



Department for  
Communities and  
Local Government



Development  
Control

- 4 MAR 2016

Mr Peter Brady  
The Planning Law Practice  
Wood End  
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BISHOPS STORTFORD  
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CM23 2BY

Our Refs: APP/J1915/A/14/2220854 &  
APP/J1915/A/14/2220859

3 March 2016

Dear Sir

**TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 78  
APPEALS BY WHEATLEY HOMES LTD: AREA 2 and 3, LAND SOUTH OF HARE  
STREET ROAD, BUNTINGFORD SG9 9JQ  
APPLICATION REFS: 3/14/0528/OP & 3/14/0531/OP**

1. I am directed by the Secretary of State to say that consideration has been given to the report of the Inspector, John Braithwaite BSc(Arch) BArch(Hons) MRTPI, who held an inquiry on 6-8 January 2015 into your client's appeals against the failure of East Hertfordshire District Council ('the Council') to give notice of its decision within the appropriate period for approximately 100 houses at Area 2 in accordance with application reference 3/14/0528/OP, and approximately 80 houses at Area 3 in accordance with application reference 3/14/0531/OP, both applications dated 21 March 2014.
2. On 27 March 2015 the appeals were recovered for the Secretary of State's determination, in pursuance of section 79 of, and paragraph 3 of Schedule 6 to, the Town and Country Planning Act 1990, because the appeals raise important or novel issues of development control, and/or legal difficulties.

**Inspector's recommendation and summary of the decision**

3. The Inspector recommended that both appeals be allowed. For the reasons given below, the Secretary of State agrees with the Inspector's analysis and conclusions, and agrees with his recommendations. A copy of the Inspector's report (IR) is enclosed. All references to paragraph numbers, unless otherwise stated, are to that report.

**Procedural matters**

4. The Secretary of State notes an application for costs was made by the appellant against the Council. That application is the subject of a separate decision.

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5. After receiving the Inspector's report, the Secretary of State received an email from the Council dated 15 September, attached to which was a consultant report entitled *Buntingford Transport Modelling Assessment* dated August 2015. The report was in two parts, a *Base Model Report* and a *Future Scenarios Model Report*. The email noted that the report has been discussed at the appeal Inquiry and had now been endorsed by the Council. On 25 September 2015 the Secretary of State received an email from Councillor Jones of East Hertfordshire District Council to which were attached the same report and also an email from Thames Water to the Council dated 15 July about development and infrastructure issues in Buntingford. The Secretary of State has given careful consideration to all these representations, but as they do not raise new issues that would affect his decision he has not considered it necessary to circulate them to the appellant for comment. Copies of the correspondence may be obtained on written request from the address at the bottom of the first page of this letter.

### **Policy considerations**

6. In deciding these appeals, the Secretary of State has had regard to section 38(6) of the Planning and Compulsory Purchase Act 2004 which requires that proposals be determined in accordance with the development plan unless material considerations indicate otherwise. In this case the development plan consists of the saved policies of the East Hertfordshire Local Plan 2007. The Secretary of State considers that the most relevant policies for this case are those set out at IR10, namely: LP Policy GBC2 (on the Rural Area beyond the Green Belt, RAGB), LP Policy GBC3 (which specifies that within the RAGB permission will not be granted for new buildings other than in specified purposes, none of which specified purposes apply in the case of these appeals) and LP Policy IMP1 which requires developers to make provision for affordable housing, infrastructure and other purposes by entering into planning obligations or accepting planning conditions. Other material considerations which the Secretary of State has taken into account include the National Planning Policy Framework (the Framework), the associated planning practice guidance (the Guidance) and the Community Infrastructure Levy (CIL) Regulations 2010 as amended.
7. The Secretary of State notes that the Council is currently preparing a new District Local Plan covering the period to 2031. A draft has been published and subject to consultation, but has not been submitted for independent examination. As the proposals are still in preparation, are subject to unresolved objections to relevant policies and may, at examination, be found to require modification in order to be consistent with the Framework, the Secretary of State agrees with the Inspector that very limited weight can be accorded to the emerging Plan (IR88).
8. The Buntingford Neighbourhood Plan (NP) is at an early stage, being yet to be submitted to East Hertfordshire District Council for publicity and independent review by an Examiner. The appeal site abuts but is outside the settlement boundary in the emerging NP and is not allocated for development. The appeal proposal therefore conflicts with the emerging NP. However, the Guidance advises that refusal of planning permission on grounds of prematurity will seldom be justified in the case of an NP before the end of the local planning authority publicity period. As the NP is still at an early stage in preparation, is subject to unresolved objections to relevant policies and may be found at examination to require modification, and because of the matter of housing land supply considered below, the Secretary of State gives little weight to the emerging NP.

## **Main considerations**

### *Housing land supply*

9. Paragraph 47 of the Framework requires local planning authorities to identify and update annually a supply of specific deliverable sites to provide five years of housing against their housing requirements. The Appellant's uncontested assessment of current housing supply is, at the very best, 3.3 years. Paragraph 49 of the Framework states that relevant policies for the supply of housing should not be considered up to date if the local planning authority cannot demonstrate a five-year supply of deliverable housing sites. The Secretary of State agrees with the Inspector that LP policies GBC2 and GBC3 are relevant policies for the supply of housing and should be treated as out of date in this respect, though not in other regards (see below), given the Council's accepted position regarding the housing land supply position (IR89).
10. Aside from housing land supply, the Secretary of State agrees with the Inspector the main issue is whether the site is a sustainable location for housing, with particular regard to matters under the headings below (IR68).

### *The visual amenity and character of the area*

11. Having regard to the reference to the appeal decision on Area 1 at IR88, the Secretary of State considers that although policies GBC2 and GBC3 are out of date in terms of identifying settlement boundaries and housing supply, they are up to date and deserve significant weight in terms of their protection of the countryside from unnecessary development, particularly as they are consistent with the principle at paragraph 17 of the Framework that planning should recognise the intrinsic character and beauty of the countryside. However, the Secretary of State agrees with the Inspector's analysis at IR69-73 and conclusion at IR73 that the proposed developments, both individually and cumulatively, would have a less than significant adverse effect on the character or visual amenity of the area. Consequently he places little weight on this harm, though he agrees with the Inspector that both developments would nevertheless be contrary to saved LP Policy GBC3 (IR73).

### *Local infrastructure*

12. For the reasons at IR74-75 the Secretary of State agrees with the Inspector that the proposed developments would not place an unacceptable burden upon local infrastructure (IR75) and would accord with saved LP Policy IMP1 (IR75).

### *Best and most versatile agricultural land*

13. The Secretary of State has taken account of the fact that the proposed developments would result in the loss of about 14 hectares of the best and most versatile agricultural land (IR76). He places moderate weight on this loss.

### *Local employment opportunities and public transport links*

14. The Secretary of State agrees with the Inspector's assessment at IR77-79 and conclusion at IR80. He agrees that Buntingford has poor public transport links to the other towns in the District and elsewhere, and currently has insufficient employment opportunities for the intended increase in the population of the town. But land exists for the creation of employment opportunities and the appellant's financial contributions would enhance the marketing of this land and enhance sustainable transport

opportunities for both existing and intended residents. In this regard both developments would accord with saved LP policy IMP1. However, the field where the Areas 2 and 3 are located is a less sustainable location for housing in comparison to sites in, or on the edge of, large towns in the District that have a railway station and better public transport (IR80). Taking account of the transport provisions in the Unilateral Undertakings, the Secretary of State places moderate weight against the proposal on account of Buntingford's relatively poor public transport links and the likelihood that a high percentage of journeys by new residents would be made by car including trips to access train services (IR83-84).

#### *Traffic*

15. The Secretary of State notes the Council's changed position at the start of the Inquiry regarding its earlier concerns about impact on the transport network (IR3) and that the traffic modelling report that has been drawn to the Secretary of State's attention (paragraph 5 above) is referred to in the unilateral undertakings for both appeal areas (email from the Council to the Secretary of State dated 15 September).
16. The Secretary of State agrees with the Inspector's conclusion that there is no evidence to indicate that the developments would result in unacceptable congestion anywhere on the local road network, or compromise highway safety or cause any unacceptable noise or disturbance due to the increased traffic (IR86).

#### *Whether the proposals would be sustainable development*

17. The Secretary of State agrees with the Inspector's assessment at IR81-85. Despite the loss of Grade 2 agricultural land and the likelihood that intended residents would predominantly use their private motor cars for journeys to work and shopping purposes, the balance falls on the developments satisfying the environmental role of sustainable development in view of the improvements to the biodiversity of the area (IR82 and condition 15 in regard to both appeals) and the less than significant adverse effect on the character and visual amenity of the area. The developments fully satisfy the economic and social roles of sustainable development and the Secretary of State agrees that the proposals may therefore be regarded to be, overall, sustainable developments in sustainable locations for housing (IR84-85).

#### **Conditions**

18. The Secretary of State has considered the Inspector's assessment at IR64-65 and recommended Schedules of conditions at page 23-25 of his report. The Secretary of State is satisfied that the proposed conditions for both appeals are reasonable and necessary and would meet the tests of paragraph 206 of the Framework.

#### **Unilateral Undertakings**

19. The Secretary of State agrees with the Inspector's assessment at IR66 of the Unilateral Undertakings submitted for each of the appeal schemes. He agrees that the Undertakings are all necessary to make the development acceptable in planning terms, are directly related to the development, are fairly and reasonably related in scale and kind to the development, and are in place to mitigate the effects of the development. He therefore agrees with the Inspector that both Undertakings would be CIL compliant and considers that they fully accord with the tests in paragraph 204 of the Framework.

## **Overall planning balance and conclusion**

20. The Secretary of State has had regard to s 38 (6) of the Planning and Compulsory Purchase Act 2004. The Secretary of State agrees with the Inspector's conclusions and planning balance at IR87-92. The proposals do not accord with the development plan taken as a whole, in particular owing to the clear conflict with LP Policy GBC3. The Secretary of State has therefore gone on to consider whether there are any material considerations which might nevertheless justify allowing the appeals.
21. The uncontested current housing supply is at best 3.3 years. In applying Paragraph 49 of the Framework the Secretary of State considers that, as the Council cannot demonstrate a five year supply of deliverable housing sites, LP Policies GBC2 and GBC3 are out of date in so far as they relate to the supply of housing. He has therefore gone on to consider Paragraph 14 of the Framework. This states that there is a presumption in favour of sustainable development and that, for decision taking, this means, where relevant policies in the development plan are out-of-date, granting planning permission for development unless any adverse effects of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.
22. Weighing against the appeal proposal are the less than significant adverse effect on the character or visual amenity of the area, on which the Secretary of State places little weight, and Buntingford's relatively poor public transport links and the likelihood that a high percentage of journeys by new residents would be made by car including trips to access train services, on which he places moderate weight. The Secretary of State also places moderate weight on the loss of 14 hectares of the best and most versatile agricultural land.
23. Weighing in favour, the main benefit of the developments is the provision of market housing units and 40% affordable housing units in a District where there is a significant under supply of housing. The Secretary of State considers that this provision of housing weighs heavily in favour of the appeal. Additionally, he places moderate weight on the improvements to the biodiversity of the site.
24. Overall, the Secretary of State agrees with the Inspector that the appeal proposals would be sustainable developments and, having weighed the adverse effects of the developments against the benefits, the Secretary of State considers that the benefits of both developments clearly outweigh the adverse effects, so justifying determination of the appeals other than in accordance with the development plan.

