Appeal Decision

Hearing held on 6 August 2009
Site visit made on 6 August 2009

by Elaine Benson BA (Hons) Dip TP MRTPI

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

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Decision date:
17 September 2009

Appeal Ref: APP/J1915/A/09/2101146
Bengeo Nursery, Sacombe Road, Hertford, Herts SG14 3HG

- 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 Major Shepherd against the decision of East Herts Council.
- The application Ref 3/08/1083/FP, dated 25 April 2008, was refused by notice dated 3 November 2008.
- The development proposed is temporary accommodation.

Decision

1. I dismiss the appeal.

Main issues

2. The main issue in this case is whether the proposal constitutes inappropriate development within the Green Belt and, if so, whether the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations so as to amount to the very special circumstances necessary to justify the development, with particular regard to the tests in Annex A of Planning Policy Statement 7: *Sustainable Development in Rural Areas* (PPS7).

Reasons

3. Bengeo Nursery is a relatively new business located in open countryside and within the Metropolitan Green Belt. Although the site was previously used as a garden centre, it had been vacant for some years before the nursery use commenced. The nursery contains a large glasshouse, a growing and external sales area, mainly for shrubs, and a large car park. Other land around the glasshouse has yet to be cultivated. It is proposed to erect a log cabin on the highest part of the site overlooking the glasshouse, to be occupied by the essential horticultural worker, Mr Max Shepherd and his wife.

4. Planning Policy Guidance Note 2: *Green Belts* (PPG2) and policy GBC1 *Appropriate Development in the Green Belt* of the adopted East Herts Local Plan Second Review April 2007 (LP) contain a presumption against inappropriate development within the Green Belt. I agree with both parties that the proposal represents inappropriate development for the purposes of PPG2 and development plan policy. PPG2 makes it clear that such development is by definition harmful to the Green Belt. I am also satisfied that given the location of the appeal site in an area currently free from development, the proposal would cause harm to the openness of the Green Belt. However, I agree with the Council that the siting and scale of the proposed temporary accommodation would not cause harm to the character

and appearance of the surrounding area and would not conflict with criterion (II) of LP policy GBC5 *Agricultural, Forestry and Other Occupational Dwellings*.

5. PPS7 seeks to protect the countryside against encroachment. In particular, it states that new agricultural and other occupational dwellings should only be allowed where a genuine case of need is made, which justifies an exception to be made to the normal policy of exercising strict control over new developments in the countryside. If a new dwelling is needed to support a new activity, whether on a new or existing enterprise, it should normally be provided by a caravan or other temporary accommodation for the first three years. A functional test as set out in paragraph 4 of Annex A of PPS7 is needed to establish whether it is essential for the proper functioning of the enterprise for one or more workers to be readily available at most times.

6. Furthermore, it has to be established that the functional need cannot be met by another existing dwelling on the unit or any other existing accommodation in the area which is suitable and available for occupation by the worker concerned. A financial test must establish if the enterprise has been based on a sound financial basis and the proposal should be supported by clear evidence of a firm intention and ability to develop the enterprise. These are stringent tests reflected in policy GBC5 of the LP.

7. The nursery produces 20 different varieties of bedding plants under one large glasshouse, for sale to the general public. To maximise production would require their propagation from the end of December until the second week in May, with the plants being sold between the end of March and the beginning of July, when the majority of sales are made. A frost during a critical stage of growth would destroy bedding plant crops due to their small size and sensitivity to cold. Such plant losses during the early part of the season would result in a significant financial loss which could not be recouped. The business has been unable to capitalise on the earliest crops for the last 2 years because the careful monitoring of seedlings required to forestall damage from frost, particularly at night has not been possible. To develop the business, the appellant intends to increase the early cropping of the plant stock and to produce poinsettias, violas and pansies for the Christmas and winter markets. However, to do this would require extending the growing period through further close monitoring of temperatures.

8. Early frost detection allows remedial action to be taken, including the use of back-up heaters and fleece covers, which cannot be automated. The appellant considers that it is crucial to live on the nursery site to be able to react quickly to any drop in temperature that may affect the delicate plant stock. Although automated systems are used at the nursery, the appellant raises concerns that they do fail on occasion, and this could lead to crop loss if not detected early. In the event that the electricity supply is disrupted for example, a standby generator would be used. However, this would need to be started promptly, by hand, if severe damage or plant loss is to be avoided. The appellant states that intermittent faults are a problem, particularly at night, as they are reported by telephone loop, leading to time delays if they are not answered by the first contact. He considers that a worker permanently present on the site would be able to deal with such problems more quickly and effectively, monitoring and resetting controls and carrying out subsequent checks before retiring.

9. I have considered the various requirements for the proper management of the nursery identified at the Hearing and note that a variety of plant types are grown, each having different requirements for water and heat. Most plants are watered by hand which has the advantage that an individual plant can be watered according to its needs. This method of watering also allows for the close monitoring of crops to assess and address any disease or insect damage. An automatic watering system would be impractical at this nursery, given that the plants are moved around according to their requirements and the varying temperature zones in the glasshouse and because not all plants can be watered from overhead. As a result, I note that this method of plant production is more labour-intensive than a monoculture system.

10. On the basis of the information before me, I accept that the growing of bedding plants requires special care during the months of December to March, and that smaller plants in particular are more susceptible to the sudden frosts common at this time of year. In my judgement, during the growing and propagation months it is essential that a worker is readily available at most times to deal with emergencies that may arise. I also accept that if poinsettias, violas and pansies were to be grown as planned in the future, there could be further periods when close monitoring would be required. However, these periods of intense activity are limited and I am not convinced that an essential need exists outside these periods. Whilst I acknowledge that there is a considerable amount of work, including repairs and maintenance to be carried out over the year, it seems to me that there is very little likelihood of essential care being required at short notice for a significant part of the year. Consequently, whilst a 24-hour on-site presence may be preferred, I am not convinced by the information provided that it is essential for the proper functioning of the nursery that someone should live on site permanently to care for the plant crops.

11. I have also had regard to the need for security at the site during those periods when the nursery would be most vulnerable to vandalism, such as when stock levels are at their highest and most vulnerable to theft, and to deal with vandalism. I saw on site that stones have been thrown from the adjacent footpath, smashing glasshouse panes. This results in plant wastage as glass-contaminated plants cannot be sold for health and safety reasons. I have also taken into account the appellant's concerns that potential vandalism to the rainwater catchment tank would result in plant drought. Whilst I accept that security is required and that during the peak period this could be on a 24 hour basis, I am not convinced that this requires an on-site residence by nursery staff or that other security measures, including the use of dedicated security personnel, have been fully explored.

12. It is a requirement of PPS7 to demonstrate that the functional need, where demonstrated, could not be fulfilled by any other existing accommodation in the area which is suitable and available for occupation by the workers concerned. Notwithstanding the appellant's stance that no accommodation other than that proposed on the appeal site would fulfil the functional needs of the nursery, he provided little evidence about the availability or otherwise of alternative accommodation for sale or rent in the area; whereas the Council produced a snapshot of a number of suitable properties within a radius of around 1 mile from the appeal site. Limited information was provided to

explain why the essential worker could not live locally or why available accommodation might be unsuitable.

13. The appeal site is close to a range of residential properties in Bengeo, the nearest being around 200m from the site. I consider that properties in this locality would be close enough to enable a worker to access the site quickly during emergencies, if alerted through a modern alarm system. Whilst I have had regard to high property values in the area, the son's limited income from the business and the appellant's desire to reinvest profits into the business, PPS7 makes it clear that the essential need for occupational dwellings depends on the needs of the enterprise and not on the personal preferences or circumstances of any of the individuals involved. Furthermore, there is no provision in national guidance or local policy for the accommodation of the essential worker to be paid for by the enterprise. I conclude that the appellant has failed to demonstrate this essential requirement of national and local policy.

14. I am satisfied by the evidence before me that there is a firm intention and ability to develop the enterprise, as demonstrated by the appellant's track record at two other nurseries in the area over many years, the investment in the glasshouse, water supply and pump, stock, equipment fencing and car park and the future proposals to expand the business set out above. I have also had regard to long-term plans to grow "pick your own" crops and a coffee/farm shop, to encourage more customers at different times of the year. I agree with the Council that the proposed dwelling would satisfy the requirements of paragraph 12 i) of Annex A of PPS7. Furthermore, on the basis of the financial information provided I agree with the Council that the financial tests set out in paragraph 12 iii) of Annex A are satisfied.

15. However, these factors do not override the fact that I am not persuaded by the evidence in this case that it is essential to the proper functioning of the horticultural enterprise that a worker be readily available at most times of the day and night, on a year-round basis or that there is no alternative suitable accommodation available in the vicinity of the appeal site. As such the proposal conflicts with the advice in PPS7 and LP policy GBC5.

16. I have had regard to the economic benefits of local seasonal employment provided by the nursery but this does not affect my conclusions on the main issues. I have also considered the various appeal decisions submitted by both the appellant and the Council. However, I have given little weight to them as the appeal before me depends very much on the specific circumstances of the case. In reaching my conclusions I have had regard to all other matters raised, but none is sufficient to outweigh the considerations noted above.

17. I have not found that there is a sound horticultural justification for the proposed temporary accommodation, or that there are any other considerations that would amount to the very special circumstances necessary to clearly outweigh the harm to the Green Belt, both by reason of inappropriateness and impact on openness. The appeal should be dismissed.

Elaine Benson

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Mr Major Shepherd	Appellant
Mr Max Shepherd	Appellant's Son

FOR THE LOCAL PLANNING AUTHORITY:

Mrs Lisa Page	Principal Planning Officer, East Herts District Council

Appeal Decision

Inquiry held on 25 & 26 August 2009
Site visit made on 25 August 2009

by Elizabeth Fieldhouse DipTP DipUD MRTPI

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

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Decision date:
15 September 2009

Appeal Ref: APP/J1915/A/09/2099898
The Stables, Bayford Lane, Bayford, Hertfordshire SG13 8PR

- 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 Joseph Robb against the decision of East Hertfordshire District Council.
- The application Ref 3/08/1100/FP, dated 13 June 2008, was refused by notice dated 14 January 2009.
- The development proposed is the use of the land as a private gypsy caravan site (total of 5 mobile homes and one touring caravan).

Application for costs

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

Decision

2. I allow the appeal, and grant planning permission for the use of the land as a private gypsy caravan site (total of 5 mobile homes and one touring caravan) at The Stables, Bayford Lane, Bayford, Hertfordshire SG13 8PR in accordance with the terms of the application, Ref 3/08/1100/FP, dated 13 June 2008, and the plans submitted with it, subject to the conditions set out in the annex.

