The Planning Inspectorate

Appeal Decisions

Hearing held on 8 May 2013
Site visit made on 8 May 2013

by R J Marshall LLB Dip TP MRTPI

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

Decision date: 17 July 2013

Appeal A: APP/J1915/A/12/2189040
Dhoon, Epping Green, Near Hertford, Herts, SG13 8NB

- 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 Samantha Baker against the decision of East Hertfordshire District Council.
- The application Ref 3/12/0814/FP, dated 10 May 2012, was refused by notice dated 12 July 2012.
- The development proposed is use of part of ground floor for the purposes of childcare on a domestic premises for up to 32 children.

Appeal B: APP/J1915/A/13/2192212
Dhoon, Epping Green, Near Hertford, Herts, SG13 8NB

- 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 Samantha Baker against the decision of East Hertfordshire District Council.
- The application Ref 3/12/1805/FP, dated 22 October 2012, was refused by notice dated 9 January 2013.
- The development proposed is use of part of the ground floor for the purposes of childcare on a domestic premises for up to 20 children.

Decision

Appeal A

1. The appeal is allowed and planning permission is granted for the purposes of childcare on a domestic premises for up to 32 children at Dhoon, Epping Green, Near Hertford, Herts, SG13 8NB in accordance with the terms of the application, Ref 3/12/0814/FP, dated 10 May 2012, and the plans submitted with it, with the proviso in paragraph 8 below, subject to the conditions on the attached list.

Appeal B

2. The appeal is allowed and planning permission is granted for the purposes of childcare on a domestic premises for up to 20 children at Dhoon, Epping Green, Near Hertford, Herts, SG13 8NB in accordance with the terms of the application, Ref 3/12/1805/FP, dated 22 October 2012, and the plans submitted with it subject to the conditions on the attached list.

between the appellant and the Council on the lawfulness of this in the absence of planning permission.

10. The premises would operate largely throughout the year, though the appellant says that attendances would drop off outside school term times. The intention is for the use to operate on Mondays to Fridays only between 07.30 and 18.30 hours and for outside play to be limited to between 10.00 hours and 17.30 hours.

Main issue (appeals A and B)

11. The proposals are so similar that I shall consider them together.

12. The Council's main concern on this issue is of noise and disturbance from children playing outside in the garden and from children being brought to and taken from the site by car. Some local residents are also concerned about the escape of noise from within the building.

13. I turn first to noise from within the house. This is covered by the appellant in his NIA, which although submitted only for the second application assessed the impact that up to 32 children would have.

14. The NIA assumes a typical internal noise level of 65 DB L_{Aeq} from children's activities based on moderately boisterous behaviour. An assumption has been made that the widows would be open for ventilation. It is assessed that at 1 metre from such a window that noise levels would be reduced to approximately 50DBL $_{Aeq.}$ It is estimated that with screening and distance losses this would reduce to 30DBL $_{Aeq}$ at the nearest property to the north of the site, Three Oaks. As this is well below the prevailing ambient noise level the appellant says that no harm would be caused.

15. The Council accepts the approach taken to assess the potential impact of noise breakout and I have no contrary technical assessment of it. I am satisfied that noise from within the building should cause no unacceptable harm to neighbours.

16. Turning to externally generated noise those most concerned about the impact of the proposed development on living conditions are those at Storeys Cottage, Three Oaks and White Lodge. From what I saw I consider Storeys Cottage and that part of its garden near the house to be too removed from the appeal site for children playing outside on the appeal site and traffic generated by the proposed use to cause any unacceptable harm to living conditions through noise and disturbance.

17. However, Three Oaks and White Lodge are much closer to the appeal premises. I turn first to the impact on these properties of noise from the external play areas. It is the rear garden that is, and would continue to the used, for children's outdoor play. The plan, now to be relied upon in both cases, shows a substantial part of the rear garden, albeit well set back from Dhoon and from the northern and southern boundaries of the site, to be used for play. The area would be marked off by cones. In addition a rear patio adjacent to the house would be for outside play for the under 3 year olds. An adjoining swimming pool would be used for swimming lessons.

18. The appellant's noise consultant measured noise from these areas from a location adjoining the patio and close to the boundary with Three Oaks. This

requirement for this could be embodied in the condition on the management of outdoor play/activities.

25. I now turn to the noise of children being brought to and from the premises by car. The appellant's noise consultant says that, based on a worse case scenario for the largest of the proposed developments, of 20 vehicle movements (a movement for this purpose being an arrival and departure) per hour, the predicted noise level at the nearest property to the north would equate to 45DBL$_{Aeq1hour}$. This would be lower than the prevailing daytime noise level at the front of the property of between 55 to 60 DBL$_{Aeq1hour}$. His conclusion is that traffic associated with the proposed developments would thus be highly unlikely to cause disturbance.

26. The 20 movements an hour figure referred to above is dependant, in part, upon the peak flow at the end of the day when children are collected being spread out between 16.00 and 18.30. However, given the nature of the use and flexi-time working hours this does not seem an unreasonable assumption.

27. I note some concerns as to whether the figures take account of the gravel drive and car doors opening and shutting. However, the appellant has discussed his approach with the Council's Environmental Health Officer. The Council has proved no technical of professional noise evidence to contest the appellant's findings.

