

3/11/1352/FP – Plot 16-18 Esbies Estate, Station Road, Sawbridgeworth,
CM21 9JE

Due to the length of the Appeal Decision we have not included a copy to this report. If you would like to see a copy please contact Development Management and we will be able to e-mail a copy to you.

3/11/1511/FP – Land north of The Old Coach Road, & being west of 12 Birch Green, Hertford, SG14 2LP

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Appeal Decisions

Inquiry held on 16, 17 & 18 July 2013

Site visit made on 16 July 2013

by Clive Sproule BSc MSc MSc MRTPI MIEnvSc CEnv

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

Decision date: 4 September 2013

Appeal Ref: APP/J1915/A/13/2190695

Tewin Bury Farm, Hertford Road, Tewin, Nr Welwyn, Herts AL6 0JB

- 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 Vaughan Williams against the decision of East Herts Council.
 - The application Ref 3/12/0592/FP, dated 4 April 2012, was refused by notice dated 11 July 2012.
 - The development proposed is retention of an existing area of hard standing for storage of agricultural items only, together with creation of a landscaped edge to the north bank of the river Mimram and associated ecological enhancements.
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Appeal Ref: APP/J1915/A/13/2191177

Tewin Bury Farm, Hertford Road, Tewin, Nr Welwyn, Herts AL6 0JB

- 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 Vaughan Williams, The Williams Bros Partnership against the decision of East Herts Council.
 - The application Ref 3/12/0744/FP, dated 27 April 2012, was refused by notice dated 31 July 2012.
 - The development proposed is erection of an agricultural storage barn which will also house a straw/wood chip boiler for heat generation with PV panels on the south facing roof slope (amended proposal).
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Decisions

Appeal A

1. The appeal is dismissed.

Appeal B

2. The appeal is dismissed.

Procedural matter

3. It was confirmed during the inquiry that there is a typographical error on the application form for the Appeal B scheme and the applicant company name should read 'The Williams Bros Partnership'. This has been used above.

Main Issues

Issues

4. These are: (a) whether the developments proposed would be inappropriate development in the Green Belt; (b) the effect of the developments proposed on the openness of the Green Belt; (c) the effect of the developments proposed on the character and appearance of the locality; and, (d) whether any 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 developments proposed.

Reasons

5. The appeal sites are within the Metropolitan Green Belt on land to the north of the River Mimram and west of Tewin Bury Farm Hotel, which has been developed through various planning permissions since the late 1980s. These planning permissions have enabled the conversion of former farm buildings that include a number of Grade II listed structures. An area of hardstanding lies between the appeal site and existing buildings in the hotel complex. The northern part of this hardstanding is used as a car park, while the southern portion has planning permission for the development of a function building in the approximate location of a former marquee.
6. The appeal sites have previously been used for car parking associated with hotel activities. Enforcement notices in relation to the neighbouring marquee and the current appeal sites' hardstanding were upheld (with variations) at appeal in 2011.¹ However, boundary treatment now clearly separates the appeal sites from the hardstanding between it and the hotel complex. Vehicular access to the appeal sites is via a track that runs through the field to the north and west of the hotel complex. Immediately to the west of the appeal sites is a smaller area of the hardstanding that is not the subject of this appeal.
7. The Statement of Common Ground notes that, in addition to concerns regarding heritage assets, the Council considers the current proposals not to be primarily (or necessary) for agricultural use. The reasons for refusal, and subsequent exchanges during the inquiry, reflected this.

Whether the developments proposed would be inappropriate development in the Green Belt

8. Paragraph 89 of the National Planning Policy Framework ("the Framework") indicates that new buildings are inappropriate in the Green Belt unless they would be for certain purposes, including for agriculture. Paragraph 90 lists other forms of development that are also not inappropriate where they would preserve the openness of the Green Belt.
9. Policy GBC1 of the East Herts Local Plan Second Review April 2007 (LP) is not permissive of inappropriate development within the Green Belt, unless very special circumstances are demonstrated. It indicates that a new building in the Green Belt would be inappropriate unless it would be for certain purposes, such as, for agriculture. It also confirms that an engineering operation in the Green Belt would be inappropriate unless it maintains openness and would not conflict with the purposes of including land within the Green Belt. In these respects LP policy GBC1 is consistent with the Framework.

¹ Appeal refs: APP/J1915/C/10/2122521, 2122522, 2122526 and 2122527

Appeal B

10. The uses of the building have been described by parties to the appeal as: grain drying at harvest time; woodchip drying outside harvest time; straw storage outside harvest time; and, the housing of a straw burner that would provide these drying processes, and also heat the adjoining hotel complex. Exchanges during the inquiry explored the degree to which these processes would require a building, and for it to be in the location proposed.
11. The appellant refers to the number of words used in Council evidence to describe activities in the building that could be considered to be agricultural in nature, as opposed to the non-agricultural heating of the hotel complex. However, the words used in paragraph 6.1 of Mr Kernon's evidence do not seek to communicate the relative scales of those activities in regard to the use of the building; that is the subject of paragraph 6.3.
12. Paragraph 6.3 highlights that the building would only need to be used for grain drying for several weeks per year, and the need for this would be dependent on weather conditions. The potential need for woodchip drying is less clear, and it has not been suggested that the possible timescales would differ significantly from those associated with grain drying, or coincide with them. In the absence of the Appeal B scheme, the farm already has recently constructed drying facilities at its Muspatts Farm site, which uses other fuels to run the process and has sufficient capacity to meet the needs of the current farm, including in regard to woodchip drying.
13. An alternative approach for the indoor storage of straw would be to use land or existing buildings at Muspatts Farm. Straw has been produced on the farm for many years, but evidence to the inquiry failed to confirm how it had been stored in the past. The available land at Muspatts Farm includes that between the existing buildings and hardstandings and School Lane, which has residential development on the opposite side of the road. However, this area of land includes a landscaping bund and foul sewers. Overhead electricity transmission wires are also present next to School Lane. There is no convincing evidence to suggest these features would prevent construction of a further storage building on the site, but they would make the development of the site more difficult. Also, fertiliser is stored on the site and this was noted to be inappropriate close to straw storage with its associated combustion characteristics.
14. There is no doubt that the Appeal B building is genuinely intended to fulfil some agricultural purposes. Reference was made to Part 6 A.1.(j) of the Town and Country Planning (General Permitted Development) Order 1995 - Statutory Instrument (SI) 1995 No.418, inserted by SI 2012 No.748, which indicates the circumstances when a building for storing fuel or waste from a biomass boiler would not be a form of agricultural permitted development. This includes, through Part 6 A.1.(j)(i), storing of waste not produced by the boiler or fuel not produced on the land within the agricultural unit. It makes no mention of where the power would be used. Nevertheless, Part 6 A.1.(j)(i) is set within the context of Part 6 Class A, which is clear that to be a form of permitted development any agricultural buildings or operations must be *reasonably necessary for the purposes of agriculture within that unit*.
15. Section 336 of the Town and Country Planning Act 1990 deals with interpretation. It indicates that agriculture includes *horticulture, fruit growing, seed growing, dairy farming, the breeding and keeping of livestock (including*

any creature kept for the production of food, wool, skins or fur, or for the purpose of its use in the farming of land), the use of land as grazing land, meadow land, osier land, market gardens and nursery grounds, and the use of land for woodlands where that use is ancillary to the farming of land for other agricultural purposes, and "agricultural" shall be construed accordingly.

