

Appeal Decision

Site visit made on 3 December 2013

by **Graham M Garnham BA BPhil MRTPI**

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

Decision date: 31 December 2013

Appeal Ref: APP/J1915/A/13/2200789

35 Burnham Green Road, Welwyn, Hertfordshire, AL6 0NL

- 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 P Smith against the decision of East Hertfordshire District Council.
 - The application Ref 3/13/0428/FP, dated 12 March 2013, was refused by notice dated 13 June 2013.
 - The development proposed is demolition of existing and erection of a replacement dwelling.
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Application for Costs

1. An application for costs was made by Mr P Smith against East Hertfordshire District Council. This application is the subject of a separate decision.

Decision

2. The appeal is dismissed.

Main Issues

3. I consider that these are:
 - (1) Whether the proposed development would be inappropriate development for the purposes of the National Planning Policy Framework and development plan policy;
 - (2) Whether harm would arise with respect to the openness, character and appearance and purposes of the Green Belt; and
 - (3) Whether any harm arising from inappropriateness or any other harm would be clearly outweighed by other considerations and, if so, whether very special circumstances will exist such as to justify the giving of planning permission.

Reasons

4. The appeal site is in a countryside area characterised by large residential plots accommodating substantial houses in spacious and well-wooded grounds. The
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existing house dates from 1924. It is quite small, vacant and in a neglected condition. There is a recent planning history of attempts to replace or enlarge it. These include the dismissal of appeals in 2009 and 2010. On 24 March 2011, planning permission was obtained for 2 storey extensions (ref 3/11/0239/FP).

First main issue – whether there would be inappropriate development

5. The appeal site is in the Green Belt. Paragraph 87 of the National Planning Policy Framework says that “as with previous Green Belt policy, inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances”. Paragraph 89 says that the construction of new buildings in the Green Belt should be regarded as inappropriate development. The specified exceptions to this stipulation include “the replacement of a building, provided the new building is in the same use and not materially larger than the one it replaces”.
6. The appellant has not challenged the local planning authority's figures comparing the size of the proposed building with that which it would replace. The new building would be over twice the size of the present house, including being 6 metres wider and 8 metres greater in depth. It would thus be materially larger than the one it would replace. Against this, the appellant argues that this would not represent inappropriate development when account is taken of the approved enlargements plus permitted development. I agree that this is a material consideration, and I take it into account in the balancing exercise regarding very special circumstances (paragraph 14 below). However, the building that could be built is not the one that is to be replaced. That, it is accepted, is materially smaller than what is proposed.
7. The local development plan pre-dates the Framework. Policy GBC1 in the East Hertfordshire Local Plan Second Review (2007) says that the construction of new buildings in the Green Belt will be inappropriate, unless for certain specified purposes. These include replacement dwellings in accordance with Policy HSG8. Among other things, policy HSG8 says that the volume of the new dwelling should not be materially larger than the dwelling to be replaced, plus any unexpended permitted development rights. I have not seen details of the unexpended permitted development rights to extend the present house. The Council points out that, at the time policy HSG8 was adopted, permitted development would only allow an increase of 70 cubic metres. The purpose of the policy is thus intentionally restrictive, in keeping with the established thrust of Green Belt policy.
8. There would be no change of use. However, the evidence before me shows that the proposed house would be materially larger than the one it would replace. On this basis I conclude that the proposal would be inappropriate development for the purposes of the National Planning Policy Framework and the development plan policies referred to. As such it would be harmful by definition to the Green Belt.

Second main issue – effect on the Green Belt

9. The new house would be significantly larger than the one it would replace. Nonetheless, I consider that it would be readily accommodated within the large plot. It would be of a design and scale similar to many houses in the vicinity. It

would be well absorbed into the landscape by the existing trees, which could be protected by planning conditions and an existing Tree Preservation Order. The replacement house would be closer to the side boundaries, but there would still be clear open space between adjoining buildings. There would be no material harm with respect to the purposes of Green Belts as set out in paragraph 80 of the Framework.

10. In so far as openness means the absence of buildings, the enlarged structure would have a negative effect on the openness of the Green Belt.
11. The Council says that additional weight against the proposal arises from a requirement in policy HSG8 that replacement dwellings in the Green Belt will be considered where the original dwelling is of poor appearance or construction not capable of retention, and not contributing the character and appearance of the surroundings. I consider that the existing house, although in poor condition, could be retained and contribute positively to the character or appearance of the surroundings. However, this aspect of local Green Belt policy goes further than the Framework. A colleague Inspector considered that this part of policy HSG8 would be in a material degree of conflict with the Framework in this respect, and therefore placed very little weight on it (ref APP/J1915/A/13/2190182, dated 24 June 2013). I consider that this aspect of local policy would not give rise to further material harm to the Green Belt.
12. I conclude that the proposal would give rise to limited harm with respect to the openness of the Green Belt but would have no materially harmful effect on the rural qualities of the surrounding area or the purposes of the Green Belt.

