Appeal Decision

Site visit made on 14 July 2009

by Wendy McKay LLB

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

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Decision date:
24 August 2009

Appeal Ref: APP/J1915/X/08/2086652
105 Ware Road, Hertford, SG13 7EE

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against a refusal to grant a certificate of lawful use or development (LDC).
- The appeal is made by Mr T Arora against the decision of East Hertfordshire District Council.
- The application Ref 3/08/0266/CL, dated 8 February 2008, was refused by notice dated 29 April 2008.
- The application was made under section 192(1)(b) of the Town and Country Planning Act 1990 as amended.
- The development for which a certificate of lawful use or development is sought is the erection of new residential outbuilding and associated access driveway.

Summary of Decision: The appeal is dismissed.

The Main Issues

1. The main issues are first, whether the proposed building would, at the relevant date, have fallen within the curtilage of the dwellinghouse concerned, and secondly, whether the proposed building would be required for a purpose incidental to the enjoyment of the dwellinghouse as such.

Reasons

2. An application made under s.192(1)(b) of the 1990 Act as amended enables an applicant to ascertain whether the carrying out of the proposed operations would be lawful without needing any further planning permission. It is necessary to consider whether the operational development proposed would have been lawful at the date the application was made.

3. On the first issue, the appellant claims that the proposed outbuilding could be erected without the need for a specific planning permission by virtue of Class E, Part 1, Second Schedule of the Town and Country Planning (General Permitted Development) Order 1995 (GPDO). The appellant owns and occupies No 105 Ware Road with his wife and family. He also owns the adjoining property No 103, that lies to the west. He intends to redefine the rear boundaries of Nos 103 and 105, by enlarging the curtilage of No 105 at its northern end through the amalgamation of the rear portion of No 103. The application plan includes within the area edged red, the rear portion of No 103. However, the red line shown on that plan merely designates the application site, as opposed to the curtilage of the dwellinghouse concerned. At the date the LDC application was made the site of the proposed outbuilding did not, as a matter of fact, entirely fall within the curtilage of No 105. In order to meet the Class E GPDO

requirements, the development must fall within the curtilage of the dwellinghouse concerned. Since this requirement was not met at the relevant date, the scheme cannot be certified as falling within Class E permitted development rights.

4. On the second issue, it is also a requirement of Class E that the proposed development should be "*required for a purpose incidental to the enjoyment of the dwellinghouse as such*". The proposed outbuilding would comprise a pair of garages in front of two interlinked rooms to be used as a snooker room and a gymnasium/games room. The Council refers to the case of *Emin v SSE and Mid-Sussex DC 1989 JPL 909* which held that the Secretary of State had erred in applying the incidental test solely by reference to physical size, although the use of a building cannot not rest solely on an unrestrained whim but connotes some sense of reasonableness in the circumstances of the particular case. The test to be applied is whether the uses of the proposed building, when considered in the context of the "*planning unit*", were intended and would remain ancillary or subordinate to the main use of the property as a dwellinghouse.

5. The appellant accepts that the Courts have indicated that incidental uses cannot be based upon the unrestrained whim of the occupier. He contends that there is a need for two garages to serve his house together with a room of a size large enough to comfortably accommodate one snooker table and an identical sized room capable of accommodating some modest keep-fit equipment and/or indoor games. He submits that the proposed uses would be wholly commensurate with the garaging and leisure/recreational needs of a family.

6. The Council agrees that the proposed uses of the new building could potentially amount to incidental activities falling within Class E. However, it does not accept that the proposed building, given its size and scale, would be reasonably required for purposes incidental to the enjoyment of the dwellinghouse. It considers that, in this case, the extent of the sports facilities proposed would not be those that would normally be associated with a standard semi-detached dwelling.

7. It is necessary to consider whether the proposed building is genuinely and reasonably required or necessary in order to accommodate the proposed use or activity. The appellant explains that the size of the snooker room has been governed by the ability to accommodate the table and leave sufficient space around it for the players to play their shots in comfort. There is no evidence before me to rebut his claim that it is large enough for only one table. It seems to me that the size of the games room would be commensurate with the provision of some modest keep-fit equipment and/or indoor games for family use. The provision of two single garage spaces does not seem unreasonable for a dwelling of this size. I conclude that, notwithstanding the physical size of the proposed building in comparison to the original dwelling, its function would remain ancillary or subordinate to the main use of the property as a dwellinghouse. However, this finding does not overcome the failure of the proposed development to comply with the matter outlined under the first issue.

Formal Conclusions

8. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of the erection of new residential outbuilding and associated access driveway was well-founded and that the appeal should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended.

Decision

9. I dismiss the appeal.

Wendy McKay

INSPECTOR

Appeal Decisions

Hearing held on 29 July 2009
Site visit made on 29 July 2009

by Ava Wood DIP ARCH MRTPI

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

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Decision date: 17 August 2009

Appeal A: APP/J1915/A/09/2096688
Northern Maltings, 16 New Road, Ware, Hertfordshire SG12 7BS

- 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 Nigel Kemp against the decision of East Hertfordshire District Council.
- The application Ref:3/08/1178/FP, dated 24 June 2008, was refused by notice dated 22 October 2008.
- The development proposed is conversion of existing building to form 12 dwellings.

Appeal B: APP/J1915/E/09/2096700
Northern Maltings, 16 New Road, Ware, Hertfordshire SG12 7BS

- 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 Nigel Kemp against the decision of East Hertfordshire District Council.
- The application Ref: 3/08/1179/LB, dated 24 June 2008, was refused by notice dated 22 October 2008.
- The development proposed is conversion of existing building to form 12 dwellings.

Decisions

1. I dismiss the appeals.

Procedural Matter

2. The applications originally included an extension to the existing building to form 14 dwellings in total. The extension was omitted from the subsequent scheme, following negotiations with the Council, and the number of dwellings reduced to 12. The description of the development and works set out in the headings above accurately reflect the proposal determined by the Council and form the subject of these appeals.

Main issue

3. In respect of the planning appeal there are three main issues, of which the first two are common to the listed building appeal. The issues are:

   - The effect the proposal would have on the special architectural and historic interest of the Grade II listed building, on its setting and on the group value of the listed malthouses.

   - Whether the proposed development would preserve or enhance the character or appearance of the Ware Conservation Area, and

- The effect on the safety of highway users.

Reasons

Appeals A and B

First Main Issue – Listed Buildings

4. As part of a group of three large malthouses in the town centre, the appeal building is of significant historic value. Its special interest lies not only in its historic connection with the maltings industry and the town but in the way its substantial form and character reflect its utilitarian past. Northern Maltings has retained many of its special qualities and distinctive features, despite its occupation by a variety of users and many years of neglect.

5. The Council recognises that the building does not readily lend itself to conversion into multiple residential units. Compromises are inevitable. On the other hand, residential use is the most viable and realistic option for the building. I accept and respect the Council's pragmatic approach in this matter. Their one major objection to the scheme is the harmful effects of the north facing balconies and staircases, leading from the first floor living areas to ground level.

6. To some extent the design defers to the main characteristics of the building. For instance, the accommodation at first and mezzanine levels would exploit the double height space up to the underside of the roof, and the roof cowls are intended to be restored and expressed internally. However, in many other respects the design would display conventional domestic characteristics with little regard for the intrinsic appeal of the building and its immediate surroundings. So, while I agree that the external balconies and stairs would represent inappropriate additions to the building, they are only part of the wider failings of the proposed scheme.