28. Given the above it is concluded on the main issue that in most respects it has been shown that the proposed developments would cause no unacceptable harm to the living conditions of neighbours with special reference to noise and disturbance and as such cause no conflict with Policies ENV1 and EDE6 of the East Hertfordshire Local Plan Second Review (2007) in so far that they seek to prevent such harm. Residual concerns may be covered by granting temporary planning permissions to give a trial run.

29. In arriving at this view I appreciate the strength of objections expressed locally by those adjoining the appeal site. There are concerns, amongst other things, of noisy night games having taken place and of noise and disturbance from the swimming pool. There are also concerns that more children on the premises would lead to more children playing outside. However, the use of the site to date has been unregulated and the operation of the development may be controlled by conditions.

Other matters

30. Some local residents raised matters that go beyond the Council's concerns. Of these the key matters are sustainability, parking/highway safety and need for this facility.

Sustainability

31. The site is in a remote rural location and as such is said by some to be in an unsustainable location. Such facilities it is said should be provided in urban areas. However, the appellant's Transport Issues Statement, based on work journeys by existing and potential customers, show that many pass Dhoon on their work journey and that only a minority of work journeys would increase. Whilst the exact relationship between the residences and work journeys of customers could not be guaranteed to remain the case it appears as though this site is likely to serve a large rural hinterland and that lengthier journeys

38. Concern has been expressed that the last item on the sustainable travel plan may lead to the appellant running a bus service to local schools from the site with implications on where the bus would be parked etc. There is some uncertainty in my mind as to exactly what this part of the travel plan is seeking. However, the appellant accepts that the travel plan needs a minor amendment in another respect. Both parties agreed that any condition referring to a travel plan should seek a new plan rather than relying on that currently submitted. This would allow the Council to clarify matters concerning the "bus service" and requiring its deletion from the plan if necessary.

39. Giving that I shall be allowing the appeal, albeit by granting temporary permission for a trial period, I attach limited weight to an alleged fall-back position of reverting to the current degree of usage in premises. Moreover, without a lawful develop certificate for that use there is no clear indication that the fall-back position is lawful.

Conclusion on other matters

40. Given the above the "other matters" raised locally do not stand against the proposals.

Conditions

41. As I am minded to allow the appeals, and grant the proposals permission on trial period, I have considered what conditions should be imposed.

42. To ensure that the proposed developments accord with what has been applied for and the supporting information I shall: limit the number of children to be cared for at the property to 32 in appeal A and 20 in appeal B; require a broadly even split between the age groups to be accommodated; and prevent anything other than the specific use applied for of mixed childcare/residential. To protect the amenities of neighbours I shall: restrict use of the premises and to the times referred to above in this decision; require an acoustic screen in the vicinity of the boundary of the patio with the neighbouring garden to the north; require a scheme for the management of outdoor play/activities to be approved (that scheme to include the number of children outside at any one time, where outside activities and play may take place and a limitation on the hours that children may be outside); and restrict the operation of the premises to weekdays. To promote sustainable transport measures I shall require the submission and approval of a revised Sustainable Travel Plan.

43. For reasons given I shall make the permissions temporary to give a trial run. The Council suggested an 18 month period and the appellant a 3 year period due to problems engaging staff for a shorter period. Whilst I acknowledge the appellant's concerns the shorter period is more appropriate given the potential implications of the proposals on living conditions.

44. I see no reason to revise the area demarcated for outside play from that shown on the plan referred to above. There is no reason to prevent use of the swimming pool subject to the management plan referred to above covering activity in the pool. I see no reason in planning terms to require a register to be kept of children outdoors. A condition restricting permission to the appellant would serve little purpose and Circular 11/95 on conditions advises that they are seldom desirable. It would be unreasonable on a temporary permission to impose a landscaping condition.

APPEARANCES

FOR THE APPELLANT:

Mr G Fisher BSc (hons) MA MRTPI DMS	Of gfplanning Limited
Mr S Gosling BEng ISVR	Of 24Accoustics
Mr and Mrs Baker	Appellant and appellant's husband

FOR THE LOCAL PLANNING AUTHORITY:

Mr M Chalk BSc MSc	Planning Officer
Miss N Beyer BA MA MRTPI	Principle Planning Officer
Cllr A Burlton	District Councillor

INTERESTED PERSONS:

Miss L Bristow	Local resident
Mrs B Bristow	Local resident
Mr P Fry	Local resident

DOCUMENTS

1 Letter of notification of appeal and those notified.
2 E mail of 8th May 2013 from S and D Bedford.
3 The Town and Country Planning (Use Classes) Order 1987.
4 Copy of appellant's Transport Issues Statement and Sustainable Travel Plan.
5 Council response to appellant's costs application.

8) The use hereby permitted shall be discontinued on or before 1 February 2015.

Appeal B

1) The number of children to be cared for at the property shall not exceed 20 on any single day.

2) In the age groups 0-3 years, 3-5 years and 5-11 years there shall be no more than between 8 to 9 children cared for on any single day.

3) The premises shall be used for mixed residential and childcare on a domestic premises and for no other purpose in the Town and Country Planning (Use Classes) Order 1987, or in any provision equivalent to that Class in any statutory instrument revoking and re-enacting that Order with or without modification.