Third main issue – whether very special circumstances exist

13. Decision makers are required to ensure that substantial weight is given to any harm to the Green Belt. I have found that there would be harm by way of inappropriateness, to which would be added limited harm with respect to the openness of the Green Belt. The very special circumstances under which planning permission may be given will only exist if this harm is clearly outweighed by other considerations. This balancing process normally requires that the proposal should give rise to positive benefit, not just an absence of harm.
14. The appellant argues that a building very similar in size and appearance to that being proposed could be formed by implementing the extensions permitted in 2011 and adding to them permitted development at the rear. The submitted drawings illustrate this. In these terms, there would be a fall-back position with no different effect on the Green Belt than the appeal proposal. Moreover, it is said that demolition and rebuilding would enable a house to be created that would achieve Code 6 of the Code for Sustainable Homes scheme. The balance of building sustainability is said to favour redevelopment, as this high standard of energy efficiency could not be achieved as cost-effectively by retro fitting and extending the existing building. However, I have not seen comparative data to substantiate this claim.
15. For Green Belt harm to be clearly outweighed by other considerations normally requires that these considerations include positive benefit arising from a proposal, not just an absence of harm. The appellant describes achieving Code 6 as being “ground breaking” and unique in the district. I agree it would

be exceptional, and potentially an exemplar to other developments. However the intention to achieve this standard is contained in the Design and Access Statement and the appeal representations. It is not on the drawings or on the application form. I do not have before me any mechanism to ensure that such an outcome would result if a planning permission was to be given. A planning condition or a unilateral undertaking might achieve this, but none has been put forward.

16. I find that there is an absence of assured benefit to weigh in favour of the proposal. As a result, I consider that the harm by way of inappropriateness and the limited harm with respect to the openness of the Green Belt would not be clearly outweighed by other considerations. I conclude therefore that very special circumstances have not been demonstrated to exist.

Overall conclusion

17. The replacement building would site comfortably in its context. However, the lack of certainty about the sustainability credentials of the new-build approach means that there is an absence of significant public benefit to weigh in favour of the proposal. Bearing in mind that substantial weight is to be given to any harm to the Green Belt, I conclude overall and on balance that very special circumstances would not exist such that planning permission could be given for inappropriate development in the Green Belt.

18. Planning permission should therefore be withheld and I dismiss the appeal.

G Garnham

INSPECTOR

Costs Decision

Site visit made on 3 December 2013

by Graham M Garnham BA BPhil MRTPI

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

Decision date: 31 December 2013

Costs application in relation to Appeal Ref: APP/J1915/A/13/2200789 Land at 35 Burnham Green Road, Welwyn, Hertfordshire, AL6 0NL

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Mr P Smith for a partial award of costs against East Hertfordshire District Council.
 - The appeal was made against the refusal of planning permission for demolition of existing and erection of a replacement dwelling.
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Decision

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

Reasons

2. Circular 03/2009 advises that, irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.
 3. The application for an award of costs is in relation to the Council's second reason for refusal. This was: "The Local Planning Authority is not satisfied that the existing dwelling is of such poor appearance or construction that it is not capable of repair and retention. It is considered that its retention and repair could be achieved in order to provide a satisfactory and acceptable standard of accommodation. The demolition and replacement of the dwelling is not therefore justified and would be contrary to Policy HSG8 of the East Hertfordshire Local Plan Second Review, April 2007".
 4. Policy HSG8 concerns Replacement Dwellings in the Green Belt and Rural Area Beyond the Green Belt. It is permissive of replacements "in circumstances where the original dwelling is of poor appearance or construction not capable of retention, and not contributing to the character and appearance of the surroundings in the Green Belt". This policy came under scrutiny in the appeal decision referred to in paragraph 11 of my appeal Decision (this was ref APP/J1915/A/13/2190182). The Inspector then noted that the phrase I have quoted is the "starting point" of the policy. She considered that it is considerably more restrictive than the wording in paragraph 89 of the National Planning Policy Framework, concerning replacement buildings in the Green Belt,
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amounting to a material degree of conflict with the Framework. I had no reason to take a different view, and I placed very little weight on this part of the policy.