16. In recent years straw has become a more valuable commodity, which is emphasised by its use as a form of renewable energy. Straw that is used for renewable energy can be stored outside, and this type of temporary stockpile is becoming a characteristic of agricultural landscapes. It is also commonplace to see straw stored within agricultural buildings, which provides greater control over its condition during the year, and its value if sold. This would be especially important if it were to be used for bedding. The Appeal B building would be of a size that reflects the quantities of straw produced on the farm, and most of the building, most of the time, would be used for straw storage.
17. However, this is a farm that does not need significant quantities of bedding straw. The context of the straw storage in the Appeal B scheme is clear. It would be stored for use principally as fuel to provide heat and hot water for the hotel, rather than sold or disposed of by some other means. The main purpose of the straw would be associated with the supply of renewable energy for the hotel, as this would occur throughout the year.
18. The hotel business is noted to employ over 100 people and it is a separate, if parallel, enterprise to the farm. Straw stored for use in the straw burner would not be necessary for the purposes of agriculture on the unit, it would principally be necessary for the operation of the hotel. Accordingly, it has been highlighted that as a matter of fact and degree the building would not be for agriculture, it would be for the supply heat and hot water to the hotel. Within the terms of LP policy GBC1 and paragraph 89 of the Framework, the Appeal B scheme would be inappropriate development in the Green Belt.

Appeal A

19. The appellant indicates that the area of the Appeal A hardstanding has been used for machinery (and other) storage in the past. This is, in part, evident on aerial photography taken in 2001, but the area of storage that is apparent in this image is much smaller than that sought now, and it does not appear to have been on a hardstanding.
20. The Appeal A hardstanding is noted to be for large, bulkier, less valuable items such as flat bed trailers. It is suggested that it is not possible to store these at Muspatts Farm due to the need for traffic circulation and to minimise the visual impact of open storage.
21. However, most of the large vehicle movements associated with grain storage would reasonably be expected to occur in the southern yard area between the grain stores and the site access to Muspatts Farm. The main area of open storage would appear to be to the north of the buildings at Muspatts Farm, although there would also appear to be some capacity next to Churchfield Road. It has not been demonstrated that there is insufficient storage capacity for farm equipment at Muspatts Farm.
22. Moreover, given the landforms, vegetation and layout of the Muspatts Farm site, it is unlikely that the storage of machinery in that location (rather than on

the Appeal A hardstanding) would cause an unacceptable visual impact on local residents. This is especially so as the equipment would be agricultural in nature and viewed within the context of the yard areas and adjacent development. In such circumstances, its storage could be considered to be part of an intrinsically rural street scene.

23. Consequently, the evidence in this case fails to indicate an agricultural need for equipment storage on the Appeal A hardstanding. Indeed, its use takes equipment away from agricultural activities at Muspatts Farm (and the appellants previously considered that it would be inappropriate to reintroduce agricultural activities into the area around the hotel²). Straw bales were also being stored on the hardstanding during the inquiry site visit, but their storage is not dependent on the presence of a hardstanding. In any event, a hardstanding for the storage of straw from this farm would not need to be of the size proposed.
24. An agricultural purpose for the hardstanding was also put to the previous Inspector, although there appears not to have been detailed evidence regarding need.³ She found clearly regarding the effect of this engineering operation on the openness of the Green Belt in this location.⁴ Ground levels seemed to have been altered during construction to enable vehicular access and circulation. Even in the absence of parked cars, the hardstanding areas were considered to be a marked contrast to the adjacent fields and woodland. Illumination of car parks during the hours of darkness added to this. The Inspector noted planting around the hardstandings did not diminish the loss of openness, which in those cases were considered to have been severe and to have resulted in encroachment into the countryside.
25. No convincing evidence has been produced to suggest that the Appeal A scheme hardstanding was substantially completed over four years before the date of the enforcement notices that were the subject of the previous Inspector's decisions, and as a consequence, such a possibility attracts no weight in this case.
26. In March 2011, and following the outcomes of the previous appeals in regard to enforcement notices, the Council granted planning permission (ref: 3/10/1200/FP) for a function barn and retention of hardstanding between the current appeal sites and the hotel complex. Planning permission (ref: 3/11/1225/FP) was also granted for an existing barn to be partly used as a temporary function room for a two-year period. This is reflected in the area of hardstanding within the Appeal A scheme, which I understand to be considerably reduced in comparison to that before the previous Inspector.
27. Aerial photographs confirm the Appeal A site was previously open, vegetated and agricultural land. The lack of public access to the Appeal A scheme reduces the need to illuminate the area, but the effect of its presence and use remains. The presence of the current hardstanding reduces openness and encroaches significantly into the countryside through the extension of the developed area westwards from the (now larger) hotel complex. The presence of the smaller compound area to the west of the hardstanding does not alter this effect, but it serves to emphasise it.

² Paragraph 21 and Footnote 4 of appeal refs: APP/J1915/C/10/2122521, 2122522, 2122526 and 2122527

³ Paragraphs 2.12 and 3.22-3.24 of the appellant's previous appeal statement – at Ms Young's Appendix AY14

⁴ Paragraphs 15-17 of appeal refs: APP/J1915/C/10/2122521, 2122522, 2122526 and 2122527

28. It has not been shown that the hardstanding is necessary for agriculture either as an adjunct to the Appeal B scheme, or in its own right. By failing to assist in safeguarding the countryside from encroachment, its presence clearly conflicts with the purposes of including land within the Green Belt. Within the terms of LP policy GBC1 and paragraph 90 of the Framework, the Appeal A scheme is inappropriate development in the Green Belt.

Conclusion on the first main issue

29. Paragraph 87 of the Framework confirms that inappropriate development is, by definition, harmful to the Green Belt. Paragraph 88 continues by stating that substantial weight should be given to *any* harm to the Green Belt, and this is what the harm by inappropriateness attracts in relation to both Appeal A and Appeal B.

Openness of the Green Belt

30. Framework paragraph 79 is clear that the *fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open; the essential characteristics of Green Belts are their openness and their permanence.*

31. The appellant has referred to an Inspector's comments regarding the effect of agricultural buildings on Green Belt openness on a site elsewhere.⁵ However, the development in that case was found not to be inappropriate and the Inspector's comments were made in that context. That is not the case in relation to these appeals.

32. Both main parties to the current appeals agree that the Appeal B scheme would impact on the open character of the GB. Due to the scale of the building, the effect would be significant and harmful to the openness of the Green Belt.

33. The Appeal A hardstanding has introduced a structure into a location that was previously open, with vegetation, some agricultural storage and a cultivated field. It is unlikely that the Appeal A scheme would have an effect on openness that would be directly comparable to the previously proposed car parking use (with agricultural storage). However, in concluding that the loss of openness had been severe, the Inspector in those cases considered the effect both with and without vehicles being present, and with boundary planting in place that continues to be there.

34. It would appear that the extent of proposed storage on the hardstanding would be much greater than that shown on the aerial photograph taken 2001. The proposed retention of the Appeal A hardstanding would result in a loss of openness. While it would not be as severe as previously determined, it would nonetheless be unacceptably harmful to the Green Belt and contrary to the fundamental aim of Green Belt policy as described by Framework paragraph 79.

35. For the reasons above, this harm also attracts substantial weight against the appeal schemes.

Character and appearance

36. Provided that all three of its criteria are met, LP policy GBC7 is permissive of proposals for agricultural buildings that require planning permission. However

⁵ Appeal decision letter ref: APP/J1535/A/12/2188033

and as concluded above, the Appeal B scheme would not be an agricultural building. Therefore I turn to LP policy ENV1 which expects all development proposals to reflect local distinctiveness and, amongst other things, consider the impact of any loss of open land on the character and appearance of the locality.

