category 2 villages, subject to meeting certain criteria in relation to the character and appearance of the area, will be permitted. The reasoned justification for the Council's policies on replacement dwellings advises that outside category 2 villages policy HSG8 applies.

3. The appeal site lies within a distinct area of housing at the southern end of Great Amwell. Although no settlement boundaries have been defined it is clear to me that by virtue of its proximity to the centre of the village, and the pattern of development on either side of the A1170, that this area of housing is within the built up part of the village and not outside it. As a consequence, policy HSG7 applies and the proposed replacement dwelling is not inappropriate development. Policies HSG8 and GBC1 are therefore not relevant to my consideration of the proposal.

Decision

4. I dismiss the appeal.

Main issues

5. The main issue is the effect of the proposal upon the character and appearance of the area.

Reasons

6. No 12a is located on a residential lane and is attached to the side of No 12. It is a single storey dwelling, originally constructed as a garage, which has a certificate of lawful use as a dwelling. It is a feature of development on this side of the lane, in the vicinity of the appeal site, that dwellings are set well back from the lane with wide gaps separating dwellings at first floor level. This spacious setting creates an attractive transition between the area of housing of which the lane forms the northern boundary and land beyond.

7. Although the proposal would be sufficiently well set back, and the first floor of the replacement dwelling would be partly contained within the roof space, it would be significantly taller than the single storey dwelling that it would replace. As a consequence, at first floor level there would be a relatively small distance separating the dwelling from the main house at No 12. The increase in the bulk of built development on the site would be accentuated by the use of a gable roof to the dwelling, rather than a hipped roof found on the properties to either side. The overall result would be a dwelling which in relation to the tapering width of the plot and the setting of adjacent development would appear cramped. As a consequence, it would appear at odds with the pattern of built development on this part of the lane.

8. A dwelling under construction close to the western end of the Lane occupies almost the full width of a plot between existing houses. However, houses at this end of the lane have a different, more suburban character due to their close spacing. As a result, this development is not directly comparable to the appeal proposal. I note that the use of materials sympathetic to the appearance of nearby dwellings could be required by condition, and that the entrance to the house and the dormer windows have been sensitively designed with respect to their surroundings. However, these matters are insufficient to overcome the significant adverse impact on the character and appearance of the area that I have described.

9. For the reasons given above, I conclude that the proposal would unacceptably harm the character and appearance of the area, contrary to policy HSG7 and ENV1 of the Local Plan. Policy ENV1 requires that development reflects the character and appearance of a locality through high quality design.

Other Matters

Tree Preservation Order

10. A Tree Preservation Order protects a Douglas Fir close to the front boundary of the appeal site. It was not proposed to remove the tree as part of the development and should permission have been granted a suitable condition, subject to comment from both parties, could have been imposed securing its protection.

Ian Radcliffe

Inspector