5. The sequence of events is important. The Council's decision is dated 13 June, and the appeal form is dated 27 June 2013. The previous Inspector's decision is dated 24 June. The Council could not have taken its contents into account at the time of its decision. However, I consider that it should have done so by the time it submitted the Questionnaire (29 July) and certainly by the time of its Statement (27 August). In the event, the appellant had to rebut the second reason for refusal in more detail, and it fell to him rather than the local planning authority to draw my attention to that appeal.
6. I take the Council's point that local policies should guide how the presumption in favour of sustainable development is to be applied locally (paragraph 15 of the Framework). Moreover, the reasoning behind Policy HSG8 seems to be that "dwellings capable of economic repair should, in most cases, be retained in the interests of sustainability" (paragraph 3.14.2 of the Local Plan). The officer report giving rise to the decision considered at length the sustainability credentials of the proposal. It came to the view that the sustainability benefits of the scheme would not, on balance, justify a grant of planning permission. The report in addition acknowledged that Policy HSG8 is "now somewhat at odds with national policy in the NPPF".
7. Issues of sustainability are at the heart of the Framework, and the justification for Policy HSG8 is consistent with this. However, its particular application in a Green Belt policy goes further than national policy. Whether or not this is acceptable would need to be tested in the examination of an up to date policy document. Without this one cannot be sure that the policy is consistent in Green Belt terms with national policy, giving rise to the risk of an award of costs pursuant to paragraph B29 in the Annex to the Circular.
8. At the very least, I consider that it would have been reasonable to expect the Council explicitly to acknowledge the implications of the previous decision as soon as it was able to. This would have been before the appellant needed to submit his Statement. By not doing so the task of researching and presenting this matter fell to the appellant. I consider that, as a result, he incurred unnecessary expense in preparing the parts of his Statement and Final Comments that relate to this matter.
9. I therefore 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, as identified in the previous paragraph.

Costs Order

10. 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 P Smith, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in researching and presenting his case in relation to the previous appeal decision ref APP/J1915/A/13/2190182, dated 24 June 2013.

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

G Garnham

INSPECTOR



Appeal Decision

Site visit made on 16 December 2013

by Thomas Shields DipURP MA MRTPI

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

Decision date: 6 January 2014

Appeal Ref: APP/J1915/D/13/2207994

Hogs-Bog, Acreman Street, Little Hadham, Ware, Herts, SG11 2HD.

- 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 David Rix against the decision of East Hertfordshire District Council.
 - The application Ref 3/13/1126/FP, dated 24 June 2013, was refused by notice dated 29 August 2013.
 - The development proposed is a two storey side and rear extension and new detached garage.
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Decision

1. The appeal is dismissed.

Main Issue

2. The main issue in this appeal is the effect of the proposal on the character and appearance of the existing building and the area.

Reasons

3. The Council has no objection to the proposed single storey elements to the rear of the dwelling or to the replacement of the existing garage with a new one, and I have no reason to disagree with that view. The Council's primary concerns therefore relate to the two storey side and rear elements of the proposal.
4. Hogs-Bog forms one of two semi-detached houses situated in an elevated position in an attractive rural location off Acreman Street, being a narrow single track lane.
5. It is not disputed between the parties that the proposal would cumulatively result in an increase in floor area of approximately 110%. Taken in isolation, this percentage increase in floor area is unlikely in my view to be representative of a proportionate increase over the size of the original dwelling, as required by policies GBC3 and ENV5 of the East Herts Local Plan Second Review (2007) (LP). However, floor area is not the only method of assessing size, and I note that the adjoining property has been granted planning permissions which increase its floor area by 120%. In my view, each case must be considered in its context and on its own merits.

6. The proposed two storey extension would be slightly set back from the principal elevation fronting the lane, and stepped down from the main roof ridge, it would project outwards to the south-east by approximately 4.7 metres and have an overall depth of just over 10 metres.
7. To the south-east of the appeal site the land level drops steeply to an earth bank before merging with the descending contour of the lane. Approaching the property up the incline of the lane from the south-east direction, I consider the proposed extension would appear overly large and dominant in its context and that this effect would be accentuated by its significantly elevated position.
8. When viewed from the north-western approach in the lane, the height and extent of the south-eastern projection of the extension, although set back and stepped down, would appear bulky and out of scale with the principal elevation of the house fronting the lane. Consequently, it would appear unbalanced and out of proportion with the host dwelling and would adversely affect the existing balanced appearance of the pair of semi-detached dwellings.
9. I conclude therefore that the proposal would harm the character and appearance of the existing building, the pair of semi-detached dwellings and the area. I appreciate and give weight to the fact that the proposal would provide the appellant with a much improved layout of family accommodation and facilities, but this is outweighed by the harm I have identified.
10. As such, the proposal would conflict with LP policies GBC3, ENV1 and ENV5 which together seek to ensure that extensions to dwellings in the rural area are not disproportionate, either by themselves or cumulatively, and are of a high standard of design which relate well to the massing and height of adjacent buildings. These policies are consistent with and supported by the overarching aims and objectives of the National Planning Policy Framework.

Other matters

11. I acknowledge that the proposal has sought to minimise its impact by use of design features such as the gabled rear projection and the use of differing materials. However, these design features would not adequately overcome the harm I have identified. Also, I was able to see during my site visit that although there is a high hedgerow and fencing to the boundaries, such that the site is screened to a degree, this would not adequately mitigate the harmful effects of the development.
12. I also note the comments in respect of the Listed Building 'Acremore' but these do not lead me to reach a different conclusion or decision.