4) The use hereby permitted shall cease 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: a) a scheme/details for an acoustic screen, in the vicinity of the patio on the appeal site and the garden of Three Oaks, has been submitted for the approval in writing of the local planning authority; b) schemes for the management of outdoor play/activities and the management of swimming pool lessons, including limiting the use of the swimming pool to lessons, have been submitted for the written approval of the local planning authority(these shall include a restriction on the number of children outside at any one time, where outside activities/play may take place and the hours within such activities/play may take place); and c) a Sustainable Travel Plan, including means for its review and the implementation of any revised provision of the Plan following the review, has been submitted for the approval in writing by the local planning authority. The schemes (a) (b) and (c) above shall include timetables for their implementation.

ii) if within 11 months of the date of this decision the schemes/details referred to above shall have 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 schemes in (a) (b) and (c) above shall have been approved by the Secretary of State.

iv) the approved schemes shall have been implemented in accordance with the approved timetable.

5) The acoustic screen approved in accordance with condition 4 shall be retained for the duration of the use.

6) The use shall be operated in accordance with (a) the approved schemes for the management of outdoor play/activities and swimming pool lessons and (b) the Sustainable Travel Plan approved in accordance with condition 4.

The Planning Inspectorate

Costs Decision

Hearing held on 8 May 2013
Site visit made on 8 May 2013

by R J Marshall LLB DipTP MRTPI

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

Decision date: 17 July 2013

Costs application in relation to Appeal Ref: APP/J1915/A/12/2189040 Dhoon, Epping Green, Near Hertford, Herts, SG13 8NB

- 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 Mrs Samantha Baker 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 use of part of ground floor for the purposes of childcare on a domestic premises for up to 32 children.

Costs application in relation to Appeal Ref: APP/J1915/A/13/2192212 Dhoon, Epping Green, Near Hertford, Herts, SG13 8NB

- 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 Mrs Samantha Baker 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 use of part of ground floor for the purposes of childcare on a domestic premises for up to 20 children.

Decision

1. The application for an award of costs is allowed in the terms set out below.

The submissions for Mrs Samantha Baker

2. The application was made in writing. The essence of the claim is set out below.

3. Having regard to Paragraph B15 of Circular 03/2009 on Costs the Council acted unreasonably in refusing permissions that should have been granted. With reference to Paragraph B16 of the Costs Circular the Council provided no scientific or objective evidence to support its case and in determining the applications. It relied on vague and generalised statements. On the second application it failed to consider properly the appellant's Noise Impact Assessment (NIA).

4. The Council also, taking into account Paragraph B20 of the Costs Circular, failed to say why the decision on the first application was made contrary to the views of its environmental health officer (EHO) and why the decision on the second application was made contrary to the advice its EHO and planning officers.

the Planning Officer presented a cogent and reasonable recommendation for refusal. I see no reason why, in the absence a technical noise report from the appellant, the Council should have undertaken its own survey.

15. However, on the second application technical noise evidence was provided by the appellant. The Council's Environmental Health Officer was satisfied with what had been produced and the Planning Officer recommended permission. In these circumstances, whilst I accept that there is an element of subjectivity in judgements on living conditions, it was unreasonable for the Council not to have made a more objective professional analysis of the case based more substantially upon technical evidence.

16. Given my findings on the need for a temporary permission to provide a trial period I did not find that a permanent permission should be granted at this stage. However, it was open to the Council also to consider such a course of action had it any legitimate concerns on the noise evidence produced. Circular 03/2009 advises that where appropriate planning authorities will be expected show that they have considered the possibility of imposing planning conditions to allow development to proceed. In my view the Council unreasonably refused permission that should, for a trial period, clearly have been permitted.

Conclusion

17. For the reasons given the Council, on the evidence before it, acted reasonably in its determination of the first application but unreasonably in its determination of the second application.

18. I find that unreasonable behaviour resulting in unnecessary expense, as described in Circular 03/2009, has been demonstrated and that a partial award of costs is justified.

Costs Order

19. In exercise of the powers under section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990 as amended, and all other enabling powers in that behalf, IT IS HEREBY ORDERED that East Hertfordshire District Council shall pay to Mrs Samantha Baker, the costs of the appeal proceedings limited to those costs incurred in dealing with the appeal on the second application, such costs to be assessed in the Senior Courts Costs Office if not agreed. The proceedings concerned an appeal more particularly described in the heading of this decision.

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

R J Marshall

INSPECTOR

The Planning Inspectorate

Appeal Decisions

Hearing held on 8 May 2013
Site visit made on 8 May 2013

by R J Marshall LLB Dip TP MRTPI

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

Decision date: 17 July 2013

Appeal A: APP/J1915/A/12/2189040
Dhoon, Epping Green, Near Hertford, Herts, SG13 8NB

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Appeal B: APP/J1915/A/13/2192212
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- The development proposed is use of part of the ground floor for the purposes of childcare on a domestic premises for up to 20 children.

Decision

Appeal A

1. The appeal is allowed and planning permission is granted for the purposes of childcare on a domestic premises for up to 32 children at Dhoon, Epping Green, Near Hertford, Herts, SG13 8NB in accordance with the terms of the application, Ref 3/12/0814/FP, dated 10 May 2012, and the plans submitted with it, with the proviso in paragraph 8 below, subject to the conditions on the attached list.