7. Successful conversion of a building of this type and quality requires an innovative or imaginative approach, which unfortunately the scheme before me lacks. A number of elements of the design cause me to take this view. In combination with the upper floor balconies and staircases, the extent and sizing of new windows and doors in the north and south facing elevations would erode the characteristic pattern of large voids and small openings. Canopies over front doors would equally disrupt the plain, functional appearance of the southern face of the building. The repetitive nature of these domestic features would change the external appearance of the building. They typify a design approach emphasising residential usage of the building. External masonry walls, marking individual amenity spaces, and other outdoor features of the styles proposed would add to the feeling of a domestic environment, when the scheme should be taking its cue from the robust, industrial nature of this historic building.

8. To conclude on this issue. The proposed conversion would restore and bring into effective use this long neglected and disused building. However, the design is not of a high enough standard or appropriate to the special interests of the listed building and would cause it significant harm. In addition to which, the external works proposed would introduce a suburban quality to the outside spaces to the detriment of the setting of the appeal building and that of its

neighbours. In coming to these conclusions, it follows that the group value of the maltings would be similarly adversely affected. The proposal would thus be contrary to Policies ENV1, BH10, BH11 and BH12 of the East Herts Local Plan Second Review of April 2007 (LP).

Appeals A and B

Second Main Issue – Conservation Area

9. The malthouses represent a link with the town's historic past and, given their size, make a prominent and valuable contribution to the streetscene. I accept that views of the Northern Maltings are restricted from New Road but the changes proposed would be apparent from the churchyard and path to the north. Having concluded that the proposed scheme would harm the distinctive qualities of the appeal building and its setting, so too would it be unacceptable in its impact on the appearance of this conservation area, contrary to the aims of LP Policy BH5.

Appeal A

Third Main Issue – Highway Safety

10. Sub-standard visibility for drivers emerging from the access onto New Road, and the absence of footways, raise genuine concerns for the safety of highway users. However, the appellant's evidence demonstrates that the proposal would generate fewer vehicular trips than would be the case with a commercial or Class B1 use, which could be regarded as the fall-back position.

11. It may well be that the prospect of a commercial use is remote. Nevertheless, taking into account additional factors, such as this site's sustainable location, the likelihood of drivers exercising caution at the access and low speeds on the local highway network, the proposal would not exacerbate existing conditions for pedestrians or drivers. I am satisfied that it would meet the requirements of LP Policy TR2. What is more, the existing conditions are likely to be temporary, as there is very real prospect of improved access arrangements with redevelopment of the middle malthouse.

12. Objectors point to the potential for the scheme to add to parking pressures in the locality. With its town centre location and good accessibility by a range of transport modes, there is no need for the scheme to provide on-site parking spaces over and above that proposed, as it meets the Council's parking standards.

Other Matters

13. I understand the policy basis and need for the appellant to make appropriate provision for a number of community and transport related facilities. Contributions towards local youth services, library and open space and provision of fire hydrants are justified, and accord with guidance in Circular 05/2005. From discussions at the Hearing it emerged that the Council have over estimated the amount of contributions towards sustainable transport. The draft S106 submitted on behalf of the appellant would have to be altered accordingly. The absence of a completed planning obligation counts against Appeal A, but I accept that the matter is resolvable.

14. Concerns about new balconies overlooking the school playground were expressed forcefully at the Hearing and in writing. The plans illustrate that no more than two balconies would directly face the playground. In any case, schools are often located in residential areas with some degree of overlooking.

15. At the Hearing I was shown plans for conversion of the middle malthouse. The Council have resolved to approve the applications, subject to a completed S106. Given the similarities in the two listed buildings and the prospect of residential uses in both, it is regrettable that a comprehensive scheme was not forthcoming. In the absence of such an approach, I have determined the appeals before me on their own particular merits.

Conclusions

16. In Appeal A I find that the proposed conversion would not worsen existing highways conditions. This matter, however, is not sufficient to override fundamental objections to the scheme in terms of its impact on the listed building, its setting and on the conservation area. For those reasons both appeals should fail.

17. I recognise my decisions could delay redevelopment of this valuable listed building and add to the appellant's frustrations. The building may be in a state of disrepair and neglect but my inspections and evidence do not suggest that its structure or essential fabric is at risk. It would be wrong to allow an inappropriate conversion, when a period of reflection and redesign could lead to an alternative scheme more respectful of the building's character and interests.

Ava Wood
Inspector

DOCUMENTS

1 Council's letter of notification of the appeals
2 Extract from officer's report to committee in connection with the Middle Maltings scheme
3 Draft unilateral undertaking
4 Copy of Council's Planning Obligations SPD
5 List of suggested conditions
6 Extract from Local Plan, Policy BH12

PLANS

A Access arrangement proposed in connection with the Middle Maltings Scheme

Appeal Decision

Site visit made on 13 August 2009

by G P Bailey MRICS

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Decision date:
24 August 2009

Appeal Reference: APP/J1915/X/08/2088016
The Old Pump House, Marsh Lane, Stanstead Abbotts, SG12 8HL

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against a refusal to grant a certificate of lawful use or development ('LDC').
- The appeal is made by Mr P Muzzlewhite against the decision of East Hertfordshire District Council.
- The application (ref: 3/08/1346/CL) dated 17 July 2008 was refused by notice dated 17 September 2008.
- The application was made under section 192(1)(b) of the Town and Country Planning Act 1990 (as amended).
- The development for which a certificate of lawful use or development is sought is described in the application as the erection of a detached residential outbuilding.

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. Section 8 of the submitted application form seeks from the applicant a description of the proposed development, but it has been left blank. However, in response to section 7, reference is made to a covering letter, dated 18 July 2008 from which I have taken the appellant's description.

2. In an application made under s.192 of the 1990 Act (as amended), there is no provision equivalent to that contained in s.191(4) (pertaining to applications made under s.191) which would enable the local planning authority (or the Secretary of State on appeal) to modify or substitute an alternative description of the proposed development. However, in citing a precise description of the proposed operation as outlined in the application for which the LDC is sought, the appellant has adopted in his notice of appeal the same description as that contained in the Council's decision notice, namely:-

   "detached residential outbuilding incorporating a double garage, garden room and games room".

   In these circumstances, where both main parties are agreed about the altered description and where there are no parties likely to be affected by the modified terms, I am able to determine the appeal on those modified terms.

Background and Main Issue

3. The appeal site comprises the appellant's two-storey dwellinghouse situated in the south-western corner of an almost-square plot of land on the south side of

Marsh Lane. The ground floor contains living room, dining room, playroom, kitchen, utility room and hallways; the upper floor, which is contained largely in the roof space, has four bedrooms, study and bathroom served from a landing. There is no dispute that the dwelling has a floor area of about 126sq.m. Standing forward of the front wall of the dwelling and adjacent to the eastern boundary of the plot stands a garage structure; its size has not been stated, but from the submitted plans, I deduce it would be about 72sq.m. All is served by a gated entrance drive from the road.

4. Planning permissions were granted in January and May 2008 for alternative schemes comprising a two-storey front and side extension to the dwellinghouse. If either scheme were to be implemented, it would increase the floorspace of the dwelling to about 192sq.m by way of the addition of a fifth bedroom and the alteration and enlargement of other rooms.

5. The scheme for which a LDC is sought includes the loss of the existing garage structure and the erection of a replacement structure comprising single building of about 162 sq.m, shown on the submitted plans to be divided internally to provide a garden room, a gymnasium/games room, an entrance hall and a double garage. Some widening of parts of the existing driveway would also be undertaken at the expense of part of the cultivated front garden.

6. The effect of s.192(2) of the 1990 Act (as amended) is that if the Council is satisfied that the operations described in the application are lawful if begun *at the time of the application*, they shall issue a LDC to that effect; and in any other case, they shall refuse the application (emphasis added).