Conclusion

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

Thomas Shields

INSPECTOR



Appeal Decision

Site visit made on 9 January 2014

by **Gary Deane BSc (Hons) DipTP MRTPI**

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

Decision date: 10 January 2014

Appeal Ref: APP/J1915/D/13/2209182

17 Bylands Close, Bishop's Stortford, Hertfordshire, CM23 4HQ

- 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 Stuart Curtis against the decision of East Hertfordshire District Council.
 - The application Ref 3/13/1298/FP was refused by notice dated 5 September 2013.
 - The development proposed is the erection of a 2-storey and single storey rear extension.
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Decision

1. The appeal is dismissed.

Procedural matter

2. At the site visit, I viewed the appeal property from 18 Bylands Close with the consent of the occupier of this adjacent house and did so unaccompanied.

Main Issue

3. The main issue is the effect of the proposed development on the living conditions of the occupiers of 18 Bylands Close, with particular regard to outlook and visual impact.

Reasons

4. The proposed development includes a 2-storey extension at the rear of the appeal property, 17 Bylands Close, which is a 2-storey house that lies within a predominantly residential area. The sidewall of the new addition would be set back from although still close to and parallel with the boundary of the site. In this position, it would face the rear of 18 Bylands Close, which broadly stands at right angles to No 17.
 5. The rear elevation of No 18 includes ground floor windows that serve a dining and living room. The Council estimates that the separation distance between the rear windows of No 18 and the 2-storey element of the proposal would be about 9.75 metres. There is also a conservatory that projects rearwards from the back of No 18 into the rear garden.
 6. Combined, the existing and new 2-storey sidewall facing the rear of No 18 would extend almost the full width of the rear boundary of the adjacent house.
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In doing so, it would project noticeably above the timber fence and vegetation that marks the common boundary between these properties. From the ground floor windows of No 18, its rear conservatory and back garden, views of the sidewall as proposed to be extended would be direct and, in my opinion, at reasonably close range. The boundary fence and planting between these properties would partially screen and visually soften the new built form, to some extent. However, having viewed the site from the rear of No 18, I consider that the sidewall as proposed to be enlarged would unacceptably dominate the external outlook especially from the living and dining room of No 18, which is a main habitable room.

7. There would also be some loss of sunlight to the rear of No 18 in the earlier part of the day due to the overshadowing effect of the new 2-storey extension, which would stand just to the southeast. To my mind, the effect of overshadowing would accenuate the imposing presence of the extended sidewall, causing it to be overbearing to the occupiers of No 18, especially when seen from their rear windows and back garden.
8. In reaching these conclusions, I acknowledge that judgements concerning the living conditions of adjoining occupiers of property is partly subjective. It is inevitable that opinion will vary. However, in this case, I have little doubt that the visual effect of the proposal would materially reduce the living conditions of the occupiers of No 18. It would do so by significantly eroding the space at one side of the existing gable wall that currently provides some sense of openness to the outlook from the rear of No 18. It would also feel oppressive given that the extended sidewall would be considerable depth and height and be situated close to and run along much of the rear garden boundary of No 18.
9. The new first floor window in the side elevation facing No 18 would serve a bathroom. The inclusion of obscure glazing in that window, which could be dealt with by a condition, would prevent problems of overlooking. The presence of this new window may heighten a perception of being overlooked. However, in my opinion, this would not be so great as to warrant withholding planning permission if the development sought was otherwise acceptable.
10. Nevertheless, for the reasons set out above, I conclude that the proposed development would significantly harm the living conditions of the occupiers of No 18. Accordingly, it conflicts with Policies ENV1 and ENV5 of the East Herts Local Plan Second Review April 2007 insofar as they aim to safeguard residential amenity. It would also be at odds with a core principle of the National Planning Policy Framework, which is to always seek to secure a good standard of amenity for all occupants of land and buildings.
11. Therefore for the reasons given above and having regard to all other matters raised, including the absence of an objection from the Town Council, I conclude that the appeal should be dismissed.

Gary Deane

INSPECTOR

Appeal Decision

Site visit made on 10 December 2013

by **K E Down MA (Oxon) MSc MRTPI MSB**

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

Decision date: 19 December 2013

Appeal Ref: APP/J1915/D/13/2208757

The Old Pump House, Marsh Lane, Stanstead Abbots, Ware, Hertfordshire, SG12 8HL

- 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 B & C Page against the decision of East Hertfordshire District Council.
 - The application Ref 3/13/1601/FP was refused by notice dated 30 October 2013.
 - The development proposed is a two storey front and side extension and internal and external alterations.
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Decision

1. The appeal is dismissed.

Main issues

2. There are three main issues. Firstly, whether the proposed extension would amount to inappropriate development in the Green Belt; secondly, the effect of the proposed extension on the openness of the Green Belt and the character and appearance of the existing dwelling; and thirdly, if the extension would amount to inappropriate development, whether the harm by reason of inappropriateness and any other harm is clearly outweighed by other considerations, such as to amount to the very special circumstances necessary to justify the development.