37. This is consistent with the *Core planning principle* that seeks planning to, amongst other things, take account of the different roles and character of different areas, protect Green Belts and recognise the intrinsic character and beauty of the countryside. Framework paragraph 81 indicates that planning decisions should seek to enhance the beneficial use of the Green Belt by, for example, retaining and enhancing landscapes, visual amenity and biodiversity.
38. Tewin Bury Farm lies next to the River Mimram (and the associated habitats) within a rolling, agricultural landscape on valley slopes that rise up from the river. Trees and wooded areas are frequent. Infrastructure is present, along with occasional residential development between the settlements in the wider area. Within this landscape the transition between settlements and the openness of the Green Belt countryside around Tewin Bury Farm is a clear and strong characteristic.
39. Both main parties agree that: neither development would impact on the landscape of the Mimram Valley; but the Appeal B building would have an effect on the open Green Belt character of the locality. They disagree as to whether the hardstanding is a visually dominant feature.
40. It is also a *Core planning principle* that planning should not simply be about scrutiny, but instead be a creative exercise in finding ways to enhance and improve places. As noted above, planning permissions have been granted for developments in the area between the appeal sites and the hotel buildings. In doing so, the Council sought to address the needs of the hotel business. The presence of these developments will alter the relationship between the hotel complex and the surrounding Green Belt countryside, and the setting of heritage assets in this location.
41. The previous Inspector's site visit was in December. Views from the B1000 to the south and on the footpath northwards to Tewin are referred to.⁶ She is clear that planting would not have screened the developments in those cases from elevated views.
42. At present vegetation restricts principal public views of the appeal sites from the footpath that crosses through the hotel complex and climbs up the valley side toward Tewin. However, this screening would be reduced by loss of foliage during winter months, and in any event, vegetation can be lost or removed, whereas the Appeal A and Appeal B schemes would be considerably more permanent.
43. The Appeal A scheme includes landscaping along the river bank that would replace non-native species with a wetland mix and introduce improved habitat for water vole. Habitats in this location would also be expected to benefit from the proposed grazing pasture for Longhorn cattle. The appellants' cooperation in these matters would support the objectives of the East Herts Green Infrastructure Plan.

⁶ Paragraph 19 of appeal refs: APP/J1915/C/10/2122521, 2122522, 2122526 and 2122527

44. Retention of the hardstanding, and the construction of the Appeal B scheme would result in a layout that reflects the positioning of the hotel complex within the valley. The *Landscape, Visual and Cultural Heritage Assessment* notes the Appeal B scheme to have considered the height, scale, form and materials of the building in relation to existing development at Tewin Bury Farm, and that is how it would appear.
45. However, due to their scale these developments would noticeably extend development along the river bank. This would significantly detract from the open character of the area, and the landscaping within the Appeal A scheme would not off-set this. The loss of openness would be sufficient to be unacceptably harmful to local character and conflict with LP policy ENV1 and the Framework objectives referred to above. This harm attracts significant weight against the appeal schemes.

Significance of heritage assets

46. Section 12 of the Framework addresses the conservation and enhancement of the historic environment, with paragraph 131 focussing on the determination of planning proposals. It indicates that account should be taken of: the desirability of sustaining or enhancing the significance of the heritage asset and that this should be consistent with its conservation; the contribution assets can make to sustainable communities; and the desirability of new development making a positive contribution to local character and distinctiveness.
47. Buildings at Tewin Bury Farm Hotel include a number of Grade II listed 18th and 19th century detached buildings arranged around a loose courtyard. They include the farmhouse, stable block, a Tithe Barn and former wheel house, and a cow shed and granary. The Council highlights that in this case the significance of the heritage asset is the sum of its character. Characteristic construction materials, the layout in relation to function and the loose arrangement of the listed buildings around the yard were apparent during the site visit.
48. At the inquiry the Council clarified its evidence and confirmed that it was now taking the view the appeal schemes would result in *less than substantial* harm to the heritage assets. Framework paragraph 134 indicates that where less than substantial harm would occur it should be weighed against the public benefits of the proposal.
49. Annex 2 to the Framework provides a Glossary of terms including in relation to the *setting of a heritage asset*, which is stated to be *the surroundings in which a heritage asset is experienced. Its extent is not fixed and may change as the asset and its surroundings evolve. Elements of a setting may make a positive or negative contribution to the significance of an asset, may affect the ability to appreciate that significance or may be neutral*. This reflects the English Heritage document referred to by the appellants.⁷
50. Ground level views from within the hotel complex and in close proximity to the east of it indicate that, in these views, there would be limited visual continuity between the developments proposed and the heritage assets.
51. While the heritage assets (and their immediate setting) are largely contained by development, landscaping and topography, they are not wholly so. The

⁷ The Setting of Heritage Assets (2011) – Appendix B to Mr Surfleet’s proof of evidence

- appellant's evidence is clear that *the wider setting of the farm group is the open landscape of the Mimram Valley where there are direct visual relationships*. It is possible to appreciate the group and its buildings from outside the loose courtyard, even if that is not as comprehensive as when entering the courtyard from the B1000, or the layout communicated by the aerial photographs supplied.
52. More distant views of the buildings in their loose courtyard arrangement would be expected from across and around the Mimram Valley, especially in the absence of summer foliage. The previous Inspector concluded that the developments before her were essentially functional spaces; their design made little reference to the historic setting, and had a negative impact on the significance of the heritage assets.
 53. The Appeal B application's *Landscape, Visual and Cultural Heritage Assessment* concluded that the proposed development would not dominate or compete with the heritage assets, and in regard to the Framework, no loss or harm would occur to them.
 54. The English Heritage guidance sets out *Key Principles for Understanding Setting*. It states that the extent and importance of setting is often expressed by reference to visual considerations, but also highlights that many other environmental factors will also contribute to setting. Included in this are spatial associations and the historic relationship between places, to which public rights of access are not necessary for the contribution the setting makes to the significance.
 55. Reference has been made to the Inspector's reasoning within appeal ref: APP/B1740/A/12/2176509. While the extended setting in that case was defined primarily by a listed water tower's presence in certain longer view points, the nature of the heritage asset and its location within a settlement, would appear to have resulted in an extended setting that differed markedly from Tewin Bury Farm and the Green Belt land around it.
 56. The granting of planning permission for the hardstanding car park and future function barn has modified the extended setting of the heritage assets at Tewin Bury Farm, especially when experienced from the area of the appeal sites, and in more distant views. Also, the proposed PV panels would be in keeping with the context provided by the existing PV panels within the hotel site, and the form and proportions of the building proposed.
 57. Immediate settings and those experienced on the southern, eastern and northern sides of the heritage assets would remain. The appeal proposals would add to the evolution of the extended setting on the western side of the farm, which includes other buildings between the recently permitted development and the listed structures. However, the Appeal A and B schemes would permanently change (and not preserve) the extended setting of the heritage assets at Tewin Bury Farm, principally through significant erosion of the open character to the west. This would amount to less than substantial harm to the significance of the designated heritage assets.
 58. Framework paragraph 140 has been referred to. It indicates that where a proposal conflicts with planning policy, the planning decision should consider whether the future conservation of heritage assets outweighs the disbenefits associated with the policy conflict. Although the Appeal B scheme would be

advantageous for the running of the hotel, it has not been shown that the appeal schemes are necessary to secure the future conservation of the heritage assets at Tewin Bury Farm.