Appeal B

2. The appeal is allowed and planning permission is granted for the purposes of childcare on a domestic premises for up to 20 children at Dhoon, Epping Green, Near Hertford, Herts, SG13 8NB in accordance with the terms of the application, Ref 3/12/1805/FP, dated 22 October 2012, and the plans submitted with it subject to the conditions on the attached list.

between the appellant and the Council on the lawfulness of this in the absence of planning permission.

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Main issue (appeals A and B)

11. The proposals are so similar that I shall consider them together.

12. The Council's main concern on this issue is of noise and disturbance from children playing outside in the garden and from children being brought to and taken from the site by car. Some local residents are also concerned about the escape of noise from within the building.

13. I turn first to noise from within the house. This is covered by the appellant in his NIA, which although submitted only for the second application assessed the impact that up to 32 children would have.

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27. I note some concerns as to whether the figures take account of the gravel drive and car doors opening and shutting. However, the appellant has discussed his approach with the Council's Environmental Health Officer. The Council has proved no technical of professional noise evidence to contest the appellant's findings.

28. Given the above it is concluded on the main issue that in most respects it has been shown that the proposed developments would cause no unacceptable harm to the living conditions of neighbours with special reference to noise and disturbance and as such cause no conflict with Policies ENV1 and EDE6 of the East Hertfordshire Local Plan Second Review (2007) in so far that they seek to prevent such harm. Residual concerns may be covered by granting temporary planning permissions to give a trial run.

29. In arriving at this view I appreciate the strength of objections expressed locally by those adjoining the appeal site. There are concerns, amongst other things, of noisy night games having taken place and of noise and disturbance from the swimming pool. There are also concerns that more children on the premises would lead to more children playing outside. However, the use of the site to date has been unregulated and the operation of the development may be controlled by conditions.

Other matters

30. Some local residents raised matters that go beyond the Council's concerns. Of these the key matters are sustainability, parking/highway safety and need for this facility.

Sustainability

31. The site is in a remote rural location and as such is said by some to be in an unsustainable location. Such facilities it is said should be provided in urban areas. However, the appellant's Transport Issues Statement, based on work journeys by existing and potential customers, show that many pass Dhoon on their work journey and that only a minority of work journeys would increase. Whilst the exact relationship between the residences and work journeys of customers could not be guaranteed to remain the case it appears as though this site is likely to serve a large rural hinterland and that lengthier journeys

38. Concern has been expressed that the last item on the sustainable travel plan may lead to the appellant running a bus service to local schools from the site with implications on where the bus would be parked etc. There is some uncertainty in my mind as to exactly what this part of the travel plan is seeking. However, the appellant accepts that the travel plan needs a minor amendment in another respect. Both parties agreed that any condition referring to a travel plan should seek a new plan rather than relying on that currently submitted. This would allow the Council to clarify matters concerning the "bus service" and requiring its deletion from the plan if necessary.

39. Giving that I shall be allowing the appeal, albeit by granting temporary permission for a trial period, I attach limited weight to an alleged fall-back position of reverting to the current degree of usage in premises. Moreover, without a lawful develop certificate for that use there is no clear indication that the fall-back position is lawful.

Conclusion on other matters

40. Given the above the "other matters" raised locally do not stand against the proposals.

Conditions

41. As I am minded to allow the appeals, and grant the proposals permission on trial period, I have considered what conditions should be imposed.

42. To ensure that the proposed developments accord with what has been applied for and the supporting information I shall: limit the number of children to be cared for at the property to 32 in appeal A and 20 in appeal B; require a broadly even split between the age groups to be accommodated; and prevent anything other than the specific use applied for of mixed childcare/residential. To protect the amenities of neighbours I shall: restrict use of the premises and to the times referred to above in this decision; require an acoustic screen in the vicinity of the boundary of the patio with the neighbouring garden to the north; require a scheme for the management of outdoor play/activities to be approved (that scheme to include the number of children outside at any one time, where outside activities and play may take place and a limitation on the hours that children may be outside); and restrict the operation of the premises to weekdays. To promote sustainable transport measures I shall require the submission and approval of a revised Sustainable Travel Plan.

43. For reasons given I shall make the permissions temporary to give a trial run. The Council suggested an 18 month period and the appellant a 3 year period due to problems engaging staff for a shorter period. Whilst I acknowledge the appellant's concerns the shorter period is more appropriate given the potential implications of the proposals on living conditions.

44. I see no reason to revise the area demarcated for outside play from that shown on the plan referred to above. There is no reason to prevent use of the swimming pool subject to the management plan referred to above covering activity in the pool. I see no reason in planning terms to require a register to be kept of children outdoors. A condition restricting permission to the appellant would serve little purpose and Circular 11/95 on conditions advises that they are seldom desirable. It would be unreasonable on a temporary permission to impose a landscaping condition.