Reasons

Whether inappropriate development in the Green Belt

3. The appeal property is a dwelling converted from a former pump house. It is one of two adjacent dwellings located in a rural area to the south of Stanstead Abbots. It lies within the Green Belt and is surrounded by open countryside. There is what appears to be a farm some distance to the south and buildings on the edge of Stanstead Abbots to the north east. However, these are well separated from the appeal site. Policies GBC1 and ENV5 of the East Herts Local Plan Review (LP), dated April 2007, accord with the National Planning Policy Framework (NPPF) in resisting inappropriate development in the Green Belt. The NPPF and Policy GBC1 make clear that inappropriate development is, by definition, harmful to the Green Belt and should not be approved other than in very special circumstances. Extensions to buildings need not be inappropriate provided they do not result in disproportionate additions over and above the size of the original building.

4. The appeal dwelling was converted to a domestic use during the 1980s and appears to be as originally built. It has a floor area of about 285 sqm. The proposed extension would have a floor area of about 185 sqm. The Council estimates that this would result in an increase in the floor area of the original building of some 69%. Neither the NPPF nor the LP defines what amounts to a disproportionate addition. Moreover, I agree with the appellants that a purely mathematical approach, based on floor area only, needs to be used with care. Nevertheless, the proposed extension represents a substantial increase in the size of the original dwelling, increasing the width of the entire building by some 6m at the eastern end which would noticeably increase its bulk and scale.
5. In consequence I conclude on the first main issue that the proposed extension would be a disproportionate addition over and above the size of the original building and would amount to inappropriate development in the Green Belt. The NPPF advises that substantial weight should be given to any harm to the Green Belt, including that by reason of inappropriateness.

Openness of the Green Belt and the character and appearance of the existing dwelling

6. The NPPF states that the essential characteristics of Green Belts are their openness and permanence. The proposed extension, to the east side of the dwelling would protrude into an open area between the house and the existing double garage. It would be clearly visible from Marsh Lane and from the surrounding countryside. This would be harmful to the openness of the Green Belt and result in encroachment into the countryside by built development which is contrary to the purpose of the Green Belt.
7. In terms of its effect on character and appearance, the front and side elevations of the extension have been well designed to enhance the appearance of the existing building. However, to the rear the design is less imaginative and would result in an overly elongated structure that would be clearly visible from outside the site. This would detract from the appearance of the dwelling. I therefore consider that on balance the extension would have a harmful effect on the character and appearance of the dwelling.
8. It is concluded on the second main issue that the proposed extension would, owing to its size and prominent location, have a materially detrimental effect on the openness of the Green Belt and on the character and appearance of the existing dwelling. This would conflict with LP Policy ENV5 and the NPPF which, taken together, seek to ensure that extensions do not detract from the openness of the Green Belt and are visually attractive.

Other considerations

9. The appellants have drawn my attention to two other considerations which, they consider, might amount to the very special circumstances necessary to justify the proposed development. Firstly, it is argued that a similar but smaller extension has been permitted by the Council and the difference in size between the two is insufficient to justify the refusal of the appeal scheme. However, that extension projects about half the distance to the side of the dwelling and in consequence, although large, it would not appear disproportionate to the original building. It would also have a significantly reduced effect on the openness of the Green Belt. I therefore find that this argument carries little weight in favour of the appeal proposal.

10. Secondly, it is suggested that changes to the permitted development regime for dwellinghouses, which largely abandoned limitations based on cubic capacity, mean that large extensions can now be built without the need for specific planning permission. I agree that is sometimes the case. However, I have no evidence that the proposed extension or any other extension of similar proportions could or is likely to be built under permitted development rights at The Old Pump House. I therefore find that this matter carries limited weight.
11. Concluding on the third main issue, the considerations drawn to my attention, taken either separately or together, are insufficient to outweigh the substantial harm that would be caused to the Green Belt by reason of inappropriateness and harm the additional harm to its openness and to the character and appearance of the existing dwelling. The very special circumstances necessary to justify the development do not therefore exist and in consequence the proposed extension would conflict with the NPPF and with LP Policies GBC1 and ENV5.

Conclusions

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

KE Down
INSPECTOR

3/03 Wing
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Mr John Simmons
Homestead Timber Buildings
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OX10 9BT

Your Ref: 313/1615/FP
Our Ref: APP/J1915/D/13/2209729
Date: 15 January 2014

Dear Mr Simmons

Town and Country Planning Act 1990
Appeal by Mr R Anderson
Site at West Manor, Robins Nest Hill, Little Berkhamsted, Hertford, SG13 8LS

Thank you for your correspondence withdrawing the appeal (reference number APP/J1915/D/13/2209729). I confirm that we will take no further action on the appeal.