Other considerations

Ecological enhancements

59. Natural England commented on the proposals and raised no objections to them, noting the: Appeal A scheme would not appear to affect any statutorily protected sites or landscapes; and, while features suitable for bat roosting have been recorded in the locality, planning permission could be granted and enhancements should be sought.
60. Proposed ecological enhancements have been set out above. Such enhancements were also before the previous Inspector.⁸ Presently, they form part of the development proposed by the Appeal A scheme. Although the proposed landscape works would not off-set the loss of characteristic openness, the ecological enhancements provide some weight in favour of the Appeal A scheme and meet the biodiversity aims of Framework paragraph 81 and LP policy ENV1.

Renewable energy

61. It is a *Core planning principle* of the Framework that planning should encourage the use of renewable resources, for example, by the development of renewable energy. Framework paragraph 97 states that local planning authorities should *identify opportunities where development can draw its energy supply from decentralised, renewable or low carbon energy supply systems and for co-locating potential heat customers and suppliers*. Framework paragraph 98 continues by highlighting that a demonstration of the overall need for renewable energy developments should not be required, and such applications should be approved if the impacts of it are, or can be, made acceptable.
62. LP policy ENV1 is consistent with this by seeking development proposals to incorporate sustainable initiatives in design, layout and construction that would include matters such as renewable energy. The appeal schemes seek to reduce the use of heating oil at the hotel by 98% and generate 25% of the hotel's electricity requirement through the proposed PV panels. Transport of straw to distant users would also be reduced.
63. Given the relative newness of the drying facilities at Muspatts Farm, it is unlikely that the appellants would wish to replace the existing heat source with a straw burner. Nor has it been shown that it would be likely to be cost effective to provide the hotel with heat and hot water from a remote straw burner at Muspatts Farm.
64. PV panels have already been installed on the temporary function barn. It is one of the closest buildings in the hotel complex to the appeal sites. The straw burner and PV panels within the Appeal B scheme would provide a considerable amount of additional renewable energy capacity, and this attracts significant weight in favour of the proposed development.

⁸ Including paragraph 36 of appeal refs: APP/J1915/C/10/2122521, 2122522, 2122526 and 2122527

65. However, despite the appellant's preference to store all of the straw that would be used to fuel the straw burner within the Appeal B building, it has not been shown that this level of storage would be necessary. In such circumstances a smaller building could be used to provide the hotel with heat and hot water from renewable sources. In arriving at this conclusion, the overall need for renewable energy developments is recognised.
66. Framework paragraph 91 confirms that elements of many renewable energy projects will be inappropriate development when located within the Green Belt, and that very special circumstances may include the wider environmental benefits associated with increased production of energy from renewable sources.

Security

67. Straw stored within a fully enclosed building is more secure, for example in relation to acts of arson, than bales kept outside. Nevertheless, the ability to stack straw safely and monitor sites remotely through CCTV reduces the need for storage facilities to be in close proximity to security staff. In addition, the appeal schemes would place stored materials and equipment in close proximity to people on the hotel complex.
68. During the inquiry various incidents were highlighted as serving to demonstrate the potential for acts of vandalism or arson to occur in the locality. However, the diary entries referred to have not been provided (even in a redacted form), to confirm the nature of the records. Nor is there sufficient supporting evidence in the form of police, newspaper or alternative records to corroborate the statements and indicate that there is a pattern, or increased likelihood, of events in this area. In the absence of these, only some weight can be attributed to the potential for safety and security to be increased through the Appeal B scheme.

The rural economy

69. Framework paragraph 28 confirms that economic growth in rural areas should be supported to create jobs and prosperity by taking a positive approach to sustainable new development. The sustainability of current operations is reflected in the hotel sending all of its waste for recycling. In addition, the farm supplies beef, eggs and water to the hotel, and it is intended to also provide herbs, fruit and vegetables.
70. The Appeal A and B schemes would benefit both of the (farm and hotel) businesses through the utilisation of a renewable energy supply, and in this respect they would be sustainable. Straw from this farm has been valued at £15,000-£18,000 per annum. However, the evidence is not as explicit in regard to the relative importance of the commodity's contribution to the businesses and the rural economy. Accordingly, while the potential benefits of the developments to the rural economy provide significant weight in favour of the appeal schemes, the scale of those benefits is not clear.

Permitted development

71. If the furthest section of existing hardstanding were to remain, its physical separation from the remainder of the farm complex would prevent it having the same elongating effect as a continuous hardstanding. It is suggested that even if planning permission were to be refused for the hardstanding, it could be

provided over a number of years. However, the context of such works is not known and therefore the likelihood of them being a form of permitted development only attracts limited weight in favour of the Appeal A scheme.

Whether any 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 developments proposed

72. Reference has been made to developments on other farms in the locality. However, each application and appeal falls to be determined on its individual merits, within the context of the particular circumstances and planning policies that apply to it. Consequently, other developments do not set a precedent in relation to these cases.
73. If, as is suggested, the straw produced on the farm were to be principally used for renewable energy, it has not been shown that a suitable quality of straw is dependent on internal storage. External storage would result in straw stockpiles for at least for part of the year, but such temporary features would be expected in a rural landscape. Within this context, the evidence fails to suggest that the scale of the proposed building would be necessary for the provision of renewable energy through the burning of straw.
74. Furthermore, PV panels could be installed on other buildings in the locality. In this respect, and while those proposed in the Appeal B scheme would be an efficient use of a southerly facing roof slope, the capture of solar energy would not be dependent on the use of PV panels in this location.
75. There are other matters that weigh in favour of the developments proposed, and that lead to compliance with LP policy ENV1 and the Framework regarding aims for biodiversity. However, the other considerations, including the scope of possible planning conditions, do not clearly outweigh the identified harms. Looking at the cases as a whole, the very special circumstances necessary to justify the appeal schemes have not been shown to exist.
76. As set out above, the Appeal A and Appeal B schemes would not be necessary and sustainable developments of this Green Belt land. They conflict with: LP policy GBC1 and the Framework policies in relation to the Green Belt; and, LP policy ENV1 and the objectives of the Framework in relation to taking account of the different roles and character of different areas, protecting Green Belts and recognising the intrinsic character of the countryside.
77. The developments would fail to preserve the setting of the heritage assets in this location, and the less than significant harm to heritage assets is not outweighed by public benefits from the proposals. This causes the Appeal A and Appeal B schemes to conflict with the policies and objectives of the Framework in relation to the historic environment.
78. No matters have been found that indicate planning permission should be granted in these cases.