## **Formal Decision**

25. Accordingly, for the reasons given above, the Secretary of State agrees with the Inspector's recommendation and hereby allows your client's appeals and grants outline planning permission for:
  - approximately 100 houses at Area 2 in accordance with application reference 3/14/0528/OP, subject to the conditions in Annex A; and
  - approximately 80 houses at Area 3 in accordance with application reference 3/14/0531/OP, subject to the conditions in Annex B.

## **Right to challenge the decision**

26. A separate note is attached setting out the circumstances in which the validity of the Secretary of State's decision may be challenged. This must be done by making an application to the High Court within six weeks from the date of this letter for leave to bring a statutory review under section 288 of the Town and Country Planning Act 1990.

27. A copy of this letter has been sent to East Hertfordshire District Council. Notification has been sent to all other parties who asked to be informed of the appeal decisions.

Yours faithfully

*Julian Pitt*

**Julian Pitt**

Authorised by Secretary of State to sign in that behalf

## **Annex A**

### **Conditions applicable to grant of outline planning permission for application No. 3/14/0528/op (Area 2)**

1. The development hereby permitted shall be carried out in accordance with the following approved plans: 16700/1019A, 16700/1021 rev B, 16700/1022B, JBA 14/07-SK03 rev A, JBA 14/07-SK04 rev A, JBA 14/07-03 rev A, C-207128/SK24 rev P6, C-207128/SK28 rev P2.
2. Details of the appearance, landscaping, layout, and scale of the development (hereinafter called the reserved matters) shall be submitted to and approved in writing by the local planning authority before any development begins, and the development shall be carried out as approved.
3. Application for approval of the reserved matters shall be made to the local planning authority not later than one year from the date of this permission.
4. The development hereby permitted shall begin no later than one year from the date of approval of the last of the reserved matters to be approved.
5. The landscaping scheme referred to in condition 2 shall include replacement, reinforcement and where appropriate the extension of screen planting on the eastern boundary of the land, together with proposals for the future management and maintenance of this area whilst the development hereby permitted remains.
6. No development or groundworks shall take place until the applicant has secured the implementation of a programme of archaeological work in accordance with a written scheme of investigation, which has been submitted to and approved in writing by the Local Planning Authority. The development shall thereafter be carried out in accordance with the approved programme, and this condition shall only be discharged when the required archaeological reports are submitted to and approved in writing by the Local Planning Authority.
7. No development shall take place until a detailed surface water drainage scheme has been submitted to and agreed in writing by the Local Planning Authority. The scheme shall be based on the submitted Flood Risk Assessment C-207128D dated 14 March 2014 and shall include a restriction in run-off and surface water storage as outlined in the FRA, and pollution prevention measures. The approved scheme shall be implemented in phases, prior to the first occupation of each phase of the development.
8. No development shall take place until a scheme to deal with any contamination of land and/or groundwater has been submitted to and approved in writing by the Local Planning Authority and until the measures approved in that scheme have been fully implemented. The scheme shall include all of the following measures unless the Local Planning Authority dispenses with any such requirement in writing:
  - i. A site investigation, based on the details contained in the Submitted Geoenvironmental Desk Study Report (J14066 dated March 2014), shall be carried out to provide information for a detailed assessment of the risk to all receptors that may be affected, including those off-site;
  - ii. An options appraisal and remediation strategy, giving full details of the remediation measures required and how they are to be undertaken, based on the results of the site investigation and detailed risk assessment referred to in i) above;

- iii. A verification plan providing details of the data that will be collected in order to demonstrate that the works set out in the remediation strategy in ii) above are complete and identifying any requirements for longer-term monitoring of pollutant linkages, maintenance and arrangements for contingency action.
9. The development hereby permitted shall not be brought into use until a verification report, demonstrating completion of works set out in the approved remediation strategy and the effectiveness of the remediation, has been submitted to and approved in writing by the Local Planning Authority. The report shall include the results of sampling and monitoring carried out in accordance with the approved verification plan to demonstrate that the site remediation criteria have been met. The report shall also include a plan (a 'long term monitoring and maintenance plan') for longer term monitoring of pollutant linkages, maintenance and arrangements for contingency action, as identified in the verification plan. The long-term monitoring and maintenance plans shall be implemented as approved.
10. No dwelling shall be occupied until the access, junction and parking arrangements serving that dwelling have been completed in accordance with the approved in principle plan, drawing number C-207128/SK28 rev P2, to the standards outlined in Roads in Hertfordshire and constructed to the Highway Authority's specification. This will include widening of the proposed access road to enable two HGVs to pass one another with 0.5m tolerance, and a preferred road radius of 40m.
11. No development shall take place, including any works of demolition, until a Construction Method Statement (CMS) has been submitted to and approved in writing by the Local Planning Authority. The approved CMS shall be adhered to throughout the construction period. The CMS shall provide for:
  - i. the programme and phasing of works on site;
  - ii. the parking of vehicles of site operatives and visitors;
  - iii. loading and unloading of plant and materials;
  - iv. storage of plant and materials used in constructing the development;
  - v. the erection and maintenance of security hoarding, including decorative displays and facilities for public viewing, where appropriate;
  - vi. wheel washing facilities;
  - vii. measures to control the emission of dust and dirt during construction;
  - viii. a scheme for recycling/disposing of waste resulting from demolition and construction works;
  - ix. construction vehicle routing and access;
  - x. the protection of pedestrians using the public footpath that crosses the site.
12. No development shall take place until additional scale layout plans showing the arrangements to be implemented at the intersection of the site entrance with public footpath 21, along with details of temporary fencing/signing to protect the alignment of the footpath, have been submitted to and approved in writing by the Local Planning Authority in accordance with Hertfordshire County Council's Rights of Way Good Practice Guide.
13. A Green Travel Plan, with the object of reducing travel to and from the development by private car, shall be submitted to and approved in writing by the Local Planning



Authority prior to first occupation of any dwelling and the proposed measures shall be implemented to an agreed timetable.

14. All existing trees and hedges shall be retained, unless shown on the approved drawings as being removed. All trees and hedges on and immediately adjoining the site shall be protected from damage in accordance with BS5837: 2012 'Trees in relation to Design, Demolition and Construction', for the duration of the works on site. In the event that trees or hedging become damaged or otherwise defective during the construction period or within five years following practical completion of the approved development, the Local Planning Authority shall be notified as soon as reasonably practicable and remedial action agreed and implemented. In the event that any tree or hedging dies or is removed without the prior consent of the Local Planning Authority, it shall be replaced as soon as is reasonably practicable and, in any case, by not later than the end of the first available planting season, with trees of such size, species and in such number and positions as shall be agreed with the Local Planning Authority.
15. The recommendations to mitigate and enhance the biodiversity of the site highlighted in Section 7 of the Ecological Appraisal and Protected Species report dated March 2014 shall be implemented as approved.
16. The dwellings hereby permitted shall be designed so that their ridge heights do not exceed 117.5 m AOD across the site.

## Annex B

### Conditions applicable to grant of outline planning permission for application No. 3/14/0531/OP (Area 3)

1. The development hereby permitted shall be carried out in accordance with the following approved plans: 16700/1021B, 16700/1023B, JBA 14/07-SK03 rev A, JBA 14/07-04 rev A, JBA 14/07-SK05 rev A, C-207128/SK25 rev P5, C-207128/SK29 rev P2.
2. Details of the appearance, landscaping, layout, and scale of the development (hereinafter called the reserved matters) shall be submitted to and approved in writing by the local planning authority before any development begins, and the development shall be carried out as approved.
3. Application for approval of the reserved matters shall be made to the local planning authority not later than one year from the date of this permission.
4. The development hereby permitted shall begin no later than one year from the date of approval of the last of the reserved matters to be approved.
5. The landscaping scheme referred to in condition 2 shall include replacement, reinforcement and where appropriate the extension of screen planting on the eastern boundary of the land, together with proposals for the future management and maintenance of this area whilst the development hereby permitted remains.
6. No development or groundworks shall take place until the applicant has secured the implementation of a programme of archaeological work in accordance with a written scheme of investigation, which has been submitted to and approved in writing by the Local Planning Authority. The development shall thereafter be carried out in accordance with the approved programme, and this condition shall only be discharged when the required archaeological reports are submitted to and approved in writing by the Local Planning Authority.
7. No development shall take place until a detailed surface water drainage scheme has been submitted to and agreed in writing by the Local Planning Authority. The scheme shall be based on the submitted Flood Risk Assessment C-207128D dated 14 March 2014 and shall include a restriction in run-off and surface water storage as outlined in the FRA, and pollution prevention measures. The approved scheme shall be implemented in phases, prior to the first occupation of each phase of the development.
8. No development shall take place until a scheme to deal with any contamination of land and/or groundwater has been submitted to and approved in writing by the Local Planning Authority and until the measures approved in that scheme have been fully implemented. The scheme shall include all of the following measures unless the Local Planning Authority dispenses with any such requirement in writing:
  - i. A site investigation, based on the details contained in the Submitted Geoenvironmental Desk Study Report (J14067 dated March 2014), shall be carried out to provide information for a detailed assessment of the risk to all receptors that may be affected, including those off-site;
  - ii. An options appraisal and remediation strategy, giving full details of the remediation measures required and how they are to be undertaken, based on the results of the site investigation and detailed risk assessment referred to in i) above;
  - iii. A verification plan providing details of the data that will be collected in order to

demonstrate that the works set out in the remediation strategy in ii) above are complete and identifying any requirements for longer-term monitoring of pollutant linkages, maintenance and arrangements for contingency action.

9. The development hereby permitted shall not be brought into use until a verification report, demonstrating completion of works set out in the approved remediation strategy and the effectiveness of the remediation, has been submitted to and approved in writing by the Local Planning Authority. The report shall include the results of sampling and monitoring carried out in accordance with the approved verification plan to demonstrate that the site remediation criteria have been met. The report shall also include a plan (a 'long term monitoring and maintenance plan') for longer term monitoring of pollutant linkages, maintenance and arrangements for contingency action, as identified in the verification plan. The long-term monitoring and maintenance plans shall be implemented as approved.
10. No dwelling shall be occupied until the access, junction and parking arrangements serving that dwelling have been completed in accordance with the approved in principle plan, drawing number C-207128/SK25 rev P5, to the standards outlined in Roads in Hertfordshire and constructed to the Highway Authority's specification. This will include widening of the proposed access road to enable two HGVs to pass one another with 0.5m tolerance, and a preferred road radius of 40m.
11. No development shall take place, including any works of demolition, until a Construction Method Statement (CMS) has been submitted to and approved in writing by the Local Planning Authority. The approved CMS shall be adhered to throughout the construction period. The CMS shall provide for:
  - i. the programme and phasing of works on site;
  - ii. the parking of vehicles of site operatives and visitors;
  - iii. loading and unloading of plant and materials;
  - iv. storage of plant and materials used in constructing the development;
  - v. the erection and maintenance of security hoarding, including decorative displays and facilities for public viewing, where appropriate;
  - vi. wheel washing facilities;
  - vii. measures to control the emission of dust and dirt during construction;
  - viii. a scheme for recycling/disposing of waste resulting from demolition and construction works;
  - ix. construction vehicle routing and access;
  - x. the protection of pedestrians using the public footpath that crosses the site.
12. No development shall take place until additional scale layout plans showing the arrangements to be implemented at the intersection of the site entrance with public footpath 15, along with details of temporary fencing/signing to protect the alignment of the footpath, have been submitted to and approved in writing by the Local Planning Authority in accordance with Hertfordshire County Council's Rights of Way Good Practice Guide.
13. A Green Travel Plan, with the object of reducing travel to and from the development by private car, shall be submitted to and approved in writing by the Local Planning Authority prior to first occupation of any dwelling and the proposed measures shall be implemented to an agreed timetable.