APPEARANCES

FOR THE APPELLANT:

Mr G Fisher BSc (hons) MA MRTPI DMS	Of gfplanning Limited
Mr S Gosling BEng ISVR	Of 24Accoustics
Mr and Mrs Baker	Appellant and appellant's husband

FOR THE LOCAL PLANNING AUTHORITY:

Mr M Chalk BSc MSc	Planning Officer
Miss N Beyer BA MA MRTPI	Principle Planning Officer
Cllr A Burlton	District Councillor

INTERESTED PERSONS:

Miss L Bristow	Local resident
Mrs B Bristow	Local resident
Mr P Fry	Local resident

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8) The use hereby permitted shall be discontinued on or before 1 February 2015.

Appeal B

1) The number of children to be cared for at the property shall not exceed 20 on any single day.

2) In the age groups 0-3 years, 3-5 years and 5-11 years there shall be no more than between 8 to 9 children cared for on any single day.

3) The premises shall be used for mixed residential and childcare on a domestic premises and for no other purpose in the Town and Country Planning (Use Classes) Order 1987, or in any provision equivalent to that Class in any statutory instrument revoking and re-enacting that Order with or without modification.

4) The use hereby permitted shall cease 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: a) a scheme/details for an acoustic screen, in the vicinity of the patio on the appeal site and the garden of Three Oaks, has been submitted for the approval in writing of the local planning authority; b) schemes for the management of outdoor play/activities and the management of swimming pool lessons, including limiting the use of the swimming pool to lessons, have been submitted for the written approval of the local planning authority(these shall include a restriction on the number of children outside at any one time, where outside activities/play may take place and the hours within such activities/play may take place); and c) a Sustainable Travel Plan, including means for its review and the implementation of any revised provision of the Plan following the review, has been submitted for the approval in writing by the local planning authority. The schemes (a) (b) and (c) above shall include timetables for their implementation.

ii) if within 11 months of the date of this decision the schemes/details referred to above shall have 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 schemes in (a) (b) and (c) above shall have been approved by the Secretary of State.

iv) the approved schemes shall have been implemented in accordance with the approved timetable.

5) The acoustic screen approved in accordance with condition 4 shall be retained for the duration of the use.

6) The use shall be operated in accordance with (a) the approved schemes for the management of outdoor play/activities and swimming pool lessons and (b) the Sustainable Travel Plan approved in accordance with condition 4.

The Planning Inspectorate

Costs Decision

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- The application is made by Mrs Samantha Baker 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 use of part of ground floor for the purposes of childcare on a domestic premises for up to 32 children.

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- The hearing was in connection with an appeal against the refusal of planning permission for use of part of ground floor for the purposes of childcare on a domestic premises for up to 20 children.

Decision

1. The application for an award of costs is allowed in the terms set out below.

The submissions for Mrs Samantha Baker

2. The application was made in writing. The essence of the claim is set out below.

3. Having regard to Paragraph B15 of Circular 03/2009 on Costs the Council acted unreasonably in refusing permissions that should have been granted. With reference to Paragraph B16 of the Costs Circular the Council provided no scientific or objective evidence to support its case and in determining the applications. It relied on vague and generalised statements. On the second application it failed to consider properly the appellant's Noise Impact Assessment (NIA).

4. The Council also, taking into account Paragraph B20 of the Costs Circular, failed to say why the decision on the first application was made contrary to the views of its environmental health officer (EHO) and why the decision on the second application was made contrary to the advice its EHO and planning officers.

the Planning Officer presented a cogent and reasonable recommendation for refusal. I see no reason why, in the absence a technical noise report from the appellant, the Council should have undertaken its own survey.

15. However, on the second application technical noise evidence was provided by the appellant. The Council's Environmental Health Officer was satisfied with what had been produced and the Planning Officer recommended permission. In these circumstances, whilst I accept that there is an element of subjectivity in judgements on living conditions, it was unreasonable for the Council not to have made a more objective professional analysis of the case based more substantially upon technical evidence.

16. Given my findings on the need for a temporary permission to provide a trial period I did not find that a permanent permission should be granted at this stage. However, it was open to the Council also to consider such a course of action had it any legitimate concerns on the noise evidence produced. Circular 03/2009 advises that where appropriate planning authorities will be expected show that they have considered the possibility of imposing planning conditions to allow development to proceed. In my view the Council unreasonably refused permission that should, for a trial period, clearly have been permitted.

Conclusion

17. For the reasons given the Council, on the evidence before it, acted reasonably in its determination of the first application but unreasonably in its determination of the second application.

18. I find that unreasonable behaviour resulting in unnecessary expense, as described in Circular 03/2009, has been demonstrated and that a partial award of costs is justified.

Costs Order

19. In exercise of the powers under section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990 as amended, and all other enabling powers in that behalf, IT IS HEREBY ORDERED that East Hertfordshire District Council shall pay to Mrs Samantha Baker, the costs of the appeal proceedings limited to those costs incurred in dealing with the appeal on the second application, such costs to be assessed in the Senior Courts Costs Office if not agreed. The proceedings concerned an appeal more particularly described in the heading of this decision.

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

R J Marshall

INSPECTOR

The Planning Inspectorate

Appeal Decision

Site visit made on 27 June 2013

by Ray Wright BA(Hons) DipTP MRTPI

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

Decision date: 4 July 2013

Appeal Ref: APP/J1915/D/13/2196573
Cleveleys, 19 Orchard Road, Tewin Wood, Hertfordshire AL6 0HG

- 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 & Mrs S Woods against the decision of East Hertfordshire District Council.
- The application Ref 3/12/1991/FP was refused by notice dated 23 January 2013.
- The development proposed is a 'two storey extension and detached garage.'