7. By Article 3(1) of the Town and Country Planning (General Permitted Development) Order 1995 (the 'GPDO'), planning permission is granted for certain development, as set out in Schedule 2 to the Order. Part 1 of Schedule 2 concerns development within the curtilage of a dwellinghouse. With effect from 1 October 2008, in England only, Part 1 was replaced by substantially amended provisions[1]. However, in accordance with s.192(2), the scheme falls to be determined in line with Part 1 as it was in force at the date of the application, that is, prior to the October 2008 amendments.

8. The main parties are agreed that, for the purposes of the GPDO, the scheme would be within the curtilage of a dwellinghouse and that it would fall to be considered against the provisions of Class E of Part 1. Permitted by Class E is development comprising, among other matters:-

   "... the provision ... of any building ... required for a purpose incidental to the enjoyment of the dwellinghouse as such ...",

   subject to the limitations set out in paragraph E.1 of Class E.

9. There is no dispute in this case that the scheme would satisfy all of the limitations set out in paragraph E.1. That would include those which relate to the scale of buildings - it would not exceed 4m in height and it would not exceed limitations placed on the proportion of the ground area covered. Moreover, although nearer to the highway than the original dwellinghouse, nevertheless, the structure would be more than 20m from the highway; and

[1] See Town and Country Planning (General Permitted Development) (Amendment) (No.2) (England) Order 2008 SI 2008/2362.

although exceeding 10cu.m in cubic capacity, it would not be within 5m of the original dwellinghouse. The matter in dispute and the **main issue** in this case is whether the scheme, as a matter of fact and degree and on the balance of probability, would be required for purposes incidental to the enjoyment of the dwellinghouse as such.

Reasons

10. The Council accepts that, in principle, a garage, garden room or games room could be regarded as "incidental" accommodation, but the Council contends that the size of the structure, and of the individual rooms[2] within it, would not be reasonably considered as being incidental to the enjoyment of the dwelling. The Council points out that the proposed structure would be significantly larger than that of the existing dwelling and argues that reasonableness, size, use of rooms and the potential arising for the building to be used as a separate dwelling, are factors to be taken into account in determining whether the scheme would be "incidental" to the enjoyment of the dwelling.

11. In *Emin v Secretary of State for the Environment & Mid-Sussex DC* (1989) 58 P&CR 416; [1989] JPL 909, referred to by the appellant, it was held that the provision of accommodation for a hobby use such, as in the present case, for billiards or snooker, could normally be regarded as being incidental to the enjoyment of a dwelling; so, too, would use by the householder as a gymnasium, or for storing gardening equipment.

12. It was further held that it would not be sufficient to deprive the appellant of the permission granted by the GPDO by consideration, taken in isolation, of the physical size of the proposed building, by itself and in relation to that of the dwelling; the mere size of the dwelling could not dictate the physical size of a facility within a building and the size of the building itself. However, it must be required for a purpose incidental to the enjoyment of the dwellinghouse, as a dwellinghouse and not for extraneous purposes. In this respect, the Courts have held also that such use would not accommodate the "unrestrained whim" of the householder, but would require a sense of reasonableness.

13. The double garage would be served by two, well-spaced, individual, vehicular entrance doors and, as the Council points out, it would be of generous proportions. Nevertheless, it would not be unreasonable to incorporate sufficient space to enable work on vehicles to be undertaken, to accommodate storage facilities for tools and other equipment or, with some internal manœuvring, the accommodation of a third car or of motor cycles, to serve domestic needs.

14. The size of the room termed "gymnasium/games room" would not exceed that reasonably required to accommodate the snooker/billiard table illustrated on the submitted plans, in addition to, or instead of, gymnasium equipment that a householder might reasonably wish to install. A side entrance door would be close to that in the side of the existing dwelling and to that in the dwelling as proposed to be extended in the later of the two 2008 permissions.

[2] The submitted plans indicate the floor area (net) of individual rooms would be: garden room – 6m x 4.7m; gymnasium/games room – 8.7m x 5.5m; and garage – 8.7m x 6m; the hallway (un-dimensioned on the plans) would be about 2.7m x 4.7m.

15. The garden room, facing south, would open on to an area of garden of modest dimensions, situated to the east of the main house and between the eastern and southern boundaries of the appeal site. A patio occupies the narrow depth between the rear wall of the house and the southern boundary and there is further garden land at the front of the house. The three pairs of outward opening doors of the proposed structure, each pair about 1m wide, would not be conducive to the accommodation of, for example, very large items of garden machinery, but would be likely to be adequate for that required for the domestic needs of the appellant's garden, together with space for tools, garden furniture and other domestic accoutrements.

16. The hallway, served from the south and providing access to the garden room and gymnasium, would be convenient for access to and from the dwelling, both as existing and as proposed to be extended.

17. With all these factors in mind, as a matter of fact and degree, it would not be the case that the size of the proposed building and the nature and scale of the intended activities and use would be materially greater or unreasonably lavish to an extent over-and-above that which would be conducive and supplementary to the very condition of living in the dwellinghouse itself. Nothing would indicate that the proposed building would be other than that genuinely and reasonably required to accommodate the intended uses to achieve the "incidental" qualities necessary. Potential use in the future as a separate dwelling, as referred to by the Council, would be a matter over which the Council would retain control and would carry little weight in the terms of the main issue.

18. Nothing would indicate that the intended uses of the proposed building would be capable of subsisting in their own right; they would be entirely parasitic upon, hence secondary to, the continuing presence and primary use of the dwellinghouse on the site. Nor is there any suggestion that the scheme would be intended or capable of use in conjunction with some other dwelling or other use comprised in a separate planning unit.

19. In the particular circumstances of the present case, looked at as a whole, the scale of the proposed outbuilding together with its intended use would be subordinate to the enjoyment of this four bedroom dwellinghouse and the land in which it stands; in that respect, as a matter of fact and degree and on the balance of probability, the scheme would fulfil the requirement arising from use of the term "incidental" in the limitation contained in paragraph E.1 of Class E. Hence, the scheme would be required for purposes incidental to the enjoyment of the dwellinghouse within the same planning curtilage as a single dwellinghouse and would be permitted by Article 3(1) of the GPDO.

Conclusions

20. For the reasons given above I conclude, on the evidence now available, that the Council's refusal to grant a certificate of lawful use or development in respect of a detached residential outbuilding incorporating a double garage, garden room and games room at The Old Pump House, Marsh Lane, Stanstead Abbotts, SG12 8HL was not well-founded and that the appeal should succeed. I will exercise the powers transferred to me under section 195(2) of the 1990 Act (as amended).

21. An LDC does no more than certify the position at the date of the application. Attention of the main parties is drawn to the implications of the changes to the GPDO arising from the October 2008 amendments.

Decision

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

G P Bailey

INSPECTOR

Lawful Development Certificate

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TOWN AND COUNTRY PLANNING ACT 1990: SECTION 192
(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 17 July 2008 the operations described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged in a thick black line on the plan attached to this certificate, would have been lawful within the meaning of section 191 of the Town and Country Planning Act 1990 (as amended), for the following reason:

Planning permission is granted by the provisions of s.58(1)(a) of the Town and Country Planning Act 1990 (as amended) and Article 3(1) and Class E of Part 1 of Schedule 2 to the Town and Country Planning (General Permitted Development) Order 1995.

G P Bailey
Inspector

Date 24th August , 2009.
Reference: APP/J1915/X/08/2088016

First Schedule
a detached residential outbuilding incorporating a double garage, garden room and games room and shown cross-hatched in black on the plan attached to this certificate.

Second Schedule
land at The Old Pump House, Marsh Lane, Stanstead Abbotts, SG12 8HL.