Main issue

3. I consider the main issue is whether the proposal is inappropriate development for purposes of Planning Policy Guidance 2 *Green Belts* (PPG2). If so whether the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations, so as to amount to the very special circumstances necessary to justify the development. If not inappropriate, whether there would be harm to the rural area from the proposal.

Reasons

Appropriate or inappropriate development

4. The appeal site lies within the Metropolitan Green Belt at the junction of the B158, Lower Hatfield Road and Bayford Lane outside any defined settlements where East Herts Local Plan Second Review 2007 (LP) policy GBC1, in line with the advice in PPG2, provides that inappropriate development will not be permitted unless very special circumstances can be demonstrated that clearly outweigh the harm by way of inappropriateness and any other harm. Planning permission was granted on appeal (ref. APP/J1915/A/03/1108744) for the use

of the land for a private gypsy caravan site, but that permission restricted the use to no more than one static caravan or mobile home and no more than one non-residential touring caravan. The current proposal would increase the number of mobile homes to five to accommodate members of the owner's family.

5. ODPM Circular 01/2006 *Planning for Gypsy and Traveller Caravan Sites* records that gypsy and traveller sites are normally inappropriate in Green Belts, whilst PPG2 in annex E advises that gypsy caravans are not normally appropriate development in the Green Belt. The appellant considers that as the application is not for a new gypsy site in the Green Belt and, in his view, the minimal additional harm to openness would be outweighed by the positive benefits of using the site to its true potential, the proposal is an exceptional, not normal, case and would be appropriate development.

6. Paragraph 3.12 of PPG2 provides that the material change in the use of land is inappropriate unless it maintains the openness and does not conflict with the purposes of including land in the Green Belt. The proposal to site four additional mobile homes on the land is materially different to the permitted use and therefore a material change in use. I acknowledge that, with the planting following the planning permission in 2003, the site is largely screened from public viewpoints even from the public footpath on the opposite side of the valley. Also the proposal would not involve any increase in hardstanding with the proposed additional units easily accommodated on the existing hardstanding.

7. Nonetheless, by placing mobile homes on the otherwise open hardstanding their bulk and form would result in some loss of openness and through the loss of openness an intrusion or encroachment into the countryside contrary to one of the purposes of including land in Green Belts in paragraph 1.5 of PPG2. I therefore consider the proposal would be inappropriate development within the Green Belt and, as indicated in paragraphs 3.1 and 3.2 of PPG2, there is a general presumption against inappropriate development which is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. I attach substantial weight to the harm to the Green Belt arising from such development.

Need for sites

8. Policy H3 of the Revision to the Regional Spatial Strategy provides that there is a substantial regional unmet need with a local need for a minimum of 25 additional pitches by 2011 through development control decisions and development plan documents (DPD). Beyond 2011 there should be an annual 3% compound increase in pitch provision. There was no evidence that the provision is currently available in the district or wider area although the Council had jointly commissioned Scott Wilson whose Stage Two Report *Identification of Potential Areas to Accommodate Gypsy and Traveller Pitches in the Study Area* 2007 identified the appeal site as one of the sites suitable for expansion within existing curtilage with the potential to accommodate 4-5 pitches. I note however that only about a third of the district is within the Green Belt and other recommended sites lie outside the Green Belt. Nevertheless, there was no evidence that the identification of sites in that study has been further

progressed and there is a pressing urgent unmet need for additional gypsy and traveller sites within the local and wider area to meet the RSS requirement.

9. ODPM Circular 01/2006 advises that where there is an urgent need to make provision, local planning authorities should consider preparing site allocations DPDs in parallel with or in advance of the Core Strategy. The Council is in the process of undertaking the Core Strategy as part of the Local Development Framework and at the inquiry indicated that a timetable for the Site Allocations DPD would be put to Members in the near future with Site Allocations Issues and Options possibly out to consultation in summer 2010. In any event, from the possible consultation period, the provision of 25 new pitches by 2011 would not be likely within the framework of an adopted Site Allocations DPD.

10. The Circular has transitional provisions where there is an unmet need and no available alternative gypsy and traveller site provision but there is a reasonable expectation that new sites are likely to become available in the future to meet the need. Although the Council has not provided gypsy and traveller sites in the past, I have no evidence to indicate that sites would not be provided as part of the DPD process and note the findings of the Scott Wilson Report. Where there is a reasonable expectation that sites would become available in the future through the DPD process, the Circular advises that consideration should be given to granting temporary permission.

11. There is a clear urgent need for sites within the District to meet the requirement in the RSS by 2011. These sites should be available, suitable and affordable. There are no such sites available within the district or the wider area. Having regard to the transitional provisions within ODPM Circular 01/2006, these factors weigh heavily in favour of the grant of planning permission and I give them substantial weight.

Sustainability

12. There are no community facilities near the appeal site with the nearest shop just over 1mile away. Nevertheless, there is a roughly 2 hourly bus service along the Lower Hatfield Road in both directions which would provide an alternative to the private car for access to at least some facilities. The appellant's wife indicated that she accessed some of the local shopping centres by bus. Having regard to the advice in ODPM Circular 01/2006 on the need to consider sustainability in wider terms than the transport mode and distances, I find the site would offer the sustainability benefits indicated in the Circular for the prospective occupiers some of whom have registered with local service since moving onto the site. The previous Inspector found the site unsustainable, but his decision predated ODPM Circular 01/2006 which widened consideration of sustainability from that in earlier Government guidance. I do not find harm in terms of LP policy SD2.

Impact on the visual amenities

13. I have already found limited impact in terms of visibility. Although I viewed the site during the summer months, I consider that it is unlikely to be very much more intrusive in the winter months having regard to the mix of evergreen and deciduous trees in the area particularly around the site. The modest realignment of the entrance to meet highway safety requirements would result in the loss of some existing hedging but this would be replaced on

to the opposite side of the entrance and in time would have a similar softening impact to the existing planting. The fact that a site is well screened does not make it acceptable in the countryside as the activity associated with the use can have a harmful effect on the visual environment. The site was in the Landscape Character Area defined in the previous local plan but the designation has been removed from the current adopted local plan. In my opinion, the removal of any formal designation, other than Green Belt, does not diminish the value of the landscape in the area. Nevertheless, in view of the number of additional mobile homes proposed, I find limited harm to the visual amenities.

Personal circumstances

14. The appellants extended family have been on the site since March 2009 and, apart from a need to have a base on which to live, until moving onto the site they had no particular connections with the area. Nevertheless, the appellant's wife had a need for additional company and now provides necessary support for family members.

Overall conclusion

15. I have found in paragraph 6 that the site is largely concealed from public view and in paragraph 13 that there would be limited harm to the visual amenities of the area. The use already exists, all be it with only one mobile home, but in view of the size of the holding and the area of hardstanding already existing, I consider that the proposal would not change unacceptably the rural character and appearance of the area. The loss of openness would be limited having regard to the number, scale and bulk of the mobile homes. There is a clear urgent need for sites within the District to meet the requirement in the RSS by 2011 and there was no evidence of available sites. Having regard to the transitional provisions within ODPM Circular 01/2006, these factors weigh heavily in favour of the grant of temporary planning permission.

16. Nevertheless, the Council had yet to programme undertaking the Site Allocations DPD at the time of the inquiry and there was no prospect of adequate provision to meet the RSS requirement by 2011. The site is an authorised gypsy and traveller site and I have found that the increase in the usage would not have an unacceptable impact. Having regard to the existing permanent permitted use of the site and need for additional pitches by 2011, I do not find a temporary consent justified or that planning permission for the proposal would harm the proper consideration of sites to meet the remaining RSS requirement in policy H3. Taking all factors into account, and without taking into account the personal circumstances of the appellant, I consider that the material considerations clearly outweigh the harm by reason of inappropriateness and any other harm. I find the very special circumstances necessary to justify inappropriate development in the Green Belt exist in this case. For the reasons given above I conclude that the appeal should be allowed.

Human rights

17. Representations were made to the effect that the appellant's extended family had moved onto the site by the time the Council reconsidered the proposal in July 2009 and therefore their Human Rights under Article 8 and Article 1 of the Human Rights Act would be violated if the appeal were dismissed. As I have

decided to allow the appeal, I do not need to deal with the question of whether the decision would result in a violation of rights.

18. Section 71(1)(b) of the Race Relations Act 1976 provides a duty to have due regard to the need to promote equality of opportunity between persons of different racial groups. The Court of Appeal judgement on Baker v. SSCLG and London Borough of Bromley of 28 February 2008 found that the decision maker had a duty to achieve these goals. ODPM Circular 01/2006 has at its core Government objectives to address the many disadvantages experienced by gypsies and travellers and a close awareness of the requirements and contents of the Circular was adequate to accord with the requirements of the Act. In reaching this decision, I have had due regard to the provisions of the Act but do not find harm in respect of the Race Relations Act.

Conditions

19. I have considered the conditions discussed at the inquiry in the light of the advice in Circular 11/95. I noted that some of the mobile homes had already been sited on the hardstanding but not all are sited in the positions shown on the application drawing. Therefore I consider the standard commencement condition is necessary. The proposal is being permitted as an exception to normal policies of restraint having regard gypsy considerations and the occupation of the site should be restricted accordingly.

20. In the interests of the visual amenities, details of refuse disposal facilities, external lighting, the size of commercial vehicles and activity restricted, the number and siting of caravans controlled, the alterations to the access landscaped to include boundary treatment are necessary. I do not consider a condition in respect of the protection of existing boundary planting is necessary as the hardstanding already exists and the boundary fencing to all areas other than the changed access arrangement already exists.

21. In the interests of highway safety the access should be altered to accord with that shown on the application drawing, the part of the existing access closed and the boundary/verge reinstated, visibility splays retained and satisfactory off-road parking provided.

Elizabeth Fieldhouse

INSPECTOR

Annex – Conditions

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

2) The site shall not be occupied by any persons other than gypsies and travellers as defined in paragraph 15 of ODPM Circular 01/2006.

3) No more than one commercial vehicle per plot shall be kept on the land for use by the occupiers of the caravans hereby permitted, and they shall not exceed 3.5 tonnes in weight.

4) No commercial activities shall take place on the land, including the storage of materials.

5) No more than 6 caravans, as defined in the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968 (of which no more than 5 shall be a static caravan or mobile home) shall be stationed on the site at any time.

