



Appeal Decision

Site visit made on 2 August 2010

by **Ian Currie** BA MPhil MRICS MRTPI

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

The Planning Inspectorate
4/11 Eagle Wing
Temple Quay House
2 The Square
Temple Quay
Bristol BS1 6PN

☎ 0117 372 6372
email: enquiries@pins.gsi.gov.uk

Decision date:
24 August 2010

Appeal Ref: APP/J1915/A/10/2123222

**Great Hadham Golf & Country Club, Great Hadham Road, Much Hadham,
Herts, SG10 6JE**

- 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 Great Hadham Golf & Country Club against the decision of East Hertfordshire District Council.
- The application (Ref:- 3/09/0882/FP), dated 9 June 2009, was refused by notice dated 26 August 2009.
- The development proposed is small extension to reception area, enlarged crèche facility, new basement for plant and changing facilities and new indoor swimming pool (erection of single-storey extension to reception area; extension to existing maintenance workshop and existing crèche facility; new indoor swimming pool; new basement for plant and changing facilities).

Decision

1. I allow the appeal, and grant planning permission for small extension to reception area, enlarged crèche facility, new basement for plant and changing facilities and new indoor swimming pool (erection of single-storey extension to reception area; extension to existing maintenance workshop and existing crèche facility; new indoor swimming pool; new basement for plant and changing facilities) at Great Hadham Golf & Country Club, Great Hadham Road, Much Hadham, Herts, SG10 6JE, in accordance with the terms of the application, Ref:- 3/09/0882/FP, dated 9 June 2009, and the plans submitted with it, 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 materials to be used in the construction of the external surfaces of the additions hereby permitted shall match those used in the existing buildings.
 - 3) The development hereby permitted shall not be carried out except in complete accordance with the details shown on the submitted plans; numbers 4175 PL - 100, 4175 PL - 101 Rev A, 4175 PL - 102 Rev B, 4175 PL 103 - Rev A, 4175 PL - 104 Rev A, 4175 PL - 105 Rev A, 4175 PL - 110 Rev C, 4175 PL - 111 Rev B, 4175 PL - 112 Rev D, 4175 PL - 113 Rev D, 4175 PL - 114 Rev C and 4175 PL - 115 Rev C.
 - 4) Prior to the commencement of development, a detailed Green Travel Plan shall be submitted to, and approved in writing by, the local planning authority and shall be implemented in accordance with the approved details, within a timetable to be agreed with the local planning authority.

be examined properly without reference to it. It says that a Rural Area Beyond the Green Belt will be maintained in the central and northern part of the District, as defined on the Proposals Map, wherein inappropriate development will not be permitted.

7. Policy GBC3 sets out a specific policy for the control of development in the countryside beyond the green belt. It says that within the Rural Area Beyond the Green Belt, except for development within the main settlement of Buntingford and the other settlements identified in Policy OSV1 (Category 1 Villages), permission will not be given for the construction of new buildings or for changes of use for purposes other than:-
 - (a) agriculture or forestry;
 - (b) essential small scale facilities for outdoor sport and outdoor recreation;
 - (c) limited extensions or alterations to existing dwellings in accordance with Policy ENV5, to employment premises in line with Policies EDE3 and OSV6, and to community facilities in line with Policy OSV8;
 - (d) replacement dwellings in accordance with Policy HSG8;
 - (e) limited infill development in Category 2 Villages, in accordance with Policy OSV2(II);
 - (f) small scale affordable housing for local needs within existing rural settlements in accordance with Policy HSG5 and Policy OSV3 (Category 3 Villages);
 - (g) the adaptation and re-use of rural buildings in accordance with Policies GBC9 and GBC10;
 - (h) other essential small scale facilities, services or uses of land which meet a local need, are appropriate to a rural area and which assist rural diversification;
 - (i) limited development within 'Major Developed Sites' which are identified on the Proposals Map, in accordance with Policy GBC4;
 - (j) agricultural, forestry and other occupational dwellings in accordance with Policy GBC5;
 - (k) small-scale riding and livery stables in accordance with Policy GBC11;
 - (l) gypsy or traveller accommodation in accordance with Policy HSG10.
8. Clearly, the only one of these headings to which the proposed development directly applies is criterion (b) of Policy GBC3, essential small scale facilities for outdoor sport and outdoor recreation, although it may be argued that criterion (h), (other essential small scale facilities, services or uses of land which meet a local need, are appropriate to a rural area and which assist rural diversification) is also applicable. Of the other policies cited by the local planning authority in its statement, Policy LRC6 on golf courses, which applies to both the Metropolitan Green Belt and the countryside beyond it, may be of assistance. This says that proposals for the use of land, within the Green Belt and in Rural Areas Beyond the Green Belt, for the provision of golf courses must only include development which is necessary for the operation of the proposed golf course. Any buildings and other associated developments should be so located and designed, and constructed of such materials, as to be unobtrusive in the countryside.
9. The countryside policies in this version of the adopted Local Plan emerged against the background of national advice contained in PPS7, "Sustainable Development in Rural Areas", issued in July 2004. However, much of the advice in that document [objectives (i-iii) and paragraphs 1 (ii-iv), 2, 3, 4, 5, 6,

7, 16 (i-ii), 17, 18,19, 30 (i-ii), 32, 34 (i-ii), 35, 36, 37, 38, 39, 40] was struck out and replaced by PPS4, "Planning for Sustainable Economic Growth", issued in December 2009. The policy in that document that is applicable to this case is Policy EC6 on planning for economic development in rural areas.

10. This says that local planning authorities should ensure that the countryside is protected for the sake of its intrinsic character and beauty, the diversity of its landscapes, heritage and wildlife, the wealth of its natural resources and to ensure it may be enjoyed by all. In rural areas, local planning authorities should:-
- (a) strictly control economic development in open countryside away from existing settlements, or outside areas allocated for development in development plans;
 - (b) identify local service centres (which might be a country town, a single large village or a group of villages) and locate most new development in or on the edge of existing settlements where employment, housing (including affordable housing), services and other facilities can be provided close together;
 - (c) support the conversion and re-use of appropriately located and suitably constructed existing buildings in the countryside (particularly those adjacent or closely related to towns or villages) for economic development;
 - (d) set out the permissible scale of replacement buildings and circumstances where replacement of buildings would not be acceptable;
 - (e) seek to remedy any identified deficiencies in local shopping and other facilities to serve people's day-to-day needs and help address social exclusion;
 - (f) set out the criteria to be applied to planning applications for farm diversification, and support diversification for business purposes that are consistent in their scale and environmental impact with their rural location;
 - (g) where appropriate, support equine enterprises, providing for a range of suitably located recreational and leisure facilities and the needs of training and breeding businesses that maintain environmental quality and countryside character.

Main Issue

11. In the light of reviewing these policies in some detail, I consider that the main issue in this appeal is whether the proposed extensions and alterations, to provide additional facilities for golf and indoor leisure within the main buildings serving a golf and country club sited in countryside in East Hertfordshire beyond the Metropolitan Green Belt, constitutes appropriate sustainable development in such a location, having proper regard to policies contained within the adopted East Herts Local Plan Second Review of 2007 and current national policies relating to economic development in the countryside.