NOTES

1. This certificate is issued solely for the purpose of Section 192 of the Town and Country Planning Act 1990 (as amended).

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

3. This certificate applies only to the extent of the operations described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any operation 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.

4. The effect of the certificate is subject to the provisions in section 192(4) of the 1990 Act, as amended, which state that the lawfulness of a specified use or operation is only conclusively presumed where there has been no material change, before the use is instituted or the operations begun, in any of the matters which were relevant to the decision about lawfulness. Attention is drawn to the implications of changes to the Town and Country Planning (General Permitted Development) Order 1995 arising from the provisions of the Town and Country Planning (General Permitted Development) (Amendment) (No.2) (England) Order 2008 (SI 2008/2362) which came into force on 1 October 2008.

Plan

This is the plan referred to in the Lawful Development Certificate dated: 24/08/09

by G P Bailey MRICS

Land at: The Old Pump House, Marsh Lane, Stanstead Abbotts, SG12 8HL

Reference: APP/J1915/X/08/2088016

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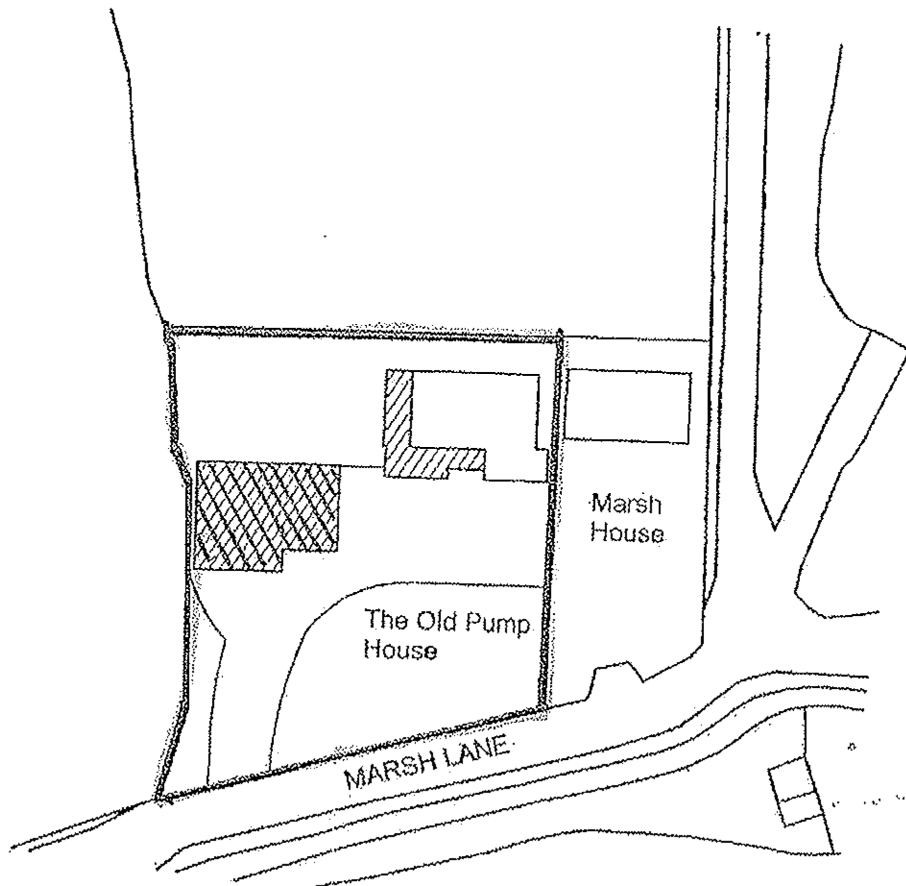
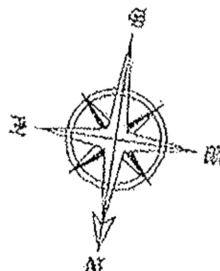
Do not scale

G P Bailey





Appeal Decision

Site visit made on 22 July 2009

by R A Sexton BSc(Hons) DipTP MRTPI

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

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Decision date:
17 August 2009

Appeal Ref: APP/J1915/X/08/2091591
Garden House, Patmore Heath, Albury, Ware, Hertfordshire SG11 2LY

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against a refusal to grant a certificate of lawful use or development (LDC).
- The appeal is made by Mr H Palmer against the decision of East Hertfordshire District Council.
- The application Ref 3/08/1520/CL, dated 18 August 2008, was refused by notice dated 16 October 2008.
- The application was made under section 192(1)(b) of the Town and Country Planning Act 1990 as amended.
- The development for which a certificate of lawful use or development is sought is the erection of a detached residential outbuilding.

Decision

1. I dismiss the appeal.

Preliminary Matters

2. Section 192 of the Act makes clear that the relevant date for determining whether a proposed development would have been lawful is the date of the application. My consideration is thus based upon the 1995 Order, the Town and Country Planning (General Permitted Development) Order 1995 ('the GPDO'), as it was on the relevant date.

3. Let me confirm, lest there be any doubt, that no issues of planning merit are relevant to an LDC appeal. The only matter for me to consider is whether what is proposed would be lawful.

Reasons

4. The GPDO permits the construction of buildings and enclosures within the curtilage of dwellings. The appellant's case is that the erection of the outbuilding would be lawful as it would be "permitted development" under the provisions of Class E of Part 1 in Schedule 2 to the GPDO.

5. Garden House sits within a corner plot, with its northern and eastern frontages adjacent to a highway. The proposed outbuilding would be single storey, measuring approximately 12.4m by 11.7m externally and thus with a footprint, on my calculation, of about 145m^2. The purpose of the proposed detached residential outbuilding is described as being "to provide leisure facilities" that would involve the "...personal leisure pursuits that would be enjoyed only by the appellant ...". Reference is later made to 'appellants' in the plural and 'owners', and "their personal recreational and health and fitness requirements".

6. Internal partitions are shown dividing the building into 3 rooms accessed from a central hallway. The largest is labelled "games room", measures 11.8m by 5.5m and is shown to contain a snooker table and table tennis table. The 2 other rooms measure 5.5m by 4.5m and are described as a "gymnasium" and "pool room". The central hallway is not dimensioned on the submitted drawing but scales roughly 5.5m by 2.6m.

7. There is no dispute that the outbuilding would be within the curtilage of Garden House. It is on this basis that I make my consideration. It is common ground also that the building would not be precluded from being permitted development by any of the limitations or conditions applied to Class E. Accordingly, the outstanding issue is whether the purpose of the building is incidental to the enjoyment of the dwellinghouse as such.

Is the purpose incidental to the enjoyment of the dwellinghouse as such?

8. I am satisfied that the recreational use proposed here is capable of being a purpose incidental to the enjoyment of a dwellinghouse. Indeed, this is not, I believe, in dispute. Furthermore, as I have said, the Council acknowledges that the physical limitations within Class E would not be infringed. It does nonetheless contend that the proposed outbuilding would be of an unreasonable size and scale. The Council says that it would have almost the same floor area as the existing dwelling – though I understand this takes no account of the floor area of the detached garage with first floor playroom that has been built following approval in 2001.

9. The relative size of the proposed outbuilding and house is not however determinative; and, while it may be an important consideration in some instances, I do not as a matter of fact and degree find it to be so in this case. Notwithstanding that, I have come to the view that the proposed outbuilding would not be permitted development for 2 main reasons; first the design of the building in its relationship to Garden House; and, second, the space provided within the building.