14. All existing trees and hedges shall be retained, unless shown on the approved drawings as being removed. All trees and hedges on and immediately adjoining the site shall be protected from damage in accordance with BS5837: 2012 'Trees in relation to Design, Demolition and Construction', for the duration of the works on site. In the event that trees or hedging become damaged or otherwise defective during the construction period or within five years following practical completion of the approved development, the Local Planning Authority shall be notified as soon as reasonably practicable and remedial action agreed and implemented. In the event that any tree or hedging dies or is removed without the prior consent of the Local Planning Authority, it shall be replaced as soon as is reasonably practicable and, in any case, by not later than the end of the first available planting season, with trees of such size, species and in such number and positions as shall be agreed with the Local Planning Authority.
15. The recommendations to mitigate and enhance the biodiversity of the site highlighted in Section 7 of the Ecological Appraisal and Protected Species report dated March 2014 shall be implemented as approved.
16. The dwellings hereby permitted shall be designed so that their ridge heights do not exceed 117.5 m AOD across the site.

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# **Costs Report to the Secretary of State for Communities and Local Government**

**by John Braithwaite BSc(Arch) BArch(Hons) RIBA MRTPI**

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

**Date: 26 August 2015**

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**TOWN AND COUNTRY PLANNING ACT 1990**

**EAST HERTFORDSHIRE DISTRICT COUNCIL**

**APPEALS**

**by**

**WHEATLEY HOMES LIMITED**

Inquiry held on 6-8 January 2015

Areas 2 and 3, Land at Hare Street Road, Buntingford

File Refs: APP/J1915/A/14/2220854 and 2220859

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**File Refs: APP/J1915/A/14/2220854 and 2220859**

**Areas 2 and 3, Land south of Hare Street Road, Buntingford SG9 9JQ**

- The application is made under the Town and Country Planning Act 1990, sections 78 and 320, and the Local Government Act 1972, section 250(5).
- The application is made by Wheatley Homes Ltd for a full award of costs against East Hertfordshire District Council.
- The inquiry was in connection with two appeals against the failure of the Council to issue notices of their decisions within the prescribed period on two applications for planning permission for the construction of approximately 100 houses and 80 houses.

**Summary of Recommendation: The application for an award be allowed.**

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**The Submissions for Wheatley Homes Ltd**

1. The Council's decision to offer no evidence in support of its case demonstrates beyond doubt that its case not only lacked merit but also did not disclose any reasonable grounds for refusing planning permission. The Council's conduct amounts to unreasonable behaviour and the Appellant has thus incurred unnecessary expense.
2. The Council's conduct breaches the objectives set out in PPG paragraph 28. The Council's Development Control Committee rejected the advice of their Director of Planning that had the Council been in a position to determine the applications they would have granted planning permission subject to conditions and a Section 106 Undertaking. They persisted in their objection to the schemes but then withdrew their case at the very latest stage in the proceedings and have thus failed to support their reasons for refusal of the applications. Their behaviour has been wholly unreasonable both procedurally and substantively.
3. The withdrawal of the Council from the Inquiry effectively resulted in the withdrawal of all the reasons for refusal of the applications. The withdrawal of a reason for refusal and the failure to produce evidence to substantiate each reason for refusal are given as examples of unreasonable behaviour in PPG paragraphs 47 and 49. The Council was warned, in a letter from the Appellant's Solicitor dated 11 November 2014, that the case they were advancing could not be properly supported.
4. In their statement the Council argued that both applications were contrary to LP policy GBC3. They must have known, however, that this argument would not carry any significant weight in the light of the absence of a five year housing land supply, the fact that the LP has expired and the previous Inspector's clear conclusions on this issue.
5. The County Council raised no in principle objections to the applications on education grounds and in their appeal representation made it plain that they did not object to the applications if financial contributions were made pursuant to a Section 106 Undertaking. There was therefore no proper basis on which the Council could oppose either scheme on grounds relating to education provision. Similarly, on the subject of highways, the Highway Authority concluded that there was no objection to either scheme on the basis of their individual or cumulative impact even when other approved schemes in the town are taken into account.
6. The Council may argue that their withdrawal from the Inquiry was prompted by the submission of highway material by the Appellant's highway consultants; in particular traffic count data for the A10/Baldock Road junction. But at no stage in consideration of the applications or during the appeal process did the Council raise the issue of highway capacity or request further modelling. The highway material

submitted was simply a response to assertions made in the Council's witness statement and has been fully accepted by the Council. There is no highways issue capable of sustaining an objection and there never has been.

7. The Council's case against the two proposed developments was never properly supportable. Their decision to persist with opposition to the appeals up to the moment the Inquiry opened clearly amounts to unreasonable behaviour and their decision to offer no evidence and withdraw from participation in the Inquiry provides unanswerable evidence of that unreasonableness. The appeals were unnecessary and the Council should bear the Appellant's full costs.

### **The Response by East Hertfordshire District Council**

8. Expert advice commissioned by the Council, the AECOM study, indicated that significant congestion could occur on one road in Buntingford, Baldock Road, with development of a scale lesser than that already permitted in the town. Against this background Members were entitled to be cautious about further development in the town, in particular with regard to highways. Though the Highway Authority had raised no concerns with the applications, advice from expert advisors was received, from the Planning Policy team, and Members were entitled to prefer this advice.

9. The AECOM study was reviewed by other highway consultants, JMP, in their review of the Appellant's transport assessment. JMP noted that it was surprising the Appellant's consultants had not modelled Baldock Road given its proximity to the sites and they advised that further work ought to be done to identify the 'tipping point' in respect of development. It is possible that the Highway Authority had overlooked the issue of congestion on Baldock Road but, this factor notwithstanding, it was not unreasonable for Members to act in accordance with the advice of JMP. The reasonableness of this approach is borne out by the fact that the Appellant felt it necessary to address the issue and to present further expert evidence to the Inquiry.

10. The County Council's position on education did indicate that there is a shortfall in first school places. Though they were content to accept Section 106 financial contributions in relation to the appeal applications there remained the issue of finding a site in a timely manner to meet the demand for first school places resulting from the developments and others. The availability of school places is a significant issue for the community and Members were entitled to attach greater weight to this matter than did their advisors.

11. The Appellant's claim for costs makes no reference to the putative reason for refusal relating to the unsustainable nature of the proposals, having regard to the lack of employment opportunities in the town. The previous Inspector had made it plain that development of more than 800 new homes, which the appeal proposals would represent, would be an environmentally unsustainable outcome without an increase in employment in the town. The modest financial contribution to marketing of employment land would not have this result and Members were entitled to conclude that this factor carried substantial weight against the proposals.

12. The Members took on board the advice of the Council's Landscape Officer that, given changes made to the proposals, the applications were acceptable, despite local opposition. The proposals are in conflict with saved LP policy GBC3 but this was never regarded to be a matter to justify refusal in itself.

13. Mr Watson's proof, for the Council, clearly states that it is the totality of the issues that significantly and demonstrably outweighs the benefits, which accords with

the policy test set out in the NPPF. Furthermore, there is no requirement that each and every possible benefit is set out when carrying out the planning balance. It is also relevant that the appeals were made against non-determination of the applications at a time when the Council still considered there to be outstanding issues requiring resolution including education, highways and employment provision.

14. The Appellant addressed a highway matter raised in Mr Watson's proof, which they had failed to do earlier, which is acknowledgement in itself that the matter needed to be addressed. The Appellant must have been aware of the AECOM and JMP studies which highlighted the problem, they were referred to in a committee report, and Baldock Road was mentioned in the Council's statement of case. It was not unreasonable for the Council to rely on the fact that an assessment of the junction of the road with the A10 had not been undertaken.

15. The Appellant's response to the highway matter raised in Mr Watson's proof was received on 23 December 2014, and on the following morning JMP were instructed to conduct a review of this new evidence. Their review, given Christmas and New Year holidays, was not received by the Council until late on 5 January 2015 and it was only on the following morning, on the day the Inquiry opened, that the issues were finally resolved and the Council decided to withdraw from the Inquiry. The Council could not have confirmed its revised position any earlier than they did.

16. The Appellant's evidence on the highway matter was produced six days after the 17 December 2014 deadline for submission of rebuttal proofs. The Council acted reasonably in adopting its initial stance and in withdrawing following the late submission of evidence. They are not responsible for unnecessary and wasted expense and the application for costs should be dismissed.

### **Conclusions**

17. National Planning Practice Guidance 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.

18. The Members of the Council's Planning Committee rejected the advice of their Director of Planning and contested the appeals up until the opening of the Inquiry. They maintained objections on highways grounds even though the Highway Authority had not raised any concerns; the suggestion that the Highway Authority had overlooked the issue of congestion on Baldock Road is disingenuous. The Appellant was entitled to address matters raised in Mr Watson's proof of evidence by submitting rebuttal evidence; this is part of the normal pre-Inquiry process. This evidence satisfied the Council on their concerns regarding congestion on Baldock Road and this ultimately led to the Council withdrawing from the Inquiry.

19. Congestion on Baldock Road was a matter that must have swung, in the Council's view, the balance of harm outweighing benefit to benefit outweighing harm, or at least to a neutral position. It is surprising that this was such a crucial matter given the Highway Authority's position. It had been mentioned by JMP in their review of the Appellant's transport assessment but if it was so crucial the Council should have requested further information from the Appellant at application stage.

20. The balance was clearly a fine one. But it should not have been so. Paragraph 203 of the NPPF states that local planning authorities should consider whether otherwise unacceptable development could be made acceptable through the use of



conditions or planning obligations. In the light of the Education Authority's position that impacts could be mitigated by the payment of commuted sums pursuant to a Section 106 Undertaking, education should not have been a matter to weigh in the planning balance. The Council also relied to a significant degree on comments made by the Inspector in his decision on the application for Area 1. Though a material consideration an application must be considered on its merits and in the light of circumstances prevailing at the time a decision is made.

21. Irrespective of all other considerations the Council withdrew all of their putative reasons for refusal of the applications, because the planning balance was swung by a matter that should not have affected that balance. The balance, furthermore, should not have been so fine because a matter which was weighed as harmful should not have been in the balance. Withdrawal of their reasons for refusal was, effectively, an admission by the Council that their decision to reject the advice of their Director of Planning was wrong, and, taking into account PPG paragraph 47, was unreasonable. The Appellant has incurred unnecessary expense in submitting the appeals and in preparing for the Inquiry.