Yours sincerely

Tina Kerai

208A

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Appeal Decision

Site visit made on 9 December 2013

by **Grahame Gould BA MPhil MRTPI**

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

Decision date: 2 January 2014

Appeal Ref: APP/J1915/A/13/2200944

Land adjacent Cautherley Lane, Great Amwell, Hertfordshire

- 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 Martin Berry against the decision of East Hertfordshire District Council.
 - The application Ref 3/12/1812/FP, dated 18 September 2012, was refused by notice dated 23 January 2013.
 - The development proposed was described as 'new entrance to land off Madgeways Lane, Gt Amwell - retrospective'.
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Decision

1. The appeal is allowed and planning permission is granted for an access to land off Madgeways Lane at Land adjacent to Cautherley Lane, Great Amwell, Hertfordshire in accordance with the terms of the application, Ref 3/12/1812/FP, dated 18 September 2012, and the plan numbered 20501DWG001A, subject to the following condition:
 - 1) Details of the hard surfacing treatment for the access hereby permitted shall be submitted to the local planning authority for its written approval within one month of the date of this permission. The access shall be hard surfaced in accordance with the approved details within three months of the date of the local planning authority's written approval for these details. The hard surfacing to the access shall thereafter be retained for the duration of the approved development.

Procedural Matter

2. The new access has already been created. However, the reference in the description of the development to the proposal being retrospective is superfluous, as is mention of 'Gt Amwell' and I have therefore left them out of my formal decision.

Main Issues

3. The appeal site is situated within the Metropolitan Green Belt (MGB), however the Council considers the development not to be inappropriate development within the MGB. Having regard to the guidance contained within the National Planning Policy Framework and as the development does not affect the openness of the area, I am similarly of the opinion that the appeal
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development is not inappropriate within the MGB. Accordingly I need not consider MGB issues any further.

4. The main issue in this case is therefore the effect of the development upon the character and appearance of the Great Amwell Conservation Area, with particular regard to the Conservation Area's landscape character.

Reasons

5. Madgeways Lane is a narrow rural road that runs between Amwell Hill (the A1170) and Catherley Lane. Along Madgeways Lane the boundaries between the adjoining properties and land and the public highway are embanked to varying degrees and are for the most part marked by trees, hedging and a mixture of fence types. There are some dwellings to the north and west of the appeal site.
6. The appeal site is situated roughly half way along Madgeways Lane and lies on its southern side. The site is situated on what forms part of the southern boundary to the Great Amwell Conservation Area. The Conservation Area extends to the north, east and west of the appeal site and is characterised by residential properties, set with comparatively large plots.
7. The appeal development has involved the formation of a new vehicular access, which allowing for its splays, I estimate to have a maximum width of six metres, to serve an extensive area of horse grazing paddocks situated to the south of Madgeways Lane. The formation of this access has involved the removal of a length of hedgerow and the undertaking of some engineering works, with cutting into the embankment having been necessary, because of the difference in levels between the road and paddock area.
8. The creation of this access has involved the removal of a modest length of hedgerow, exposing the paddock area beyond, an activity, which in land use and appearance terms, is compatible with this rural location. It is common to find accesses formed in field boundaries in rural areas such as this and in this respect I therefore find nothing unusual about the character or appearance of the appeal development, allowing for both the hedgerow removal that has occurred and the appeal site's position within the Conservation Area. I recognise that it will be necessary to undertake some hard surfacing works to create a stable surface to the access, however, with the careful choice of materials, there is no reason why the finished access should not be in keeping with the character and appearance of the area.
9. I find that the development has not caused harm to the character and appearance of the Conservation Area and that its appearance has been preserved. I therefore conclude that appeal development accords with the objectives of Policies ENV1 and BH6 of the East Herts Local Plan Second Review, which amongst other things seek to ensure that new development, including that in Conservation Areas, is respectful of its context and minimises the loss of landscape features.

Other Matters

10. Great Amwell Parish Council and residents have raised highway safety concerns about the formation of this access. However, the Highway Authority

has raised no safety concern, only questioning the justification for the new access. The appellant has submitted that the access will form a secondary access to the paddocks in his ownership and it is not for me to question the need for this access. Having regard to the equestrian use that the access will serve and the limited width and geometry of Madgeways Lane, I am of the view that the use of this access will not result in levels of traffic generation that will be prejudicial to highway safety in the area.

11. The Amwell Society has alleged that the appeal development is in conflict with a condition imposed on the planning permission for the adjoining paddocks. The Council has not drawn my attention to any such conflict and in any event I am required to consider the appeal proposal on its merits, which is what I have done. Similarly should the appellant or any other party propose an alternative development for the adjoining paddock area, it would be for the Council to consider any such application it received on its merits.