10. On the first matter, the proposed building would be orientated away from Garden House. This is a curious arrangement and not one that sits comfortably with the proposed use of the building on an incidental basis. The entrance to the building would be via a doorway in the northern elevation of the building, under an open porch, facing the highway that adjoins this frontage. The only openings in the eastern and western elevations would be conventional windows. The southern elevation would contain 2 large, full height glazed patio style doors. And, while access could therefore be obtained via these openings, the principal personnel access is proposed through the northern entrance door.

11. In effect, the outbuilding would turn away from the host dwelling. I do not accept the appellant's contention that this is wholly irrelevant. Rather, I take the view, as a matter of fact and degree, that the design of the proposed outbuilding and its physical relationship to Garden House is inconsistent with a building that it is proposed would be used incidental to the enjoyment of the dwellinghouse as such.

12. Turning to the second reason, I have no basis to doubt that the area allocated for the pool room is genuinely required to enable this activity to be undertaken. And, while the gymnasium appears to me rather spacious for exercising on the

4 pieces of equipment shown, I would not regard the space overall as excessive for the type of activities that could be undertaken here by the appellant (or owners) as an incidental use to the particular dwellinghouse. I take a less sanguine view however of the space devoted to the games room and hall.

13. From my consideration of the scheme, I would regard the games room (at 11.8m x 5.5m internally) as overly generous and, indeed, quite excessive in terms of the space requirements about the 2 tables to accommodate the playing of snooker and table tennis, and its reasonable use by the appellant (or owners) as an incidental recreational use to the use of the dwellinghouse. Equally, nearly 10% of the building's floor area is taken up by a hall that serves no apparent purpose in facilitating the reasonable use of the outbuilding for a purpose incidental to the use of the dwellinghouse as such. Even if one wished to partition the games room, pool room and gymnasium - and I can see the sense of separating the latter room - that could be readily achieved without the need for a hallway of such generous proportions.

14. I recognise that it is not the role of the decision maker to impose some hard objective test so as to frustrate the reasonable aspirations of a particular owner or occupier, so long as they were sensibly related to enjoyment of the dwelling. Even so, what is incidental to the enjoyment of the dwellinghouse as such connotes a sense of reasonableness in all the circumstances of the particular case and does not rest solely on the unrestrained whim of the occupier of the dwellinghouse. In my judgement making provision for the hallway and games room of such dimensions as proposed here for use by the appellant (or owners) for their personal recreational requirements is exactly that.

15. Overall I consider the floor space within the outbuilding would, as a matter of fact and degree, provide an area out of proportion to the floorspace which could reasonably be regarded as required for the leisure purposes shown as incidental to the enjoyment of the dwellinghouse as such.

16. Finally, I note that planning permission was granted in 2001 for the erection of a detached garage with first floor playroom at the appeal property. I saw on my inspection that this has been built, but that the playroom was being used for another purpose at the time of my visit - it contained a bed, settee and television. This is a substantial area, certainly sufficient enough to accommodate the appellant's incidental recreational requirement for leisure facilities in part. In the absence of any explanation, this adds to my concern that the amount of floorspace which is being sought in this instance goes beyond what could be regarded as reasonably required in view of the permission for the provision of space for leisure facilities which is not being used for that purpose.

Conclusion

17. Having regard to the design of the proposed outbuilding in its relationship to Garden House and the space to be provided within it for the games room and hallway, I consider the purpose of the building could not reasonably be described as incidental to the enjoyment of the dwellinghouse as such. As a result, I find the building as a whole would not meet the description of development permitted by Class E of Part 1 in Schedule 2 to the GPDO and so cannot benefit from the permitted development rights therein.

18. I have taken account of all the other matters raised, including the appeal decision of a colleague in another local planning authority area (Ref: APP/X0360/X/08/2064662) to which my attention has been drawn. That decision is specific to its own facts and no comparison can be made to the case before me. I have also noted the favourable view of the scheme adopted by the Council's Solicitor but that does not persuade me that the Council's decision was other than well-founded.

Overall Conclusion

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

R A Sexton
INSPECTOR

Appeal Decision

Hearing held on 23 July 2009

by Christine Thorby MRTPI, IHBC

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

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Decision date:
14 August 2009

Appeal Ref: APP/J1915/A/09/2101209
Cromwell Road Allotments, Cromwell Road, Hertford SG13 7DP

- 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 Mudlarks against the decision of East Hertfordshire District Council.
- The application Ref 3/08/1674/FP, dated 22 September 2008, was refused by notice dated 17 December 2008.
- The development proposed is the construction of a timber garden room, composting toilet and tool shed.

Decision

1. I allow the appeal, and grant planning permission for the construction of a timber garden room, composting toilet and tool shed at Cromwell Road Allotments, Cromwell Road, Hertford SG13 7DP in accordance with the terms of the application, Ref 3/08/1674/FP, dated 22 September 2008, and the plans submitted with it, subject to conditions set out in the attached schedule.

Preliminary Matters

2. The description of the proposal on the planning application form was, in part, for a 'garden workshop'. The Council changed this to 'timber garden room'. The appellant was satisfied that this better described the proposal and agreed for the description of the appeal to be as set out by the Council. The Council indicated at the Hearing that the parking and vehicular access would be permitted development and were not part of the planning application description. Therefore, they are not for my consideration. I intend to deal with the appeal on this basis.

Main issues

3. I consider the main issues in this case are whether the proposal would accord with national and local policy seeking protection of the Green Belt.

Reasons

4. The appeal site is part of a larger area of allotments within the Green Belt. It is used collectively by a community based group (Mudlarks) for the growing of plants and vegetables and is a horticultural use. In written submissions and at the Hearing the appellant confirmed that the timber garden room would be used for shelter, potting of plants and other such tasks, solely for the purpose of tending to the allotments.

5. I have taken into account the submissions of all parties and have come to the conclusion that the timber garden room, compost toilet and tool shed would be genuinely required for the purposes of the horticultural use and would not be inappropriate development. With regard to openness, although the buildings are larger than other sheds at the site, they are low, small scale, not inappropriate structures to be used collectively for several allotment plots. For most other allotments, it would be usual for each plot to have a small shed, therefore, provided no more sheds are erected at the appeal site, which can be controlled by a condition, there would be no detrimental impact on the openness of the Green Belt.

6. Allotments have a very distinct character, with the land containing cultivated plots with small isolated sheds dotted informally over the whole area. I consider that larger buildings such as the garden room, would, if repeated too often, undermine this character. However, in this case, the appeal site forms part of a very extensive area of open allotments and there would only be one large building. Together with the smaller toilet and shed, which are not dissimilar to other allotment sheds, and the remaining two small sheds owned by Mudlarks, the distinct character of the allotments would be unharmed.

7. The shed and toilet would have solar panels on the roof which may be shiny but they are essentially small, wooden sheds of an appropriately low key nature for the site. The timber garden room would have a green, planted roof which would be acceptable in this rural location. They would be isolated from other buildings but this would not be untypical for allotment sheds. I conclude that the proposal would protect the character and appearance of the area and the visual amenities of the Green Belt. It would comply with national policy contained in Planning Policy Guidance Note 2: Green Belts and the East Hertfordshire Local Plan policies GBC1 and GBC7 which seek to protect the Green Belt.

Conditions

8. Details of the shutters, external materials, and green roof, and restricting lighting would be necessary to ensure that the detailed appearance of the buildings is appropriate for the allotments. As the proposal is described as a 'timber garden room', and to avoid any confusion, I consider it necessary to impose a condition restricting all the buildings to horticultural use ancillary to the allotments. There is an identified site of wildlife interest adjacent to the allotments and a condition seeking a reptile survey would be necessary in the interest of biodiversity protection.