22. The rebuttal evidence that led to the withdrawal of the Council from the Inquiry was submitted six days after the deadline for submission of such evidence and on the day before Christmas Eve 2014. Taking into account delays caused by the festive season holidays it is not surprising that the Council made the decision to withdraw on the morning of the first day of the Inquiry. But even if the evidence had been submitted on time and the Council had withdrawn six days before the opening of the Inquiry the Appellant's team would have had to attend the Inquiry to address the case made by the Rule 6(6) party. The Appellant has not therefore incurred any unnecessary expense in the attendance of their professional team at the Inquiry.

#### Overall conclusion

23. The Council has acted unreasonably and the Appellant has incurred unnecessary expense in submitting the appeals and in producing evidence to address the putative reasons for refusal of the applications and in preparing for the Inquiry to present that evidence. The unnecessary expense does not, however, include that incurred by the attendance of their professional team at the Inquiry.

#### **Recommendation**

24. I recommend that the application for an award of costs be allowed to the extent set out in the overall conclusion above.

***John Braithwaite***

Inspector



## Appeal Decisions

Hearing held on 19 January 2016

Site visit made on 19 January 2016

**by Jonathon Parsons MSc BSc (Hons) DipTP Cert(Urb) MRTPI**

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

**Decision date: 03 March 2016**

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### **Appeal A Ref: APP/J1915/W/15/3028983**

#### **Prince of Wales, 244 Hertingfordbury Road, Hertingfordbury, Hertford SG14 2LG**

- 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 John Stock (Acre Limited) against the decision of East Hertfordshire District Council.
  - The application Ref 3/14/0689/FP, dated 14 April 2014, was refused by notice dated 24 March 2015.
  - The development proposed is the redevelopment of the site for residential purposes, including the removal of all existing buildings and replacement with a detached 3 bedroom house and a terrace of four 2 bedroom cottages on the western part of the site; and all ancillary works.
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### **Appeal B Ref: APP/J1915/W/15/3017342**

#### **Prince of Wales, 244 Hertingfordbury Road, Hertingfordbury, Hertford SG14 2LG**

- 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 John Stock (Acre Limited) against the decision of East Hertfordshire District Council.
  - The application Ref 3/14/0690/FP, dated 14 April 2014, was refused by notice dated 15 October 2014.
  - The development proposed is the redevelopment of the site for residential purposes, including demolition of modern extensions to former public house and conversion of historic core of building to a detached 4 bedroom house; erection of a terrace of four 2 bedroom cottages on the western part of the site; and all ancillary works.
- 

### **Decision**

1. Appeals A and B are dismissed.

### **Procedural Matters**

2. In appeal A, the public house would be demolished and replaced with a detached dwelling, whilst in appeal B, the public house would be converted into residential use. In both appeals, four terraced cottages would be constructed with facing brick, render and timber cladding. However in appeal A, more extensive use of render would be made such that two of the cottages would be finished in render, with parts of the facade recessed between two column-like
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projections.

### **Main Issues**

3. The site is within the Green Belt and so the main issues are -
  - Whether the proposals would be inappropriate development for the purposes of the National Planning Policy Framework;
  - The effect of the proposals on the living conditions of neighbouring residents, having particular regard to privacy for the occupiers of 242 Hertingfordbury Road;
  - The effect of the proposals on the provision of community facilities in the village; and
  - Whether the appeal proposal A would preserve or enhance the character or appearance of the Hertingfordbury Conservation Area.

### **Reasons**

#### *Whether inappropriate development*

4. The National Planning Policy Framework (the Framework) establishes that new buildings are inappropriate unless they involve the limited infilling or the partial or complete redevelopment of previously developed sites (brownfield sites), whether redundant or in continuing use (excluding temporary buildings), which would not have a greater impact on the openness of the Green Belt and the purpose of including land within it than the existing development.
5. The appeal site comprises a public house building with significant extensions to the rear, and a large car park to the side. Openness is defined as the absence of built form. It is not disputed that the appeal proposals would involve the partial or complete redevelopment of a previously developed site. Both proposals would result in the development of an open car park area with four dwellings where there are none at present. Consequently the proposals would inevitably have some effect on openness of the Green Belt as a result.
6. However, the overall footprint and volume of both proposals would be slightly smaller than the existing buildings on the site. As part of both proposals, there would be the demolition of substantial extensions to the public house. Accordingly, the effect on openness would not be so significant that it would cause material harm to the Green Belt. On this basis, I conclude that both proposals would not be inappropriate development within the Green Belt.

#### *Living conditions*

7. There is an elevated terrace of small dwellings with long gardens behind the car park of the public house. The closest of these, 242 Hertingfordbury Road, flanks onto the site, along with its garden. It has a sitting room at ground floor and bedroom above that mainly face onto its rear garden. To the side of this neighbouring property, there is a single storey extension. There is access to the dwelling around the back of this property past this extension via a passageway. There is a small hard surfaced outdoor space between the flank of this dwelling and its boundary with the appeal site.

8. Both proposals would result in a terrace of four cottages that back onto this neighbouring property. Cross section plans show that the slab levels of these dwellings would be at a lower ground level than that of the neighbouring dwelling due to topography. Some of these windows serving bathrooms would be likely to be obscure glazed but others, those serving bedrooms would not. Comparison between cross section plans and elevation plans indicate that most of the extent of the first floor windows would be above the fence line.
9. At the hearing, it was argued that a certain amount of privacy loss was to be expected in this urban area given the nature of dense-knit of development with it. However, as viewed on my site visit, the proposed dwellings would be close to the neighbour's property, including its flank and outdoor space, including a garden, which is narrow. Irrespective of whether the flank windows are secondary in nature, there could be overlooking through them into the living areas of this neighbouring property. In respect of outdoor space, proposed dwellings would be between approximately 4m and 9m away from the boundary with this neighbouring property, and face an area likely to well-used given its location just outside the neighbour's dwelling. For all these reasons, the development would result in a significant loss of privacy to any occupiers of this neighbouring property.
10. In appeal B, there would be dormer roof openings that face onto the garden of this neighbouring property. However, this part of the garden is already overlooked by the first floor of the public house and is some distance from the dwelling. The appellant has submitted a Daylight and Sunlight report based on good practice and guidance of the Building Research Establishment. This shows that that overall both proposals would not significantly affect daylight and sunlight to windows of neighbouring properties. Furthermore, it would not significantly reduce sunlight and daylight to the gardens of the two immediately adjacent gardens of 242 and 246 Hertingfordbury Road. By reason of the proposed dwelling's separation distance and siting at a lower level in respect of No 242, I am satisfied that there would be no significant loss of outlook for the occupiers of these neighbouring properties. For similar reasons, there would be no adverse loss of outlook for those properties opposite the site.
11. In summary, appeal proposals A and B would harm the living conditions of any occupiers of 242 Hertingfordbury Road, having regard to the loss of privacy. Accordingly, they would conflict with Policy ENV1 of the East Herts Local Plan (LP) Second Review 2007, which amongst other matters, requires development to be of a high standard of design and respect residential amenity.

#### *Community facility*

12. The public house has been closed since January 2014. A précis of the financial history details the operation of the public house by various operators, landlords and tenants. It shows a history of financial difficulties since 2000 and from September 2011, the public house was offered rent free due to the then tenant being unable to make a profit. The appellant has also stated the public house is too small to provide an adequate dining area to serve food, an essential requirement for the success of public houses these days, and is located within a small village with no passing trade. Furthermore, it is stated that this is against a background of fewer people drinking in public houses, the impact of drink-drive laws and availability of cheap alcohol from supermarkets.

13. The nearby White Horse Hotel provides mainly a restaurant service but does have a bar area and lounge. At the hearing, it was pointed out that a current application showed re-organisation of the floor space areas reducing the extent of the bar and lounge facilities. It was disputed that this establishment could provide the same experience as a traditional public house. There has been considerable representation detailing the value of the Prince of Wales as a local pub with a bar area for meeting place for people within the community which I attach some importance and significance to. However the financial difficulties, the lack of adequate dining area and its location are highly relevant considerations because a public house cannot operate and provide a community facility and service, if it is unviable.
14. In this regard, the number of previous tenants/landlords over a period of greater than 10 years provides strong evidence that a sustainable profit could not have been made from the business and that there is a limited likelihood of a profit being generated in the future. It has been put to me that tenants/landlords were not qualified. However, given the length of time that these financial difficulties have been experienced and the associated number of operators/tenants/landlords, this does not strike me as an overriding cause. Indeed, the appellant has been indicated that the last landlord had experience and qualifications in the trade, and made significant investment undertaken in re-decorating the public house, improving the bar area, letting rooms and outside areas, opening for breakfast and organising special events.
15. In the absence of any financial accounts, the Council considers that the only way to test viability is to market the premises. However, the appellant has submitted evidence on the financial difficulties experienced with the public house over a significant period of time and that the public house would not be fit for purpose. Additionally, ways of extending the public house to increase the number of food covers has been explored with the Council but without success. Any new start-up of the public house as a business would also need a significant level of investment given the length of time the public house has been closed. There has also been no detailed evidence submitted that any operator, manager or tenant would be able to turn the public house into a viable business. On the balance of the evidence before me, there is a limited likelihood of a profit being generated in the future sufficient for a business to survive. Therefore, marketing would serve no useful purpose.
16. There was a dispute as to whether the CAMRA public house viability test has been carried fully. Nevertheless, even if it had not, the weight of evidence on lack of viability detailed previously is convincing and therefore, this matter would not be determinative. Comments were made over the quality of service and restricted opening times of public house when last in use. Again, when weighed against the overall weight of evidence, this is not persuasive. The economic background is more prosperous than when the public house was closed. However, the evidence put forward strong indicates that there is a trend of people straying at home and making use of public houses which serve food, which this pub does not have adequate facilities for.
17. Turning to Policy STC8 of the LP, its wording indicates that the loss of a public house will not be permitted where such loss would result in a significant reduction in the level of such provision locally. In determining the significance of the loss of such a unit, the policy indicates that the Council will consider how long the premises has been on the market, the use of the premises and its

contribution to the range of provision available to the local population and if there is clear evidence that it is not possible for the use to continue as a viable business. By reason of its wording, the policy is not prescriptive in requiring compliance with the various considerations detailed to assess the loss of a community facility and therefore requires a balanced judgement.

18. As such, it does not require marketing in all instances and in this case, for the reasons indicated, I find that the appellant's evidence on viability is clear, to which I attach great importance and significance. Accordingly, I find both appeal proposals comply with LP Policy STC8 and for similar reasons comply with policy in paragraphs 22, 69 and 70 of the Framework.