Conclusions

Appeal A

79. The Appeal A proposal should be dismissed.

Appeal B

80. The Appeal B scheme should be dismissed.

C Sproule

INSPECTOR

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

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She called

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DOCUMENTS

- 1 East Herts Local Plan Second Review April 2007 - Green Belt and Countryside & Built Heritage Policies – GBC8, GBC9, GBC10, BH4, BH5, BH6, BH7 & BH8
- 2 Suggested conditions
- 3 (a) Plans and photographs indicating the line of sewers and the location of inspection chambers at Muspatts Farm and,
(b) Decision notice 3/07/0127/FP, dated 15 March 2007, regarding a new grain store and landscaping bund at Muspatts Farm
- 4 A plan indicating Thames Water foul sewer drainage plant in an area of Tewin that includes Muspatts Farm
- 5 An e-mail from the Building Control Team Manager at East Herts District Council regarding possible re-routing of drainage
- 6 A document entitled *JO references to "Sustainability Credentials"*, dated 16.07.13, with a print-off of a webpage regarding Tewin Bury Farm Hotel with text entitled *What's happening on The Farm*
- 7 Part 6 – Agricultural Buildings and Operations regarding permitted development, including parts inserted by SI 2012 No.748
- 8 Statement of Common Ground
- 9 Council minutes regarding Appendix 4 of Ms Orsborn's proof of evidence



Appeal Decision

Site visit made on 22 August 2013

by **J D Westbrook BSc(Hons) MSc MRTPI**

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

Decision date: 19 September 2013

Appeal Ref: APP/J1915/A/13/2194736

The Paddocks, 1 Winters Lane, Walkern, Herts, SG2 7NZ

- 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 T Wilson against the decision of East Hertfordshire District Council.
 - The application Ref 3/12/1092/FP, dated 21 June 2012, was refused by notice dated 13 November 2012.
 - The development proposed is the erection of a four-bedroomed dwelling.
-

Decision

1. The appeal is dismissed.

Main Issues

2. The main issues in this case are the effect of the proposed dwelling on:
 - The Rural Area beyond the Green Belt around Walkern, and
 - The character and appearance of the Walkern Conservation Area.

Reasons

3. The appeal site is a parcel of land, some 0.27 hectares in extent, situated to the north of Winters Lane and to the east of High Street. It lies outside of the settlement boundary for Walkern Village and to the north-east of the main part of the village. It also lies within the Walkern Conservation Area (CA).
 4. The site is part of a larger area of land in the ownership of the appellants on the north side of Winters Lane. At the time of my visit the site was an open area of land under rough grass with some small piles of rubble and wooden pallets and what appeared to be a small portable WC. To the east of the site, on land in the same ownership, was a large mound of indeterminate materials covered with plastic sheeting. There was a vehicular access to the site from a point opposite to No 6 Winters Lane, and a second access from a gate close to the junction of Winters Lane and Totts Lane. This second access appears to cross land not shown on the application as being in the ownership of the appellants but leading to the appeal site.
-

5. The appeal site lies to the east of a strip of open land at the rear of the White Lion Public House and has mature and semi-mature planting to the boundary with this land and to the front boundary. The boundary to the north consists of a row of small conifers, and there is currently no boundary to the east between the site and the rest of the land in the ownership of the appellants. The proposal would involve the construction of a four-bedroom detached house on the site, utilising the existing access opposite to No 6 Winters Lane.

Effect on the Rural Area

6. Policy GBC3 of the East Herts Local Plan (LP) indicates that within the Rural Area beyond the Green Belt, permission will not be granted for the construction of new buildings except for a number of specified purposes. The proposal does not fall within any of these purposes. The appellants contend that the local Plan is now out of date and that the National Planning Policy Framework (NPPF) stresses a presumption in favour of sustainable development. They also contend that the appeal site constitutes previously developed land which has a lawful use for storage of building materials. Finally, they contend that the site is within an area of search for housing land as part of the Council's preparatory work in relation to its proposed District Plan. I must assess these contentions in the context of material considerations relating to this proposal.
7. The Council has apparently identified 4 parcels of land in Walkern as search sites for housing land. It would appear that the appeal site is included within one of these 4 sites, although it is not clear whether the identified land is greater than the appeal site which is only 0.27 hectares in extent. Furthermore, from the evidence before me, it is not clear what stage the Council's search has reached or whether the preparatory work has been the subject as yet of any public consultation. In the absence of such information, I can give the preparatory work for the emerging District Plan little weight. In any case development of the site would result in only one dwelling and this would not be significant in the overall housing strategy for the future.
8. I have no reason to suppose that the site does not still have a lawful use for storage of building materials. The appellants contend that such a use would be more harmful to the area than a dwelling. However, there is little evidence of any current significant demand to use the site for storage purposes, and it must therefore remain possible that a use more appropriate to a Rural Area beyond the Green Belt could also be found. At the time of my visit there were small signs within the site advertising it as available for builders' storage or use for horses. I have no evidence before me of any significant marketing efforts concerning the site.
9. The site is relatively close to the heart of the village where there are some local facilities. On this particular basis, it could therefore be considered a sustainable site. However, the NPPF also indicates that account should be taken of the different roles and character of different areas, and I must take into account other issues relating to sustainability, including environmental considerations, and the effect on the CA. These will be considered later, though I note at this point that the main built-up area of the eastern side of village effectively ends at Winters Lane, and that the use of the appeal site for housing purposes would extend the built-up area into what is effectively an area of open countryside.

10. In conclusion on this issue, from the evidence before me I find that the on-going work for the emerging District Plan has not reached a stage where it could be given any significant weight. The Local Plan remains the development plan for the area and the NPPF states that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise. There are no other material considerations before me sufficient to indicate that a decision should be taken other than in accordance with Policy GBC3 of the LP.

Effect on the CA

11. Walkern CA has a largely linear form, including the core of development along High Street from its junction with Benington Road in the south to The Old Rectory in the north. With the exception of a small number of houses fronting the east side of High Street, there is no significant development north of Winters Lane, and the prevailing character of this north-eastern section of the CA is one of open countryside. At an earlier planning appeal into a proposed development of two houses, on a similar plot to the current appeal site, the inspector noted that the site is a key contributor to the open rural nature of the CA at the northern end of the village. I concur with that view. He concluded that the proposed development would be a significant intrusion and encroachment into this area.

12. Although the current proposal is for one dwelling only, it would occupy an isolated parcel of land almost as large as that considered at the earlier appeal, and it would mark an intrusion of the built environment into an open rural area. For this reason, I find that the proposed development would be harmful to the character of the CA, and that it would conflict with Policy BH6 of the LP which relates to new developments in conservation areas.

13. The appellants contend that the house has been designed to reflect the character and appearance of the dwellings on the southern side of Winters Lane. I accept that the appearance of the house would be sympathetic to that of the built environment to the south. However, this does not compensate for the harm that would be caused to the open character of the CA at this point and to the views out from this part of the CA across the open countryside.

Conclusion

14. I find that the proposed dwelling would conflict with Policies GBC3 and BH6 of the LP, in that it would have a harmful effect on the rural area around Walkern and on the character of the Walkern CA. I have taken into account the considerations raised by the appellants but they do not warrant deciding against the provisions of the development plan in this case.

J D Westbrook

INSPECTOR



Appeal Decision

Site visit made on 19 August 2013

by John Felgate BA (Hons), MA, MRTPI

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

Decision date: 17 September 2013

Appeal Ref: APP/J1915/Q/12/2188085

Land at Stocking Hill Lane, Cottered, Hertfordshire SG9 9PY

- The appeal is made under Section 106B of the Town and Country Planning Act 1990 against a refusal to modify a planning obligation.
 - The appeal is made by Mr Rodney Raymond White of Darling Homes LLP, against the decision of East Hertfordshire District Council.
 - The planning permission to which the planning obligation relates is Ref. 3/06/0314/FP, for the erection of 8 elderly persons dwellings with associated car parking, garages and landscape.
 - The planning obligation, dated 23 August 2007, was made between East Hertfordshire District Council and Rodney Raymond White.
 - The application to modify the obligation was Ref 3/12/1485/SV, dated 31 August 2012, and was refused by notice dated 7 November 2012.
 - The application sought to have the planning obligation modified by the removal of the age restriction, which limits the occupation of the dwellings to persons aged over 50 years.
-

Decision

1. The appeal is allowed. The planning obligation, dated 23 August 2007, made between East Hertfordshire District Council and Rodney Raymond White, is modified as set out below, and shall hereafter have effect subject to the following modification:
 - Clause 4.1 of the obligation is deleted.