Other Matters

9. There are lots of sheds belonging to other allotments already, but no evidence of any crime has been put before me. The site is overlooked by the rear of houses on Ware Road and Cromwell Road and next to a public footpath. In these circumstances I do not consider that the proposal would increase the risk of crime. I acknowledge that the community use offers significant benefits and has considerable local support. For the reasons given I consider that the proposal would be acceptable.

C. Thorby INSPECTOR

SCHEDULE OF CONDITIONS

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

2) No development shall take place until details of the materials to be used in the construction of the external surfaces of the buildings hereby permitted, including the security shutters and the green roof have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.

3) The buildings hereby approved shall only be used for the purposes ancillary to the authorised horticultural/allotment use of the site and for no other purpose.

4) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any order revoking and re-enacting that Order with or without modification), no buildings/sheds or enclosures other than those hereby permitted nor any external lighting shall be erected/provided at the appeal site.

5) Before development commences, a comprehensive reptile survey shall be undertaken, and together with details of a mitigation strategy, method statement and works schedule/timetable shall be submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.

Appeal Decision

Hearing held on 24 June 2009

Site visit made on 24 June 2009

by Ian Radcliffe BSC (Hons) MCIEH DMS

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

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Decision date:
18 August 2009

Appeal Ref: APP/J1915/A/09/2100088
Land at 37-57 Haysmead Lane, Bishops Stortford CM23 5JJ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
- The appeal is made by European Land Holdings Ltd against the decision of East Hertfordshire District Council.
- The application Ref 3/08/1761/OP, dated 6 October 2008, was refused by notice dated 11 February 2009.
- The development proposed is the demolition of 39 and 41 Haysmead Lane, residential development and construction of access.

Procedural Matter

1. The application was submitted in outline, with access to be determined at this stage and all remaining matters reserved for subsequent approval. I have dealt with the appeal on that basis and I have taken the illustrative plan that has been submitted into account, insofar as it is relevant to my consideration of the principle of the development on the appeal site. It was clarified that the correct reference for the plan considered as part of the application that shows the proposed site access and indicative layout of housing is 1024/01 Rev B.

Application for costs

2. At the Hearing an application for costs was made by European Land Holdings Ltd against the decision of East Hertfordshire District Council. This application is the subject of a separate Decision.

Decision

3. I dismiss the appeal.

Main issues

4. Firstly, the effect of the proposal on the on the character and appearance of the area. Secondly, the effect of the proposal on education, youth, child, library and fire services, and upon sustainable transport.

Reasons

5. The appeal site consists predominantly of the rear half of the back gardens of 37 – 57 Haysmead Lane. Access to the site would be created by the demolition of the semi-detached dwellings, Nos 39 and 41.

Character and appearance

6. The appeal site is within an area of residential housing within the settlement boundary of Bishop's Stortford. As such it constitutes previously developed

land. I saw that it was in a sustainable location with regard to the ease of access to local services and facilities. In line with policy SD2 of the adopted East Herts Local Plan Second Review (Local Plan) and Planning Policy Statements 1 and 3 'Delivering Sustainable Development' and 'Housing' (PPS1 and PPS3) the site is suitable in principle for residential development.

7. The entrance to the appeal site is at the northern end of a row of interwar semi-detached houses built along Haysmead Lane. These dwellings have particularly long rear gardens ranging from 55m to more than 70m in length. In contrast to the south west along Linkside Avenue more closely spaced semi-detached dwellings on smaller plots predominate. Facing the appeal site is a recent high density residential development of a former hospital site, and to the north there are post war semi-detached and detached homes on relatively small plots. Further to the south along Haysmead Lane a mixture of all three ages of development can be seen. The pattern of development is clearly varied with earlier development on the Lane having a coarser urban grain and more recent development, which has made more efficient use of land, having a finer urban grain.

8. Policy HSG7 of the Local Plan is supportive in principle of infill housing development subject, as the policy and its reasoned justification explains, to the avoidance of over intensive development and proposals complementing the character and appearance of the area. Policy ENV1 requires the protection of the character and appearance of a locality through high quality design. The more intensive development of the appeal site would be in keeping with the varied pattern of development in the area. In relation to the creation of an access road and the development in depth of land off the Lane, I note that this would continue a pattern of development already seen with cul-de-sacs off Linkside Avenue and off Haymead Lane to the north with the development of the residential side road, Haycroft. As such the proposal would continue a pattern of development that reflects the trend over time for the increasingly efficient use of land for housing which is supported by PPS3.

9. Whilst the 2 semi-detached houses that would be demolished are well kept dwellings that contribute to the street scene they do not have any special architectural merit and are not protected. Although their loss would change the street scene 4 pairs of similar dwellings would remain, and so the dominant character and appearance of development along this part of the eastern side of the Lane would remain largely intact.

10. The appeal site is sufficiently large to accommodate a well designed attractive housing scheme of an appropriate scale, suitably laid out with sufficient space for attractive landscaping. The site is therefore suitable in principle in relation to the matters reserved for subsequent approval.

11. The Nag's Head Public House on the corner of Haysmead Lane and Dunmow Road has a distinctive art deco architectural style. It is, I understand, a listed building. However, it is over 100m away from the appeal site and intervening development is marked by its varied age, form and setback from the road. The setting of the public house would therefore not be adversely affected by the appeal proposal and whilst it is of a similar age to the houses that would be lost its existence is a consideration of minimal weight in favour of retaining the houses and dismissing the appeal.

12. For all of the above reasons, I conclude that the proposal would result in a development that would complement the character of the local built environment. As a consequence it would not harm the character and appearance of the area and so would comply with policies HSG7 and ENV1 of the Local Plan.

Local services and sustainable transport

13. Policy IMP1 of the Local Plan advises that where new housing creates a demand for facilities and services for the community, including transport related improvements, the Council will seek to secure their provision or contributions towards their provision. The Design and Access Statement indicates that 13 houses would be constructed on the site. Given the dimensions of these dwellings it is clear to me that they would have two or more bedrooms and so would constitute family housing. Such development would clearly increase demand for community facilities and services.

14. The County Council has specifically identified the need to fund the expansion of schools at primary and secondary levels as a shortage in local provision exists. It has also identified, amongst other matters, that the development would exacerbate the demand on the local library, and place greater pressure on youth services provided at the Northgate Centre and childcare provision. The sums sought would be spent on increasing provision and improving these local services. The affordable housing element of the scheme also needs to be secured. Without such provision the development would place excessive demands on local services and would not assist in meeting the demand for affordable housing.

15. Based upon the policies of the Local Plan and the guidance within the County Council's 'Planning obligations guidance – toolkit for Hertfordshire' on need within the District, and what and where the money would be spent, the contributions sought would make appropriate provision for the impact of the development and would meet the tests set by Circular 05/2005: *Planning Obligations*. The contributions are therefore justified and are necessary in order to make the development acceptable.

16. The appellant is not the sole owner of the site and because not all of the other landowners are willing to agree to a planning obligation it has not been possible to submit such a document. As an alternative 3 negatively worded conditions have been suggested that would prevent the implementation of the permission until schemes have been put in place to ensure that improvements to local services occur and to secure the provision of affordable housing.

17. Such an approach in relation to on site provision of affordable housing is acceptable. However, in relation to local services and transport it is clear to me that such schemes could not be drawn up without requiring the payment of money. Whilst section 106 of the Act enables a requirement for payment to be made as part of a planning obligation, the sections of the Act regarding the use of conditions does not allow conditions to be used to require payment. The conditions in relation to local services and transport would also fail the test of precision as set out in Circular 11/95 '*The Use of Conditions in Planning Permissions*' as they lack sufficient detail.

18. In the absence of an obligation the increased demand on education, youth, childcare, library services and transport would not be addressed. This would result in unacceptable harm to these services and would be contrary to policy IMP1 of the Local Plan.