*Character and appearance of the Conservation Area*

19. The appeal site comprises a late 19<sup>th</sup> century building of 2 storeys that fronts onto Hertingfordbury Road. By reason of the bend in the road, its façade is kinked. It is constructed with pitched slated roofs, bricks painted with whitewash, some timber sash windows, floor band, substantial chimneystacks and decorative crest ridge tiles. By reason of its L-shape, it extends to the rear in the form of a two storey outrigger on its western side. There are extensions attached to this which elongate the L-shape of the building. To the side of the public house, there is an extensive area of hardstanding. The site lies within the Hertingfordbury Conservation Area.
20. As the site is within a Conservation Area, I am required to pay special attention to the desirability of preserving or enhancing the character or appearance of that area in accordance with the statutory duty under s72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990.
21. The Conservation Area consists of mainly frontage development along Hertingfordbury Road of varying ages and design but within a traditional style. The Hertingfordbury Conservation Area Appraisal and Management Plan (HCAAMP) Draft for Consultation 2013 indicates that the urban form of the eastern side of the road is tighter, as opposed to a more open character elsewhere. The HCAAMP also indicates that building materials include brick and render finishes with old red tile or slate roofs, and that chimneys are important features in respect of both listed and some unlisted 19<sup>th</sup> Century buildings. Although the HCAAMP is not adopted, its description of the character and appearance of the Conservation Area hold true based on my site visit observations. In summary, it is the varied and historic traditional design and construction of dwellings which contribute positively to the character and appearance of the Conservation Area.
22. By reason of its position and height, there are significant views of this building along Hertingfordbury Road. Whilst the car park is a negative feature in the Conservation Area, it does not obscure views of the flank of the public house, with its first floor sash windows, banding, ridge tiles and chimneystacks. By reason of topography of the area, there is a slope in the road towards the south which is evident as you approach the public house from the west. However due to its position and height, the public house would still be a prominent feature to the eye from this direction. Although there are extensive single storey extensions, these are to the rear of the property such that the original form and design of the building is largely retained. For all these reasons, the building's form, age and design is distinctly recognisable meriting a modest degree of significance which justifies its status as a non-designated

- heritage asset. It would also make a positive contribution to the character and appearance of the Conservation Area for similar reasons.
23. In appeal A, the existing public house building would be demolished along with the rear extensions. In its place, the detached dwelling would be smaller and would be constructed with sash windows, render, chimneys and slate roofs. A small porch would be located in a 'wrap around' single storey extension to its western side. Although it has been designed to reflect dwellings on the western side of the site, its design incorporates a hybrid of traditional and modern influences. In particular, it has a low pitched roof and parts of the facade would be recessed to give a contemporary-like feature. By reason of its hybrid design, the design of the development would not be of any great quality and thus would not represent a visual improvement on the existing public house building which is of some modest significance and importance. For this reason, the proposal would detract from the character and appearance of the Conservation Area.
24. Notwithstanding the design failings of the detached dwelling, it has been argued that overall the scheme would still result in an enhancement of the character and appearance of the Conservation Area through the significant reduction in unsightly hardstanding. However, there has been no suggestion that redevelopment of the public house building with a new dwelling is linked with the favourable consideration of the four terraced cottages. The purported overall benefit could also be achieved by a different scheme for the public house part of the site. In any case, the overall benefit would be doubtful given the use of the contemporary style column-like features in two of the terraced dwellings in respect of appeal A which by reason of their prominence would visually clash with the prevailing traditional context of the area.
25. Paragraph 134 of the Framework states where a development would lead to less than substantial harm to the significance of a designated heritage asset (such as a Conservation Area), this harm should be weighed against the public benefits of the proposal. Appeal proposal A would develop a derelict site which would contribute to an existing shortfall in the 5 year housing supply. The development would be in a reasonably sustainable location with regard to accessibility to bus services and the centre of the village. The proposal would incorporate a footpath adjacent to the public house building.
26. The proposal would also involve the erection of four terraced cottages on the western part of the site. Their siting in close proximity to the road would be in keeping with much of the frontage development in the Conservation Area. With landscaping works, they would visually break-up the unsightliness of the existing expansive hard surfaced area next to the public house.
27. In the balance, this has to be weighed against the harm to the Conservation Area for which considerable importance and weight has to be attached. In this respect, there would be demolition of an existing building that adds positively to the Conservation Area and replacement with a dwelling that harms it. Two of the cottages would be designed with incongruous contemporary rendered column-like features. Therefore, while the harm to the significance of the Conservation Area is less than substantial, the public benefits would not be sufficient to outweigh that harm.
28. In conclusion, appeal proposal A would fail to preserve the character and appearance of the Conservation Area. Accordingly, this development would

conflict with Policy BH6 of the LP, which amongst other matters, requires new developments to be sympathetic in terms of scale, height, form and materials to the general character and appearance of the area, and where views within the Conservation Area are respected.

*Other matters*

29. In respect of appeal proposal B, I agree with both the Council and the appellant, that the development would enhance the character and appearance of the Conservation Area. In this respect, the proposal involves the conversion of the public house building, the removal of associated extensions and four detached cottages constructed and designed to reflect the traditional context of the area.

**Conclusion**

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

*Jonathon Parsons*

INSPECTOR



**APPEARANCES**

FOR THE APPELLANT

J Dixon MRTPI	JB Planning Associates
L Stannard	JB Planning Associates
J Stock	Appellant
P Berber	Appellant
E Grower	Appellant

FOR THE LOCAL PLANNING AUTHORITY

M Chalk	East Hertfordshire District Council
M Brown CBS MRICS DipBldgCons IHBC	East Hertfordshire District Council

OTHER INTERESTED PARTIES

T Bergin	Resident
J Hart	Resident
District Council Councillor S Rutland-Barsby	Resident
J J Secker	Resident
J Straker	Resident
I Arthur	Resident
D Ferguson	Resident
F Ferguson	Resident
P Parsell	Resident
G Cooper	Resident

**Documents**

1. Plans Nos 710 21, 710 22A, 710 23 & 710 24.

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## Appeal Decision

Hearing held on 17 November and 15 December 2015

Site visit made on 15 December 2015

**by Peter Rose BA MRTPI DMS MCSI**

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

**Decision date: 22nd February 2016**

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**Appeal Ref: APP/J1915/W/15/3127807**

**Land south of Froghall Lane, Walkern**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for outline planning permission.
  - The appeal is made by Gladman Developments Ltd/Simon John Cordell, Philip Cordell, Jane Louise Cordell, and Alison Joanne Sendall against East Hertfordshire District Council.
  - The application Ref 3/14/2200/CP, is dated 5 December 2014.
  - The development, as originally proposed, was a residential development for up to 98 houses including site access, public open space and landscaping.
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### Decision

1. The appeal is allowed and outline planning permission is granted for a residential development for up to 85 houses including site access, public open space and landscaping at Land south of Froghall Lane, Walkern, in accordance with the terms of the application Ref: Ref 3/14/2200/CP dated 5 December 2014, and subject to the conditions set out in the attached schedule.

### Application for costs

2. An application for costs has been made by the appellants against East Hertfordshire District Council. This application is the subject of a separate Decision.

### Procedural Matters

3. The application is for outline planning permission, with all matters except access reserved for subsequent approval.
  4. Whilst the originally submitted proposal referred to an upper limit of 98 houses, a revised scheme was submitted reducing the upper limit to 85. Although the Council failed to determine that scheme, it was subject to formal publicity on that basis and the appeal was publicised in similar terms. Both the main parties confirmed the appeal proposal is based upon the revised limit and both agree that, should the appeal be allowed, a condition be imposed to limit development to 85 dwellings.
  5. The appellants are concerned, however, that a revised description referring to 85 dwellings would not reflect the terms of the original application. I find that the alternative of a description referring to 98 dwellings but then reduced by a
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condition to 85 would be unnecessarily confusing, and that no interests would be prejudiced by such a change. In the interests of consistency and clarity, I have therefore amended the description accordingly.

6. Although matters of appearance, layout, landscaping and scale are not formally submitted for determination as part of the appeal application, the submission is accompanied by illustrative details to which I have regard. These include a design and access statement and Development Framework plans.
7. At the hearing, a Unilateral Undertaking made under section 106 of the Town and Country Planning Act 1990 was submitted and has been signed and executed as a deed dated 15 December 2015.
8. The Council formally considered the application on 19 August 2015. Whilst no longer able to formally determine the submission, it resolved that planning permission would have been refused for the reasons set out in its letter dated 20 August 2015.
9. I consider the appeal on the above basis.

### **Main Issues**

10. The main issues in this appeal are:
  - (a) the scale of the proposed development relative to the status and capacity of Walkern;
  - (b) the effect of the proposed development upon the character and appearance of the local countryside, and including its relationship to proposed open space, and;
  - (c) whether the proposed development would satisfactorily promote sustainable modes of transport.

### **Reasons**

#### *Development status*

11. The appeal site comprises some 4.17 hectares of agricultural land located to the south west of Walkern. It lies outside the village boundary as defined by the East Herts Local Plan Second Review April 2007 (the Local Plan).
12. The site is served by an existing vehicular access via Aubries and that is identified in the application as the proposed access point for the development.
13. The site is also accessed from Froghall Lane which is a relatively narrow road also serving houses to the north which look across the appeal site. No formal vehicular access into the site exists from Froghall Lane. To the east, the appeal site is enclosed by a residential development at Aubries. The site slopes down from Froghall Lane towards a further residential development at Moors Ley which encloses the southern boundary of the site. The western boundary is unenclosed and comprises open land offering views towards Stevenage.
14. Walkern is defined as a Category 1 Village by Policy OSV1 of the Local Plan. Policy OSV1 allows limited small-scale and infill housing development within the confines of the village, and subject to various detailed criteria.

15. The more recent East Herts Draft District Plan Preferred Options Consultation January 2014 (the District Plan) identifies Group 1 Villages for an increase in housing stock of at least 10% over the period 2016-2031. The District Plan identifies a 10% growth in Walkern as 47 households.
16. Policy GBC3 of the Local Plan applies to the appeal site as a rural area beyond the Green Belt. This states that permission will not be given for new buildings other than for defined exceptions which mainly involve small-scale development linked to the rural character.
17. Whilst the appeal proposal would not come within the terms of permissible development identified by Policy GBC3, the Council has previously accepted the principle of a residential development of the appeal site. Rather, the Council's concern relates to the scale of the proposed development and has commissioned a consultancy, Tibbalds, to undertake preliminary feasibility work towards preparation of an appropriate framework for residential development of the site.
18. Nevertheless, and notwithstanding the Council's acceptance of the principle of the development and the on-going work by Tibbalds, I find that the proposed scheme would lie outside the village and be contrary to the provisions of Policy GBC3.

*Capacity of Walkern and scale of development*

19. I have had careful regard to representations on behalf of local residents who consider that development on the scale proposed to be unsustainable in Walkern. The status of Walkern as a sustainable settlement and as a location for future growth is also questioned. It is maintained that road infrastructure through the village and available public transport are already inadequate and insufficient employment opportunities and lack of school provision will increase the existing dependence upon the use of private cars.
20. Notwithstanding any future status of Walkern, the village is formally defined by the development plan as a settlement for growth and that could involve more than 47 households. The threshold for growth has not been defined with regard to any specific capacity assessment, but through a strategic allocation of the District's needs, and the appeal scheme seeks to respond to likely impacts with specific mitigation.
21. There would be commensurate increases in demands for local services and the Undertaking includes commitments to further facilities at Walkern Primary School and to funding of additional health facilities in accordance with the Council's requirements. Additional play facilities would also be provided within the existing High Street play area. No case has been made by the local planning authority for contributions to pre-school or to secondary education.
22. Even though the site lies within Flood Zone 1, I note the previous history of flooding in Walkern, and that particular issues relate to the south-west corner of the site.
23. An outline scheme has been prepared by the appellants to demonstrate possible technical solutions to matters of drainage and flooding. Responsibility as Lead Local Flood Authority (LLFA) transferred to the County in 2015 after submission of the application, but neither the local Council nor the Environment Agency had previously raised any objection to the principle of the development.