Decision

1. The appeal is dismissed.

Main issues

2. The appeal site is within the Green Belt and so the main issues in this appeal are:

    - whether the proposals would be inappropriate development in the Green Belt for the purposes of the National Planning Policy Framework and development plan policy;
    - the effect of the proposals on the openness of the Green Belt and on the character and appearance of the area and;
    - if the proposals would be inappropriate development, whether the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations, so as to amount to 'very special circumstances' necessary to justify them.

Reasons

3. The appeal property is a detached dwelling in a large plot, with a mature garden setting, including a number of trees.

4. The appeal scheme has two elements, the erection of a two storey side extension and the erection of a detached, pitched roof garage building.

Whether Inappropriate Development?

5. The Framework confirms that the construction of new buildings inside a Green Belt is inappropriate with only limited exceptions. One exception is 'the extension or alteration of a building provided that it does not result in disproportionate additions over and above the size of the original building.'

house. The extension would also be wider than the previous addition to this part of the building. Its resultant design, with its prominent roof form and open area at ground floor level, would significantly alter and unbalance the overall appearance of the dwelling from the rear. However, due to the orientation of the house and the current boundary screening, the main two storey extension would have a relatively discrete location which would not be prominent from the road frontage.

12. Overall, I consider the side extension, as proposed, would be harmful to the appearance of the rear of the property, but would have a limited effect on the wider character of the area.

Other Considerations

13. While I have noted the appellants' reference to other extensions and replacement dwellings that have taken place within the general area of the appeal site with the Council's support, I have considered these proposals solely on their individual merits based on the specific site circumstances.

Conclusion

14. The proposals would be inappropriate development and the Framework establishes that substantial weight has to be given to the harm by reason of inappropriateness. In addition, there would be a loss of openness and a limited effect on the character and appearance of the area. The other considerations put forward to support the proposal do not clearly outweigh the totality of harm which is the test they have to meet. Consequently, very special circumstances do not exist and the proposal is contrary to guidance in the Framework and LP Policies GBC1, ENV1, ENV5, and ENV6. For the reasons given above, I therefore conclude that the appeal should be dismissed.

Ray Wright

INSPECTOR

The Planning Inspectorate

Appeal Decision

Site visit made on 10 July 2013

by R Barrett BSc (Hons) MSc, Dip HistCons, Dip UD, MRTPI, IHBC

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

Decision date: 17 July 2013

Appeal Ref: APP/J1915/D/13/2196652
Lyndhurst House, 71 Dunmow Road, Bishops Stortford, Herts, CM23 5HF

- 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 Michelle Cundall against the decision of East Herts Council.
- The application Ref 3/12/1443/FP was refused by notice dated 23 January 2013.
- The development proposed is a dropped kerb at front of property; block paving to front of property; necessary drainage between blocked paved area and public footpath.

Decision

1. The appeal is dismissed.

Main issue

2. The effect of the proposal on the safety of highway users in the vicinity of the appeal site.

Reasons

3. The appeal site includes a terraced house which fronts onto Dunmow Road. It includes a relatively small front garden and a garage which sits at the end of the rear garden, accessed by a relatively narrow service road which leads off Elm Grove. The proposal is for works, including a dropped kerb to use the front garden for parking a vehicle.

4. The proposed hardstanding is relatively small and would not provide an easy or convenient turning space, even for one car. As the proposed hardstanding and dropped kerb would be large enough to accommodate two vehicles parked side by side, turning would be impossible within the appeal site when both cars were parked. This would mean that vehicles would be likely to reverse either into or out of the proposed parking area. Entering in reverse would hold up traffic on the near side of Dunmow Road. Entering in a forward gear from the east would lead to vehicles waiting in the middle of the road. Reversing vehicles onto this busy road would result in additional manoeuvring on the highway. The above manoeuvres would be likely to be a hazard for road users and result in vehicles being held up on Dunmow Road, which may cause inconvenience to other road users.

5. I observed that some other properties in the vicinity have off street parking, some with dropped kerbs. However, I do not know the circumstances that have led to all these developments. In any event, I am determining this appeal on its planning merits and these developments do not justify the appeal

The Planning Inspectorate

Appeal Decision

Site visit made 2 July 2013

by Philip Willmer BSc Dip Arch RIBA

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

Decision date: 23 July 2013

Appeal Ref: APP/J1915/E/12/2187267
8, 10 and 12 Railway Street, Hertford, Hertfordshire, SG14 1BG.

- The appeal is made under section 20 of the Planning (Listed Buildings and Conservation Areas) Act 1990 against a refusal to grant listed building consent.
- The appeal is made by Union Realty Ltd against the decision of East Hertfordshire District Council.
- The application Ref 3/12/1348/LB, dated 8 August 2012, was refused by notice dated 3 October 2012.
- The works proposed are described as further internal alterations to the ground floor to partially remove the front chimney breasts to Nos 10 and 12 Railway Street, slightly cut back the ground floor chimney breast to No 8 and to slightly widen the already approved openings between the shop units.