Other matters

Highway safety

19. Concerns were expressed regarding highway safety and congestion of the nearby highway network. However, the Highway Authority and East Hertfordshire District Council have no planning objections to the proposal on these grounds. After considering all the evidence I find no reason to disagree with the conclusions of the District and County Councils.

Wildlife

20. The effect of the proposal on wildlife on the site has been raised. However, there is no evidence of any protected species on the site.

Overlooking and noise

21. The site is sufficiently large for housing to be designed and laid out so as to prevent overlooking that would have a significant adverse affect on the privacy of the occupiers of surrounding houses. In terms of noise further housing is compatible with existing the residential use and the amount of traffic using the new access would not result in excessive levels. In relation to construction noise I note the Council has separate powers to control such matters.

Housing need

22. The presence of 190 homes in the town that have been empty for more than 6 months has been referred to. It is not clear what percentage of the housing stock within the town this represents or to what extent this reflects the current poor state of the housing market. As a consequence this does not persuade me that there is an oversupply of housing in the town. Indeed it is not a matter at issue between the Council and appellant that there is a need for additional housing in Bishop's Stortford. On the basis of the evidence I have read and heard I have no reason to disagree with that conclusion. The demolition of two houses would allow the development of the appeal site and a net gain of 12 houses, several of which would be retained as affordable homes. This would assist in meeting housing need in the area.

Conclusion

23. The proposal would not harm the character and appearance of the area and would result in additional housing that would contribute towards meeting housing need in the District. Nevertheless, the absence of a completed obligation means that the increased demand on local services would not be addressed. This would result in unacceptable harm to these services and so the appeal should be dismissed.

Ian Radcliffe

Inspector

DOCUMENTS SUBMITTED AT THE HEARING

1 Notification letter of the date, time and location of the Inquiry and list of persons notified

2 Copy of letter from the appellant to the Council dated 19 January 2009.

Costs Decision

Hearing held on 24 June 2009
Site visit made on 24 June 2009

by Ian Radcliffe BSC (Hons) MCIEH DMS

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

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Decision date:
18 August 2009

Costs application in relation to Appeal Ref: APP/J1915/A/09/2100088 Land at 37-57 Haysmead Lane, Bishop's Stortford CM23 5JJ

- 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 European Land Holdings Limited for a full award of costs against East Hertfordshire District Council.
- The hearing was in connection with an appeal against the refusal of planning permission for the demolition of 39 and 41 Haysmead Lane, residential development and construction of access.

Decision

1. In exercise of my powers under section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town & Country Planning Act 1990, and all other powers enabling me in that behalf, I HEREBY ORDER that East Hertfordshire District Council will pay to European Land Holdings Limited the costs of the appeal proceedings limited to those costs incurred in the lodging of the appeal, the preparation of the hearing statement and the preparation of final comments on the Council's statement and comments from interested persons, 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 & Country Planning Act 1990 against the refusal of the Council to grant planning permission for the demolition of 39 and 41 Haysmead Lane, residential development and construction of access on land at 37-57 Haysmead Lane, Bishops Stortford CM23 5JJ.

2. The applicant is now invited to submit to East Hertfordshire 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.

The Submissions for the applicant

3. The application refers to paragraphs 7, 8 and 9 of Annex 3 of Circular 8/93. In refusing planning permission the Council prevented development which having regard to the development plan, national planning policy statements and other material planning considerations should clearly have been permitted. The Council has not substantiated its reason for refusal with an explanation as why the 2 unexceptional semi-detached houses which would be demolished should be retained. There has been no analysis of the semi-detached houses in the context of the varied character and appearance of development in the area. The Council has not been able to provide evidence to support its contention,

contrary to officer advice, that the harm caused to the character and appearance of the area would be unacceptable.

The Response by the Council

4. The Council made no comment.

Conclusions

5. 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.

6. There are 3 tests to be applied. Firstly, whether the Council produced evidence to substantiate its sole reason for refusal (paragraphs 8, Annex 3). Secondly, whether the Council produced evidence to substantiate its decision to refuse planning permission contrary to officer advice (paragraphs 9, Annex 3). Thirdly, whether the Council prevented development which could reasonably be permitted in the light of the development plan and of other material considerations (paragraph 7, Annex 3).

7. In relation to the first two tests, the Council's statement and evidence at the hearing failed to adequately explain why the change to the street scene, resulting from the loss of the two undistinguished semi-detached houses, would cause significant harm to the character and appearance of this area of varied residential development. Similarly, the Council failed to explain why the proposal would result in a pattern of development that would not complement the layout of housing in the locality. The officer report had considered both matters and found that little harm would result. The Council therefore acted unreasonably in failing to substantiate its reason for refusal and in failing to produce evidence to substantiate a decision taken contrary to officer advice.

8. The Council in assessing the impact of the proposal failed to show in its statement, or at the hearing, that in reaching its decision it had considered and given due weight to the sustainable location of the site, the contribution of the proposed housing to meeting housing need and the efficient reuse of housing land. The Council acted unreasonably in not doing so.

9. For the reasons that I have given above, I conclude that the Council acted unreasonably. As a consequence, the Council's behaviour resulted in additional expense, as described in Circular 8/93, occurring. As the appeal was dismissed an award of costs cannot include the appellant's costs in relation to attending the hearing. To do otherwise would be inconsistent with the decision to dismiss the appeal. A partial award rather than a full award of costs should therefore be made.

Ian Radcliffe

Inspector

Appeal Decision

Site visit made on 22 July 2009

by **R A Sexton** BSc(Hons) DipTP MRTPI

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Decision date:
12 August 2009

Appeal Ref: APP/J1915/X/08/2093164
33 Burnham Green Road, Welwyn, Hertfordshire AL6 0NL

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against a refusal to grant a certificate of lawful use or development (LDC).
- The appeal is made by Mr Nigel Halligan against the decision of East Hertfordshire District Council.
- The application Ref 3/08/1790/CL, dated 13 October 2008, was refused by notice dated 1 December 2008.
- The application was made under section 192(1)(b) of the Town and Country Planning Act 1990 as amended.
- The development for which a certificate of lawful use or development is sought is single storey rear extension.

Decision

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

Reasons

Procedural Matters

2. The copies of the application form and decision notice provided to me are not dated. I have therefore adopted the dates supplied by the appellant on the appeal form in the banner heading above

The Appeal Site and Proposal

3. The appeal property is a large, detached 2 storey dwellinghouse standing well back from Burnham Green Road and set within a substantial plot. A single storey addition to the rear elevation of the house is proposed.

4. The house has been extended in the past, significantly so in 1978 when planning permission was granted for "two 2 storey side extensions and attached double garage" (Ref: 3/78/1342/FP). The approved plans for that development show the existing house in 1978 to have had a cruciform pattern – which can still be discerned on site today.

5. An Ordnance Survey extract dated 1948 shows a slightly different floor plan, with the whole of the rear elevation in the same plane. However, I place greater weight in this instance upon the arrangement of the building indicated by the approved floor plans that accompanied the 1978 planning application. These are detailed plans, showing all the appearance of having been professionally drawn after a survey of the house. Having regard also to my own site inspection of the building, I am satisfied the cruciform plan is the 'original dwellinghouse' for the purpose of my consideration.

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6. The approved 1978 development included the extension of the north easterly arm of the house to produce an enlarged room. Taken from Drawing No.10085-2, the rear wall in question scales about 6.2m, of which 2.8m or so is original. The proposed extension would infill the space between this extended arm of the house and the south easterly projection of the original dwelling; and extend a further 1.899m beyond the rearmost wall of the south easterly projection of the original dwelling. The maximum external depth of the extension overall would be 4 metres.