Reasons

12. It is generally agreed by the parties that the physical impact of these various proposals upon the countryside would be restricted. The principal proposed external enlargements are alterations to the roof area to create a new link to

mainly administrative office accommodation in the currently largely unused roofspace of one of the two main buildings, expansion of the foyer to the main entrance and the provision of a link between staff accommodation and a machinery workshop building to accommodate the present crèche, which would be displaced by a relocated golf professional's shop. However, the major change, which would have little impact on the external appearance of the building, would be the formation of a basement indoor swimming pool with associated changing rooms. This brings about the disruption to other present administrative and leisure accommodation at ground floor level and forces it to relocate elsewhere within the complex. As a result, although the external changes to the appearance and bulk of the existing range of buildings would be limited, it must not be overlooked that the planning application form indicates that the floor area of non-residential floorspace within these premises would rise from 1,810m² to 2,807m², an increase of 997m².

13. I consider this proportional increase in floorspace by more than 50% cannot be said to represent small-scale development for leisure purposes in a rural locality. On that basis, even if the question of sustainability, raised by Local Plan Policies SD1 and SD2, is put to one side, such a large addition to the floorspace of the golf clubhouse and leisure facilities would clearly be in breach of criterion (b) of Policy GBC3, restricting development in the countryside to essential small scale facilities for outdoor sport and outdoor recreation, and Policy LRC6, which says that provision of development on a golf course must be limited to what is necessary for its operation. Such breaches of the adopted development plan would ordinarily bring about dismissal of an appeal.
14. However, section 38(6) of the Planning & Compulsory Purchase Act says that if regard is to be had to the development plan, for the purpose of any determination to be made under the planning Acts, the determination must be made in accordance with the plan unless material considerations indicate otherwise. A material consideration in this regard must be the advice on economic development in a rural area contained within PPS4. This is much more up-to-date than the adopted Local Plan, dating from the end of 2009 rather than mid-2007. It is, therefore, a more accurate reflection of the Secretary of State's current attitude towards development in the countryside than the rescinded sections of PPS7, in force at the time that the current version of the East Herts Local Plan was adopted.
15. Moreover, although it was issued during the watch of the previous Secretary of State, I have heard nothing in the various recent pronouncements from Ministers in the new coalition government to indicate that they disagree with the content of Policy EC6 of PPS4. Therefore, in these particular circumstances, I consider that, if there is conflict between the provisions of the adopted Local Plan and those of PPS4, then the latter should be given greater weight. Those considerations should determine the outcome of this appeal.
16. Looking at the provisions of the policy set out in paragraph 10 above in some detail, there is general agreement between the parties that the modest alterations to the bulk of the buildings would, in themselves, continue to protect the countryside for its own sake. Under the specific brief for Policy EC6 of bringing the benefits of economic development to the countryside, it seems to me that these proposals, although not on all fours with criteria (b) and (f), comply in general with the spirit of this policy.

17. Looking at criterion (f) first, it must not be forgotten that the range of buildings was originally built for agricultural purposes and that their re-use from the outset was for indoor leisure and activity purposes, in addition to providing a golf clubhouse. The swimming pool element of the former merely increases the range of leisure and fitness facilities available, contained within development in scale with the existing built environment. Turning to criterion (b), I accept that the premises are in open countryside and that public transport provision is non-existent. However, the site is comparatively close to the edge of the built-up area of Bishop's Stortford so that most of any additional car trips to the expanded leisure facilities are likely to be relatively short. I note the Much Hadham Parish Council's observations on the inadequacies of the B1004 secondary road, but I have to give appropriate weight to the lack of any objection from the Highway Authority to this development.
18. On that basis, I conclude that, although the proposed development would be in breach of certain provisions of the adopted East Hertfordshire Local Plan, it would conform to a weightier more recent material consideration, Policy EC6 of PPS4, and would therefore be acceptable.
19. With regard to the conditions suggested by both parties, a condition necessitating development to commence within three years is a statutory requirement and will be attached. There seems to me to be no need to require further approval of a sample of external materials for modest additions to substantial existing buildings, so I shall impose a condition requiring materials employed in new external surfaces to match those existing. A condition requiring compliance with the submitted drawings will also be attached. The appellants' suggested improvements to public byways, to make them more suitable for use by cyclists over periods of wet weather, can be incorporated into the local planning authority's requirement for the approval of a Green Travel Plan before development commences. Finally, I see no need for conditions requiring wheel washing facilities or for a construction workers' compound that does not obstruct the highway. These matters can be resolved between the appellants and the Highway Authority.

Conclusion

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

Ian Currie

Inspector



Appeal Decision

Site visit made on 10 August 2010

by **Geoff Salter** BA MRTPI

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

The Planning Inspectorate
4/11 Eagle Wing
Temple Quay House
2 The Square
Temple Quay
Bristol BS1 6PN

☎ 0117 372 6372
email:enquiries@pins.gsi.gov.uk

Decision date:
31 August 2010

Appeal Ref: APP/J1915/A/10/2123368

32 Mangrove Road, Hertford, SG13 8AL

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Mrs Frances Amey against the decision of East Hertfordshire District Council.
- The application Ref 3/09/0905/FP, dated 12 June 2009, was refused by notice dated 26 August 2009.
- The development proposed is an extension to house, part two storey and part single storey, and division of building to form two houses.

Decision

1. I allow the appeal, and grant planning permission for an extension to house, part two storey and part single storey, and division of building to form two houses at 32 Mangrove Road, Hertford, SG13 8AL in accordance with the terms of the application, Ref 3/09/0905/FP, dated 12 June 2009, and the plans submitted with it, subject to the following conditions:
 - 1) The development hereby permitted shall begin not later than three years from the date of this decision.
 - 2) The development hereby permitted shall be carried out in accordance with the following approved plans: 080707.01-04.
 - 3) No development shall take place until full details of both hard and soft landscape works to the area in front of the dwellings have been submitted to and approved in writing by the local planning authority. These details shall include proposed finished levels or contours; car parking layouts; hard surfacing materials; and planting plans. All hard and soft landscape works shall be carried out in accordance with the approved details. The works shall be carried out prior to the occupation of any part of the new dwelling or in accordance with a programme agreed with the local planning authority.
 - 4) The materials to be used in the construction of the external surfaces of the extension hereby permitted shall match those used in the existing building.
 - 5) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any order revoking, re-enacting or modifying that Order), the first floor window in the north elevation of the extension shall be fitted with obscured glazing.

Main issue

2. The Council raised no objection to the design of the proposed side extension, which would be of similar dimensions and general appearance to that on the adjoining semi-detached house. The main issue in this case is the effect of the subdivision of the house on the character of the surrounding area.

Reasons

3. The site lies within the extensive Hertford Conservation Area, which covers a very wide area of varying character. In the vicinity of the site residential use predominates, although there is a cricket field on the opposite side of Mangrove Road which lies outside the Conservation Area. To the west is a large detached house. The adjoining property to the north is a relatively small detached dwelling, formerly a lodge to Mangrove Hall, whereas to the south are two semi-detached houses of similar size to the proposed appeal building. Beyond these houses is a fairly new development which contains a large detached house and a row of substantial three storey terraced houses, a small block of flats and four smaller terraced houses. In my judgement the size of the proposed new dwelling would not be completely out of character with the mixed density development nearby and the building itself would not look out of place.
4. The Council do not cite the recent changes to PPS3 regarding the definition of previously developed land or minimum density requirements in support of their case in this instance. The extended building would reflect the other half of the pair and would represent the traditional pattern of development fronting a street. The new residential unit would be a relatively small two bedroom house, but not unduly cramped on its plot. A limited amount of garden would be lost, retaining adequate private space for the occupants of both dwellings. I have concluded therefore that the proposal would not have a harmful effect on the Hertford Conservation Area, the character and appearance of which would be preserved. The scheme would accord therefore with saved Policies ENV1, BH5 and BH6 of the East Herts Local Plan 2007, which seek to ensure that new development is compatible with the surrounding area and sympathetic to the general character of a conservation area.
5. With regard to the visual impact of additional parking in front of the building, a consultation response on the file indicates that it may be possible to incorporate an additional space while retaining more area as garden. I agree that a more visually attractive parking arrangement could be provided and have imposed a condition requiring details of landscaping and parking, to preserve the appearance of the conservation area. For the same reason, I have imposed a condition requiring the extension to be built in matching materials. The Council has not suggested any conditions but the occupant at No. 30 has requested that the landing window, which would directly overlook the garden immediately to the rear of this adjoining property, should be fitted with obscured glazing. I have imposed this reasonable requirement in the interests of residential amenity.
6. For the reasons given above I conclude that the appeal should be allowed.