6) The use hereby permitted shall cease and all caravans, structures, equipment and materials brought onto the land for the purposes of such use shall be removed within 28 days of the date of failure to meet any one of the requirements set out in (i) to (iv) below:

   i) within 3 months of the date of this decision the approved access on drawing XXX 001B shall be fully completed including a visibility splay of 2.4m by 43m in a southerly direction and 2.4m by 10m in a northerly direction; and a scheme for: the storage and removal of refuse; proposed and existing external lighting on the boundary of and within the site; tree, hedge and shrub planting and including details of species, plant sizes and proposed numbers and densities; boundary treatment including fencing, planting and verge reinstatement where the existing access is closed; and the internal layout of the site, including the siting of caravans and parking (hereafter referred to as the site development scheme) shall have been submitted for the written approval of the local planning authority and the said scheme shall include a timetable for its implementation.

   ii) if within 11 months of the date of this decision the site development scheme has not been approved by the local planning authority or, if the local planning authority refuse to approve the scheme, or fail to give a decision within the prescribed period, an appeal shall have been made to, and accepted as validly made by, the Secretary of State.

   iii) if an appeal is made in pursuance of (ii) above, that appeal shall have been finally determined and the submitted site development scheme shall have been approved by the Secretary of State.

   iv) the approved scheme shall have been carried out and completed in accordance with the approved timetable.

7) At the same time as the site development scheme required by condition 6 above is submitted to the local planning authority there shall be submitted a schedule of maintenance for a period of five years of the proposed planting commencing at the completion of the final phase of implementation as required by that condition; the schedule to make provision for the replacement, in the same position, of any tree, hedge or shrub that is removed, uprooted or destroyed or dies or, in the opinion of the local planning authority, becomes seriously damaged or defective, with another of the same species and size as that originally planted. The maintenance shall be carried out in accordance with the approved schedule.

8) The visibility splays required by condition 6 shall be kept free of any obstruction to visibility between 600mm and 2.0m in height above the carriageway level.

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Cain Ormondroyd	Of Counsel instructed by East Hertfordshire District Council
He called	
Anil Khosla BA(Hons), DipTCP, DipTP MRTPI	Planning Consultant for East Hertfordshire District Council

FOR THE APPELLANT:

Alan Masters	Of Counsel instructed by Dr Murdoch -Agent
He called	
Mrs Julie Robb	Appellant's wife
Dr A Murdoch BA(Hons) MSC PhD MA MRTPI	Agent

INTERESTED PERSONS:

Dr M Wainwright	Chairman Bayford Parish Council
Mr R Jamieson	Interested person

DOCUMENTS

1 Statement of Common Ground
2 Letter date 4 July 2009 from Mrs Hughes
3 Letter dated 7 July 2009 from Chairman Ware Youth Football Club
4 Letter dated 22 April 2009 from Hertfordshire Gypsy Section re. Waiting List Applications
5 East Herts Council Landscape Character Assessment SPD
6 Court of Appeal case no. C1/2007/2519 & 2520

PLANS

A Application plans

Appeal Decision

Site visit made on 2 September 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:
22 September 2009

Appeal Ref: APP/J1915/A/09/2103724
Bansang, Queen Hoo Lane, Tewin, Welwyn Hertfordshire AL6 0LT

- 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 John James against the decision of East Hertfordshire District Council.
- The application Ref 3/08/1655/FP, dated 17 September 2008, was refused by notice dated 25 November 2008.
- The development proposed is the demolition of the existing dwelling, garages outbuildings and tennis court; erection of replacement dwelling with attached garage and residential annex and detached energy centre.

Decision

1. I dismiss the appeal.

Background information

2. The existing house is undergoing alterations. Planning permission has been granted for single storey side and rear extensions and a replacement entrance vestibule (ref 3/08/2145/CL), and for the erection of a single storey garage and swimming pool building (ref 03/09/0698/CL). Both appeared to be under construction at the time of the site visit.

Main issues

3. The main issues are;

   - whether the proposal would be inappropriate development within the Green Belt;
   - the effect of the proposal upon the openness of the Green Belt; and,
   - whether there are any material considerations sufficient to clearly outweigh any harm to the Green Belt, and any other harm, thereby justifying the proposal on the basis of very special circumstances.

Reasons

Inappropriate Development

4. The appeal site is occupied by a detached 2 storey dwelling in the Metropolitan Green Belt and is within an area of open countryside. Planning Policy Guidance Note 2 '*Green Belts*' (PPG2) advises that replacement of an existing dwelling would not be inappropriate provided the new dwelling is not materially larger than the dwelling it replaces. Policy GBC1 of the East Herts Local Plan advises

that inappropriate development will not be permitted except in very special circumstances. Policy HSG8 of the Local Plan advises that replacement dwellings are not inappropriate development where they comply with certain criteria which can be summarised as follows. Firstly, that the dwelling has a lawful residential use. Secondly, that the existing dwelling is of poor appearance, or not capable of retention, and does not contribute to the character and appearance of the area. Thirdly, in relation to the scale of the house, the volume of the replacement dwelling would not be materially larger than the dwelling to be replaced, plus any unexpended permitted development rights excluding separate buildings.

5. In relation to the first part of the policy, it is common ground that the dwelling has a lawful residential use. Turning to the appearance of the dwelling, although it is undergoing alterations, I saw that it has a simple rectangular form with disproportionately large windows that has given it an unbalanced appearance. In style it very much reflects the mid 20th century period in which it was constructed. I note that the Council does not oppose the proposal on the basis that it is a dwelling worthy of retention, or that it contributes to the character and appearance of the area, and I have no reason to disagree with that assessment.

6. Turning to whether the property is capable of retention, whilst the building survey has identified that there is some minor differential settlement it appears otherwise to be structurally sound. Whilst substantial general repairs and renovation would be required to bring the dwelling up to a modern standard it is capable of being retained. Notwithstanding my findings on this matter, I see little practical or policy benefit of requiring the retention of a building that is not worthy of retention and no longer meets the needs of its owners.

7. In terms of the last criteria, the existing dwelling, with extensions that have been granted permission, amounts to a volume of approximately 570 cubic metres. The proposal with a volume almost three times bigger (approximately 1700 cubic metres) would be far larger than the existing dwelling. The appellant has sought to express the increase in size of the dwelling in terms of floor area rather than volume. Whilst this approach shows a smaller relative increase it would, if the outbuildings are excluded as required by the Local Plan, still be a significant increase in the size of the dwelling.

8. The proposal includes an Energy Centre, a separate building next to the main house. Ancillary buildings and minor structures within the curtilage of a dwelling house are not specifically referred to in PPG2. However, it would be located next to the house and for the purposes of the proposal it is clear that it would form an intrinsic part of the dwelling. As a consequence it would not, in itself, be inappropriate development. However, its contribution to the increase in built development associated with the replacement development exacerbates the harm caused by the disproportionate increase in the size of the house. I conclude that the size of the proposed replacement dwelling would represent inappropriate development in the Green Belt, contrary to policies GBC1 and HSG8 of the Local Plan and PPG2. In accordance with PPG2 I attach substantial weight to the harm caused to the Green Belt by such development.

Openness

9. PPG2 advises that the most important attribute of the Green Belt is its openness. The proposed dwelling would occupy more ground than the existing dwelling. The use of a pitched roof to the main house would mean that it would also be appreciably taller than the original house. The overall effect would be of a significantly larger, more visually intrusive dwelling.

10. The extensive screening afforded by the woodland and associated planting would mean that there would be little practical harm to openness as the new house would not be seen outside the appeal site. Nevertheless, the fundamental aim of Green Belt policy is to keep land permanently open by not building upon it or strictly controlling the extent of new building. For this reason, this consideration has little effect on reducing the adverse impact of the proposal on the openness of the Green Belt.

11. Whilst the removal of the unsightly outbuildings and structures on the site would benefit the openness of the area, this demolition could occur even in the absence of this proposal. In any event this limited benefit would not outweigh the harm to openness of the area which would result from this scheme. Furthermore, as the proposal is a replacement dwelling rather than a new dwelling if permission was granted exceptional circumstances would not exist that would necessitate the removal of the existing development rights with regards to ancillary buildings, structures or hard standing. As a consequence, these structures could be replaced at any time in the future negating the gain that would result from their loss. The proposal would therefore also harm openness. This additional harm to the Green Belt adds further weight against the proposal.

Other considerations

12. I have found the proposal would be harmful to the Green Belt. It is therefore necessary to consider the grounds put forward by the appellant to determine whether there are any material considerations that would amount to very special circumstances that would outweigh this harm.

Sustainability

13. The proposed dwelling would achieve code level 6 of the Code for Sustainable Homes. This is the highest rating that can be awarded to a dwelling and it would constitute a zero carbon home. At present there are very few homes that have been built to this standard in the country. However, by 2016 all new homes will have to achieve code level 6. As a consequence, it would be an exemplar development for a comparatively short period of time. Given that it is likely that the proposed dwelling would remain long after achievement of such a standard becomes common place this is a matter in favour of the proposal to which I attach little weight.

Design

14. The dwelling would be contemporary in design and use oak, one of the most traditional and attractive of building materials. Nevertheless, its design with its symmetrical appearance and use of pitched roofs is not so distinctive that it

would result in an outstanding or unique dwelling, and so this is also a matter to which I attach little weight in favour of the appeal.

Protected species

15. The appeal site is large and much of it is wooded. A badger set is present in the woodland within the curtilage of the site some distance from the site of the house. The garden has been surveyed for badgers by the local badger group and mitigation measures, should construction occur, have been suggested. However, the Wildlife Trust have also identified that the natural habitat is also attractive to bats and that the proposed demolition on the site could harm any bats that are present.

16. The presence of protected species is a material consideration when determining development proposals. In such cases where there are reasonable grounds to suspect that protected species may be present, such as the appeal site, legislation including paragraph 99 of Circular 06/2005 *Biodiversity and Geological Conservation – Statutory Obligations And Their Impact Within The Planning System* and national guidance set out in Planning Policy Statement 9 *Biodiversity and Geological Conservation* (PPS9) and its accompanying *Good Practice Guide* emphasise the need to establish the presence or otherwise of protected species, and the extent to which they may be affected by a proposed development, before planning permission is granted. Given the absence of a bat survey in relation to the house and the outbuildings which would be demolished this is a matter of considerable weight against the proposal.

Conclusion

17. The sustainability and quality of the design would not overcome the intrinsic harm to the Green Belt by reason of inappropriateness, and I have found that the proposal would also reduce openness. Clearly the degree of harm caused would be considerable and in comparison the material considerations in favour of the appeal are small. Even if this was not the case the absence of a comprehensive wildlife survey means that the implications of the proposal on protected species is not understood and this would be sufficient reason in itself to dismiss the appeal. I therefore conclude that very special circumstances do not exist that justify permitting the proposal. As such the replacement dwelling would be contrary to policies GBC1 and HSG8 of the Local Plan and PPG2.