Appraisal

7. The main issue is whether the extension would be permitted development under Class A of Part 1 of Schedule 2 of the Town and Country Planning (General Permitted Development) 1995 (GPDO), as amended in 2008[1]. Class A permits the enlargement, improvement or other alteration of a dwellinghouse, subject to certain limitations and conditions set out in paragraph A.1(a) to (i).

8. The appellant says the single storey extension would be permitted development since it would extend by no more than 4m from the rear wall of the original dwelling and points to support for this stance from the opinion expressed by Council's Solicitor. The Council's decision however cites a conflict with paragraph A.1(e). The exclusion at paragraph A.1(e) advises, in summary, that development is not permitted by Class A if the enlarged part of the dwellinghouse would extend beyond the rear wall of the original dwellinghouse by more than 4 metres in the case of a detached dwellinghouse.

9. The Council contend, in essence, that this limitation would not be met because "...the enlarged part of the dwelling would extend in part only beyond the rear wall of the original dwellinghouse." Certainly it is the case that part of the extension would not be *from* the rear wall of the original dwellinghouse – in the sense of being attached to it. But, paragraph A.1(e) does not require an extension to be wholly from or, indeed, from the rear wall of the original dwellinghouse at all. Only that it cannot extend *beyond* the rear wall of the original dwellinghouse by more than 4 metres in the case of a detached house.

10. As a matter of fact, no part of the enlarged dwellinghouse in this case would project more than 4 metres beyond any part of the rear wall of the original dwellinghouse; nor, indeed, more than 4 metres beyond the rear wall of the original dwellinghouse to which it is attached – albeit attached in part. For that reason I consider there would not be any conflict with paragraph A.1(e).

11. I am satisfied also on the same basis that there would be no conflict with paragraph A.1(h). It is common ground that the exclusions at paragraph A.1(a) to (d), (f), (g) and (i) are not engaged in this instance.

12. Accordingly, I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of a single storey rear extension was not well-founded and that the appeal should succeed. I will exercise the powers transferred to me under section 195(2) of the 1990 Act as amended.

R A Sexton

INSPECTOR

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[1] The Town and Country Planning (General Permitted Development) (Amendment) (No.2) (England) Order 2008

Lawful Development Certificate

The Planning Inspectorate
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TOWN AND COUNTRY PLANNING ACT 1990: SECTION 192
(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 13 October 2008 the operations described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged in black on the plan attached to this certificate, would have been lawful within the meaning of section 191 of the Town and Country Planning Act 1990 (as amended), for the following reason:

The single storey rear extension would be permitted development by virtue of Class A of Part 1 of Schedule 2 of the Town and Country Planning (General Permitted Development) 1995 (GPDO), as amended.

Signed

R A Sexton
Inspector

Date: 12 August 2009
Reference: APP/J1915/X/08/2093164

First Schedule
Single storey rear extension, as detailed on Drawing Nos. 10085-1 & 10085-2, dated October 2008, submitted with the application.

Second Schedule
Land at 33 Burnham Green Road, Welwyn, Hertfordshire AL6 0NL

NOTES

1. This certificate is issued solely for the purpose of Section 192 of the Town and Country Planning Act 1990 (as amended).

2. It certifies that the use /operations described in the First Schedule taking place on the land specified in the Second Schedule would have been lawful, on the certified date and, thus, would not have been 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 /operations described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use /operation 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.

4. The effect of the certificate is subject to the provisions in section 192(4) of the 1990 Act, as amended, which state that the lawfulness of a specified use or operation is only conclusively presumed where there has been no material change, before the use is instituted or the operations begun, in any of the matters which were relevant to the decision about lawfulness

Plan

This is the plan referred to in the Lawful Development Certificate dated: 12.08.09

by R A Sexton BSc(Hons) DipTP MRTPI

Land at: 33 Burnham Green Road, Welwyn, Hertfordshire AL6 0NL

Reference: APP/J1915/X/08/2093164

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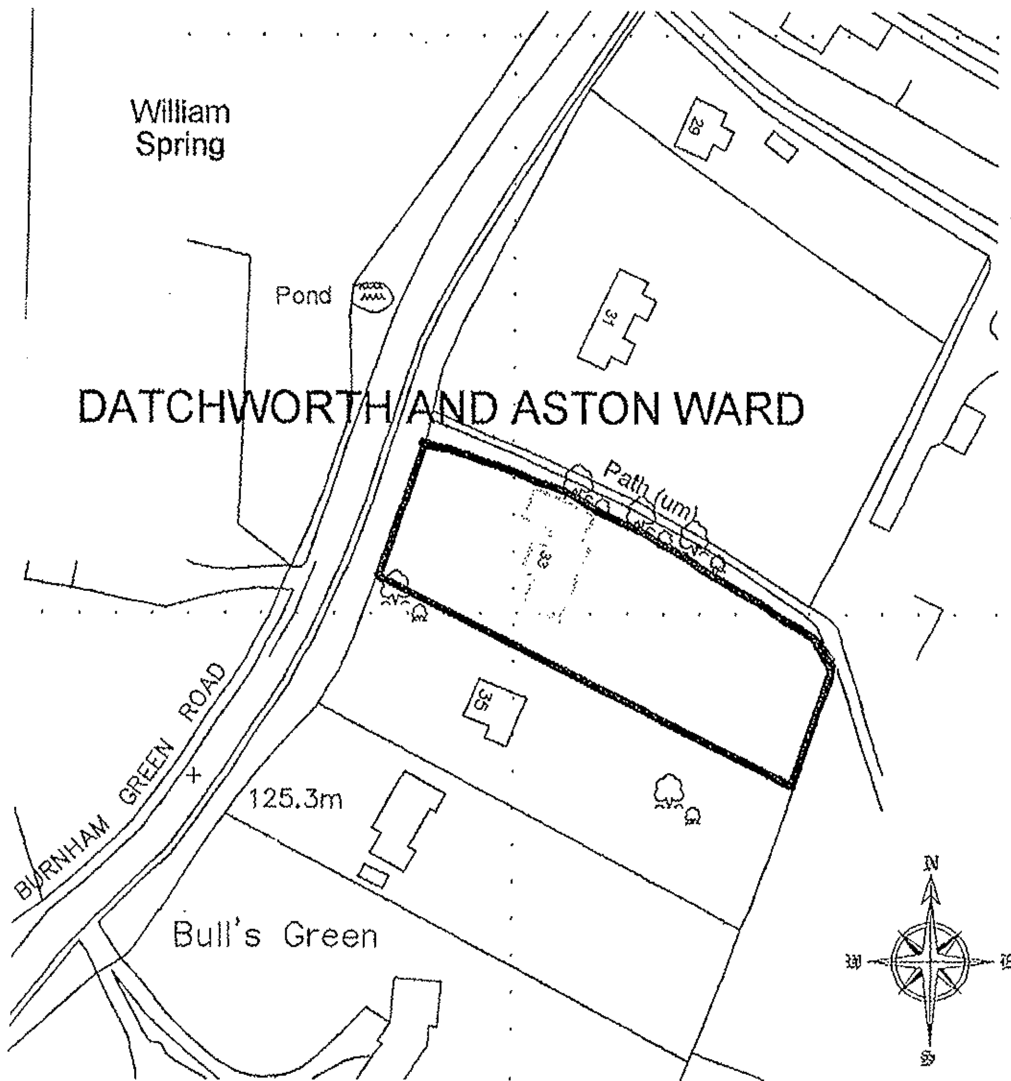

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William Spring

IMPORTANT NOTES – SEE OVER