Whilst some preliminary discussions have taken place, the County is yet to be satisfied of the full details of a scheme. It was agreed in principle by the appellants, the local Council and the LLFA that this could be progressed by way of a suitably worded planning condition should the development be otherwise found to be acceptable. There was disagreement regarding the detailed form of wording, but not regarding the approach, and I concur with the principle of that way forward.

24. The scheme would also be intended to include some wider betterment through the proposed works, improving both the existing very limited on-site drainage but also providing facilities for storage of water from elsewhere.
25. I deal with issues of highway and public transport capacity separately as part of sustainable transport issues below. Those matters apart, I find that implications of the development would be satisfactorily mitigated by the measures proposed and would thereby be broadly consistent with the capacity of Walkern to absorb further development of this scale, and with its status as a Group 1 Village in the development plan accommodating at least 10% growth.

*Character and appearance of the countryside*

26. The overall character and appearance of the appeal site is as a large expanse of gently rising open land containing relatively few natural features. Whilst it enjoys a relatively open aspect to the west, it is effectively enclosed by housing on three sides. Although overlooked from the frontages of properties in Froghall Lane to the north, the eastern and southern boundaries comprise housing of various styles, but with little overall distinctiveness of character or appearance.
27. Little specific evidence has been provided by the Council to substantiate a harmful impact, but a full Landscape and Visual Impact Appraisal has been submitted by the appellants. The Appraisal concludes no more than a minor adverse landscape effect overall, mitigated by a scheme of green infrastructure which would include unoccupied areas of open space.
28. Policy ENV1 of the Local Plan states that all development proposals will be expected to be of a high standard of design and layout to reflect local distinctiveness, and that development proposals will be expected to demonstrate compatibility with the structure and layout of the surrounding area, as well as effective connection with existing routes and spaces.
29. Policy LRC3 of the Local Plan commits the Council to seeking provision of adequate and appropriately located open space and recreation facilities in conjunction with new residential development.
30. Whilst comprising greenfield land and of a rural character, the appeal site otherwise has no formal designation in relation to landscape quality, and few specific landscape features.
31. A core principle of the National Planning Policy Framework (the Framework) is to recognise the intrinsic character and beauty of the countryside. Paragraph 109 of the Framework further states that the planning system should contribute to and enhance the natural and local environment by protecting and enhancing valued landscapes. I am also mindful of the Minister of State for Housing and Planning's affirmation by letter dated 27 March 2015 of the importance of the impact of development upon landscapes outside designated

areas. In this regard, I have noted the public opposition from the local community, and I accept that 'valued' does not necessarily just equate to designated landscapes, and that most open land adjacent to residential areas may have a value to local residents. Nevertheless, I am not persuaded on the evidence that it has features or quality that would place it in the category of being a valued local landscape in the sense intended by the Framework.

32. Although of substantial size, the site is largely enclosed by existing development to the north, east and south and is thereby screened from surrounding sensitive landscapes.
33. The western side of the site is adjacent to open countryside, however, and affords more distant views beyond the appeal site. The appellants identify the potential for lower housing density and planting to the west which would combine to create a filtered edge to the development linking to the adjacent open countryside.
34. Public views beyond the site towards the west may be impeded, but that would remain to be fully considered as part of future layout, design and landscaping proposals. Views from properties in Froghall Lane will change markedly as they will cease to face open land. Nevertheless, Froghall Lane is set at a higher level to the remainder of the site and significant potential is indicated within the Development Framework for green infrastructure integral to the scheme and for retention of existing trees and hedges.
35. Taking the above factors together, I therefore find that the proposed development would not be harmful to the character and appearance of the local countryside, and including its relationship to proposed open space. Accordingly, the development would not be contrary to Policies ENV1 and LRC3 of the Local Plan or to the expectations of the Framework.

#### *Sustainable transport*

36. Policy TR1 of the Local Plan requires developments generating additional traffic to incorporate measures commensurate with the scale of additional generation and to ensure that alternative transport options to the private car are available to users of the site. Such measures may include pedestrian links, cycle paths and improvements to the passenger transport network.
37. Policy TR12 of the Local Plan requires, where possible, that new developments include appropriate routes and facilities for cyclists and pedestrians.
38. A core principle of the Framework is to promote sustainable transport. The Framework advises that patterns of growth should be managed to make fullest possible use of public transport, walking and cycling, and focus development in locations which are or can be made sustainable. Encouragement should be given to solutions which support reductions in greenhouse gas emissions and reduce congestion. Plans and decisions should ensure developments that generate significant movement are located where the need to travel will be minimised and the use of sustainable transport modes can be maximised.
39. Whilst concerns are raised by both the local planning authority and highway authority with regard to the shortcomings of the scheme in relation to sustainable transport, little direct technical evidence has been submitted to substantiate the alleged harm.

40. The appellants have made various technical submissions, including a transport assessment and proposals for a travel plan.
41. In terms of highway capacity, the submitted evidence indicates that the scheme would have no material impact upon the occurrence of accidents but confirms there would be an increase in traffic in the AM and PM peak hours at key local junctions. I also heard evidence from local residents at the hearing regarding existing problems of traffic congestion within the High Street itself. The appellants' evidence shows a traffic increase at nearby junctions but indicates the junctions would be capable of operating in an acceptable manner during the critical peak periods.
42. Nevertheless, it is clear to me that the High Street does suffer significant problems of traffic congestion and the likelihood is that development of the scale proposed would add further highway pressures. Further, I accept there is already a high car dependency within the village, and particularly in relation to links to Stevenage. I find it significant, however, that the High Street benefits from little existing on-street parking control and the scheme is accompanied by a contribution of £40,000 through the Unilateral Undertaking for future measures to improve parking provision in the High Street.
43. In terms of public transport, the site is served by a limited bus service with stops in both Stevenage Road and the High Street. Buses link to Stevenage, and the village is also served by a number of school buses.
44. I consider the site provides a reasonable context for journeys by foot and cycle, but note the dangers arising from local traffic conditions, and the limitations of existing links.
45. Whilst noting the Council's case for an appropriate link to Moors Ley to the south, I find the overall material benefits of such a link for sustainable transport to be relatively limited. There would be some closer proximity to bus stops for some residents, but pedestrian and cycle access to the south would still be available via Aubries.
46. The proposal includes a commitment to a travel plan with accompanying funding, and also £50,000 funding for additional bus services, all of which is supported by the highway authority.
47. The Undertaking also invites me to consider a sustainable transport contribution of either the sum of £100,000 as a contribution towards the cost of a cycleway link between Walkern and Stevenage and/or improvements to public rights of way, or the sum of £10,000 as a contribution towards improvements to public rights of way in the vicinity of the site, or a sum of £30,000 towards public rights of way improvements which may include a pedestrian link to the north-east corner of the site. Walkern is highly dependent upon Stevenage for many services and Stevenage also benefits from a cycleway network to a wider area. Given the potential increase in car use arising from the development, and the accompanying need to promote and support alternative sustainable modes of transport, I find that a £100,000 contribution towards a cycleway link would be a reasonable and necessary provision.
48. Of the three options presented, I find that more significant and more appropriate mitigation as a necessary contribution to sustainable transport

would be yielded by development of a cycleway link between Walkern and Stevenage and I consider the proposal on that basis. Although the cycleway link is part of an option which includes possible extensions to other public rights of way, I see the cycleway as the priority provision. I also note the cycleway link was indicated at the hearing to be the Council's preferred option and that it considers the identified sum would be likely to cover the cost of provision.

49. I acknowledge the development would undoubtedly lead to greater vehicular generation, but that would be significantly offset over time by the mitigation proposed. Whilst I find there would still be some net impact upon the local road network, and particularly in the short term prior to the full effect of the mitigation, I do not consider that the net impact, given the detailed modelling evidence submitted by the appellants and the absence of substantive evidence to the contrary, would in itself be sufficient reason to withhold planning permission in this instance. In particular, the Framework advises that development should only be resisted where the residual cumulative impacts of development would be severe, and I am unable to conclude that would be the case in this instance.
50. I therefore conclude that the proposed development would lead to some additional traffic generation upon local roads but the scheme is accompanied by satisfactory proposals to promote sustainable transport and by other such measures to mitigate the harm arising. Accordingly, on balance, I find the development would not be contrary to Policy TR1 or TR12 of the Local Plan, or to the expectations of the Framework.

*Five-year housing land supply*

51. The Framework requires the local planning authority to identify and update annually a supply of specific deliverable housing sites sufficient to provide five years' worth of housing relative to its full objectively assessed needs for market and affordable housing.
52. The Council accepts it is unable to demonstrate a five-year supply of housing land. The East Herts Council Authority Monitoring Report 2013-14 of December 2014 identifies a supply of 3.8 years with a 5% buffer and 3.4 years with a 20% buffer based upon a housing target of 750 dwellings per annum.
53. In the absence of a five-year supply of deliverable housing land, it follows, by virtue of paragraphs 47 and 49 of the Framework, that relevant policies in the development plan for the supply of housing are to be considered out-of-date. Further, by virtue of being out-of-date, relevant provisions of the presumption in favour of sustainable development under paragraph 14 of the Framework are also engaged, should the scheme be found to constitute sustainable development.
54. The implications for Policy GBC3, and its possible status as a policy for the supply of housing, are set out in my overall planning balance to follow. The absence of a five-year housing land supply also places a premium upon the housing benefits of the proposed scheme.

*Unilateral Undertaking*

55. The Unilateral Undertaking makes commitments to various matters to mitigate the impact of the development, including contributions in relation to parking,



sustainable transport, education, health, open space, a play area, a design workshop, a travel plan and in relation to fire and rescue services. The local planning authority and the County have provided evidence of compliance with the relevant provisions set out in Regulations 122 and 123 of the Community Infrastructure Levy (CIL) Regulations 2010 and this is not disputed. I have also had regard to the Framework, and to the relevant advice of both the government's Planning Practice Guidance (the Guidance), and of the Planning Inspectorate's Procedural Guide Planning Appeals - England, published July 2015.

56. The Undertaking also presents a number of options for consideration as part of my decision, and these include the sustainable transport contribution already discussed, and the timings of the education and sustainable transport contributions.
57. I am satisfied with the terms of the commitments in relation to the proposed contributions towards parking, bus services, a travel plan, Walkern Primary School, open space, off-site play and health services.
58. In relation to a sustainable transport contribution, I find option (i) involving a cycle link to the important local centre of Stevenage and/or improvements to public rights of way in the vicinity to be both necessary and reasonable as already discussed. It would serve to promote wider use of sustainable modes of transport by future occupiers and thereby most effectively mitigate the likely impact of additional car-based travel arising from the development.
59. In relation to the timing of the education and sustainable transport contributions, I consider these should be made prior to the commencement of the development so as to afford maximum lead-in time for their provision.
60. I have considered the case for a design workshop contribution of £10,000, but I am unable to conclude this to be either necessary or reasonable. I find it relates to matters which are properly the statutory function of the local planning authority. Whilst I acknowledge the importance of the eventual design of the development, I find no particular justification why such a payment should be required in this instance.
61. The Undertaking includes a commitment to fire hydrants, although the need is disputed by the appellants. I have had regard to Schedule 1 Part B to the Building Regulations 2010, and am not satisfied from the evidence presented that publicly adopted fire hydrants would be otherwise covered in the particular context of the appeal scheme. There would be a need for the availability of a water supply to fight fires associated with the development. This would only arise directly from the development itself, and would not otherwise be available, and I therefore find the Undertaking's contributions to be both necessary and reasonable in that regard.
62. Concerns were raised by the County that the terms of the Undertaking for the purposes of its calculations as they relate to matters arising from proposed housing provision do not adequately address considerations of proposed tenure. Nevertheless, the calculations do reflect the full composition of the development as proposed.