Conclusion and Conditions

12. For the reasons set out above I conclude that the appeal should succeed, subject to a condition requiring the submission of details for the hard surfacing of the access and the implementation of the approved surface treatment scheme, in the interests of the proper planning of the area. The Environment Agency has requested the imposition of a condition relating to the disposal of foul drainage and surface water. However, having regard to the guidance on the imposition of conditions contained within Circular 11/95, I find such a condition to be neither necessary nor relevant to the development to be permitted, because the access in itself will not be a source of pollution for ground or surface water, being ancillary to the established paddock use.

Grahame Gould

INSPECTOR



06 DEC 2013

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Mr Malcolm Amey
Arboricultural Officer
East Herts Councils
Wallfields
Pegs Lane
Herford
SG13 8EQ

Your Ref: 468727/TPO 12 & 468726/TPO 12

Our Ref: APP/TPO/J1915/3382

Date: 04 December 2013

Dear Mr Amey,

**THE TOWN AND COUNTRY PLANNING (TREE PRESERVATION) (ENGLAND)
REGULATIONS 2012, SI No. 605
APPLICATION FOR CONSENT TO CARRY OUT WORKS TO PROTECTED TREES
APPELLANT: MR MARK JENKINS
SITE: 8 & 10 TWYFORD GARDENS, BISHOPS STORTFORD, HERTS CM23 3EH**

I enclose a copy of our Inspector's decision on the above appeal following the site visit on 14 October 2013.

The appeal decision is final unless it is quashed following a successful challenge in the High Court on a point of law (see enclosed leaflet). If the challenge is successful the decision may be quashed but the case will probably be returned to the Secretary of State for re-determination. However, if it is to be re-determined, it does not necessarily follow that the original decision on the appeal will be reversed.

An application under Section 288 of the Town & Country Planning Act 1990 must be made to the High Court promptly and in any event within 6 weeks of the decision in question. This is an absolute time limit that cannot be extended by the Court.

A challenge must be made on one or both of the following grounds:

- (1) the decision is not within the powers of the above-cited Regulations;
- (2) any of the relevant statutory requirements have not been complied with.

A decision will not be overturned by the Court merely because someone does not agree with an Inspector's judgment. It would need to be shown that a serious mistake was made by the Inspector when reaching his or her decision or, that the site visit was not handled correctly, or that the appeal procedures were not carried out properly. Even if a mistake has been made, the Court may decide not to quash the decision if it is decided that the interests of the person who has sought to challenge the decision have not been prejudiced.

If you have any complaints or questions about a decision, or about the way we have handled the appeal write to:



Quality Assurance Unit
The Planning Inspectorate
4/06 Kite Wing
Temple Quay House
2 The Square
Temple Quay
Bristol BS1 6PN

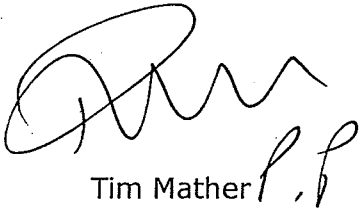
Phone No. 0303 444 5884

Or visit:

<http://www.planningportal.gov.uk/planning/appeals/planninginspectorate/feedback>

The Quality Assurance Unit will investigate your complaint and will endeavour to reply within twenty working days.

Yours sincerely



Tim Mather *T.M.*
Environment Appeals Administration

Enc



Appeal Decision

Site visit made on 14 October 2013

by **Brian G. Crane, M Hort, P Dip Arb (RFS), OND Hort, FLS, F Arbor A, MIC For, MI Hort, MEWI, MSB, Chartered Arboriculturist**

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

Decision date: **04 DEC 2013**

Appeal Ref: APP/TPO/J1915/3382

8 and 10 Twyford Gardens, Bishop's Stortford, Hertfordshire CM23 3EH

- The appeal is made under Regulation 19 of the Town and Country Planning (Tree Preservation) (England) Regulations 2012 against a refusal to grant consent to undertake work to three trees protected by a Tree Preservation Order.
 - The appeal is made by Mr M Jenkins against the decision of East Hertfordshire Council.
 - Applications References: 468726/TPO 12 (8 Twyford Gardens) and 468727/TPO 12 (10 Twyford Gardens) dated 10 May 2013, were refused by notices dated 10 July 2013.
 - The proposed work is:-
 - T1 Oak at 8 Twyford Gardens - remove lowest large limb growing towards No 10 Twyford Gardens, and cut the remaining branches back to the boundary line at suitable growing points.
 - T2 Oak at 8 Twyford Gardens - cut back the branches to the boundary line at suitable growing points.
 - T1 Oak growing adjacent to a garage at the rear of 10 Twyford Gardens - fell to ground level.
 - The relevant Tree Preservation Order (TPO) is the Bishop's Stortford Urban District (Thorley Park No. 2) Tree Preservation Order 1957, which was confirmed on 26 June 1957.
-

Decision

1. The appeal is dismissed.

Preliminary Matters

2. The two applications which are the subject(s) of this appeal appear to have been made by the same appellant, although no appellant's name is filled in on the Local Planning Authority application form relevant to 8 Twyford Gardens (which is not owned by the appellant); however, the handwriting and agent's name are identical on both forms and I have therefore considered this matter as a single appeal.