Ian Radcliffe

Inspector

Appeal Decisions

Hearing held on 15 September 2009
Site visit made on the same date

by Gloria McFarlane LLB(Hons) BA(Hons) Solicitor (Non-practising)

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

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Decision date:
22 September 2009

Appeal A: Appeal Ref: APP/J1915/C/09/2098532
35 Clements Street, Ware, SG12 7AG

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mr Charles Bancroft against an enforcement notice issued by East Hertfordshire District Council.
- The Council's reference is E/08/0364/B.
- The notice was issued on 28 January 2009.
- The breach of planning control as alleged in the notice is the unauthorised change of use from single dwellinghouse to a dwelling in multiple occupation.
- The requirements of the notice are to cease the use of the dwellinghouse as one in multiple occupation.
- The period for compliance with the requirements is 6 months.
- The appeal is proceeding on the grounds set out in section 174(2)(a),(f) and (g) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: The appeal is dismissed and the enforcement notice upheld.

Appeal B: Appeal Ref: APP/J1915/A/09/2098576
35 Clements Street, Ware, SG12 7AG

- 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 Charles Bancroft against the decision of East Hertfordshire District Council.
- The application Ref 3/08/1755/FP, dated 3 October 2008, was refused by notice dated 25 November 2008.
- The development proposed is change of use to nine bedroom dwelling with multiple occupation.

Summary of Decision: The appeal is dismissed.

The appeal under ground (a), the deemed planning application and the s.78 appeal

1. The appeal property is located in a residential area of Ware mainly comprising semi-detached and terraced two storey properties. Excluding the appeal site, all the properties in Clements Street appear to be in use as single dwellings. The appeal property is a two storey semi-detached dwellinghouse with rooms in the roof and it has been extended to the side and rear. It comprises on the ground floor a communal kitchen and utility area, a ground floor w.c. and separate shower room, and three bedrooms; on the first floor there is a shower room with a w.c, three bedrooms and one bedroom with an en-suite shower room with a w.c; there are two bedrooms on the second floor (that is, in the

roof space). The property currently provides accommodation for nine people. The front area is paved providing car parking space although the dropped kerb does not extend for the entire width of the space. There is a large rear garden with outbuildings and a deck area accessed from the kitchen and the rear ground floor bedroom.

Main issues

2. In this part of the appeal I consider that there are three main issues. The first is whether the change of use results in the provision of satisfactory living accommodation. The second is the effect of the change of use on neighbours' living conditions with regard to noise and disturbance and visual amenity. The third is the impact of the change of use on parking in the area.

First issue: Living accommodation

3. The Council is aware of the valuable contribution houses in multiple occupation (HMO) make towards housing provision for people in need of affordable housing[1] and policy HSG9 of the East Hertfordshire Local Plan Second Review adopted 2007[2] sets out a presumption in favour of HMOs provided that the conversion provides a satisfactory level of living environment for the intended occupiers and that adequate facilities for the storage and disposal of refuse are provided. The Environmental Health Section of the Council adopted Guidance with regard to HMOs[3] which is referred to in the Local Plan[4]; this Guidance assists in the implementation of policy HSG9 by giving an explanation of what facilities etc are required in an HMO. Although the Guidance is primarily concerned with Environmental Health legislation it seems to me that the standards and requirements in the Guidance are equally applicable when assessing a living environment for planning purposes and, as such, I give the Guidance considerable weight.

4. The building appears to meet the required standards for the number and location of bathrooms and w.cs. However, two of the bedrooms fall below the required 8sq m. One is barely below but the other is a room in the roof-space which has an area of only 4.2sq m and which has only a roof-light for natural lighting and ventilation. In my opinion this room provides wholly unsatisfactory living accommodation, particularly in view of the fact that there is no communal lounge or dining area. The Guidance says that for nine people the kitchen should be 23sq m but the one at No.35 is 9.3sq m. The provision of, among other things, cupboard space, sinks, ovens and hobs also falls well below the standards set out in the Guidance.

5. Nine people generate a lot of rubbish. There are two black wheelie bins that appear to be usually kept at the front of the property[5]. These are often full and refuse is left piled up in black sacks and other bags. The Appellant maintains that he has asked the Council for larger bins but that his request has been refused. I accept that there may have been problems in this respect but the current arrangements are not adequate facilities for the storage and disposal of refuse as required by policy HSG9 and the Guidance.

[1] Paragraph 3.15.2 of the Local Plan
[2] The Development Plan for the purposes of these appeals
[3] Amenity Standards for Houses in Multiple Occupation and Other Houses
[4] Paragraph 3.15.2
[5] I noted them on my pre-hearing site visit and photographs on the file show them in that location

6. It was suggested by the Appellant that a condition could be imposed requiring refuse to be stored at the rear of the premises. There is a side access to No.35 but the status of the access-way is not known and continued access to the rear may be problematic. Even if it was possible, from comments made by the Appellant the likelihood of the occupiers complying with the requirement to put refuse at the rear and wheel the bins to the front on the appropriate collection day appears to me to be remote. The possibility of constructing a refuse storage area in the front of the property raises a number of issues including the effect on the appearance of the property and the area given that the enclosure would have to be of a considerable size. I therefore do not consider that the imposition of a planning condition would overcome the harm resulting from the current inadequate facilities.

7. I appreciate that the HMO is fully occupied, some of the occupiers having lived there for a long time, and that in this respect the accommodation can be said to be acceptable. I also appreciate that the people who live in No.35 may have difficulty living in any other type of accommodation and that there is a general need for low cost accommodation of this type. I also accept that the Appellant has done what he can to ensure that the accommodation is reasonable so far as the circumstances permit. But, in my opinion, none of these matters, and the other matters raised by the Appellant, justify the grant of permission for a HMO for nine people at No.35 because of the sub-standard accommodation provided. It may well be that, after further discussions between the Appellant and Environmental Health and Planning Officers along the lines of the contents of the letter dated 19 February 2009[6], the Council permits the property to be used as a HMO for fewer occupiers, but that is not for me to determine in these appeals.

8. I therefore conclude that the change of use results in the provision of unsatisfactory living accommodation and that it is contrary to policy HSG9 of the Local Plan.

Second issue: Neighbours' living conditions

9. The property at No.35 has a neglected and dilapidated appearance and it seems that the exterior has not been painted for some time. I acknowledge that even if it was in single family use this could still be the case but the change of use to a HMO has, in my opinion, exacerbated the unkempt appearance of the property.

10. I have commented above on refuse storage at the front of the property which, among other things, is unsightly and unhygienic.

11. There are rules of behaviour that the Appellant expects his tenants to abide by. The Appellant has provided his mobile phone number to local residents and if he is not available and there are problems, local residents have been advised to call the Police. The house at No.35 could provide accommodation for a large family; any family, or indeed any occupier of a dwelling, could make a lot of noise and be a disturbance in any residential area. But a group of adult individuals sharing what I consider to be unsatisfactory and cramped accommodation would, in my opinion, be more likely to have arguments or

[6] Appendix LP5 to the Council's s.174 statement

disagreements and have a lifestyle that could result in undue noise and disturbance in the area than if the dwelling was in single family occupation.

12. I also accept that, given the size of the property, that there would be a considerable amount of coming and going for, for example, going to school, shopping and socialising. But it seem to me that a dwelling comprising nine individual households would be likely to have a greater number of people coming and going because there would be fewer shared visitors, journeys and/or activities.

13. I note that there have been no complaints to the Council by local residents about these issues except in the context of these appeals. There are any number of reasons why local residents may choose not to complain to the Council. I also note that the Appellant said that he had been contacted on many occasions by local residents about matters relating to No.35 which may have resulted in there being no need for complaints to the Council but which nevertheless indicate that neighbours have had concerns about the use of No.35 as a HMO.

14. I therefore conclude that the change of use has a harmful effect on neighbours' living conditions with regard to noise and disturbance and visual amenity and that the change of use is contrary to policy ENV1 of the Local Plan which, among other things, expects development to respect the amenity of occupiers of neighbouring buildings and also that it is in conflict with an aim of policy HSG9 to protect the amenity of local residents[7].

Third issue: Parking

15. Policy TR7 of the Local Plan assesses the provision of car parking in accordance with standards set out in Appendix II. These standards recognise the likelihood of occupiers of HMOs having a car as a maximum of 0.5 spaces per tenancy unit is required. In this case this equates to 4.5 spaces. The Appellant maintains that there is room for four cars on the forecourt. However, the dropped kerb does not extend for the entire width of the space and approval to extend it would not be forthcoming from the Highway Authority[8]. Therefore although the plan[9] shows four spaces there is only space for two cars at the front.

16. Policy TR7 goes on to say that the actual provision will be determined on a site-specific basis having regard to matters such as the proposed use, the location and the availability of access to modes of transport other than the private car.

17. I noted on my visit that Clements Street is narrow and that vehicles were parked half on the footway and half on the road. Many of the properties in the street have off-street parking and whilst this may reduce demand for on-street parking it also reduces available on-street parking because of the number of dropped kerbs. At the time of my visit there were on-street parking spaces available and a local resident advised me that, because of the garage and the physiotherapist at the end of the road and the proximity to the town centre, there were always cars parked in the street.

[7] Paragraph 3.15.3 of the Local Plan
[8] Email dated 6 November 2008
[9] Drawing No.0832 E01

18. I accept that the occupiers of No.35 may not have cars and that currently only one occupier has a car and one has a motor cycle but this situation cannot be guaranteed and future occupiers may have their own vehicles. Whilst occupiers may not have cars, they could have visitors; in addition the Appellant and his wife, who looks after the interior of the property, come and go; there could be repair people, and other tradesmen who visit. This could result in a number of vehicles associated with No.35 having to park in the street, leading to an increased demand for limited space.

19. I note that the property is well located for accessibility to shops and services and public transport, but this does not outweigh what I consider to be insufficient provision for parking at the property.

20. I therefore conclude that the change of use has a detrimental impact on parking in the area and that the change of use is contrary to policy TR7 of the Local Plan.

Other Matters

21. The Appellant raised under this ground of appeal the history of the use of No.35 as, among other things, a Bed & Breakfast establishment. As the Appellant withdrew the appeal under ground (d) and no evidence was therefore produced with regard to this history I do not consider the history of No.35 to be of relevance in these appeals. I have, however, taken into account that the current use of the premises as an HMO for nine people has been taking place for some time.

Conclusions

22. For the reasons given above, and taking all other matters into account, the appeal under ground (a) fails, the deemed planning application is refused and the s.78 appeal is dismissed.

The appeal under ground (f)

23. The Appellant says that the tenants are people who require accommodation for short periods of time such as those seconded to firms in the area and single people who have recently divorced. There is a need for this type of accommodation and there is no record of bad behaviour at the property. The Appellant says he has been in discussions with the Council about the possibility of reducing the number of people who occupy the premises with a view to him obtaining a Licence for the HMO and that he is willing to implement any necessary requirements. However, save for a Schedule of Works[10] no written evidence about this was produced by the Appellant and I note that the Council invited the Appellant to put forward proposals for an alternative scheme in February 2009. The Appellant said that he had not responded to this letter and that he did not continue negotiations after the service of the notice.