Decision

1. I allow the appeal and grant listed building consent for internal alterations to the ground floor to partially remove the front chimney breasts to Nos 10 and 12 Railway Street, slightly cut back the ground floor chimney breast to No 8 and to slightly widen the already approved openings between the shop units at 8, 10 and 12 Railway Street, Hertford, Hertfordshire, SG14 1BG in accordance with the terms of the application Ref 3/12/1348/LB, dated 8 August 2012 and the plans submitted subject to the following conditions:

    1) The works hereby authorised shall begin not later than 3 years from the date of this consent.

    2) The works hereby authorised shall not be commenced until larger scale detailed plans and drawings, together with structural calculations and details showing in detail, at a scale of not less than 1:20, any new structural support required, its relationship to adjacent building fabric/structure, along with details/specification of any necessary fire proofing and finish, have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.

    3) The works hereby authorised shall be carried out in accordance with the following plans: drawings numbered: 2169SLP/1, 2169/EX/1, 2169/P/1A, 2169/EX/2, 2169/P/2A, 2169/P/3, 2169/P/4, 2169/P/5, 2169/P/6, 2169/P/7, and 2169/P/8.

9. b) From what I have seen and read, as an opening has already been allowed in the cross wall between numbers 8 and 10, despite the loss of a small amount of additional historic fabric, I am not persuaded that the enlargement of the opening would have any harmful impact on the special architectural and historic interest of the building.

10. c) Number 8 is a very narrow unit and the present chimney stack and staircase effectively mean there are only limited sight lines front to back. Accordingly, I can appreciate the need, once this unit is part of one large shop, for which consent has previously been given, for these sight lines to be improved to enable it to operate efficiently.

11. The appellant proposes only the partial removal of the existing chimney breast at ground floor level and then corbelling it to a small downstand. Further, there is no proposal to alter the chimney on the higher levels. I appreciate that this work would result in the further loss of some historic fabric and part of the chimney breast would be removed. However, the loss would be relatively modest. I am therefore satisfied that sufficient of this original feature can be retained, so that the integrity of the historic plan form is preserved even though there would be a modest change.

12. I do not consider that the proposed works would harm the significance of these designated heritage assets. The alterations proposed would simply be another change to the premises to reflect the history of retailing in this market town.

13. I conclude in respect of the main issue that while paying special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses, I do not consider the proposed works to be harmful in this instance and therefore listed building consent should be granted. The works for which I am granting consent accord with the objectives of national policy as set out in the National Planning Policy Framework.

Conditions

14. The Council has suggested no conditions in the event that I am minded to grant consent. However, in addition to the standard time condition, having regard to the significance of this heritage asset and as neither construction drawings nor supporting structural details are before me, I shall require these to be submitted to and approved by the Council prior to work starting. Furthermore, for the avoidance of doubt and in the interests of proper planning, I shall also impose a condition requiring the works to be carried out in accordance with the approved plans.

Conclusions

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

Philip Willmer

INSPECTOR

The Planning Inspectorate

Appeal Decision

Hearing held on 2 July 2013
Site visit made on 2 July 2013

by J M Trask BSc(Hons) CEng MICE

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

Decision date: 24 July 2013

Appeal Ref: APP/J1915/A/13/2190215
Kick and Dicky, Wellpond Green, Standon, Ware SG11 1NL

- 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 Frances Aspin against the decision of East Hertfordshire District Council.
- The application Ref 3/12/1395/FP, dated 15 August 2012, was refused by notice dated 5 December 2012.
- The development proposed is the change of use of public house to residential dwelling with no change to existing external fabrication and no change to existing boundary fences or hedges.

Decision

1. The appeal is allowed and planning permission is granted for the change of use of public house to residential dwelling with no change to existing external fabrication and no change to existing boundary fences or hedges at Kick and Dicky, Wellpond Green, Standon, Ware SG11 1NL in accordance with the terms of the application, Ref 3/12/1395/FP, dated 15 August 2012, subject to the following conditions:

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

   2) The development hereby permitted shall be carried out in accordance with the following approved plans: 6790 - 01 Rev A and 6790 – 02 Rev A.

Main Issue

2. The main issue is the effect of the proposal on the provision of local services.

Reasons

3. The appeal site is within the settlement of Wellpond Green which comprises about 30 properties in a rural setting. The proposal is for the conversion of a public house with letting rooms into a single dwelling. Public houses are important in maintaining local communities and saved Policy STC8 of the East Herts Local Plan Second Review advises the loss of a public house, among other businesses, in this situation will not be permitted where it would result in a significant reduction in the level of such provision locally available. The policy then indicates ways of determining the significance of the loss and I shall address each of these in turn.

there is clear evidence that it is not possible for the use to continue as a viable business.

8. While I have found that the public house makes a limited contribution to the range of provision available to the local population, the marketing of the property has been satisfactory, there is little likelihood of another use being found, and there is clear evidence that it is not possible for the use to continue as a viable business. On balance I conclude that the reduction in the provision of local services would not be significant and the proposal is in accord with Policy STC8 of the East Herts Local Plan Second Review and the objectives of the National Planning Policy Framework.