63. The Council confirmed at the hearing that it is satisfied with the form and drafting of the agreement as a deed, which I also find to be generally fit-for-purpose.
64. Accordingly, I take into account the commitments and accompanying terms as outlined above as considerations of my decision.

*Affordable housing*

65. The development proposes a 40% provision of affordable housing. This is fully compliant with Policy HSG3 of the Local Plan which would otherwise seek up to 40% provision. The Council is also satisfied with the proposed tenure split, and the scheme would make a significant contribution of up to 34 affordable dwellings in the context of the Council's SHMA which identifies an affordable need of some 9,100 dwellings in the period 2011-2033.
66. I am concerned, however, that the appellants do not propose to provide a planning obligation in relation to affordable housing, given the scale of proposed provision and the implications of its delivery, including possible involvement of a Registered Provider. In such circumstances as these, I do not consider a planning condition to provide the most robust or effective means of delivery.
67. The Guidance states that a negatively worded condition limiting the development that can take place until a planning obligation or other agreement has been entered into is unlikely to be appropriate in the majority of cases. It states that ensuring that any planning obligation or other agreement is entered into prior to granting planning permission is the best way to deliver sufficient certainty for all parties about what is being agreed. This encourages the parties to finalise the planning obligation or other agreement in a timely manner and is important in the interests of maintaining transparency.
68. The Guidance further advises that, in exceptional circumstances, a negatively worded condition requiring a planning obligation or other agreement to be entered into before certain development can commence may be appropriate in the case of more complex and strategically important development where there is clear evidence that the delivery of the development would otherwise be at serious risk. No such case has been made in this instance.
69. Whilst the Council acknowledges its use of conditions for such purposes in smaller scale developments, it would prefer a planning obligation to be available given the significance of the scheme and the need to address such matters as transfer arrangements. The Council's Affordable Housing and Lifetime Homes Supplementary Planning Document, January 2008 also makes clear that section 106 agreements should be used in most cases to secure affordable housing in preference to a condition. It identifies an agreement to be a more effective means of delivery, explaining that the matters involved are usually too complex for a condition.
70. Nevertheless, it is possible, in principle, for affordable housing to be secured by way of a planning condition, and evidence has been provided of such arrangement at a similar appeal. I consider this matter further as part of my overall planning balance to follow.

*Other Matters*

71. I have carefully considered all other matters raised, both at the hearing and in written submissions.
72. There is a concern from local residents that, if growth is to be accommodated, it should not be focussed upon a single site, but there is no spatial policy in place to distribute development across the village in such a way.
73. I have noted details of pre-application discussions between the main parties, and public consultations undertaken by the appellants prior to submission.
74. I note that the development has been assessed by the authority as not to involve Environmental Impact Assessment development.
75. The appellants' Ecological Appraisal includes a number of surveys and does not identify the site to be of particular overall significance, and little evidence is otherwise available to that effect. The scheme proposes retention of mature trees and hedges where possible and the detailed design of the scheme, through planting and provision of green open spaces, would seek to provide ecological benefits in accordance with the expectations of the Framework.
76. Given its proposed location, the development does not have any heritage implications for either listed buildings or for Walkern Conservation Area. The appeal site adjoins post-war edges of Walkern and this is an outline application with all matters of appearance and landscaping reserved for subsequent approval should the appeal be allowed.
77. I have also had regard to all other sites and planning decisions as referred to in the submitted evidence, and to related matters raised. This includes reference to a 1973 appeal decision at the site, and to a recent appeal decision for a housing development at Braughing. Notwithstanding any similarities and the importance of consistency in decision-making, the planning circumstances of any individual site and of any proposed scheme will be different to others, and each proposal and site must be considered with reference to its own particular merits.
78. A letter was also sent to the local planning authority from a third party post-event and which has been forwarded to me. Whilst I have noted the content, particularly related to matters of land ownership and to the District Plan, this does not affect the evidence I heard at the event and has not been a determining factor of my decision.
79. I have had regard to all other concerns raised, both at the hearing and in written evidence, and including references to neighbourhood planning. These have not been raised as objections by the Council and I have little reason to conclude that such matters represent grounds to preclude development.

*Sustainable development*

80. The Framework makes clear that housing applications should be considered in the context of the presumption in favour of sustainable development.
81. The purpose of the planning system is to contribute to the achievement of sustainable development. Sustainable development is defined by the Framework with reference to the policies in paragraphs 18 to 219 taken as a whole. At the heart of the Framework in paragraph 14 is a presumption in

favour of sustainable development. The Framework further identifies economic, social and environmental dimensions to sustainable development.

82. The scheme would undoubtedly provide significant housing benefits, in terms of both affordable and market provision, and such benefits would be consistent with the social dimension of sustainable development. The investment represented by the development would also be consistent with the economic dimension. The undisputed economic benefits would include investment in construction and related employment for its duration. Benefits would also include an increase in local household spending and demand for services, and the financial contributions to the Council through New Homes Bonus payments.
83. In environmental terms, the scheme would incur loss of an open field and some public views across the site. Nevertheless, as already described, the intrinsic environmental qualities of the field are limited and it should be possible as part of the eventual layout for some public views to be safeguarded, particularly towards the open land towards the west. Further, the illustrative Development Framework indicates significant potential for green infrastructure, including open space and landscape buffers. Detailed arrangements, once agreed, would also be in place to mitigate flood risk. On balance, I find the environmental implications of the development would be reasonably sustainable.
84. Further, Walkern is identified by the development plan as a settlement for growth and, in principle, the location is recognised as a sustainable one.
85. I therefore conclude, having regard to the expectations of the Framework as a whole, that the proposed scheme would be sustainable development. Accordingly, the presumption in favour of sustainable development set out in paragraph 14 of the Framework is engaged, and this has two possible implications. Firstly, unless material considerations indicate otherwise, paragraph 14 makes a presumption in favour of approving proposals that accord with the development plan without delay. Secondly, it states that, where the development plan is absent, silent or relevant policies are out-of-date, planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.

### **Overall Planning Balance**

86. Policy GBC3 seeks to impose a general restriction on development, including housing, outside defined limits. It thereby acts as a constraint to future housing supply by presuming against housing development outside development boundaries. As the Council is unable to demonstrate a five-year supply of housing land, it follows that, for the purposes of paragraph 49 of the Framework, Policy GBC3 is to be considered out-of-date.
87. The scheme would occupy existing countryside, would incur some loss of views and would add to vehicle generation in the vicinity of the site. Nevertheless, the development would be accompanied by commitments to mitigate, including sustainable transport measures, which I consider to be both effective and reasonable.
88. Weighed against the sum of the harm, I am satisfied the scheme would constitute sustainable development with significant economic, social and environmental benefits as described.

89. Of particular weight would be up to 85 new homes in a District which is unable to demonstrate a five-year housing land supply. The associated affordable housing benefits would also be significant and would amount to 40% of the dwellings.
90. I consider the scheme would give rise to environmental benefits through an emphasis upon green infrastructure, and particularly along its boundaries in key relationships to adjacent sites, and would include improvements to drainage infrastructure.
91. I share the Council's concerns, however, that the affordable housing benefits would not be delivered through the robustness of a planning obligation, and note the advice of the Guidance in this regard. Whilst not preferable, a planning condition could still, in principle, deliver. Given the Council's absence of a five-year housing land supply, its acknowledged need for affordable housing, the early delivery proposed, and the full 40% allocation proposed, I find that the particular circumstances of the scheme, in terms of the affordable housing benefits, to be sufficiently exceptional to justify use of a condition in this instance. I also do not find my concerns in that regard out-weigh the significant benefits of the development otherwise arising.
92. I therefore find, on balance, that the adverse impacts of the scheme would not significantly and demonstrably out-weigh the benefits, when assessed against the policies in the Framework taken as a whole, and with regard to the development plan as a whole.

### **Conditions**

93. I have considered the conditions put forward by both main parties to the hearing. In assessing such matters, I have regard to the advice set out in both the Guidance and in the Framework in terms of both the need for individual conditions and of appropriate wording, and to the relevant representations of third parties.
94. For the avoidance of doubt and in the interests of proper planning, a condition is imposed to ensure the development is undertaken in accordance with the relevant drawings.
95. Given the Council's pressing need for further housing, the period for submission of reserved matters is an agreed 18 months, with commencement on site within 12 months of the final approval.
96. Whilst all matters other than access remain reserved for further approval, it is necessary for the outline permission to define the maximum capacity of development. In accordance with the appellants' revised submission, the capacity is set at a maximum of 85 dwellings.
97. Although the submitted drawings to be approved set out general principles of the access, full details of its design remain to be submitted and are required for approval by the local planning authority.
98. It is necessary to protect the living conditions of future occupiers of both the development and existing and future occupiers of adjacent properties in connection with drainage and flooding by ensuring that appropriate measures are agreed and put in place as part of the development. A related condition

- also precludes development within the south-west portion of the site affected by extreme flooding. A condition also requires a scheme of sewage disposal.
99. In order to make an appropriate contribution to addressing local housing need, a condition makes arrangements for delivery of affordable housing.
100. To contribute to a sustainable development, a green travel plan is required. A detailed plan of measures based upon the proposed ecological enhancements identified in the appellants' Ecological Appraisal is also necessary. A condition also safeguards any archaeological value of the site by way of a programme of investigative works.
101. It is necessary to protect the living conditions of future occupiers of the development by ensuring that appropriate arrangements are made for identification and treatment of any on-site contamination.
102. It is also necessary to safeguard the future environment of the site by ensuring measures are in place both to retain and to protect existing trees and hedges.
103. To protect the living conditions of neighbouring occupiers during construction, it is necessary to limit the hours of construction works, and to have in place a Construction Method Statement for the duration of the works. This also includes arrangements for waste management.
104. The Council has suggested inclusion of indicative drawings prepared by Tibbalds as part of the approved details. These matters do not form part of the application and have not been subject to necessary publicity as part of that process. They relate to future matters which would remain to be approved, and I see no reason why a permission should need to make such reference at this time. I also note the objections raised to their content by interested third parties at the hearing, and the hitherto absence of formal consultation.
105. Similarly, the appellants have suggested inclusion of a condition referring to their illustrative Development Framework plan as setting parameters for future submissions. This application relates to the principle of the development and to access, and other reserved matters, including layout and landscaping, remain to be formally considered. Objections have also been raised by the Council and other parties to the content of this plan. I find it would therefore be equally inappropriate to introduce such matters in this way, and could prejudice the interest of other parties.
106. The appellants also suggest reference could be variously made to future landscaping, provision of open space and to detailed matters of internal roads and associated layout. These are not matters which formally comprise part of the application and such conditions could fetter their future consideration.
107. The appellants also request reference to a scheme of works to Froghall Lane agreed with Hertfordshire County Council as highway authority and set out in submitted drawing 1370/10. The local planning authority, however, has concerns towards the scheme and suggests a broader condition to enable the details to be further considered, particularly in light of third party objections. A condition to this effect is included. The Council suggests this be extended to include works within the main High Street but such matters would lie well beyond the confines of the application site and any relevant matters relating to the High Street are instead addressed through the Unilateral Undertaking.