24. The purpose[11] of the requirements of a notice is to remedy the breach by discontinuing the use of the land. It therefore seems to me that the requirement to cease the use of the dwellinghouse as one in multiple occupation is not excessive.

[10] Document 1
[11] S.173(4)(a) of the 1990 Act

25. Given the negotiations that have taken place in the past; the relationship that the Appellant has with the Council because of his interest in this property and HMOs in the area; and the possibility of future discussions in respect of No.35 I remind the Council of its powers in s.173A of the 1990 Act to withdraw a notice, or waive or relax any requirement of a notice, whether or not the notice has taken effect.

26. The appeal under ground (f) fails.

The appeal under ground (g)

27. In view of the fact that the tenants are on six month tenancies, some of which would be coming to an end in the near future, and that some tenants were in arrears with their rent, the Appellant did not pursue this ground of appeal as he considered that six months was a reasonable period in which to comply with the notice.

28. Although he did not pursue this ground of appeal the Appellant did not formally withdraw it. The appeal under ground (g) fails.

Appeal A: Conclusions

29. For the reasons given above I conclude that the appeal should not succeed. I shall uphold the enforcement notice and refuse to grant planning permission on the deemed application.

Appeal B: Conclusions

30. For the reasons given above I conclude that the appeal should be dismissed.

Decisions

Appeal A: Appeal Ref: APP/J1915/C/09/2098532

31. I dismiss the appeal and uphold the enforcement notice. I refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

Appeal B: Appeal Ref: APP/J1915/A/09/2098576

32. I dismiss the appeal.

Gloria McFarlane

Inspector

APPEARANCES

FOR THE APPELLANT

Mr C Bancroft	Appellant
Mr M Hardy	Director, Fraser Dunchurch Ltd

FOR THE LOCAL PLANNING AUTHORITY

Ms L Page BSc(Hons) MA TP	Principal Planning Officer, East Hertfordshire District Council

INTERESTED PERSONS

Cllr P Ballam	Local Councillor
Mr N Lee	Local resident

DOCUMENT SUBMITTED AT THE HEARING

Document 1 - Schedule of works, submitted by the Appellant

Appeal Decision

Site visit made on 25 August 2009

by Ann Skippers BSC (Hons) MRTPI

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

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Decision date:
25 September 2009

Appeal Ref: APP/J1915/A/09/2101355
74 Upper Green Road, Tewin, Welwyn, Herts AL6 0LH

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Mrs. C. Cook against the decision of East Herts Council.
- The application (Ref: 3/08/1848/FP), dated 22 October 2008, was refused by notice dated 23 December 2008.
- The development proposed is a new dwelling.

Decision

1. I allow the appeal and grant planning permission for a new dwelling at 74 Upper Green Road, Tewin, Welwyn, Herts AL6 0LH in accordance with the terms of the application [Ref: 3/08/1848/FP] dated 22 October 2008, and the plans submitted therewith, subject to the following 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 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.

   3) No development shall take place until a scheme of landscaping has been submitted to and approved in writing by the local planning authority and these works shall be carried out as approved. These details shall include details of all existing hedgerows and trees and details of any to be retained, together with measures for their protection in the course of development.

   4) All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding seasons following the occupation of the buildings or the completion of the development, whichever is the sooner. Any trees or plants which, within a period of five years from the completion of the development, die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of a similar size and species, unless the local planning authority gives written approval to any variation.

   5) No development shall take place until full details of the position, design, materials and type of boundary treatment has been submitted to and approved in writing by the local planning authority. The boundary treatment shall be completed before the building is occupied or in accordance with a timetable agreed in writing with the local planning

authority. Development shall be carried out in accordance with the approved details.

6) 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 windows, dormer windows or other openings other than those expressly authorised by this permission shall be constructed at first floor level or in the roof in the northern elevation of the building hereby permitted.

7) Demolition and construction works shall not take place outside 0730 hours to 1830 hours Mondays to Fridays and 0730 hours to 1300 hours on Saturdays nor at any time on Sundays or Bank Holidays.

Procedural matters

2. The site lies partly within the village boundary of Tewin which is identified as a Category 1 Village in the East Herts Local Plan Second Review (LP) adopted in 2007 and partly with the Metropolitan Green Belt. The Council do not object in principle to the proposal as the proposed dwelling would be sited within the village boundary whereas the garden and driveway would fall within the Green Belt. The site is currently used as garden area. The Council consider that there would be no loss of openness to the Green Belt. I have no reason to disagree with the Council's position and shall determine the appeal on the basis of other development plan policies and material considerations.

3. There is an inconsistency in the submitted drawings in that the proposed building is shown variously as being 2m and 2.5m away from No 74 Upper Green Road's southern wing. The appellant has confirmed that 2.5m is the intended distance and that references to a shorter distance are mistakes. Whilst the Council dealt with the application on the basis of the proposal being 2m away from No 74, the drawings include clear dimensions stating 2.5m and in these circumstances I propose to deal with the appeal on the basis that the proposed building would be 2.5m away from No 74's southern wing. I am satisfied that no other parties' interests would be prejudiced by my action in this respect.

Main issue

4. The main issue is the effect of the proposal on the character and appearance of the surrounding area.

Reasons

5. The site is located on the east side of Upper Green Road and currently forms part of the garden to No 74, a converted stable block. To the west lie Nos 76 and 78, a pair of semi-detached properties, of which No 76 is listed. Permission has been given for a dwelling to replace a barn to the north of No 74, but had not been constructed at the time of my site visit. Beyond the site is open countryside.

6. LP Policy OSV1 permits limited small-scale and infill development in Category 1 villages subject to a number of criteria. These include whether the site is a significant open space or gap important to the form or setting of the village,

whether the proposal would block important vistas and the effect on the appearance of the village from the surrounding area as well as the effect on the amenities of the adjoining area or nearby occupiers. The proposal should be sensitively designed and be satisfactorily integrated. LP Policy HSG7 permits new infill development provided it is well sited and would not appear obtrusive or over intensive and the design complements the character of the local built environment and natural surroundings. LP Policy ENV1 expects all development to be of a high standard of design and layout and reflect local distinctiveness.

7. The proposal is for a detached dwelling, part two storey, part one and a half storey and part single storey. The existing adjacent dwellings form an interesting grouping on the edge of Tewin, on a brow of a hill. The proposed dwelling would be set back from Upper Green Road and share No 74's existing access. The new building would primarily be seen from public viewpoints in longer distance views across open countryside to the east and from nearby public footpaths. The proposal, even with its higher height than the converted stables, would read as part of this close knit group of buildings and be seen against the backdrop of a row of trees, a feature of the village. The dwelling would be well designed and appropriate in its setting in line with LP Policies HSG7 and ENV1.

8. I accept that the dwelling would be close to No 74. However, the design of the proposal is such that rooms and windows have been orientated carefully to avoid overlooking and there would be limited fenestration to this elevation. Although the proposed dwelling would be higher and differ in design from the converted stable, its scale and siting would not be so excessive as to have a materially harmful effect on the living conditions of the occupiers of No 74 or result in a cramped form of development. It would create an enclosed courtyard for No 74, reminiscent of a group of farm buildings. I conclude that the proposal would not conflict with any of the LP Policies summarised above.

9. In reaching my decision, consideration against a fallback position is unnecessary.

10. I have also had regard to the effect on the setting of the nearby listed building. The Council has not objected on this basis and I agree with their assessment.

11. The Tewin Society has raised concern about the increase in traffic and shared access. However, on this issue I agree with the Council that one additional dwelling would not have a harmful effect on highway safety.

12. I have considered the conditions put forward by the Council in the light of the advice in Circular 11/95. I agree that in the interests of the character and appearance of the area conditions are necessary to control the dwelling's external materials, landscaping and boundary treatment. A condition regarding construction is also necessary to protect the living conditions of nearby residents. In relation to the issue of ground contamination, insufficient evidence has been put before me to justify a condition in this regard. The Council has suggested the imposition of conditions relating to the use of the garage and the removal of permitted development rights, but I consider these would be unduly restrictive. However, I consider that it is necessary to restrict the insertion of any additional windows or openings at first floor level or in the roof in the

northern elevation to protect the living conditions of the occupiers of No 74. I have reworded the conditions where necessary to improve clarity and accord with the advice given in the above Circular.

13. For the reasons set out above and having regard to all other matters raised, I conclude that the appeal should be allowed.

Ann Skippers
INSPECTOR

Appeal Decisions

Site visit made on 25 August 2009

by Ann Skippers BSc (Hons) MRTPI

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

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Decision date:
25 September 2009

Appeal A: Ref: APP/J1915/A/09/2102902
Bonks Hill House, High Wych Road, Sawbridgeworth, Hertfordshire CM21 9HT

- 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. Oliver Hookway of Go Homes Ltd against the decision of East Herts Council.
- The application (Ref: 3/09/0229/FP), dated 16 February 2009, was refused by notice dated 8 April 2009.
- The development proposed is the erection of 2 No detached 4 Bed dwellings.

Appeal B: Ref: APP/J1915/A/09/2101750
Bonks Hill House, High Wych Road, Sawbridgeworth, Hertfordshire CM21 9HT

- 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. Oliver Hookway of Go Homes Ltd against the decision of East Herts Council.
- The application (Ref: 3/08/1854/FP), dated 23 October 2008, was refused by notice dated 14 January 2009.
- The development proposed is the erection of 2 No detached 4 Bed dwellings.

Decisions

1. **Appeal A:** I allow the appeal and grant planning permission for the erection of 2 No detached 4 Bed dwellings at Bonks Hill House, High Wych Road, Sawbridgeworth, Hertfordshire CM21 9HT in accordance with the terms of the application Ref: 3/09/0229/FP, dated 16 February 2008, and the plans submitted with it, subject to the 14 conditions set out in the schedule appended to this letter.

2. **Appeal B:** I allow the appeal and grant planning permission for the erection of 2 No detached 4 Bed dwellings at Bonks Hill House, High Wych Road, Sawbridgeworth, Hertfordshire CM21 9HT in accordance with the terms of the application, Ref: 3/08/1854/FP, dated 23 October 2008, and the plans submitted with it, subject to the 14 conditions set out in the schedule appended to this letter.

Procedural matters

3. **Appeals A & B:** I have considered each proposal on its individual merits, but to avoid duplication I have dealt with the two proposals together in this document except as otherwise indicated.

Main issues

4. **Appeals A & B:** I consider that there are two main issues. The first is the effect of the proposal on the setting of Bonks Hill House, a Grade II listed building. The second issue is the effect of the proposal on the character and appearance of the surrounding area. The Questionnaire submitted by the Council as part of the appeal documents states that the site is not located in a Conservation Area and the Council's decision makes no mention of harm to a Conservation Area. However, I note that both of the Council Officers' reports state that the site is located in a Conservation Area. In these circumstances I have employed the more stringent test set by legislation and national guidance that the development should either preserve or enhance the character or appearance of the area. Because of the extent of overlap of matters relevant to the consideration of these issues, they have been dealt with together below.