Geoff Salter



Appeal Decision

Site visit made on 10 August 2010

by **Geoff Salter** BA MRTPI

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

The Planning Inspectorate
4/11 Eagle Wing
Temple Quay House
2 The Square
Temple Quay
Bristol BS1 6PN

☎ 0117 372 6372
email: enquiries@pins.gsi.gov.uk

Decision date:
7 September 2010

Appeal Ref: APP/J1915/A/10/2124196

16 Mansfield, High Wych, Sawbridgeworth, CM21 0JT

- 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 Norman Jackson against the decision of East Hertfordshire District Council.
- The application Ref 3/09/1241/FP, dated 7 August 2009, was refused by notice dated 12 January 2010.
- The development proposed is two new detached 3 bedroom houses.

Decision

1. I dismiss the appeal.

Main issue

2. The effect of the proposal on the character and appearance of the surrounding area.

Reasons

3. The site lies within the settlement of High Wych at one end of a T-shaped cul-de-sac of semi-detached houses. In this case the two houses would be of similar size and design to the existing houses in Mansfield but would be sited on much smaller plots. The buildings would not respect the pattern of development in Mansfield, because one house would be set back behind the building line of Nos. 15 and 16 and the other would be at right angles to these other 3 houses. The area in front of the new dwellings would necessarily be dominated by vehicle hardstandings, even if new landscaping were planted, and the rear gardens would be much smaller than all the others nearby. The site is mainly laid to grass and contains no landscape features of particular note, so saved Policy ENV2 of the Local Plan would not be breached. However, as a consequence of the close juxtaposition of the buildings, the small garden sizes and uncharacteristic pattern of development I consider the scheme would have a detrimental effect on the character and appearance of this part of High Wych. I have concluded the scheme would fail to complement the existing development in the vicinity of the site, in conflict with saved Policies ENV1 and HSG7 of the Local Plan.
4. PPS3 states that the best use should be made of land within existing settlement boundaries to provide much needed new housing. The Council do not cite the recent changes to PPS3 regarding the definition of previously developed land, which does not now include garden land, or the deletion of

minimum density requirements in support of their case in this instance. However, the recent ministerial statement outlining the changes to PPS3 supplements existing advice that new developments should respect the character of their surroundings.

5. I note that adequate off street parking could be provided in front of the houses, subject to the visual disadvantage described above. The site is separated visually from a nearby listed building, Beth Gilboa, by a substantial hedge and I agree with the Council that there would be no adverse effect on the setting of the building or the adjacent Conservation Area. Despite the lack of objection on these counts, I consider the benefit of providing two more houses within the village boundary, to which there is no objection in principle, is outweighed by the harmful effect of the scheme on the character and appearance of the surrounding area.
6. For the reasons given above I conclude that the appeal should be dismissed.

Geoff Salter



Appeal Decisions

Site visit carried out on 28 July 2010

by **R J Tamplin** BA(Hons) MRTPI Dip Cons
Studies

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

The Planning Inspectorate
4/11 Eagle Wing
Temple Quay House
2 The Square
Temple Quay
Bristol BS1 6PN

☎ 0117 372 6372
email:enquiries@plns.gsi.gov.uk

Decision date:
26 August 2010

Appeal A. Ref: APP/J1915/E/10/2120408

Party World, 20 St Andrew Street, HERTFORD, SG14 1JA

- The appeal is under Section 20 of the Planning (Listed Buildings and Conservation Areas) Act 1990 against a refusal to grant listed building consent.
- The appeal is by Colin Straker against the decision of East Hertfordshire District Council.
- The application Ref 3/09/1534/LB, dated 24 September 2009, was refused by notice dated 18 November 2009.
- The works proposed are redesign of existing fascia and hanging sign for a shop, Party World, Hertford.

Summary of Decision: The appeal is dismissed.

Appeal B. Ref: APP/J1915/H/09/2119395

Party World, 20 St Andrew Street, HERTFORD, SG14 1JA

- The appeal is under Regulation 17 of the Town and Country Planning (Control of Advertisements) (England) Regulations 2007 against a refusal to grant express consent.
- The appeal is by Colin Straker against the decision of East Hertfordshire District Council.
- The application Ref 3/09/1383/AD, dated 24 August 2009, was refused by notice dated 21 October 2009.
- The advertisement proposed is to recover existing signs, fascia and hanging sign with new design.

Summary of Decision: The appeal is dismissed.

Preliminary Matters

1. The appeals concern the same matters and both the works to the listed building and the advertisement display have already taken place. I shall therefore deal with these appeals as being for, firstly, listed building consent for alterations to 20 St Andrew Street by the affixation of a fascia sign and hanging sign, and secondly, for express consent for the display at the same address of a non-illuminated fascia sign and non-illuminated hanging sign.

Inspector's Reasons

Appeal A

2. The main issues in this appeal are the effects of the advertisements on the special interest and setting of the listed building and on the character and appearance of the Hertford Conservation Area.
 3. 20 St Andrew Street is included in the list of buildings of special architectural or historic interest for Hertford at Grade II and its external appearance appears to be unchanged from that of the listing description. To my mind its special interest lies in its being a visible expression of the growing commercial wealth
-

of small traders in an English market town during the 18th and 19th centuries. This is seen in the simple but substantial form of the building and the details such as the rusticated quoins around the first floor windows and the remains of the Victorian shop front. Its appearance is restrained and modest due to the grey/blue colour of the upper storey and black detailing of the quoins.

4. It seems that both the new fascia display and the new hanging sign have been inserted over or in place of the previous fascia and sign, which are shown in a photograph forming part of the application. Hence the size and location of the new signs have no materially greater impact on the listed building and its setting than was already the case. But the bright yellow background colour of the new signs is much stronger and more assertive than the subdued yellow or primrose of the previous fascia board and hanging sign. Similarly the lettering on the fascia is much larger, more boldly coloured and more random in style than before.
5. The photographs also show that the design of the previous fascia related well to the proportion and form of the facade, with the words 'Party World' set above the recessed central doorway and phone numbers above the left and right hand windows. Similarly only two colours were used before, the primrose background and a restrained mid-blue. The present fascia uses black, red and white for the lettering, which is in at least three different type faces and at least four different sizes, and the words 'Party World' extend well beyond the central doorway. The result is what might be described as a visual cacophony set on a garish yellow background.
6. The effect of the new fascia and hanging sign is to disrupt the restrained and modest character and appearance of the building in the street and thus to damage its special interest as an historic building and its setting. This effect is magnified because the building stands opposite the entrance to one of the central car parks of the town. Though this entry is one way in for vehicles it was evident that pedestrians use it as an exit to St Andrew Street and hence walk directly towards the shop. Accordingly the fascia is in their direct line of vision and makes a most unfortunate introduction to the street picture. I thus conclude that this issue weighs heavily against consent.
7. Turning to the second main issue, I saw that the conservation area has the character and appearance of a particularly well preserved example of a market town. Its centre contains many commercial premises in historic buildings, appears well maintained, and displays a consistently high standard of design, as regards buildings and their details, street surfaces, layout and furniture, and in the use of colour and materials. This care continues into the surrounding residential areas within the conservation area so that the impression is of a high standard of preservation and enhancement.
8. The fascia and hanging signs have a greatly detrimental effect on the high quality of the conservation area. The bright yellow background to the signs contrasts unfortunately with the range of colours used in the town and the combination of lettering size, random placing and different type faces is disruptive to the reposeful character of the street scene. Far from enhancing or even preserving the nature of the conservation area, the signs cause serious harm to both its character and appearance. This conclusion reinforces that on the first main issue.