Preliminary matters

2. The lane where the appeal site is located is referred to by the appellant and the Council as Stocking Hill Lane, but is evidently known to some local residents simply as Stocking Hill. I have used these terms interchangeably.
3. By way of clarification, the appeal relates to the eight existing dwellings numbered 10-17 Stocking Hill (or Stocking Hill Lane), which were constructed pursuant to planning permission 3/06/0314/FP, granted in August 2007.
4. An application for costs has been made by the appellant against the Council. That application is the subject of a separate Decision.

Main issues

5. In the light of the Council's stated reason for refusal, the single main issue in the appeal is the effect on the living conditions of neighbouring occupiers at Nos 1-9 Stocking Hill.

Reasons for decision

6. Nos 1-9 Stocking Hill, which adjoin the appeal site, were built in the early 1990s as a development for elderly persons. Occupation of the dwellings is age-restricted, by a legal agreement similar to that which applies at the appeal site itself. The properties are owner-occupied, and are all understood to be occupied by persons who meet the terms of the agreement, some of whom have been resident at the site since the development was first completed. The Council argues that removing the age restriction on Nos 10-17, as now proposed, would have a harmful impact on residential amenity, due to additional noise and disturbance.
7. I agree that the maintenance of good living conditions is important for all occupiers, including the elderly. That aim is reflected in Policy ENV1(d) of the Local Plan¹, and in the core planning principles of the National Planning Policy Framework (NPPF). However, nothing in either of these documents, or any other guidance that I am aware of, suggests that this should involve separating different age groups. Nor, as far as I know, is there any policy or guidance that advocates different standards of residential amenity for the elderly compared to other occupiers.
8. It is true that the surroundings at Stocking Hill are relatively peaceful and secluded. I agree that it is likely that existing residents value those qualities, and indeed may have chosen to live there for that very reason. It may well be that, in general terms, younger occupiers would be more likely to include families with children, and would probably tend to generate a higher level of activity, including more vehicle movements. In these respects, I accept that removing the age restriction on the appeal site might be expected to result in some increase in noise. But that does not mean that the noise and disturbance would be so great as to result in unacceptable living conditions, even in an otherwise quiet location.
9. In addition, whilst the development at the appeal site is described as being for elderly persons, the existing agreement already permits occupation by anyone over 50 years old. At that age, most people nowadays are likely to be still working, and many will still have families living with them. Therefore, even if the agreement remained unaltered, there would be nothing to prevent the dwellings from being occupied by persons who are far from elderly. The same applies to Nos 1-9; when the existing properties within that development change hands, there is nothing to stop them from being occupied by 50-year olds, whose lifestyles might well be different from those of some current residents. Consequently, I am not convinced that the removal of the age restriction at the appeal site would be likely to make any material difference to the noise levels experienced by adjoining residents.
10. I note the concerns of one neighbour with regard to noise from dogs, but there is no reason to think that younger occupiers would be more likely to keep pets than those who could occupy the development under the existing agreement.
11. In all the circumstances, I can see no proper reason to anticipate that the removal of the age restriction, as now proposed, should have any significant adverse effect on the occupiers of other nearby properties, including those at Nos 1-9 Stocking Hill.

¹ East Herts Local Plan Second Review, adopted April 2007

Other matters

Effects on the supply of housing for older people

12. I have given careful consideration to the points made by those who suggest that the appeal properties may still be needed for their original purpose of housing the elderly. I appreciate that, when the development was first proposed, the fact that it was to be for elderly people was perceived as an important benefit. I agree that, if there were still a need for the dwellings for that purpose, this would be a relevant consideration in the appeal.
13. However, Cottered is a small rural village. Although it may once have had a better range of facilities, it now has very few, and bus services are infrequent. As such, it seems to me that this is not now a particularly suitable location in which to provide housing for the elderly, except those with local connections or a special need to be there, for family or other reasons. Given the village's size, and even with the demographic trend towards an ageing population, such persons are likely to be fairly few in number. This is confirmed by the Council's most recent surveys, and the officers' analysis of current housing register applicants, all of which suggest that there is little need for elderly persons' accommodation in this location. The current Local Plan also gives no support to such provision in Cottered or similar settlements.
14. In addition, it is hard to disagree with the appellant's contention that the appeal site is a far from ideal location for any elderly persons with mobility difficulties, being outside the village, and accessed from a narrow lane with no footways. There also appears to be nothing about the design or layout of the buildings themselves that makes them especially suitable for occupation by elderly people. The development would clearly not provide 'extra care' in line with the support model now preferred by the Council.
15. I accept that there might well be a potential demand from other persons of over 50, either from outside the locality, or from those in good health who do not yet require accommodation aimed specifically at the elderly. But any general demand of this type would not amount to a recognised need in planning terms.
16. Taking everything into account, I can see no evidence that the removal of the age restriction would cause any significant harm in terms of the supply of housing for older people, either in the local area or in the District as a whole.

Effects on policies relating to development in the countryside

17. I also appreciate the concerns of those who suggest that relaxing the age restriction would undermine the well established policies of restraint on development in the countryside. I fully accept that, if the development had not been proposed as being for the elderly, planning permission for housing would probably never have been granted at all on a site such as this, outside the village.
18. However, the original planning permission dates back to more than 25 years ago. Since then, the site has changed hands several times. The present development is said to have been built around 4 years ago, and apparently stood completely empty for about the first two years. I also understand that four of the dwellings still remain empty now. I accept that there is little evidence as to their marketing, but it seems unlikely that these units would

have been allowed to stand empty for such a length of time if qualifying purchasers or tenants could have been found.

19. If there was any reason to suspect that the planning system had been deliberately manipulated during this process, I would agree that removing the age restriction could be seen as undermining policy. But, given the length of time over which these events have unfolded, the above history does not suggest any such abuse.
20. I can understand why some local people may see the granting of the original permission as having set an unfortunate precedent. However, the development now exists. Removing the occupancy restriction as now proposed would not increase the impact that the dwellings already have on the countryside. Nor could any harm already caused in that respect be undone by refusal.

Suitability for family occupation

21. I accept that the dwellings in the appeal development have mostly quite small gardens. However, given their rural location and the openness of the surroundings, in this particular case I do not consider that they would be unsuitable for occupation by younger persons, including families. In any event, I note that the majority of the units have only two bedrooms, and this is likely to limit the size of families that could occupy them.
22. Although some respondents question the sufficiency of the car parking, it appears that a total of 17 spaces are available. In my view this seems likely to be adequate.

Walkern appeal decision

23. In August 2010, an appeal was determined relating to a site at Finches End, Walkern, in East Hertfordshire District. The appeal concerned an application to remove the age restriction (over 55 years) that applied to four units out of a development of 18 dwellings. The Inspector found no policy basis for the retention of the obligation. The appeal was allowed and costs were awarded against the Council (Ref. APP/ J1915/Q/10/2128085).
24. Whilst every appeal must be decided on its own merits, there are some clear similarities between that case and the present one, particularly in terms of the rural location and relevant policy background. In the present case, the lack of any need for elderly persons' housing, and the lack of any policy support for retaining the age restriction, are not disputed by the Council. In the circumstances, these matters strengthen the case in favour of the present appeal.

