



Appeal Decision

Site visit made on 15 January 2008

by **Robin Jacques** MSc BSc(Hons Arch)
RIBA FRSA

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

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Decision date:
30 January 2008

Appeal Ref: APP/J1915/A/07/2057076

White Lion House, Furneux Pelham, Buntingford, Hertfordshire SG9 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 P Fergusson against the decision of East Herts Council.
- The application (Ref 3/07/1400/FP), dated 5 July 2007, was refused by notice dated 22 August 2007.
- The development proposed is a pair of semi-detached cottages.

Decision

1. I dismiss the appeal

Main issues

2. I consider that there are two main issues in this case. The first is whether or not the proposal would be an unacceptably cramped form of development of the site, with particular reference to the effect on the living conditions of adjacent occupiers. The second is the effect of the proposal on the character and appearance of the conservation area and the setting of the listed building.

Reasons

3. The appeal site is within the Furneux Pelham Conservation Area (CA), and within the curtilage of White Lion House, a C18 timber framed Grade II Listed Building. Other nearby Grade II listed buildings on The Street (south side) are Hall Cottage and Shepherds Cottage. The appeal site has a frontage onto The Causeway, and is an area of land at the back of White Lion House that is partially separated from its walled garden by intervening land. On my site visit, I saw that the site is at a higher level than The Causeway in the gently rising terrain.
4. It is not in dispute that the village is included in Category 2 under Policy OSV2 of the East Herts Local Plan Second Review, adopted April 2007 (LP), where infilling may be permitted within the built-up area of the village, subject to specific provisos. Under the proposal a pair of two-bedroom dwellings would be built with a frontage to The Causeway, separated from a detached carport and parking serving the two houses by a vehicular access.
5. The appellant indicates that the house on Plot 2 would be 1.1m from the boundary with 'Appaloosa' the adjoining house to the south. The owner of Appaloosa has submitted representations that include that the mutual site boundary is incorrectly drawn on the application drawings. I saw on my site visit that the part of the boundary adjacent to the end elevation of Appaloosa is more or less parallel to it, not at the angle shown on the application drawing. In itself, this does not seem to me to critically affect the position of the

proposed building. However the rear elevation and windows of the house on Plot 2 would be turned towards the ground and first floor windows in the end elevation of Appaloosa. To my mind, the relative angle and the closeness would lead to unacceptable loss of privacy. The angle of the boundary to Plot 2 would also cause overlooking of the side and rear garden of Appaloosa, to a slightly greater extent than indicated by the submitted site layout. This reinforces my view that the relationship with that adjacent property would be detrimental to the living conditions of the occupiers.

6. Several trees adjacent to the eastern boundary, particularly a horse chestnut tree and a sycamore within the site of The Old School, are significant features. The proposed rear gardens to each house would be somewhat overshadowed by the trees, and considerably smaller than those typical of the surrounding houses. Nevertheless, to my mind, they would provide a useful private outdoor space for the proposed small houses.
7. The site layout has been influenced by the need to avoid the root system of the large horse chestnut tree in particular. Interested parties suggest that this is likely to extend significantly further than the present crown of that tree, which has been substantially reduced by tree surgery. This view is consistent with the recommendations of an Arboricultural Report to use a no-dig raft foundation on a matrix of piles in flexible locations. The Council's Arboricultural Officer has recommended approval following adjustments to an earlier scheme, subject to conditions requiring the submission of details of the house foundations.
8. I recognise that the ridge level of the new house on Plot 2 is intended to be slightly lower than that of Appaloosa, although no specific levels are given. Written representations suggest that such foundations would cause the proposed building height to be exceeded. Whether or not this is the case, the houses and the detached carport as proposed would be significantly closer to the road boundary than Appaloosa. In my view, this would give them an overbearing prominence in the street scene and in relation to Appaloosa. My view is reinforced by my negative findings under the second main issue. I conclude, therefore, that the proposal would be an unacceptably cramped development of the site, contrary to the aims and objectives of LP Policy ENV1.
9. Turning to the second main issue, I saw that the site forms part of a spacious village context extending behind the appeal property and on the opposite side of The Causeway. The rear of White Lion House, and beyond it St Mary's Church, can be seen across the site from the public highway. Although the site is overgrown, written representations indicate that this is a recent condition. This could be readily rectified and, in my view, the site contributes positively to the character and appearance of the conservation area as a whole.
10. Therefore, I do not consider that the site is a gap site, or one which makes no positive contribution to or detracts from the character or appearance of the CA, as referred to in Government guidance in Paragraph 4.16 of PPG15. Paragraph 4.17 goes on to advise that whilst conservation (whether by preservation or enhancement) of their character or appearance must be a major consideration, this cannot realistically take the form of preventing all new development in a conservation area. However, I consider that the prominent siting of the proposed development that I have described under the first main issue would