9. I have taken into account the two examples of other nearby signs referred to by the appellant. However, it seems that those on the Chinese takeaway may be unauthorised so that they do not justify a similar approach in this case. As to the signs on the hairdressers, those appear unified in their type face and lettering size while the red background colour is recessive and thus not inappropriate. Hence I conclude that neither example provides a cogent argument in favour of consent for the signs before me. Nor do trading difficulties in the current economic climate carry substantial weight, given that this is a short term cyclical consideration compared to the long term desirability of preserving and enhancing this listed building and the conservation area. It follows that this appeal should be dismissed.

Appeal B

10. The main issue before me in this appeal is the effect of the advertisement displays on the visual amenity of St Andrew Street.
11. St Andrew Street is a most attractive thoroughfare due to its historic character and the evident careful control and co-ordination of design, materials and colour. As noted in Appeal A, No 20 is a listed building and the street lies within the designated Hertford conservation area, factors which give much greater weight to the desirability of preserving or enhancing the present high degree of visual amenity.
12. The palette of colours used in advertisements in the street is generally subdued and restrained, so that the bright background yellow of both the fascia and hanging signs appears incongruous and out of keeping. This incongruity is accentuated by the use of red, black and white letters in multiple type faces and sizes giving a cluttered appearance. Because No 20 lies directly opposite the entrance to a car park, the harm caused by the fascia in particular is emphasised. Nevertheless, both signs appear intrusive and harmful to the visual amenity of this otherwise most attractive street scene and detract from the historic character of the host building and its setting within the conservation area.
13. I have taken into account all the other arguments advanced in support of his case by the appellant, but none outweighs the desirability of preserving or enhancing the street scene. Hence I conclude this appeal should be dismissed.

Formal Decisions

14. For the above reasons, and in exercise of the powers transferred to me, I hereby dismiss both the appeals and refuse to grant listed building consent for the works to the listed building and advertisement consent for the display of the fascia and hanging signs.

RJ Tamplin

Inspector



Appeal Decisions

Site visit made on 5 August 2010

by Ian Currie BA MPhil MRICS MRTPI

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

The Planning Inspectorate,
4/11 Eagle Wing
Temple Quay House
2 The Square
Temple Quay
Bristol BS1 6PN

☎ 0117 372 6372
email:enquiries@pins.gsl.gov.uk

Decision date:
2 September 2010

Appeal Ref: APP/J1915/A/09/2116672

34 Amwell End, Ware, Herts, SG12 9HW

- 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 Maurice Charge against the decision of East Hertfordshire District Council.
- The application (Ref:- 3/09/1468/FP), dated 10 September 2009, was refused by notice dated 4 November 2009.
- The development proposed is external security shutters to front elevation [external security shutters and shutter boxes to front and side elevations (retrospective)].

Appeal Ref: APP/J1915/H/09/2116675

34 Amwell End, Ware, Herts, SG12 9HW

- The appeal is made under Regulation 17 of the Town and Country Planning (Control of Advertisements) (England) Regulations 2007 against a refusal to grant express consent.
- The appeal is made by Mr Maurice Charge against the decision of East Hertfordshire District Council.
- The application (Ref:- 3/09/1469/AD), dated 3 September 2009, was refused by notice dated 4 November 2009.
- The advertisement proposed is 2 No externally illuminated shop fascia signs with individual cut letters.

Decision on Appeal Ref: APP/J1915/A/09/2116672

1. I allow the appeal, and grant planning permission for external security shutters to front elevation [external security shutters and shutter boxes to front and side elevations (retrospective)] at 34 Amwell End, Ware, Herts, SG12 9HW in accordance with the terms of the application, (Ref:- 3/09/1468/FP), dated 10 September 2009, and the plans submitted with it, subject to the following condition:-
 - 1) The development hereby permitted shall not be carried out except in complete accordance with the details shown on the submitted plans, numbers HS/1 and HS/2.

Decision on Appeal Ref: APP/J1915/H/09/2116675

2. I allow the appeal, and grant consent for the display of 2 No externally illuminated shop fascia signs with individual cut letters at 34 Amwell End, Ware, Herts, SG12 9HW as applied for. The consent is for five years from the date of this decision and is subject to the five standard conditions set out in Schedule 2 to the Town and Country Planning (Control of Advertisements) (England) Regulations 2007.
-

Main Issue on Appeal Ref: APP/J1915/A/09/2116672

3. I consider that the main issue in this appeal is the visual impact of the installation of these external security shutters and shutter boxes to the front and side elevations of this corner building upon the character and appearance of Ware Conservation Area.

Appeal Ref: APP/J1915/A/09/2116672 – Reasons

4. Planning decisions in respect of development carried out in a conservation area must give a high priority to the objective of preserving or enhancing the character of appearance of the area, to satisfy the test set out in section 72 of the Planning (Listed Buildings and Buildings in Conservation Areas) Act 1990. However, in *South Lakeland DC v Secretary of State for the Environment*, [1992] 2 WLR 204, the House of Lords held that there is no requirement in the legislation that conservation areas should be protected from all development that does not enhance or positively preserve.
5. Whilst the character and appearance of conservation areas should always be given full weight in planning decisions, the objective of preservation can be achieved, either by development that makes a positive contribution to an area's character or appearance, or by development that leaves character and appearance unharmed. Therefore, the statement in adopted East Herts Local Plan Policy BH6, that new developments in a conservation area will be permitted where they are sympathetic to the general character and appearance of the area, or are of such quality as to be likely to enhance the character and appearance of the area, has to be tempered by this sound and authoritative advice from the Courts.
6. Applying these principles to the circumstances of this case, the appeal premises undoubtedly occupy a prominent corner position within the Ware Conservation Area. The building is situated on the west side of Amwell End, the principal link between Ware railway station and the historic and commercial core of the town centre, on the north side of its junction with Broadmeads. Unfortunately, in my judgement this undistinguished two-storey flat-roof structure, constructed in the post second world war era, makes little positive contribution in itself towards the character or appearance of the conservation area.
7. To my mind the parade of smaller inter war shops to its north, with their narrower frontages and rendered art-deco detailing at first floor level, adds a livelier visual input to the commercial character of the west side of Amwell End. However, in my opinion, the declining standards of the appearance of post-war commercial development is repeated to the north of the 1930s parade and the older Sky Night Club with its dominant brick pediment, by a further row of unprepossessing brick buildings.
8. I carried out my site inspection in the middle of the evening. The betting office at the appeal premises remained open to cater for summer evening horse race meetings and greyhound meetings but, with the exception of a fish and chip shop and a convenience grocery store, most of the other ground floor premises in this other parade of more modern premises were closed, with metal shutters, of greater solidity than those employed on the appeal premises, firmly secured across the full width of most of the shop fronts.