9. Other matters have been raised. The Kick and Dicky was included on the List of Assets of Community Value earlier this year but a request for a review has been made on the basis that the public house is unviable and will close. I have also had regard to other decisions and planning permissions that have been referred to by the parties but note that the circumstances in those cases differ from the circumstances in this case. The appellant has referred to a change of use under permitted development rights but few details have been produced to support this proposal. I have had regard to these and all other matters raised, including that once the public house is gone it is unlikely to be replaced, but they are not sufficient to outweigh the considerations which have led me to my conclusion.

10. I have considered the conditions suggested by the Council having regard to Circular 11/95 The Use of Conditions in Planning Permissions. It is necessary that the development shall be carried out in accordance with the approved plans for the avoidance of doubt and in the interests of proper planning and I shall impose such a condition.

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

J M Trask

INSPECTOR

The Planning Inspectorate

Appeal Decision

Site visit made on 12 June 2013

by Nicholas Taylor BA (Hons) MRTPI

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

Decision date: 9 July 2013

Appeal Ref: APP/J1915/A/13/2190750
Former Biss Site, London Road, Spellbrook, Herts CM23 4AU

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Mr and Mrs Smeeth against the decision of East Hertfordshire District Council.
- The application Ref 3/12/1130/FP, dated 3 July 2012, was refused by notice dated 12 September 2012.
- The development proposed is erection of three bedroom house and garage.

Decision

1. The appeal is allowed and planning permission is granted for erection of three bedroom house and garage at Former Biss Site, London Road, Spellbrook, Herts CM23 4AU in accordance with the terms of the application, Ref 3/12/1130/FP, dated 3 July 2012, subject to the following conditions:

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

   2) The development hereby permitted shall be carried out in accordance with the following approved plans: Location Plan; Site Plan; and drawing showing proposed floor plans, elevations and cross-section, dated 3 July 2012.

   3) 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.

   4) No development shall take place until full details of both hard and soft landscape works have 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 means of enclosure; hard surfacing materials; planting plans; schedules of plants noting species, planting sizes and proposed numbers/densities and a timetable for implementation.

   5) All hard and soft landscape works shall be carried out in accordance with the approved details. The works shall be carried out prior to the occupation of any part of the development or in accordance with the programme agreed with the local planning authority. Any trees or plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be

back. The ribbon of development comprises a mixture of commercial and residential uses, including a large motor dealership, and is more substantial than many traditional villages. Moreover, only a relatively small gap, comprising a small field, separates the ribbon of development from the remainder of the village of Spellbrook. Although the village has an approximate focus at a road junction slightly further south, it is mostly strung out along the A1184. The appellant states that properties in the vicinity of the appeal site give Spellbrook as their address.

6. The Framework does not define "village" in the context of paragraph 89 and the Council has not put forward any specific evidence on this point. Whilst not every area of ribbon development should necessarily be regarded as a settlement in its own right, in this case, given the almost continuous pattern of development along the main road, it is reasonable to conclude that the ribbon of development and, consequently, the appeal site, should be regarded as within the village of Spellbrook.

7. Therefore, the proposed development of a single dwelling on this relatively small site should be regarded as limited infill in a village. As such, it would meet one of the exceptions set out in paragraph 89 of the Framework and, in those terms, would not represent inappropriate development within the Green Belt. As noted above, with regard to this matter, Policy GBC1 is not consistent with the Framework. In this respect, the Framework is a material consideration which carries very significant weight and which indicates that, in this case, Policy GBC1 should not be followed.

8. In the light of my conclusion that the proposal does not represent inappropriate development, it is not necessary to go on to consider the question of very special circumstances, which would be needed to justify inappropriate development in the Green Belt.

9. Furthermore, with respect to limited infill in villages, the Framework does not refer to its impact on the openness of the Green Belt or the purposes of including land within it. I acknowledge the Council's concern about such impact. However, if openness is defined as the absence of built development, it is an inevitable consequence that, if the Framework and LP Policy GBC1 allow certain types of development within the Green Belt, they would affect its openness. In this case, the appeal site has a narrow frontage between adjacent built-up plots and does not make a very considerable contribution to the openness of the Green Belt. The appeal scheme would comprise a modestly sized house, garage and driveway. Taking into account the amount of proposed building, the overall area of domestic garden, the area to be retained as a natural habitat, the extent of mature vegetation to be retained and the context, the proposal, and any domestic paraphernalia and movements which would arise from it, would have a limited effect on openness. The proposal would not represent encroachment into open countryside and it would not harm any of the other main purposes of Green Belts, as set out in the Framework. Nor would it harm the appearance of the area or wider landscape.

10. I note that one of a number of previous proposals for the site was dismissed at appeal in 2005. According to an extract from the decision, the Inspector said that "*development on the front part of the appeal site would represent an undesirable consolidation of the existing development on this side of London Road, even if the development were set back*" and went on to say that "*in whatever way the dwelling might be laid out there would be visible harm to the*

Council's suggested wording to make the condition more concise. Having consulted the main parties on the matter, I consider that a condition is necessary to ensure that details of the construction of the access to the site are provided, in the interests of highway safety.

Conclusions

17. I have taken account of all the matters raised, including the views of all interested parties. The proposal would not represent inappropriate development within the Green Belt, in terms of the Framework, and there are no other strong reasons to withhold consent. Therefore, for the reasons set out above, the appeal succeeds.

Nicholas Taylor

INSPECTOR