be unacceptably intrusive in the street scene. It would be harmful to the spacious character that contributes to the quality of the conservation area as a whole, and detrimental to the setting of the White Lion House and St Mary's Church as seen from The Causeway.

11. The Council has proposed conditions for use if the appeal is allowed, one of which requires that *'an area of land across the whole of the site frontage measuring at least 2.0m from and parallel to the nearest edge of the adjacent road carriageway shall be provided and kept free of all obstruction to visibility over a height of 1.05m above the adjoining road channel'*. Having regard to the rise in the site level from the road edge, to my mind, there would be little if any height within which the existing mature hedgerow could be retained, contrary to the submitted drawing, and as required by another suggested condition. The closeness of the buildings to the road and the width of the site access and turning area mean that little opportunity would exist at the front of the site to compensate for this loss of greenery. I consider that the proposed siting would significantly undermine the contribution that the site makes to the green sylvan character of the area, particularly on the approach from the south.
12. I note that the proposed design uses traditional forms, features and materials sympathetic to the vernacular architecture of the area, and has been evolved in extensive consultation with the Council's officers. I also note that some existing properties are closer to the road than others, such as Thatch End and Brick Cottage. However, these factors do not outweigh my findings that the proposal would not satisfactorily respect its particular site and its context.
13. The appellant indicates that a need for smaller houses, including low cost market housing, has been identified by the Council's Housing Needs Survey 2004 and Update 2005, and the Council does not dispute this. I also recognise that Government guidance, including that in PPS1 and PPS3, seeks to promote sustainable development by means that include the efficient use of land. However, this is to be achieved having regard to complementary policies that seek to promote local distinctiveness and protect the historic environment. In my view, the proposal significantly fails to meet these complementary aims.
14. Having regard to my duty under section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (LB Act), I conclude that the proposal would not preserve the setting of the listed building. With reference to section 72(1) of the same Act I conclude that it would neither preserve nor enhance the character or appearance of the CA. The proposed development would, therefore, be contrary to LP policies OSV2, BH6 and BH12 that aim to protect the historic environment.
15. I have considered all other matters raised, including the representations of interested parties, and conditions suggested by the Council for use if the appeal is allowed. However, none are sufficient to outweigh my findings under the main issues, or overcome the objections that I have found.

Robin Jacques

INSPECTOR



The Planning Inspectorate

An Executive Agency in the Department for Communities and
Local Government and the National Assembly for Wales

Challenging the Decision in the High Court

Challenging the decision

Appeal decisions are legal documents and, with the exception of very minor slips, we cannot amend or change them once they have been issued. Therefore a decision is final and cannot be reconsidered unless it is successfully challenged in the High Court. If a challenge is successful, we will consider the decision afresh.

Grounds for challenging the decision

A decision cannot be challenged merely because someone disagrees with the Inspector's judgement. For a challenge to be successful you would have to show that the Inspector misinterpreted the law or, for instance, that the inquiry, hearing, site visit or other appeal procedures were not carried out properly, leading to, say, unfair treatment. If a mistake has been made and the Court considers it might have affected the outcome of the appeal it will return the case to us for re-consideration.

Different appeal types

High Court challenges proceed under different legislation depending on the type of appeal and the period allowed for making a challenge varies accordingly. Some important differences are explained below:

Challenges to planning appeal decisions

These are normally applications under Section 288 of the Town & Country Planning Act 1990 to quash decisions into appeals for planning permission (including enforcement appeals allowed under ground (a), deemed application decisions or lawful development certificate appeal decisions and advertisement appeals.). For listed building or conservation area consent appeal decisions, challenges are made under Section 63 of the Planning (Listed Buildings and Conservation Areas) Act 1990. **Challenges must be received by the Administrative Court within 42 days (6 weeks) of the date of the decision - this period cannot be extended.**