9. To my mind this sets the standard of shop security for modern retail and non-retail ground floor premises in this part of Ware Conservation Area. The more open form of security grill employed on the appeal premises, in my professional opinion, represents something of an improvement over the more solid shutters employed on its near neighbours to the north. On that basis, I consider that the security grills installed at the appeal premises, even if they do not preserve or enhance the character or appearance of this part of Ware Conservation Area, do nothing to undermine it and thereby leave their contribution towards the building and its surroundings unharmed.
10. I note the contents of the local planning authority's supplementary planning guidance on shopfront security and the support it gives for the use of laminated glass in shopfronts in place of metal security grills. However, in circumstances where there is already a preponderance of metal shutters on modern shop premises in this part of Ware Conservation Area, I consider it unrealistic to insist upon the use of laminated glass in the shopfront of this particular non-retail unit. The existing metal grills can be allowed to remain. The local planning authority does not suggest that any conditions be imposed in the event of the appeal being allowed. I attach one that covers the circumstances in which alterations from the approved plans arise.

Main Issue on Appeal Ref: APP/J1915/H/09/2116675

11. I consider that the main issue in this appeal is the visual impact of the installation of these indirectly illuminated advertising fascia signs, to the front and side elevations of this corner building, upon the character and appearance of Ware Conservation Area.

Appeal Ref: APP/J1915/H/09/2116675 – Reasons

12. The same general approach towards the metal grills, set out above in paragraphs 4 and 5, should be adopted towards this advertising material. Particular attention should also be paid to the advice in paragraph 22 of PPG19, "Outdoor Advertisement Control", which says that many conservation areas are thriving commercial centres where the normal range of advertisements on commercial premises is to be expected, provided they do not detract from visual amenity. Advertisement control should be used flexibly in such areas, so as to conserve or enhance particular features of architectural or historic interest.
13. Taking that last piece of advice into account, I have already made it clear in the preceding paragraphs that I am not over-impressed by the architectural standards of this building. The non-illuminated advertising material that is currently displayed on these premises would appear to me to have been granted deemed consent by virtue of the provisions of Class 5 of Schedule 3 to the Town and Country Planning (Control of Advertisements) (England) Regulations 2007. The fascia signs refer to the business carried on in the premises and the services provided, they are attached to walls containing a shop window, I have no information that they are within an Area of Special Control for Advertisement, no character is more than 0.75m high and no part of the advertisements is higher above ground level than the bottom level of any first floor window in the wall on which either of the advertisements is displayed.

14. So far as I can ascertain, the only reason why these advertisements require express consent is because it is proposed that the present non-illuminated advertising material be indirectly illuminated. Class 4 of Schedule 3 allows for the display certain illuminated advertising material with deemed consent but limitation 4A precludes such display in a conservation area without express consent. In the third paragraph of its report headed "Planning Issues", the local planning authority says in terms, *"The frontage sign is to be externally illuminated by way of three downlighters. There is no objection to the provision of these downlighters."*
15. In these circumstances, this seems to me to be a clear-cut example where the advice contained in paragraph 22 of PPG19 can be adopted and advertisement control in a conservation area can be applied flexibly. The current non-illuminated advertising material does not need express consent and the local planning authority does not object to the means of illumination proposed, the only reason why express consent is required. In this particular situation, I have no alternative but to grant advertisement consent. This will be subject to the standard conditions set out in Schedule 2 to the 2007 Regulations as suggested by the local planning authority.

Conclusions

16. For the reasons given above, I conclude that the section 78 appeal should be allowed. In addition, for the further reasons given above, I conclude that the display of the advertisement material would not be detrimental to the interests of amenity or public safety.

Ian Currie

Inspector



Appeal Decisions

Site visit made on 10 August 2010

by **D Roger Dyer** BA, DipArch, RIBA,
FCIArb, Barrister

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

The Planning Inspectorate
4/11 Eagle Wing
Temple Quay House
2 The Square
Temple Quay
Bristol BS1 6PN

☎ 0117 372 6372
email: enquiries@pins.gsi.gov.uk

Decision date:
7 September 2010

Appeal A Ref: APP/J1915/E/10/2124224/WF 54 High Wych Road, Sawbridgeworth CM21 0HF

- The appeal is made under section 20 of the Planning (Listed Buildings and Conservation Areas) Act 1990 against a refusal to grant listed building consent.
- The appeal is made by Mr and Mrs M Shaffron against the decision of the East Hertfordshire District Council.
- The application Ref 3/09/1565/LB, dated 2 October 2009, was refused by notice dated 26 November 2009.
- The works proposed are "Demolish existing conservatory, construct a single storey extension at the rear".

Appeal B Ref: APP/J1915/A/10/2124226/WF 54 High Wych Road, Sawbridgeworth CM21 0HF

- 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 M Shaffron against the decision of the East Hertfordshire District Council.
- The application Ref 3/09/1536/FP, dated 28 September 2009, was refused by notice dated 26 November 2009.
- The development proposed is "Single storey rear addition".

Decisions

Appeal A Ref: APP/J1915/E/10/2124224/WF

1. The appeal is dismissed.

Appeal B Ref: APP/J1915/A/10/2124224226/WF

2. The appeal is dismissed.

Main issue

3. The principal consideration in these appeals is whether the new extension would preserve the features of special architectural or historic interest which the listed building possesses.

Reasons

4. The appeal property is one of a pair of semi-detached cottages built in the 17th century. These are tall timber-framed and plastered houses under a steep red tiled gabled roof that are listed Grade II. The cottages have interest internally as well as externally with fireplaces and internal posts and cross beams mentioned in the list description.
-

5. Externally the cottages are notable for their simplicity. The appellants have a rather fussy timber conservatory on a brick base at the rear of the cottage but that would be demolished to make space for a new extension. It is essential that alterations to buildings of this sort are based on a proper understanding of the nature and substance of the host building. New work should be fitted to the old to ensure respect for the listed structure. Most importantly, modern extensions should not dominate the existing building in terms of scale, material or structure. It is necessary to apply an intimate knowledge of the main building that is being extended with sensitive handling of scale and detail.
6. In this case such sensitivity has not been displayed in the proposed scheme. In particular the proposal for an "L" shaped extension departs from the simplicity of the original cottage. The scale of the extension does not reflect existing features that led to the listing of the cottages. While the existing conservatory lacks merit, the proposed extension would not preserve the listed building or its features. It follows that the appeals must be dismissed.
7. In reaching my decision I have taken careful note of all other matters brought to my attention in writing. I note particularly the appellants' indication of mixed, even ambiguous, advice from the Council in pre-application and other discussions. Nevertheless it is important that the listed building should be preserved and I have found nothing that outweighs the main planning considerations in this case.

D Roger Dyer

INSPECTOR



Appeal Decision

Site visit made on 13 July 2010

by Philip Willmer BSc Dip Arch RIBA

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

The Planning Inspectorate
4/11 Eagle Wing
Temple Quay House
2 The Square
Temple Quay
Bristol BS1 6PN

☎ 0117 972 6372
email:enquiries@pins.gsi.g

13 AUG 2010
Decision date:
12 August 2010

Appeal Ref: APP/J1915/A/10/2123569

5 Parliament Square, Hertford, Hertfordshire, SG14 1EX.

- 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 T Morreale against the decision of East Hertfordshire District Council.
- The application Ref 3/09/1784/FP, dated 5 November 2009, was refused by notice dated 21 January 2010.
- The development proposed is change of use from retail (A1) to coffee shop (A3) including external seating to front.

Decision

1. I dismiss the appeal.

Main issue

2. I consider the main issue to be the effect of the proposal on the vitality and viability of this secondary shopping frontage within Hertford town centre.