Reasons

5. The appeal site forms part of the area of land of Bonks Hill House, a Grade II listed building. The listing description refers to the seventeenth century property as largely rebuilt and extended circa 1827 for the rose grower Thomas Rivers. It describes the house as being of 'striking appearance in a picturesque setting'. The site is presently open in appearance with a number of trees and other planting subject to a group tree preservation order. It is accessed via a drive from High Wych Road. The area around the house has been developed to the west and north with more modern housing.

6. The Council has raised no objection to the principle of development. The sub-division of the land around the house would result in the creation of two plot sizes that would be similar to the larger plot sizes of the modern houses in Heron Close to the west of the site. They would also reflect the general pattern of development along this part of Bonks Hill. Both plots would be of sufficient size to accommodate a dwelling without appearing cramped or contrived as a large area of garden would be provided and further planting introduced. Furthermore a significant area of land around the listed building would be retained.

7. The development has been carefully sited to take account of the protection zones of trees. This has largely determined the position of the dwellings to enable trees worthy of retention to be kept. Given that the trees and hedgerows are an important part of the setting of the listed building and that the area's character and appearance largely derives from the attractive landscaped area, the relative siting of the new dwellings is acceptable.

8. In relation to Appeal A the dwellings are of a simple, traditional design of a scale and appearance that would appear generally subservient to the listed building. The dwellings would have uniform and balanced frontages with a central glass feature. Whilst the traditional barn design would differ from the more modern designed properties in Heron Close and the regency villa, the proposed units would not be at odds or compete with the listed building. A separation distance of some 59m would exist between the two storey element of the nearest proposed dwelling and the main entrance to the listed building which fronts Bonks Hill. Given the relative position and orientation of the proposed dwellings in relation to the listed building and the retention of the

trees which make a significant contribution to the setting, I consider that the proposal would preserve the setting of the listed building and would not harm the character and appearance of the area.

9. Turning now to Appeal B this scheme would introduce two dwellings in similar positions to the Appeal A proposal. I consider that the main difference between the two proposals relates primarily to the design of the dwellings. In Appeal B the dwellings are of contemporary design. I understand that Thomas Rivers designed glasshouses and the design philosophy reflects this connection in so far as the dwellings combine the use of stone, timber cladding and significant amounts of glazing as an integral part of the design concept. Both these dwellings would be distinctive and make a statement in their own right. They would be equally striking in appearance as Bonks Hill House. Given that the dwellings' design, form and materials would contrast, but respect the historic connections of the site, I consider that this new development would sit alongside the listed building comfortably. The picturesque setting would be retained and because of the striking difference between the historic and the new, this proposal would harmonise with its surroundings and, in my view, the character and appearance of the area would be preserved.

10. On the two main issues, I therefore find in relation to Appeal A and Appeal B that the setting of Bonks Hill House would be preserved by the proposal In addition the character and appearance of the area would not be harmed. Therefore I consider that the setting of the listed building would be preserved in accordance with Policy BH12 of the East Herts Local Plan Second Review (LP) adopted in 2007. The proposal would accord with LP Policies ENV1 and HSG7 which together seek a high standard of design and layout and would comply with the test set by Planning Policy Guidance Note 15 (PPG15) *Planning and the Historic Environment* in that the character and appearance of the Conservation Area would not be harmed.

11. Local residents have raised a number of concerns relating to highways matters, including the appropriateness of the access for refuse and emergency vehicles. The appellant has suggested some modifications to help improve the access at its junction with High Wych Road. I am mindful that the Highways Authority does not object to either proposal subject to these modifications and from my own observations on site, I have no reason to disagree with their view. As the works would be on land outside the application site, I can deal with this issue by imposing a Grampian-style condition to prevent any development taking place before these works are carried out.

12. I have also given careful consideration to all other comments made by local residents, including the concern expressed about loss of privacy, additional traffic and lack of parking. In both schemes a considerable distance exists between Weeping Ash and properties in Heron Close. Furthermore dwellings in Heron Close are separated by the access and substantial planting to the west which backs onto the rear gardens of these properties. For these reasons there would not be any significant loss of privacy.

13. I consider that the traffic generated by an additional two dwellings would not materially increase the activity and general noise and disturbance to such an extent that the schemes could be resisted on this issue alone. Parking which meets the Council's standards is also provided for Appeal A and the Council

considers that, as the site is in a sustainable location, the provision made in Appeal B is also acceptable. Whilst I appreciate that development in this area would be different from the existing situation, neither scheme would be materially harmful to the living conditions of nearby residents.

14. Local residents have also raised concerns about wildlife including great crested newts. The Council has not raised a similar concern and there is no evidence before me to substantiate any claim about great crested newts.

15. I have considered the conditions suggested by the Council in the light of the advice given in Circular 11/95. For both schemes, I agree that details of materials, landscaping, parking, boundary treatment and levels are necessary to ensure the development harmonises with its surroundings. Additionally details of tree protection measures, soil levels, excavation and foundation details, construction method statement including contractor parking and restriction on burning are needed because of the protected trees on the site. Given the sensitive nature of the site I consider that there is justification to remove some permitted development rights. A condition regarding construction is also necessary to protect the living conditions of nearby residents. It is also necessary to impose a Grampian-style condition in respect of the improvements to the highways. I have reworded the conditions where necessary to improve clarity and accord with the advice given in the above Circular.

16. I have considered all other matters raised, including objections from the Town Council and a County Councillor, but they do not alter my decision.

Ann Skippers

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 hereby permitted shall take place until details of the materials to be used in the construction of the external surfaces of the proposed buildings 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) No development hereby permitted shall take place 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:

   i. the parking of vehicles of site operatives and visitors

   ii. loading and unloading of plant and materials

   iii. storage of plant and materials used in constructing the development

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

   v. wheel washing facilities

   vi. measures to control the emission of dust and dirt during construction

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

   viii. a restriction on any burning of materials on the site

4) Demolition or construction works shall not take place outside 0730 hours to 1800 hours Mondays to Fridays and 0730 hours to 1300 hours on Saturdays nor at any time on Sundays or Bank Holidays.

5) No dwelling hereby permitted shall be occupied until space has been laid out within the site in accordance with the details showing on the plans accompanying the application for cars to be parked to stand clear of the highway.

6) No development hereby permitted shall take place until details of the existing and proposed ground levels of the site in relation to adjoining land have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.

7) No development hereby permitted shall take place until a scheme of landscaping has been submitted to and approved in writing by the local planning authority and these works shall be carried out as approved. These details shall include details of all existing hedgerows and trees and details of those to be retained, together with measures for their protection in the course of development.

8) All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding seasons following the occupation of the buildings hereby permitted or the completion

of the development, whichever is the sooner. Any trees or plants which, within a period of five years from the completion of the development, die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of a similar size and species, unless the local planning authority gives written approval to any variation.

9) No development hereby permitted shall take place until full details of the position, design, materials and type of boundary treatment has been submitted to and approved in writing by the local planning authority. The boundary treatment shall be completed before any building hereby permitted is occupied or in accordance with a timetable agreed in writing with the local planning authority. Development shall be carried out in accordance with the approved details.

10) In this condition "retained tree or hedge" means an existing tree or hedge which is to be retained in accordance with the approved plans and particulars; and paragraphs i. and ii. below shall have effect until the expiration of 5 years from the date of the occupation of the building for its permitted use.

    i. No retained tree or hedge shall be cut down, uprooted or destroyed, nor shall any retained tree or hedge be topped or lopped other than in accordance with the approved plans and particulars, without the written approval of the local planning authority. Any topping or lopping approved shall be carried out in accordance with British Standard [3998 (Tree Work)].

    ii. If any retained tree or hedge is removed, uprooted or destroyed or dies, another tree or hedge shall be planted at the same place and that tree or hedge shall be of such size and species, and shall be planted at such time, as may be specified in writing by the local planning authority.

    iii. The erection of fencing for the protection of any retained tree or hedge shall be undertaken in accordance with the approved plans and particulars before any equipment, machinery or materials are brought on to the site for the purposes of the development, and shall be maintained until all equipment, machinery and surplus materials have been removed from the site. Nothing shall be stored or placed in any area fenced in accordance with this condition and the ground levels within those areas shall not be altered, nor shall any excavation be made, without the written approval of the local planning authority.

11) No development hereby permitted shall take place until details of the design of building foundations and the layout including the positions, dimensions and levels of service trenches, ditches and drains and any other excavations on the site have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.

12) The soil levels within the root spread of the trees and hedges to be retained shall not be raised or lowered except in accordance with details previously submitted to and approved in writing by the local planning authority.

13) No development shall take place until the access and junction arrangements shown on drawing number 2007/028 001 have been carried out to the satisfaction of the local planning authority in accordance with details previously submitted to and approved in writing by the local planning authority.

14) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any order revoking, re-enacting or modifying that Order), no works falling within Classes A, B, C, D, E or F of Part 1, Schedule 2 to the Order shall be carried out without the prior written approval of the local planning authority.

End of Schedule

Appeal Decision

Site visit made on 25 August 2009

by Ann Skippers BSc (Hons) MRTPI

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

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Decision date:
25 September 2009

Appeal Ref: APP/J1915/A/09/2100245
Site adjacent to Highfield Farm, Mangrove Lane, Brickendon, Hertfordshire SG13 8QJ

- 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 Ram Homes Ltd against the decision of East Herts Council.
- The application (Ref: 3/08/2121/FP), dated 9 February 2009, was refused by notice dated 25 March 2009.
- The development proposed is 'partial demolition and refurbishment of existing paddock including new internal partitions, openings and rooflights, construction of glass link between two paddocks. Change of use to residential – single dwelling'.

Decision

1. I dismiss the appeal.

Procedural matter

2. The application form originally submitted by the appellant on 17 December 2008 were amended and submitted to the Council on 9 February 2009. For the avoidance of any doubt, I have based my decision on the application form submitted on 9 February 2009.

Main issues

3. I consider the main issues are:

   - whether the proposal is inappropriate development for the purposes of Planning Policy Guidance Note 2 (PPG2) *Green Belts* and development plan policy;
   - whether there would be any other harm to the Green Belt and
   - if it is inappropriate development whether the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations, so as to amount to the very special circumstances necessary to justify the development.

Reasons

Whether the development is inappropriate for the purposes of PPG2 and development plan policy

4. The site comprises three buildings which formed part of a larger site used for an animal breeding and scientific research use which ceased in 2002. The buildings have been unused for several years and have been the subject of several previous appeals.