Challenges to enforcement appeal decisions

Enforcement appeal decisions under all grounds [see our booklet 'Making Your Enforcement Appeal'] can be challenged under Section 289 of the Town & Country Planning Act 1990. Listed building or conservation area enforcement appeal decisions can be challenged under Section 65 of the Planning (Listed Buildings and Conservation Areas) Act 1990. To challenge an enforcement decision under Section 289 or Section 65 you must first get the permission of the Court. However, if the Court does not consider that there is an arguable case, it can refuse permission. **Applications for permission to make a challenge must be received by the Administrative Court within 28 days of the date of the decision, unless the Court extends this period.**

Important Note - This leaflet is intended for guidance only. Because High Court challenges can involve complicated legal proceedings, you may wish to consider taking legal advice from a qualified person such as a solicitor if you intend to proceed or are unsure about any of the guidance in this leaflet. Further information is available from the Administrative Court (see overleaf).

Frequently asked questions

"Who can make a challenge?" - In planning cases, anyone aggrieved by the decision may do so. This can include third parties as well as appellants and councils. In enforcement cases, a challenge can only be made by the appellant, the council or other people with a legal interest in the land - other aggrieved people must apply promptly for judicial review by the Courts (the Administrative Court can tell you more about how to do this - see Further Information).

"How much is it likely to cost me?" - A relatively small administrative charge is made by the Court for processing your challenge (the Administrative Court should be able to give you advice on current fees - see 'Further information'). The legal costs involved in preparing and presenting your case in Court can be considerable though, and if the challenge fails you will usually have to pay our costs as well as your own. However, if the challenge is successful we will normally meet your reasonable legal costs.

"How long will it take?" - This can vary considerably. Although many challenges are decided within six months, some can take longer.

"Do I need to get legal advice?" - You do not have to be legally represented in Court but it is normal to do so, as you may have to deal with complex points of law made by our own legal representative.

"Will a successful challenge reverse the decision?" - Not necessarily. The Court can only require us to reconsider the case and an Inspector may come to the same decision again but for different or expanded reasons.

"What can I do if my challenge fails?" - The decision is final. Although it may be possible to take the case to the Court of Appeal, a compelling argument would have to be put to the Court for the judge to grant permission for you to do this.

Inspection of appeal documents

We normally keep appeal files for one year after the decision is issued, after which they are destroyed. You can inspect appeal documents at our Bristol offices by contacting us on our General Enquiries number to make an appointment (see 'Contacting us'). We will then ensure that the file is obtained from our storage facility and is ready for you to view. Alternatively, if visiting Bristol would involve a long or difficult journey it may be more convenient to arrange to view your local planning authority's copy of the file, which should be similar to our own.

Further information

Further advice about making a High Court challenge can be obtained from the Administrative Court at the Royal Courts of Justice, Queen's Bench Division, Strand, London WC2 2LL, telephone 0207 9476655; Website: www.courtservice.gov.uk

Council on tribunals

If you have any comments on appeal procedures you can contact the Council on Tribunals, 81 Chancery Lane, London WC2A 1BQ. Telephone 020 7855 5200; website: <http://www.council-on-tribunals.gov.uk/>. However, it cannot become involved with the merits of individual appeals or change an appeal decision.

Contacting us

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The Parliamentary Ombudsman

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The Planning Inspectorate

An Executive Agency in the Department for Communities & Local Government and the National Assembly for Wales

Our Complaints Procedures

Complaints

We try hard to ensure that everyone who uses the appeal system is satisfied with the service they receive from us. Planning appeals often raise strong feelings and it is inevitable that there will be at least one party who will be disappointed with the outcome of an appeal. This often leads to a complaint, either about the decision itself or the way in which the appeal was handled.

Sometimes complaints arise due to misunderstandings about how the appeal system works. When this happens we will try to explain things as clearly as possible. Sometimes the appellant, the council or a local resident may have difficulty accepting a decision simply because they disagree with it.

Although we cannot re-open an appeal to re-consider its merits or add to what the Inspector has said, we will answer any queries about the decision as fully as we can.

Sometimes a complaint is not one we can deal with (for example, complaints about how the council dealt with another similar application), in which case we will explain why and suggest who may be able to deal with the complaint instead.