November 2011 committee resolution

25. In November 2011, a breach of the age restriction at one of the dwellings on the appeal site was reported, but the Council's planning committee resolved not to take enforcement action. I appreciate that this decision may have had to take account of other factors, including the costs of legal proceedings, the prospects of such an action succeeding, and the effects on the occupiers. But nonetheless, the Council has given no explanation for what appears to be a different approach to the present appeal.

26. In the circumstances, there is some force in the appellant's contention that this demonstrates that the removal of the age restriction would not cause any significant harm. Again, this seems to me to reinforce the conclusions that I have drawn, based on the issues and considerations set out above.

Conclusion

27. For the reasons explained above, I conclude that the age restriction on the occupancy of the appeal properties is not needed for the purpose of protecting living conditions at neighbouring properties in accordance with Policy ENV1. And in any event, this was clearly not the reason why the age restriction was applied to the development in the first place, and would thus not justify retaining it now.

28. In the light of the other matters discussed above, I conclude that the planning obligation in question no longer serves any worthwhile purpose. The appeal therefore succeeds, and the obligation is modified accordingly.

John Felgate

INSPECTOR



Costs Decision

3

Site visit made on 19 August 2013

by **John Felgate BA (Hons), MA, MRTPI**

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

Decision date: 17 September 2013

Costs application in relation to Appeal Ref: APP/J1915/Q/12/2188085 Land at Stocking Hill Lane, Cottered, Hertfordshire SG9 9PY

- The application is made under the Town and Country Planning Act 1990, sections 78, 106B, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Mr Rodney Raymond White of Darling Homes LLP, for a full award of costs against East Hertfordshire District Council.
 - The appeal was against the Council's refusal to modify a planning obligation relating to planning permission Ref. 3/06/0314/FP, for the erection of 8 elderly persons dwellings with associated car parking, garages and landscape.
-

Decision

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

Reasons

2. Circular 03/2009 advises that costs may be awarded against a party who has behaved unreasonably and thereby caused another to incur unnecessary expense in the appeal process. Paragraph B16 of the Circular states that reasons for refusal must be relevant to the application, and must be capable of being substantiated. Paragraph B17 makes it clear that vague or generalised assertions, unsupported by evidence, may result in a costs award. B20 advises that where officers' advice is not followed, the authority will need to show reasonable planning grounds for its decision. B29, amongst other things, advises authorities against persisting with objections where a previous appeal decision has shown the proposal to be acceptable.
3. In the present case, the application to modify the existing agreement was recommended by the planning officer for approval. Whilst the planning committee was within its rights to reject that advice, it should have ensured that its decision was based on sound planning grounds. Instead, the committee chose to refuse the application based on a reason relating to the alleged impact on neighbouring properties. But that refusal reason was little more than a vague and generalised assertion, of the kind that the Circular expressly warns against. The Council's subsequent appeal statement was clearly unable to add anything else of any substance. Consequently, in terms of the merits of the case, it seems to me that there was never likely to be any basis on which the Council's decision, based on this single refusal reason, could have been supported on appeal.
4. And in addition, the issue of the effects on neighbours had nothing to do with the original purpose of the obligation. The refusal was therefore based on a reason which was irrelevant to the application.

5. The appeal decision relating to Finches End, Walkern, related to an application to modify a similar obligation, in very similar circumstances. The parallels were made clear to the planning committee in the officer's report. In the light of that decision, and the officer's advice, it should have been clear that there was very little prospect of the Council being able to successfully defend a refusal in the present case, without addressing the issues of the lack of need and lack of relevant policies.
6. I accept that the Council's case was based on Policy ENV1, which is part of the adopted development plan. But for the reasons explained elsewhere, the Council failed to establish any significant conflict with that Policy. I acknowledge that the Council's refusal was supported by the Parish Council and some local residents. But that does not justify a decision which could not be substantiated on planning grounds.
7. For these reasons, I conclude that in reaching its decision to refuse the application, the Council acted unreasonably, and thereby caused the appellant the expense of an unnecessary appeal. A full award of costs is therefore justified.

Costs Order

8. 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 Mr Rodney Raymond White of Darling Homes LLP, the costs of the appeal proceedings described in the heading of this decision.
9. The applicant is now invited to submit to East Hertfordshire District Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount. In the event that the parties cannot agree on the amount, an application may be made for a detailed assessment by the Senior Courts Costs Office. A guidance note on how to apply for such an assessment is enclosed.

John Felgate

INSPECTOR



Appeal Decision

Site visit made on 22 August 2013

by **J Westbrook BSC(ECON) MSC PGCE MRTPI**

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

Decision date: 29 August 2013

Appeal Ref: APP/J1915/D/13/2201187

21 Bishops Road, Tewin, WELWYN, Hertfordshire, AL6 0NR

- 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 Nick Moore against the decision of East Hertfordshire District Council.
 - The application Ref 3/13/0171/FP was refused by notice dated 12 April 2013.
 - The development proposed is a single-storey rear extension and alterations to the existing dwelling, including the conversion of one garage to a TV room and alterations to the roof and fenestration.
-

Decision

1. The appeal is dismissed.

Main issue

2. The main issue in this case is whether the proposed extension represents inappropriate development in the Green Belt and, if so, whether the harm to the Green Belt, and any other harm, is clearly outweighed by any other considerations

Reasons

3. No 21 Bishops Road is a detached house on a large plot on the northern side of the road. The property lies within the Green Belt. It is a wide-fronted house with two integral garages. The plot slopes down from south to north such that the rear garden has a terraced nature and there is a number of large mature trees around and within the garden.
4. The proposed development would involve the conversion of one of the garages to a TV room and a range of alterations to the fenestration and roofs. None of these matters are in dispute and the Council has recently granted permission for alterations to the house similar to those currently proposed. At the time of my site visit alterations were in progress. The current proposal would also, however, involve the construction of a single-storey rear extension to the house, which would take the form of a conservatory to the rear of the existing sitting room.
5. The original house, as constructed in the 1960s, had a floorspace of approximately 140 sq metres. Since then it has been extended a number of times such that the current floorspace is apparently some 260 sq metres. The

proposed extension would add a further 20 sq metres, and this would result in a cumulative increase to the original floorspace of around 100%. This would be a disproportionate addition over and above the size of the original building and would represent inappropriate development which would, by definition, be harmful to the Green Belt. I accord this harm substantial weight, in accordance with advice in Paragraph 88 of the National Planning Policy Framework.

6. The appellant has recently received a Certificate of Lawful Development for a single-storey rear extension to the house. This is a fall-back situation which I must take into account. However, this extension would have a floorspace of only some 12 sq metres. In view of the significant additions to the original dwelling that have already taken place, I find that the extra floorspace that would result from the current proposed extension would still represent inappropriate development.
7. The appellant also contends that the extension would utilise the space currently occupied by a paved patio area, and that the conservatory would not be readily visible from the road or from surrounding gardens. This may be the case, but the conservatory would add built form to the area and would be detrimental to the openness of the Green Belt, particularly given the scale of the building plots in the area and the resultant openness of the surroundings.
8. Finally, the appellant indicates that he has only recently purchased the property and that he needs the additional space for his family. I sympathise with his situation, but this is not a reason to cause harm to the Green Belt by virtue of further additions to a dwelling that has already been extended to a substantial degree, with resultant detriment to openness.
9. In conclusion, I find that the considerations put forward by the appellants do not clearly outweigh the harm to the Green Belt that would be caused by the proposal, and that there are, therefore, no very special circumstances to justify this inappropriate development. The proposal would also conflict with policies GBC1 and ENV5 of the East Herts Local Plan Second Review, which relate to extensions to buildings in the Green Belt and extensions to dwellings outside of settlements.