5. Policy GBC1 of the East Herts Local Plan Second Review (LP) adopted in 2007 refers to development in the Green Belt reflecting the advice in PPG2. In relation to the adaption and re-use of rural buildings LP Policy GBC9 applies. Amongst other things, the residential re-use of a building will only be permitted if it is worthy of retention, would not detract significantly from the rural character and appearance of the area, the building's retention cannot be facilitated by conversion to business use or as part of a scheme for business re-use, leisure, tourism, community or other purposes compatible with a rural area and a contribution to affordable housing cannot be made.

6. PPG2 explains that the re-use of buildings is not inappropriate development providing several criteria are met. The first of these is that the re-use would not have a materially greater impact than its present use on the openness of the Green Belt and the purposes of including land within it. The second criterion is that strict control is exercised over the extension of re-used buildings and any associated uses of land. This proposal involves some demolition of the buildings. In line with the view of my colleague who dealt with a previous appeal on this site for conversion into three dwellings, I consider that the overall footprint of buildings would be reduced and, as conditions could be imposed regarding extensions, the openness of the Green Belt and the purposes of including land within it would not be harmed.

7. Turning now to the third and fourth criteria in PPG2, I agree with the conclusions of my colleague that the buildings are of permanent construction. Their form and construction reflects their former agricultural use. Buildings A and C have a timber frame and timber cladding whereas Building B is open-fronted with a concrete framework and sheet cladding. From the details before me the conversion would include changes in floor levels, new clay tile roofs, new or replacement timber cladding, new windows and openings including rooflights together with a significant amount of new wall constructed around the existing structure on Building B as well as numerous internal alterations. Therefore whilst I consider that the buildings' form, bulk and general design are in keeping with their surroundings, in my view this proposal involves major reconstruction to enable the conversion. Therefore this requirement of PPG2 has not been met.

8. Consequently on the first issue, I find that the proposal would be inappropriate development that is, by definition, harmful to the Green Belt and in conflict with PPG2 and LP Policies summarised above. In view of the presumption against inappropriate development, the Secretary of State will attach substantial weight to the harm to the Green Belt when considering an appeal. Very special circumstances will not exist unless the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations. It is therefore necessary for me to consider whether the development causes any other harm and whether there are any other considerations relevant to the overall balance.

Whether there would be any other harm to the Green Belt

9. I consider that the insertion of new openings and rooflights in particular would be harmful to the typically agricultural character of these buildings. In addition the proposed glass link between Buildings B and C would be an unusual feature

which would appear out of character by reason of its design, siting and materials harming the character and appearance of the area.

10. At present the buildings read separately, but form part of a group commonly found in rural areas. From longer distance views the buildings are seen against the backdrop of woodland. Although some adjoining land is notated as a paddock/reserve, some landscaping is being provided and some existing hardstanding is removed, few details have been submitted regarding these changes. I am concerned that the creation of a residential curtilage around these buildings would have a materially harmful effect on the visual amenity of the Green Belt particularly bearing in mind the nearby woodland and the public footpath. This is especially so given the contrived nature of the curtilage, the creation of boundaries on the site and the overall lack of coherence between the proposed uses of the buildings which would be apparent from the public footpath.

11. The site is adjacent to Highfield Wood and concerns have been expressed about wildlife including bats. The presence of a protected species is a material consideration in considering a proposal that, if it is carried out, is likely to result in harm to the species or its habitat. Circular 6/2005 advises that it is essential that the presence or otherwise of protected species, and the extent to which they might be affected by a proposal, is established before planning permission is granted. The Hertfordshire Biological Records Centre has indicated that there is a possibility that the buildings may be used by bats. Having regard to the Council's undisputed evidence, I consider the presence or otherwise of bats and other species needs to be established before permission is granted. To grant permission in these circumstances or to deal with this by way of condition would conflict with the advice in PPS9 *Biodiversity and Geological Conservation* and Circular 6/2005.

12. On the second issue, I consider that the proposal would be harmful to the visual amenity of the Green Belt and the character and appearance of the area contrary to LP Policy GBC9 and that the issue of nature conservation interests has not been fully resolved. In the overall balance this harm has to be added to the harm by reason of inappropriateness.

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

13. The appellant has put forward a number of considerations which principally relate to the history of the site and include a recent appeal which refused permission for Class B1 use. The Inspector concluded that Class B1 uses would be detrimental to the safety of users of the highway because the road serving the site is a narrow lane and the entrance to the site is located on a sharp bend. I note that the appellant states that the buildings have been marketed for a number of years without success and, in the light of this recent appeal decision, considers a residential use is the only and most appropriate use for the site. Bearing in mind the nature of the access to the site and the proximity of other residential uses in the locality, I agree that a single residential use on this site would not have a harmful effect on highway safety or living conditions of nearby occupiers. However, this is not an argument which I consider should

be given more than a small amount of weight in favour of the proposal. This is because little evidence other than the length of time the site has been marketed together with an assumption that other uses would be equally unacceptable on highways grounds following the appeal for Class B1 uses have been put forward as to why other uses are not appropriate or viable on this site. I am therefore not persuaded that other uses have been fully explored.

14. I am also mindful of the previous Inspector's decision made in 2004. However, this decision was not made in the context of a re-use for the buildings and as such this does not lend support to this proposal.

15. The appellant points out that there are 15 dwellings nearby and therefore the site is sustainable. Whilst, it is a matter of fact that there are other residential uses nearby, there could be many cases in the Green Belt where similar arguments could be advanced and I only give this factor minimal weight in favour of the appeal.

16. Concerns have been raised about the public footpath. I agree with the view of a previous Inspector that this matter could be dealt with by way of a condition preventing development until diversion of the footpath has been secured. Although the appellant considers the footpath would be improved as a result of the proposed conversion, no firm proposals are put forward as to what these might be and accordingly I attach little weight to this factor.

17. On this issue, I conclude that the other considerations in favour of the proposal do not clearly outweigh the general presumption against inappropriate development in the Green Belt, the substantial weight to be attached to the harm caused by the inappropriateness of the development, the harm to the visual amenity and the character and appearance of the area and the conflict with LP Policies GCB1 and GCB9. Therefore the necessary very special circumstances to justify the proposal do not exist.

Conclusion

18. For the reasons given above and having regard to all other matters raised, I conclude that the appeal should be dismissed.

Ann Skippers
INSPECTOR

Appeal Decision

Hearing held on 22 September 2009

by Stuart Hall BA(Hons) DipTP FRTPI MIHT

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

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Decision date:
28 September 2009

Appeal Ref: APP/J1915/A/09/2100531
Coniston, Conduit Lane, Great Hormead, Herts SG9 0NU

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (the 1990 Act) against a refusal to grant planning permission.
- The appeal is made by Mr Peter Button against the decision of East Hertfordshire District Council.
- The application (Ref 3/09/0029/FP), dated 8 January 2009, was refused by notice dated 4 March 2009.
- The development proposed is described as retention of existing pre-cast concrete kerb, reduced by 100mm in height, and construction of earth bund to cover existing brick wall.

Decision

1. I allow the appeal and grant planning permission for the construction of a pre-cast concrete kerb and earth bund to cover an existing brick wall at Coniston, Conduit Lane, Great Hormead, Herts SG9 0NU in accordance with the terms of the application Ref. 3/09/0029/FP dated 8 January 2009, and the plans submitted therewith, subject to the following conditions:

   1) The development hereby permitted shall begin before the expiration of three years from the date of this decision.

   2) Construction of the earth bund hereby approved shall not commence until a construction method statement has been submitted to and approved in writing by the local planning authority. The construction method statement shall include a detailed specification, including dimensioned cross and long section drawings, of the content and means of construction, compaction and retention of the earth bund. Development shall be carried out in accordance with the approved details.

   3) Construction of the earth bund hereby approved shall not commence until a planting plan has been submitted to and approved in writing by the local planning authority. The planting plan shall include a schedule of plants noting species, plant sizes and proposed numbers and/or densities; a programme of implementation; and a schedule of maintenance for a minimum of 2 years following complete implementation that makes provision for the replacement of any plants that die, are removed or become seriously damaged or diseased within that period. Planting and maintenance shall be carried out in accordance with the approved planting plan.

Application for costs

2. At the Hearing, an application for costs was made by the appellant against the Council. This application is the subject of a separate Decision.

Preliminary Matters

3. Though the planning application was in part retrospective, it emerged at the Hearing that the kerb had been altered, by profile reduction and surface abrasion, since the Council refused permission. As I come to the appeal afresh, I approach it on the basis that the effect would be to reduce the height of the kerb as it now exists to a height of 200 millimetres (mm) above the adjoining carriageway surface, as shown on the submitted plans. The wording of my decision differs from the above description of proposed development only in order to accord with section 55 of the 1990 Act.

4. In the light of an appeal decision dated 15 May 2009 relating to the proposed full retention of the kerb as it then was (*APP/J1915/A/08/2091812*), by letter dated 29 May 2009 the Council withdrew objection on highway safety grounds. Whilst I refer below to local highway authority and Parish Council's objections, their continuing concerns that development has taken place on highway land relate to a legal issue that is not for me to determine.

Main Issue

5. The Council having withdrawn their highway safety reason for refusal, the need for some means of verge retention (primarily to deter drivers of large vehicles from mounting the verge, causing damage and risk to highway safety) is not at issue between the main parties. The remaining main issue in this appeal is the effect of the proposal on the character and appearance of its surroundings, having particular regard to its location within the Great Hormead Conservation Area (CA).

Reasons

Character and appearance

6. The appeal site is situated near to the eastern edge of the settlement of Great Hormead, and of the CA. It lies between sharp bends in Conduit Lane, where the road narrows to around 4.7 metres and its surface is cut into rising ground shortly before entering open countryside. I share the view of the Inspector in the earlier appeal that the resulting roadside banks topped with hedgerows, and verges, contribute significantly to the rural character and appearance of this part of the CA. Elsewhere within the CA, roadside kerbs are the norm. Even so, to each side of the site and on each side of the lane, intermittent lengths of kerbing retain the embankments and verges. That kerbing is also part of the character and appearance of the site's surroundings.

7. From measurements agreed at my site visit, it appears that most of the other kerbing in the vicinity stands around 100 mm proud of the road surface, rising in isolated instances to around 130 mm. At a height of 200mm, the vertical face of the proposed kerb would be significantly more noticeable. However, it would be much less prominent than the existing kerb, the upper, rear-sloping facet of which rises to some 300 mm and would be removed. In this respect, I conclude that the scheme before me differs materially from that which the earlier Inspector found unacceptable.

8. Whilst the horizontal top surfaces of some nearby kerbs are also exposed to view, submitted plans show that the proposed earth bund would cover the top surface of the retained kerb. I saw that vegetation growth immediately adjoining the carriageway is inhibited, presumably by salt or grit spray from the road surface. Therefore, it is likely that subsequent planting on the proposed bund may not be as vigorous on its outer margin as elsewhere. However, artificial means of retention could ensure that the bund itself would remain in place, largely if not wholly covering the top surface of the retained kerb.