How we investigate complaints

Inspectors have no further direct involvement in the case once their decision is issued and it is the job of our Quality Assurance Unit to investigate complaints about decisions or an Inspector's conduct. We appreciate that many of our customers will not be experts on the planning system and for some, it will be their one and only experience of it. We also realise that your opinions are important and may be strongly held.

The Quality Assurance Unit works independently of all of our casework teams. It ensures that all complaints are investigated thoroughly and impartially, and that we reply in clear, straightforward language, avoiding jargon and complicated legal terms. We aim to give a full reply within three weeks wherever possible. To assist our investigations we may need to ask the Inspector or other staff for comments. This helps us to gain as full a picture as possible so that we are better able to decide whether an error has been made. If this is likely to delay our full reply we will quickly let you know.

What we will do if we have made a mistake

Although we aim to give the best service possible, we know that there will unfortunately be times when things go wrong. If a mistake has been made we will write to you explaining what has happened and offer our apologies. The Inspector concerned will be told that the complaint has been upheld.

We also look to see if lessons can be learned from the mistake, such as whether our procedures can be improved upon. Training may also be given so that similar errors can be avoided in future. Minor slips and errors may be corrected under Section 56 of the Planning & Compulsory Purchase Act 2004 provided we are notified within the relevant High Court challenge period, but we cannot amend or change in any way the substance of an Inspector's decision.

Who checks our work?

The Government has said that 99% of our decisions should be free from error.

An independent body called the Advisory Panel on Standards (APOS) monitors this and regularly examines the way we deal with complaints. We must satisfy it that our procedures are fair, thorough and prompt.

Taking it further

If you are not satisfied with the way we have dealt with your complaint you can contact the Parliamentary Commissioner for Administration (often referred to as The Ombudsman), who can investigate complaints of maladministration against Government Departments or their Executive Agencies. If you decide to go to the Ombudsman you must do so through an MP. Again, the Ombudsman cannot change the decision.

Frequently asked questions

"Can the decision be reviewed if a mistake has happened?"
– Although we can rectify minor slips, we cannot reconsider the evidence the Inspector took into account or the reasoning in the decision. This can only be done following a successful High Court challenge. The enclosed High Court leaflet explains more about this.

"So what is the point of complaining?" – We are keen to learn from our mistakes and try to make sure they do not happen again. Complaints are therefore one way of helping us improve the appeals system.

"Why did an appeal succeed when local residents were all against it?" – Local views are important but they are likely to be more persuasive if based on planning reasons, rather than a basic like or dislike of the proposal. Inspectors have to make up their own minds whether these views justify refusing planning permission.

"What do the terms 'Allowed' and 'Dismissed' mean on the decision?" – 'Allowed' means that Planning Permission has been granted, 'Dismissed' means that it has not.

"How can Inspectors know about local feeling or issues if they don't live in the area?" – Using Inspectors who do not live locally ensures that they have no personal interest in any local issues or any ties with the council or its policies. However, Inspectors will be aware of local views from the representations people have submitted.

"I wrote to you with my views, why didn't the Inspector mention this?" – Inspectors must give reasons for their decision and take into account all views submitted but it is not necessary to list every bit of evidence.

"Why did my appeal fail when similar appeals nearby succeeded?" – Although two cases may be similar, there will always be some aspect of a proposal which is unique. Each case must be decided on its own particular merits.

"I've just lost my appeal, is there anything else I can do to get my permission?" – Perhaps you could change some aspect of your proposal to increase its acceptability. For example, if the Inspector thought your extension would look out of place, could it be re-designed to be more in keeping with its surroundings? If so, you can submit a revised application to the council. Talking to its planning officer about this might help you explore your options.

"What can I do if someone is ignoring a planning condition?"
– We cannot intervene as it is the council's responsibility to ensure conditions are complied with. It can investigate and has discretionary powers to take action if a condition is being ignored.

Further information

Each year we publish our Annual Report and Accounts, setting out details of our performance against the targets set for us by Ministers and how we have spent the funds the Government gives us for our work. We publish full statistics of the number of cases dealt with during the preceding year on our website, together with other useful information (see 'Contacting us'). You can also obtain booklets which give details about the appeal process by telephoning our enquiries number.

You can find the latest Advisory Panel on Standards report either by visiting our website or on the ODPM website - www.communities.gov.uk

Contacting us

Complaints and Queries

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