Reasons

3. Saved Policy STC3 of the East Herts Local Plan Second Review April 2007 (LP) advises that within secondary shopping frontages in the larger town centres, including Hertford, proposals for development or changes of use falling within, along with others, use class A1 (shops) will be permitted provided that this would not result in an excessive concentration of non-shop uses. It goes on to say that as a general guideline to shopping sustainability in secondary frontages, proposals that result in fewer than 50% of ground floor premises, in a continuous frontage in shop use, would not be favoured. In any event, regard will be had to the character and function of that part of the shopping area and the overall proportion of non-shopping uses.
4. The appellant proposes the change of use of number 5 Parliament Square, currently known as 'Marmalade', a ladies clothes boutique (A1), to a coffee shop (A3) with an outside seating area.
5. Secondary frontages are identified in Appendix III of the LP *Shopping Frontage Policy Areas in Large and Small Centres* and illustrated on the LP proposals maps. The Council states that the property lies within a continuous secondary frontage comprising numbers 2-26 (evens) Fore Street, 1-25 (odds) Parliament Square and 13-15 (odds) Castle Street. The appellant suggests that the Salisbury Arms Hotel (24 and 26 Fore Street) is not part of this continuous frontage because it is situated on an island site separated from its immediate

neighbours on both sides by two roads, Bell Lane and Church Street. However, paragraph 7.7.4 of the LP states that for the avoidance of doubt a continuous frontage is that denoted by a continuous line on the proposals map. To my mind the proposals map (Inset Map 12 Hertford Town Centre) is clear as to the extent of the defined continuous secondary frontage (2-26 Fore Street) by reason of the unbroken line on the map. However, it is common ground between the parties that whether the Salisbury Arms Hotel is or is not included, the proposed change of use would reduce the ratio of retail to other uses to a little below the 50% guideline set out in the policy. The difference in the two assessments, of 44% or 47%, being just 3 percentage points.

6. I give some weight to the appellant's argument that the shortfall in percentage terms from the guidelines would seem to be small. However, the policy requires regard to be had to both the character and function of that part of the shopping area as well as the overall proportion of non-shopping uses, which I shall now consider.
7. From my observations, because of Parliament Square's edge of centre location, the footfall appeared relatively low in comparison to even those premises that front Fore Street. However, based on the limited evidence provided, I am not persuaded that a further coffee shop, as opposed to the retention of a retail use, would, as suggested, necessarily increase the footfall to this part of the secondary frontage to the benefit of the other businesses. I can therefore only give little weight to the appellant's contention in this regard.
8. Furthermore, in my experience, specialist or unique shops are often to be found in locations such as this as they are sought out destinations by their customers. Lack of footfall therefore is not necessarily the only fundamental consideration in terms of viability. There is no evidence before me to suggest that the current business or indeed neighbouring businesses are unsustainable because of limited footfall. I accept that saved Policy STC3 does not require a demonstration of need or viability. However, in my view, the loss of existing shops or a lack of demand for retail premises may, dependant on circumstances, be an indicator of the viability and vitality of a shopping frontage.
9. My attention has been drawn to linked appeals dated 30 April 2009 Appeal Ref: APP/J1915/C/08/2073722 and APP/J1915/A/08/2069820 which related to a proposed coffee shop within a primary shopping frontage to the north of Hertford town centre. I accept, as identified by the Inspector in that matter that complementary non-shopping activities, including coffee shops, may in certain circumstances promote town centres as diverse multi-functional areas. However, here there are already some 50% non retail uses. In addition I observed that Café Rouge, next door to the appeal site, already provides a coffee shop facility and therefore if the development were to go ahead there would be two similar non-shopping activities immediately next to each other. Furthermore, in my opinion, the fact that a particular mix of uses has become established elsewhere in the town is no reason to replicate the same model here.
10. A café here, spreading on to the pavement as envisaged by the appellant, might well be visually attractive particularly during the summer months and therefore may well attract some people seeking an alternative choice to other

nearby A3 outlets. However, the diversity of uses sought by the Council and envisaged in Planning Policy Statement 4: *Planning for Sustainable Economic Growth* (PPS4) may, in my opinion, equally well if not better be provided here, where approximately 50% of the premises in the frontage are already non-retail, by retaining the existing shop. Further, an independent retailer, like the proprietor of the proposed coffee shop, would in my experience be just as likely to be local and may well also provide enhanced employment opportunities. I therefore give these arguments little weight.

11. I conclude, based on the limited evidence provided in support of the proposal, that the loss of the shop here would, on balance, be detrimental to the continuing vitality and viability of this secondary shopping frontage. The proposal is therefore contrary to the underlying objectives of saved LP Policy STC3 as it seeks to avoid an excessive concentration of non-shop uses in secondary shopping frontages.

Other considerations

12. The appeal site is located within the Hertford Conservation Area. Section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires me to pay special attention to the desirability of preserving or enhancing the character or appearance of such areas. The application does not propose any alterations to the external appearance of 5 Parliament Square. However, it is intended to form an external seating area on the pavement, similar to that of the next door café. The Council states that this element of the development would be acceptable in terms of the character or appearance of the area. From what I have seen and read I have no reason to come to a different conclusion. I therefore believe that the proposal would preserve the character and appearance of the conservation area.
13. My conclusion in respect of this issue, however, does not outweigh my findings on the main issue.

Conclusion

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

Philip Willmer

INSPECTOR



Appeal Decision

Site visit made on 3 August 2010

by **N A C Holt** TD BArch(hons) DipTP
DipCons RIBA MRTPI

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

The Planning Inspectorate
4/11 Eagle Wing
Temple Quay House
2 The Square
Temple Quay
Bristol BS1 6PN

☎ 0117 372 6372
email: enquiries@pins.gsi.gov.uk

Decision date:
31 August 2010

Appeal Ref: APP/J1915/Q/10/2128085

15 Finches End, Walkern, Stevenage, SG2 7RG

- The appeal is made under Section 106B of the Town and Country Planning Act 1990 against a refusal to modify/discharge a planning obligation.
- The appeal is made by Mrs S J Brent against the decision of East Hertfordshire District Council.
- The development to which the planning obligation relates is the construction of 18 dwellings at Finches Farm under the terms of application 3/96/0813/FP.
- The planning obligation, dated 10 March 1997, was made between East Hertfordshire District Council and Walkern Developments Ltd.
- The application Ref 3/09/1849/SV, dated 12 November 2009, was refused by notice dated 10 February 2010.
- The application sought to have the age restriction imposed on the occupation of No 15 Finches End (along with Nos 2, 3 and 14) imposed by clause 2.(c) removed.

Summary of Decision:

The appeal is allowed and the obligation discharged

Application for costs

1. An application for costs was made on behalf of Mrs S J Brent against East Hertfordshire District Council. This application is the subject of a separate Decision.

Procedural Matters

2. The obligation in respect of application 3/96/0813/FP identified four of the units on the Finches Farm site (constructed as Nos. 2, 3, 14 and 15 Finches End) as 'Retirement Homes'. Clause 2.(c) states that:

'no Retirement Home shall be used or occupied other than as private residential accommodation for persons where at least one member of the household is of the Specified Age (defined as aged 55 or over) provided always that this restriction shall not apply to the occupation of any Retirement Home by a surviving spouse or sibling under the Specified Age who was permanently residing with a person of the Specified Age at the date of death and continues to occupy the Retirement Home after the death of the said person of the Specified Age who had occupied that Retirement Home in the period immediately before his or her death'.

3. The application also makes reference to an earlier agreement made in the context of application 3/94/1508/FP which contains a similar restriction on the age of occupants of certain dwellings. The appellant requests that this obligation should also be modified if it is still considered to be effective.