Main Issues

3. I consider the main issues in this case to be:-
 - i. The effect of the proposal on tree health and the character and amenity of the area.
 - ii. Do the appeal trees present such a significant nuisance to the owners of Numbers 8 and 10 Twyford Gardens that this is sufficient to outweigh their amenity value and justify the works proposed?

Reasons

The effect of the proposal on tree health and the character and amenity of the area.

4. The appeal trees are all English oaks (*Quercus robur*) in the early-mature phases of their life cycles. All appear to be growing with appropriate vigour for their ages and species and I estimate their safe, useful life expectancies to be in excess of 50 years. Somewhat confusingly, they are referred to in the appeal documentation as being T1 and T2 within the garden of No 8 Twyford Gardens and T1 within the garden of No 10. These numbers do not relate to the Tree Preservation Order, which shows them as being within G (Group) 6. All three trees form part of a loose, linear grouping between the properties. The single tree within the grounds of No 10 has a full, well-furnished and well-balanced crown. The two trees within the garden of No 8 are growing in close proximity to each other and to other nearby oaks, this has led to slightly uneven development of the crowns to the northwest and south, however, this is common with trees growing in fairly close canopy and the grouping as a whole does not have an unbalanced appearance. The trees stand on rising ground and are highly visible from a number of viewpoints within Twyford Gardens, they contribute to local landscape quality and visual amenity and the works proposed would have a negative effect on such amenity.
5. It is appropriate, when considering native trees for me to take their biodiversity potential into account. The English oak acts as host to a wide range of species, many invertebrate and some threatened (with a number being afforded Red Data Book status). In this instance the trees are probably part of a woodland or hedgerow remnant and the value they afford is increased by their proximity to each other as they will act as part of a 'wildlife corridor'.
6. Pruning opens wounds within the crowns of trees; these are susceptible to colonisation by wood-decaying organisms, in particular, fungi. In addition, the removal of large amounts of foliage inhibits a tree's ability to photosynthesise carbohydrate. Hormonal imbalance will also be affected. These factors are likely to have negative effects on long-term tree health and vigour.
7. The removal of branches from the crowns of trees growing close together can render them liable to wind breakage as they are exposed to unaccustomed wind-loadings.
8. I consider that the works proposed, in particular, the felling of the tree within the curtilage of No 10 would have a negative effect on local landscape amenity and biodiversity potential.

Do the appeal trees present such a significant nuisance to the owners of Numbers 8 and 10 Twyford Gardens that this is sufficient to outweigh their amenity value and justify the works proposed?

9. **Tree within the curtilage of No 10 Twyford Gardens.** This tree stands on the north-eastern boundary of the property and will cast very little shade into the garden and none towards the house. Beneath the tree is a hard-surfaced area, a shed and a double garage (newly constructed). Within the rear garden of No 8 Twyford Gardens the land is almost entirely hard-surfaced with a line of small buildings on the northern boundary. There is no evidence that this tree

causes or will give rise to any nuisance by virtue of its shading either property. It is a very considerable distance from the houses.

10. Trees within the curtilage of No 8 Twyford Gardens. These trees overhang the boundary with No 10. The crowns form at about 5 metres above the level of the drive of No 10 and are unlikely to foul incoming vehicles – in fact they were well above the height of a van which was present on the property at the time of my visit. They do not foul on the roof of the house and there is a general clearance in excess of 1 or 2 metres between the crowns and the roof of the house. A telephone line runs through the crown of the more southerly tree. This is not fouling on the branches. Telecommunications providers are legally empowered to take arboricultural action to ensure the effectiveness and safety of their services.

11. Both trees will cast shade towards the flank wall of No 10 during the early part of the day. Towards the latter part of the day, shade will be cast by the building inside. The works proposed would result in a considerable loss of the crowns of both trees, leaving them unbalanced with a considerable number of large wounds within the crown. The works would have no effect on shading issues at this property.

Other Matters

12. The appellant raised matters in appeal documentation which were not included in the initial application to the Local Planning Authority. As the Authority has not had the opportunity to assess these issues, I am unable to consider them in arriving at my decision.

Conclusions

13. The appeal trees contribute to local biodiversity potential, landscape quality and visual amenity. The works proposed would degrade these attributes. I do not consider the appeal justified on grounds of shading or encroachment into the grounds of No 10 Twyford Gardens. For these reasons, I dismiss the appeal.

B G Crane

Arboricultural Inspector