9. Whilst the proposed reduction of the kerb height would not change its industrial character, this is an attribute it shares with other lengths of kerb nearby, though in the main these are less visible. The abrasion that has been applied to the road-facing kerb surface renders its appearance slightly less stark than other recent kerbing and on the access returns, where it is hidden by vegetation. Its appearance should mellow over time as roadside grime attaches to its surface. Though it would not fully restore what appears to have been an original roadside bank, I am aware that the character and appearance of this length of Conduit Lane has been substantially altered recently by the construction of the large dwelling and new access at the appeal site.

10. I have had regard to the requirement in section 72(1) of the *Planning (Listed Buildings and Conservation Areas) Act 1990* that special attention be paid to the desirability of preserving or enhancing the character or appearance of CAs. However, bearing the above considerations in mind I am not persuaded that the appeal scheme, taken as a whole, would detract from the overall character and appearance of its surroundings. I conclude that it would have a neutral effect on the Great Hormead CA, thereby preserving those attributes.

11. Accordingly, I further conclude that the scheme would not conflict with Policy BH6 of the *East Herts Local Plan Second Review April 2007*, which requires development to be sympathetic in form and materials to the CA's general character and appearance and not affect existing contributory landscape features. Similarly, it would comply with the more broadly stated design requirements of that Plan's Policy ENV1.

Other matters

12. Notwithstanding the Council's decision to withdraw its reason for refusal on highway safety grounds, I am aware that there are outstanding objections on those grounds from the local highway authority and Hormead Parish Council. However, in the earlier appeal the Inspector concluded that the then installed kerb and proposed earth bund would have no material impact on highway safety and the free flow of traffic. There is nothing before me to suggest that the proposed reduction of the kerb to a height of 200 mm is material to that point. In the absence of any new evidence to the contrary, I find no cause to come to a different conclusion.

13. In accepting that some form of structure is required to help retain the proposed bund, the Council submit that a kerb lower than that proposed would be adequate to deter drivers from attempting to mount the verge to avoid oncoming traffic. Be that as it may, my decision must relate to the merits of the scheme before me. I have dealt above with its effect on character and

appearance, and there is no suggestion that it would be ineffective as a deterrent. Similarly, with reference to the earlier appeal decision, evidence as to whether materials such as railway sleepers may be equally effective is inconclusive, and does not bear directly on the merits of the appeal scheme.

Overall conclusion and conditions

14. The above other matters do not outweigh my conclusion on the main issue I have identified. It follows that the appeal should succeed. Accordingly, I have considered the conditions suggested by the Council in the light of advice in *Circular 11/95 The Use of Conditions in Planning Permissions*.

15. My decision does not permit any development requiring planning permission other than that shown on the submitted plans. Therefore, it is not necessary to exclude any other such development by condition, or to require submission of details of kerb height and materials. It may be expedient for the appellant to carry out the work quickly, bearing in mind planning enforcement action in place. However within the scope of matters before me I consider it unreasonable to require submission of any further necessary details within a specified period much shorter than the normal 3 year currency of a planning permission.

16. The approved bund would not exceed the 1.05 metres height above the adjoining road channel that the Council wish to be cleared of any obstruction to visibility. Control over the provision and maintenance of planting on the bund, appropriate in the interests of appearance, would also enable visibility to be safeguarded, in so far as it may be relevant to the proposed development. Further details of the method of construction of the bund, including the means by which it would be retained in place, are justified in the interests of appearance and highway safety.

Stuart Hall

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Richard Honey of Counsel
Peter Trevelyan MA MSc DipTP MRTPI FIHT MILT
Peter Button

FOR THE LOCAL PLANNING AUTHORITY:

Martin Plummer

Costs Decision

Hearing held on 22 September 2009

by Stuart Hall BA(Hons) DipTP FRTPI MIHT

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

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Decision date:
28 September 2009

Costs application in relation to Appeal Ref: APP/J1915/A/09/2100531
Coniston, Conduit Lane, Great Hormead, Herts SG9 0NU

- 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 Peter Button 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 development described as retention of existing pre-cast concrete kerb, reduced by 100 mm in height, and construction of earth bund to cover existing brick wall.

Summary of Decision: The application fails and no award of costs is made.

The Submissions for the Appellant

1. A full award of costs is sought. With reference to paragraph A12 of the Annex to *Circular 03/2009*, it should not have been necessary to go to appeal. The Council did not actively review their case in the light of the appeal decision dated 15 May 2009 (Ref: *APP/J1915/A/08/2091812*), as advised in paragraph A28. Lack of contact with the Council has no relevance to that obligation. Had they done so when they withdrew their objection on highway grounds, by letter dated 29 May 2009, they would have come to a different decision.

2. No realistic and specific evidence has been produced to show clearly why the development cannot be permitted (paragraphs B16 and B18). The Council rely on generalised assertions. Nothing has emerged since the 29 May letter, at which time an appeal statement could have been prepared. Instead, the letter confirmed objection on grounds of character and appearance and referred only to their earlier Officer Delegated Decisions reports.

3. Should the above submissions not prevail, then, a partial award is sought for costs incurred from the end of May 2009. With reference to paragraph B29 of the Circular, it was unreasonable of the Council to persist in objecting in the face of indications given in the 15 May appeal decision.

4. Since then, only appearance, effectively the height of the kerb, has been at issue. This could have been dealt with by condition (paragraph B25). In the earlier appeal, the Council proposed such a condition. If a condition was reasonable then, it was unreasonable to continue to appeal after 15 May 2009 and not to propose resolving the only outstanding matter by permission with conditions.

The Response by the Council

5. The Council have had full and proper regard to the development plan, in particular adopted Local Plan Policies ENV1 and BH6, in determining the application. The previous appeal decision is material, and full regard has been taken of it. The current appeal scheme does not fully address that Inspector's

concerns. Therefore, the reason for refusal at issue remains valid. It is reasonable to maintain objection on that ground.

6. As to evidence, the Officer Delegated Decisions reports highlight the key issues and reason for refusal. The letter of 29 May 2009 explains why a further appeal statement could not be prepared then. The appellant has not incurred costs as a direct result.

7. The reason for refusal relating to highway safety was withdrawn as soon as practically possible, and the remaining reason is identical to that in the earlier appeal. In relation to it, the planning considerations are the same as before. Therefore, the appellant was fully aware of the Council's legitimate position from 29 May. Since then, until very recently the appellant has not been in contact with the Council.

8. The Council have acted reasonably, and no unnecessary expenditure has been incurred by the appellant as a result of the Council's actions. Therefore, the costs applications should be dismissed.

Conclusions

9. *Circular 03/2009* relates to appeals made on or after 6 April 2009. However, this appeal was made on 22 March 2009. Therefore, I have considered this application for costs in the light of *Circular 8/93* and all the relevant circumstances. Like *Circular 03/2009*, 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.

10. In his appeal decision dated 15 May 2009, the Inspector concluded among other things that whilst a kerb may be necessary the installed kerb detracted from the character of the Conservation Area in conflict with the development plan. The Inspector gave no intimation that a lower kerb of similar construction and at a given height would be acceptable.

11. With reference to paragraph 16 of Annex 3 to the Circular, I find nothing in that decision that makes it clear that another Inspector would have no objection to the proposal before me on grounds of character and appearance. Similarly, whether or not the Council fully reviewed its decision in the light of that appeal decision, nothing in that decision indicates that, had they done so, the likely outcome would have been a different stance in relation to character and appearance.

12. Though paragraph 4 of Annex 2 explains that failure to provide an adequate pre-hearing statement may be regarded as unreasonable behaviour, the Council were not obliged to produce a statement. Their 29 May letter, read with the appeal decision enclosed with it and their Officer Delegated Decisions Report, makes clear the reason why the Council still considered the scheme unacceptable. There was no undue delay in communicating this to the appellant.

13. Ultimately, the Council's objection is a matter of judgement. However, their written submissions relate that judgement to relevant attributes of local character and appearance in a reasoned manner. They contain relevant

references to the earlier Inspector's observations and conclusions, moderated by the differences between the 2 proposals. Though little new was added at the Hearing in this regard, this was the appellant's choice of procedure and the defence of the Council's stance was robust.

14. Taking into account the site's position in a Conservation Area, the reasoning in my decision illustrates that the planning issue is finely balanced. Paragraph 8 of Annex 3 states that in such circumstances an award of costs relating to substantive matters is unlikely to be made.

15. In the earlier appeal, it appears that the Council's suggestions as to planning conditions were made without prejudice to their case. As the proposal was in part to retain an existing kerb, the Inspector determined that a condition requiring details of height, materials, etc would be inappropriate. I take the same view in this case, where the proposal is specific as to the height reduction of the kerb to be retained. Therefore, with regard to paragraph 11 of Annex 3, I conclude that the circumstances are not appropriate to the Council considering whether their objection could be overcome by imposing a condition.

16. Bearing the above points in mind, I consider that unreasonable behaviour resulting in unnecessary expense, as described in Circular 8/93, has not been demonstrated. Therefore, in relation to each strand of the application, I conclude that no award of costs is justified.

Formal Decision

17. I refuse the application for an award of costs.

Stuart Hall

INSPECTOR

Appeal Decision

Site visit made on 8 September 2009

by Ian Radcliffe BSC (Hons) MCIEH DMS

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

The Planning Inspectorate
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Decision date:
29 September 2009

Appeal Ref: APP/J1915/A/09/2104717
The Studio, Broxbourne Common, Broxbourne, Hertfordshire EN10 7QT.

- 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 Spencer Cooper against the decision of East Hertfordshire District Council.
- The application Ref 3/09/0127/FP, dated 15/12/2008, was refused by notice dated 15 April 2009.
- The development proposed is a 'retrospective' application for the erection of a tree house / hide in the paddock to the rear of the property.

Procedural matter

1. As the development was largely carried out before the date of application I shall treat the application as one made under sec 73A of the Act.

Decision

2. I dismiss the appeal.

Main issues

3. The main issues in this appeal are:

   - whether the proposal is inappropriate development for the purposes of Planning Policy Guidance Note 2: *Green Belts* (PPG2) and development plan policy;
   - the effect of the proposal upon openness of the Green Belt;
   - the effect of the proposal on the character and appearance of the area;
   - the effect of the proposal on the living conditions of the neighbours at Briar Cottage with regard to overlooking and visual intrusion; and,
   - whether the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations, so as to amount to the very special circumstances necessary to justify the development.

Reasons

Inappropriate development and openness

4. PPG2 advises that the construction of new buildings within the Green Belt is inappropriate except for certain specified purposes. Such purposes include essential facilities for outdoor sport and recreation. This approach to