4. However I agree with the Planning Authority that the development permitted under 3/94/1508/FP was never implemented and the agreement never came into force. I shall therefore restrict my consideration to the later agreement in relation to 3/96/0831/FP.
5. As the sole remaining purpose of the obligation relates to an age restriction on the occupation of the units identified as 'Retirement Homes' I shall therefore regard the application as one seeking the discharge of the obligation rather than its modification.

Main issue

6. I consider that the main issue in this case is whether the obligation the subject of this appeal meets the tests set out in paragraph B5 of Circular 05/2005 'Planning Obligations' and whether it continues to serve any useful purpose in land use planning terms.

Reasons

7. Circular 05/2005 makes clear that obligations are intended to make acceptable development which would otherwise be unacceptable in planning terms. The document states that obligations must satisfy all of the following tests:
 - i. be relevant to planning,
 - ii. necessary to make the proposed development acceptable in planning terms,
 - iii. directly related to the proposed development,
 - iv. fairly related in scale and kind to the proposed development, and
 - v. reasonable in all other respects.
8. If a restriction is to be placed on the age of persons who can occupy a property there must be a clear justification for such a measure. Annex B to Circular 05/2005 indicates that development plan policies are a crucial pre-determinant in justifying the seeking of any planning obligations since they set out the matters which, following consultation with potential developers, the public and other bodies, are agreed as essential in order for a development to proceed.
9. Whilst policies of the East Hertfordshire Local Plan, Second Review seek to ensure that an appropriate level of affordable housing is provided in the district and also that 15% of new dwellings are constructed to 'Lifetime Homes' standards there is no requirement in relation to the restriction of the occupation of dwellings to those over a certain age. Whilst the adoption of the plan may post date the approval of the application my attention has been drawn to no policies in earlier plans that would have justified such a measure.
10. A Strategic Housing Market Assessment commissioned by a consortium of Councils including East Hertfordshire and produced in 2008 recognises the importance of ensuring that a part of the new housing delivery across all tenures is particularly suited for the elderly. However this is very different to saying that the occupation of a proportion of housing, that would be equally

suitable for occupation by other groups for which there is a need, such as first time buyers, should be restricted to persons over 55.

11. The dwellings are not in the control of a charity or registered social landlord and can not be regarded as affordable housing. They would not be available to persons who could not afford the market price or the market rental. In policy terms there is no justification for a restriction on the age of persons occupying what would otherwise be normal market housing.
12. Whilst I have no evidence before me in relation to matters such as the rental sought or the extent of advertising, I note that the owner of No 15 has been unsuccessful in attempts to rent out the property to persons who would meet the age restriction.
13. In terms of their layout and construction, whilst the properties may meet the requirements of 'lifetime homes' and be suitable for occupation by the elderly and persons with mobility problems, there is nothing that would make the identified 'Retirement Homes' unsuitable for occupation by others wishing a small dwelling. Whilst the gardens may be smaller and the properties are semi-detached, the layout is not one that would result in unacceptable living conditions if the dwellings in question were occupied on an unrestricted basis. Each unit has access to off street parking provision and it can not be argued that a restriction on occupation is required to ensure that adequate parking is available.
14. Whilst there is local support for the retention of the restriction on the occupancy of the properties, this is not reflected in relevant planning policy and I do not consider that it has been demonstrated that there is a specific need in Walkern that would justify an approach to housing provision not followed elsewhere. Nor do I consider that it could be argued that the element of elderly persons' housing is required in the context of the development of which it forms a part.
15. Permission was initially granted for the Finches Farm development against officer advice and the restriction on the occupancy of certain units as 'Retirement Homes' was offered by the landowner. However, I consider that there is no policy justification for the restriction in the occupation of four of the units and it serves no useful planning purpose. The removal of the restriction would not, as a result, make residential use of the site unacceptable in planning terms. As such I consider that the restriction is contrary to the national advice on planning obligations in Circular 05/2005. Whilst a draft Government policy document for planning obligations proposes a revision in the tests which obligations must meet, the requirement that it is 'necessary to make the development acceptable in planning terms' is retained. The obligation in this case fails to satisfy the test.
16. In reaching my conclusion that the appeal should be allowed I have taken account of all the other matters raised in the material before me. I am aware for instance that residents of Finches End would have purchased their properties in the knowledge that a restriction applied to the occupation of certain units and that the owner of the adjacent 'Retirement Home' supports the retention of the age restriction. These and the other matters raised do not alter my conclusion that the obligation should be discharged.

17. Whilst I note that the site is located in a conservation area, the application does not affect the character or appearance of the area.

Formal Decision

18. For the above reasons and in exercise of the powers transferred to me I hereby allow the appeal and discharge the obligation dated 10 March 1997 between East Hertfordshire District Council and Walkern Developments Ltd.

Neil A C Holt

Inspector



Costs Decision

Site visit made on 3 August 2010

by **N A C Holt** TD BArch(hons) DipTP
DipCons RIBA MRTPI

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

The Planning Inspectorate
4/11 Eagle Wing
Temple Quay House
2 The Square
Temple Quay
Bristol BS1 6PN

☎ 0117 372 6372
email: enquiries@pins.gsi.gov.uk

Decision date:
31 August 2010

Costs application in relation to Appeal Ref: APP/J1915/Q/10/2128085 15 Finches End, Walkern, Stevenage, SG2 7RG

- The application is made under the Town and Country Planning Act 1990, sections 106B, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
- The application is made by Mrs S J Brent for a full award of costs against East Hertfordshire District Council.
- The appeal was against a refusal to modify/discharge a section 106 undertaking.

Summary of Decision: The application is allowed in the terms set out below in the Formal Decision and Costs Order.

Reasons

1. 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 another party to incur or waste expense unnecessarily.
 2. The appeal relates to the second application by Mrs Brent seeking the removal of the clause of an obligation which requires at least one member of the household of 15 Finches End to be 55 or over. Both applications were refused against officer advice.
 3. There is no development plan policy or other relevant policy which requires new housing development to include provision solely for the elderly and whilst reference is made to the view of members that there is a need for specific provision for housing for the elderly within the district no real evidence was produced that would justify such a requirement in Walkern. Whilst the developer may have been willing to include accommodation suitable for the elderly in the overall development, I am satisfied that having regard to the guidance of Circular 05/2005 there was no justification in planning terms for the restriction in the age of the individuals who could occupy the dwellings at the time the application was considered or now.
 4. Appendix B of Circular 03/2009 indicates that Planning Authorities are at risk of an award of costs against them if they prevent or delay development which should clearly be permitted having regard to the development plan, national policy statements and any other material considerations. It also states that authorities will be expected to produce evidence to show clearly why the development should not be permitted. Whilst Planning Authorities are not bound to accept the advice of their officers, if officers' professional advice is not followed they will need to show reasonable planning grounds for taking a contrary decision and produce relevant evidence on appeal to support the decision in all respects. Whilst the wording of the Circular may refer
-

specifically to development proposals the same principles can be applied to an application relating to the modification or discharge of an obligation.

5. Whilst it is indicated in the Council's letter of 22 June 2010 that in reaching their decision the Committee attached weight to information about the proportion of those over 60 seeking affordable housing in Walkern, there is no indication from the Committee Report or Minutes that such information was provided to members. In any event it would appear that such enquiries related specifically to affordable housing which is not provided in this case.
6. In my opinion the Council have failed to produce relevant planning evidence to support their view that there is a specific need in Walkern to restrict the occupation of what otherwise would be normal market housing to persons 55 and over. I note that in the conclusion of his Committee Report the Planning Officer states 'it is considered that it is not necessary or reasonable, in planning terms to restrict the occupancy of these four dwellings to elderly persons. There is no policy justification in the current local plan for doing so, and there are no other planning reasons why such a restriction is necessary'. I agree with the officer's comments.
7. Reference is made in the appellant's costs application to certain other matters. I am not convinced that Clause 4 of the agreement would necessarily have provided a means of overcoming the requirement of Clause 2c and I do not consider this point materially contributes to the appellant's case. I similarly attach little significance to errors in the wording of the decision.
8. I consider that in refusing the application against officer advice for a second time in the absence of relevant planning evidence and policy support, the Council behaved unreasonably and as a result the appellant unnecessarily incurred the costs of her appeal.