J Westbrook

INSPECTOR



Appeal Decision

Site visit made on 19 August 2013

by John Felgate BA (Hons), MA, MRTPI

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

Decision date: 6 September 2013

Appeal Ref: APP/J1915/A/13/2197187

32 Cannons Meadow, Tewin, Welwyn, Herts AL6 0JU

- 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 C & S Hopkins against the decision of East Hertfordshire District Council.
 - The application Ref 3/13/0194/FP, dated 4 February 2013, was refused by notice dated 2 April 2013.
 - The development proposed is the conversion and extension of the existing detached garage to form an annexe, including a pitched roof to replace the existing flat roof.
-

Decision

1. The appeal is allowed, and planning permission is granted for the conversion and extension of the existing detached garage to form an annexe, including a pitched roof to replace the existing flat roof, at 32 Cannons Meadow, Tewin, Welwyn, Herts AL6 0JU, in accordance with the terms of the application Ref: 3/13/0194/FP, dated 4 February 2013, 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 building to which this permission relates shall be occupied only as an annexe to the existing dwelling No 32 Cannons Meadow, and shall be used only for purposes ancillary to the residential use of that dwelling. At no time shall the new building be used as a separate independent dwelling.
 - 3) No development shall take place until samples of the proposed roof tiles have been submitted to the local planning authority and approved in writing, and the roof shall be constructed using only these approved tiles. The external walls shall be constructed in brickwork to match that used on the existing building.
 - 4) The development hereby permitted shall be carried out in accordance with the submitted Drawing No 11035-P001-B.

Main issues

2. The main issues in the appeal are:
 - Whether the proposal should be treated as seeking to create a separate dwelling rather than an annexe;
 - The effects on the character and appearance of the area; and
 - Whether the proposed development would provide satisfactory living conditions for its future occupiers.

Reasons for decision

SECRET

Whether the proposal should be treated as a separate dwelling

3. The Council's refusal notice asserts that the proposed development would be tantamount to the provision of a separate dwelling, rather than an annexe. The officer's report goes further, by stating that the proposal has been considered on the basis that it is in fact for a separate independent dwelling. However, that is not the use that has been applied for. The appellants are entitled to a decision based on the application that has been made, which is for an annexe, as set out above. Accordingly, I must make a decision on that basis.
4. I appreciate that the Council is concerned about the potential for the building to be used separately, either now or in the future, and the possible effects of such a use. But that would be a materially different use, and would therefore be subject to planning control. And in any event, the use of the building as a separate dwelling could be controlled by condition.
5. It is true that the building is at the far end of the garden from the existing house, and with the extension and conversion works now proposed, it would provide all the facilities necessary to enable it to be used as a separate dwelling. But the distance would be no more than about 12-15m. In my view, these considerations would not prevent the building from being used as an annex, ancillary to the main dwelling
6. I have therefore considered the appeal proposal on the basis that the proposed development would be used as an annexe as proposed, and not as a separate, independent dwelling.

Effects on the area's character and appearance

7. The Council objects to the proposed building's scale, form and design. However, the greater part of the building already exists. The proposed extension would add 4m to its length, and the new roof would add just over 1m to its height, but in the context of the spacious plot in which it stands, these additions would be relatively small. The change to a pitched roof would alter the building's form somewhat, but the roof would be well-proportioned in relation to the building itself, and its shape would be in keeping with the surrounding houses. The sizes and positioning of the new window and door openings would be reasonably well co-ordinated, and would create an acceptable composition. The proposed materials are brick and tile, which are materials widely used in the surrounding residential area, and the details of these could be the subject of conditions.
8. I accept that these proposed alterations would result in a building whose appearance would be somewhat akin to a small bungalow. However, I can see no reason why that should make the scheme unacceptable in this residential area. Overall, the resulting building would still be modest and unobtrusive in size, and unobjectionable in its design.
9. I note the Council's argument that the proposed development would conflict with the prevailing layout and pattern of development in the area. However, this seems to be based on the contention that it would be a separate dwelling. As an ancillary facility to the existing property, the new annexe would not require any subdivision of the existing plot, or the erection of any new

boundary treatments. It would therefore not affect the size of the existing plot, and nor would it require any amenity space of its own. Given the size of the existing plot, more than adequate amenity space would remain for the existing dwelling. I accept that there are no similar annexes in the area, but that does not mean that the development now proposed would cause harm.

10. Consequently, I can see no significant harm that would be caused to the area's character or appearance. In this respect, I find no conflict with any of the relevant provisions of Local Plan¹ Policy ENV8 relating to residential annexes, nor with Policies ENV1 relating to design quality, or ENV5 and ENV6 relating to domestic extensions.

Living conditions of future occupiers

11. The proposed annexe would provide a living room, bedroom, kitchen and bathroom. Although these would be compact, they would provide around 35 sq m of living accommodation in total. And whilst the annexe would not have any dedicated amenity space, its occupants would have access to the existing property's extensive garden. I can therefore see no reason why the development should not provide adequate living conditions for its occupants.

12. In these respects, the annexe's size would be compatible with the occupants' likely requirements, as required by Policy ENV8.

Other matters

13. I note that Policy ENV8 also states that residential annexes will be permitted where, amongst other things, the accommodation forms an extension to the main dwelling, and is capable of being used as an integral part of the dwelling. But that does not mean that other types of annexe must be refused.

14. I also note the Council's reference to Local Plan Policies HSG7 and OSV1. But these are directed at new dwellings rather than annexes.

15. With regard to parking, it appears that the existing parking area can accommodate about three vehicles. This seems likely to be sufficient for the normal requirements of both the existing dwelling and the annexe. In the event that additional space may sometimes be needed, there seems no reason why some parking should not take place on the road, since this part of Cannons Meadow has properties fronting one side only.

16. I appreciate the concerns of the adjoining occupiers with regard to the effects on their privacy and daylight. But since the proposed building would be single storey, its effects in these respects would not be unacceptable. I note that there is an on-going boundary dispute, but this is not a planning consideration. In any event, any ownership rights that may exist would not be affected by the grant of planning permission.

17. I have taken account of the evidence presented by the appellants regarding their need for accommodation for an elderly relative, Mrs Cavill. I have no reason to doubt this evidence. I agree that there is no evidence that the need in question could not be met in some other way. However, since I have found no harm arising from the proposed development, there is no need for that point to be proved. In the circumstances, the potential benefit to the family

¹ The East Herts Local Plan Second Review, adopted April 2007

carries some weight, and reinforces my conclusion that the development should be permitted.

Conditions and conclusion

18. For the reasons explained above, it seems to me that the proposed development would accord with the relevant provisions of the development plan. Having regard for the advice in the National Planning Policy Framework, and particularly paragraph 14, I conclude that planning permission should be granted.
19. With regard to the conditions proposed by the Council, I agree that conditions relating to materials, and limiting the use of the building to use as an annexe, are necessary and reasonable, for the reasons given elsewhere in this decision. A condition requiring adherence to the approved plans is also necessary, for the avoidance of doubt, and in the interests of proper planning. However, the suggested condition relating to boundary treatments is not necessary, because no new boundaries are proposed or required. And a restriction on new accesses to the highway is unnecessary, since there is no evidence that such a restriction is essential for reasons of highway safety, or for any other reason.
20. Having taken into account all the other matters raised, I conclude that permission should now be granted, subject to the conditions stated. The appeal is therefore allowed.

John Felgate

INSPECTOR