Formal Decision and Costs Order

9. In exercise of my 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 powers enabling me in that behalf, I HEREBY ORDER that East Hertfordshire District Council shall pay to Mrs S J Brent the costs of the appeal proceedings, such costs to be assessed in the Supreme Court Costs Office if not agreed. The proceedings concerned an appeal more particularly described in the heading of this decision.
10. 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 Supreme Court Costs Office is enclosed.

Neil A C Holt

Inspector

The Planning Inspectorate

Award of appeal costs:

Local Government Act 1972 – section 250(5)

How to apply for a detailed and independent assessment when the amount of an award of costs is disputed

This note is for general guidance only. If you are in any doubt about how to proceed in a particular case, you should seek professional advice.

If the parties cannot agree on the amount of costs to be recovered, either party can refer the disputed costs to a Costs Officer or Costs Judge for detailed assessment¹. This is handled by:

The Senior Court Costs Office²
Clifford's Inn
Fetter Lane
London EC4A 1DQ
(Tel: 0207 9477124).

But before this can happen you must arrange to have the costs award made what is called an order of the High Court³. This is done by writing to:

The Administrative Court Office
Royal Courts of Justice
Strand
London WC2A 2LL

You should refer to section 250(5) of the Local Government Act 1972, and enclose the original of the order of the Secretary of State, or their Inspector, awarding costs. A prepaid return envelope should be enclosed. The High Court order will be returned with guidance about the next steps to be taken in the detailed assessment process.

© Crown copyright

407

Printed in Great Britain by the Planning Inspectorate on recycled paper Sept 2000
(updated)

¹ The detailed assessment process is governed by Part 47 of the Civil Procedure Rules that came into effect on 26 April 1999. These rules are available online at http://www.justice.gov.uk/civil/procrules_fin/menus/rules.htm

You can buy these Rules from The Stationery Office bookshops or look at copies in your local library or council offices.

² Formally named the Supreme Court Costs Office

³ Please note that no interest can be claimed on the costs claimed unless and until a High Court order has been made. Interest will only run from the date of that order.



Appeal Decision

Site visit made on 3 August 2010

by **N A C Holt** TD BArch(hons) DipTP
DipCons RIBA MRTPI

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

The Planning Inspectorate
4/11 Eagle Wing
Temple Quay House
2 The Square
Temple Quay
Bristol BS1 6PN

☎ 0117 372 6372
email:enquiries@pins.gsi.gov.uk

Decision date:
16 August 2010

Appeal Ref: APP/J1915/D/10/2131027
Gatesbury Mill, Braughing, Ware, SD11 2PA

- 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 A Oakley against the decision of East Hertfordshire District Council.
- The application Ref 3/10/0240, dated 10 February 2010, was refused by notice dated 1 April 2010.
- The development proposed is the removal of an existing two storey habitable outbuilding and its replacement with a detached swimming pool building.

Decision

1. The appeal is allowed and I grant planning permission for the removal of an existing two storey habitable outbuilding and its replacement with a detached swimming pool building at Gatesbury Mill, Braughing, Ware, SD11 2PA, in accordance with the terms of application 3/10/0240 dated 10 February 2010 and subject to the conditions listed at Annex A.

Main issues

2. I consider that the main issues in this case are whether the proposal would result in the loss of a curtilage building of special architectural or historic interest and the effect of the proposal on the setting of the principal listed building.

Reasons

3. Gatesbury Miller's House is a Grade II listed building. The list description refers to it being early 17th Century but it has been altered over the years. To the north are a group of outbuildings including a structure measuring around 13m by 5.8m with a ridge height of 6m that has rendered walls and a plain tile roof. In the roof-slope nearest to the mill house are two dormer windows. The proposed swimming pool would be erected on the site of this building.
 4. Whilst the Planning Authority refer to old maps showing ancillary buildings associated with the mill and suggest that the building to be replaced may itself be of heritage significance, evidence produced by the appellants suggests that the current building post-dates 1948. From what I saw on site I would not dispute this view. Whilst the building may be of traditional construction I do not consider that it was built before 1948. Whilst there may be a hoist and pulley on the east gable I consider this is applied ornament. The remains of
-

the staircase at the opposite end of the building appeared to be of modern construction.

5. Whilst it may be that the site is of archaeological significance, and this is something that could be addressed by condition, I do not consider the building that would be replaced pre-dates 1948 and I do not consider it has significance in heritage terms.
6. A previous application for a swimming pool was dismissed on appeal because of its damaging effect on the setting of the listed building. This earlier proposal involved an additional structure on the site rather than the replacement of an existing building.
7. The building now proposed would have a marginally larger footprint than the structure to be replaced. However, I do not consider that the slight increase in size would have material consequences in terms of its impact on the principal building.
8. The drawings show a building with a relatively steeply pitched plain tile roof, with a 'cat-slide' on the south elevation, over walls partly clad in brick and partly oak framed with glazing. Each of the roof pitches would have three dormers with weatherboarding on their cheeks and front. There would also be weatherboarding on the upper part of the east gable and an external timber staircase.
9. Whilst arguably the building would be more eye catching than the structure that would be replaced, subject to care in the architectural detailing and in the finishes, I do not consider that the design proposed would appear out of place in the context of the miller's house. I note that the listed building already has a glazed oak framed extension.
10. I do not consider that the proposal would harm the setting of the listed building. Indeed, bearing in mind that the scheme would also involve the removal of existing hardstanding and shelters around the existing structure, I am satisfied that the overall consequences for the setting of the listed building would be beneficial.
11. I have taken account of all the other matters raised. Whilst the site is located in a rural area I agree that the proposal would not have a detrimental effect on the open character of the countryside. The various other matters do not alter my conclusion that the scheme would enhance the setting of the listed building and would not conflict with relevant policy, including that in the development plan and in the recently produced national policy relating to Planning and the Historic Environment in PPS5. As a consequence I am allowing the appeal.
12. Whilst the precise wording has been changed I consider the various conditions suggested by the Council are necessary. I consider however that the matters on which further details are to be provided and agreed should be expanded.

Neil A C Holt

Inspector

ANNEX A

CONDITIONS

1. The development hereby permitted shall begin not later than three years from the date of this decision.
2. The development shall be carried out in accordance with drawings PPC225/01, PO/01, PO/02, PO/03.
3. Prior to commencement of development samples of the external facing materials shall be submitted to and approved in writing by the Local Planning Authority and the building shall be constructed using the approved materials.
4. Prior to commencement of development the following shall be submitted to and approved in writing by the Local Planning Authority:
 - i. detailed drawings showing method of construction and finishes of external doors, staircase, windows (including dormers), timber framing and eaves at a scale not less than 1:20,
 - ii. drawings showing the treatment of the space around the building, including surface treatment, structures and features to be removed and any means of enclosure at a scale not less than 1:100,and the development shall be carried out in accordance with the approved details.
5. No development shall take place until a programme of archaeological work has been submitted to and agreed in writing by the Local Planning Authority and erection of the swimming pool shall not commence until the approved programme of archaeological work has been fully implemented.