108. A condition has also been proposed for works to upgrade local bus stops. Such works would again lie well beyond the application site and would relate to matters not within the control of the appellants. Accordingly, I find such a condition to be unreasonable.
109. The Council has also suggested a condition requiring full details of connecting footway and cycleway routes, including landscaping implications, from Moors Ley via the garage court adjacent to No 70 Moors Ley, and via the land to the north east of the site which links to Froghall Lane. For the reasons already discussed, I do not consider it would be either necessary or reasonable for such links to be a requirement of a permission, particularly in light of third party constraints relating to land ownership beyond the control of the appellants.

### **Conclusion**

110. At the heart of the Framework is a presumption in favour of sustainable development. I find the proposed scheme would accord with that expectation having regard to the development plan and to the Framework as a whole.
111. For the above reasons, and with regard to all other matters raised, I conclude the appeal should be allowed.

*Peter Rose*  
INSPECTOR

## **SCHEDULE OF CONDITIONS**

1. Details of the appearance, landscaping, layout, and scale, (hereinafter called "the reserved matters") shall be submitted to and be approved in writing by the local planning authority before any development begins and the development shall be carried out as approved.
2. Application for approval of the reserved matters shall be made to the local planning authority not later than 18 months from the date of this permission.
3. The development hereby permitted shall begin not later than 12 months from the date of approval of the last of the reserved matters to be approved.
4. The development hereby permitted shall be carried out in accordance with the following approved drawings: Site Location Plan: 5578-L-03 Rev; and Proposed Site Access Arrangements Ref: 1370/05A.
5. No more than 85 dwellings shall be developed within the site.
6. Prior to the commencement of any development, full design details of the proposed access into the site based upon the drawings hereby approved, and including all associated works and proposed materials, shall be submitted to and be approved in writing by the local planning authority. The development shall be undertaken in accordance with the details as approved and the access shall be completed prior to the first occupation of any dwelling.
7. No development shall take place until full details of a scheme of sustainable surface water drainage has been submitted to and been approved in writing by the local planning authority, and the scheme shall be implemented in full accordance with such details and in full accordance with an accompanying programme as approved. Before any scheme details are submitted for approval to the local planning authority, a full and detailed assessment shall be carried out of the potential for disposing of surface and other water, having regard to DEFRA's non-statutory technical standards for sustainable drainage systems (or any subsequent version) and all other relevant guidance, and including with regard to run-off rates and all relevant flow routes, to critical storm events, and with regard to all other necessary factors relevant to flood risk. The full results of this assessment shall be made available to the local planning authority. Details of the sustainable drainage scheme and associated measures to address these matters shall include information about the design storm period and intensity, the method employed to delay and control the surface water discharged from the site, arrangements for on-site flood water storage, the measures to be taken to prevent pollution of the receiving groundwater and/or surface waters, and allowances for climate change. Details shall also include a timetable for implementation, and shall provide a management and maintenance plan for the lifetime of the development which shall include the arrangements for adoption by any public authority or statutory undertaker and any other arrangements to secure the operation of the scheme as may be necessary throughout its lifetime.



8. The layout shall not include any built development within the south-west portion of the site affected by a 1 in 100 year surface water flood as shown on Enzygo plan reference SHF.1132.045.HY.D.004.2 dated November 2015.
9. No development shall take place until full details of a scheme for sewage and foul water drainage have been submitted to and been approved in writing by the local planning authority, and the works shall be implemented in accordance with the approved details and an agreed programme.
10. No development shall take place until a scheme for the provision of affordable housing as part of the development has been submitted to and been approved in writing by the local planning authority. The affordable housing shall be provided in accordance with the approved scheme and shall meet the definition of affordable housing in Annex 2: Glossary of the National Planning Policy Framework or any future guidance that replaces it. The scheme shall include:
  - a. the numbers, type, tenure and location on the site of the affordable housing provision to be made which shall consist of not less than 40% of housing units
  - b. a tenure split of 75% affordable rent and 25% shared equity
  - c. the timing of the construction of the affordable housing and its phasing in relation to the occupancy of the market housing
  - d. the arrangements for the transfer of the affordable housing to an affordable housing provider or such other arrangements for the management of the affordable housing if no Registered Social Landlord is involved
  - e. the arrangements to ensure that such provision is affordable for both first and subsequent occupiers of the affordable housing
  - f. the occupancy criteria to be used for determining the identity of occupiers of the affordable housing and the means by which such occupancy criteria shall be enforced.

The affordable housing shall be retained in accordance with the approved scheme.

11. No development shall take place until a site investigation of the nature and extent of any contamination has been carried out in accordance with a methodology which has previously been submitted to and been approved in writing by the local planning authority. The results of the site investigation shall be made available to the local planning authority before any development begins. If any contamination is found during the site investigation, a report specifying the measures to be taken to remediate the site to render it suitable for the development hereby permitted shall be submitted to and be approved in writing by the local planning authority. The site shall be remediated in accordance with the approved measures and in accordance with an agreed programme. If, during the course of development, any contamination is found which has not been identified in the site investigation, additional measures for the remediation of this source of contamination shall be submitted to and be approved in writing by the local planning authority. The remediation of the site shall incorporate the approved additional measures in accordance with details and a programme of works to be approved in writing by the local planning authority.

12. Prior to the commencement of any development, a programme of archaeological work shall be submitted to and be approved in writing by the local planning authority. The development shall be carried out in accordance with the details of the scheme as agreed and in accordance with an agreed timetable.
13. Prior to the occupation of any dwelling, a green travel plan shall be submitted to and be approved in writing by the local planning authority and the development shall be undertaken in accordance with the details as approved.
14. Prior to the commencement of any development, a detailed plan of implementation based upon the proposed ecological enhancements identified in the appellants' Ecological Appraisal shall be submitted to and be approved in writing by the local planning authority and the development shall be undertaken in accordance with the details and a programme of works as approved.
15. No site works, including the operation of all plant or machinery in connection with all demolition, preparation and all other works, shall be undertaken outside the hours of 07:30 and 18:30 Mondays to Fridays and 07:30 to 13:00 on Saturdays, and not at all on Sundays or Bank Holidays.
16. No development shall take place, including any works of demolition, until a Construction Method Statement has been submitted to, and been approved in writing by, the local planning authority. The approved Statement shall be adhered to throughout the construction period. The Statement shall provide for:
  - a. the programme and phasing of works
  - b. the parking of vehicles of site operatives and visitors
  - c. loading and unloading of plant and materials
  - d. storage of plant and materials used in constructing the development
  - e. the erection and maintenance of security hoardings, including decorative displays and facilities for public viewing where appropriate
  - f. wheel washing facilities
  - g. measures to control the emission of dust and dirt during construction
  - h. a scheme for recycling/disposing of waste resulting from demolition and construction works
  - i. construction vehicle routing and access
  - j. measures for safeguarding pedestrian safety in the vicinity of the site
  - k. a scheme to control noise during the construction phase.
17. All existing trees and hedges shall be retained unless otherwise approved in writing by the local planning authority.
18. Prior to the commencement of any development, a scheme for the protection of all existing trees and hedges for the duration of the works shall be submitted to and be approved in writing by the local planning authority

and the development shall be undertaken in accordance with the details as approved.

19. No dwellings shall be occupied unless and until full details of a scheme for enhanced pedestrian access along Froghall Lane have been submitted to and been approved in writing by the local planning authority, and the works shall be undertaken in accordance with the details as approved and in accordance with an agreed programme.

## **APPEARANCES**

### **FOR THE LOCAL PLANNING AUTHORITY:**

Tim Hagyard	Development Team Manager and case officer
Isabelle Haddow	Senior Planning Officer, Policy

### **FOR THE APPELLANT:**

Chris Still	Gladman Developments Ltd
Tim Jackson	Fpcr
Simon Helme	Ashley Helme Associates
Duncan Hartley	Rural Solutions
Jonathan Easton	Counsel
Dr Paul Hardwick	Water Sciences, Enzygo Ltd

### **FOR HERTFORDSHIRE COUNTY COUNCIL:**

Alexandra Stevens	Hertfordshire County Council (Planning Obligations Officer)
Oliver Sowerby	Hertfordshire County Council (Highways)
John Rumble	Hertfordshire County Council (Environmental Resource Planning)

### **OTHER INTERESTED PERSONS:**

Steve Jenner	Chair, Walkern Parish Council
Chris O'Brien	Walkern Neighbourhood Planning Group and Walkern Action
Michele Rist	Walkern Neighbourhood Planning Group
Jaqueline Veater	Planning consultant to third parties

**DOCUMENTS SUBMITTED TO THE HEARING:**

**By the Council:**

1. Note referring to section 106 Obligations and CIL Compliance
2. Hearing notification letters dated 7 August and 22 October 2015
3. Planning application notification letter dated 24 April 2015
4. East Herts Council Response to Costs Application
5. Letter from the Planning Inspectorate dated 21 February 2007 relating to East Hertfordshire Local Plan Inspector's Report
6. Policy OSV1 of East Herts Local Plan Second Review April 2007
7. East Herts Draft District Plan (Preferred Options) January 2014 North West Quadrant
8. East Hertfordshire Local Plan Second Review April 2007 North West Quadrant Sheet A
9. East Herts Council Authority Monitoring Report 2013-14 December 2014
10. East Herts Draft District Plan Preferred Options Consultation January 2014
11. Email from Tom Goldsmith to Tim Hagyard dated 20 November 2015
12. Section 3. Housing of East Herts Local Plan Second Review April 2007
13. Section 18. Housing of East Herts Local Plan Second Review April 2007
14. Suggestions for amended Council conditions submitted on 15 December 2015
15. Tibbalds Development Concept plans dated September 2015
16. Affordable Housing and Lifetime Homes Supplementary Planning Document dated January 2008
17. Planning Obligations Supplementary Planning Document dated October 2008
18. Comments in relation to possible planning condition for affordable housing dated 30 December 2015

**By the appellant:**

19. Flood Risk and Drainage Statement
20. Reply on behalf of the appellants (costs) dated 17 November 2015
21. Email from Tim Hagyard dated 12 August 2015
22. Proposed modifications to pages 6 and 7 of draft Unilateral Undertaking
23. Schedule 1 Part B of the Building Regulations 2010
24. Suggested list of conditions 1 – 22
25. Plan of adopted public highways

- 26. Response to amended Council conditions submitted on 15 December 2015
- 27. Comments in relation to possible planning condition for affordable housing dated 23 December 2015
- 28. Unilateral Undertaking dated 15 December 2015

**Jointly by the Council and the appellant:**

- 29. Statement of Common Ground dated November 2015

**By Hertfordshire County Council:**

- 30. Statement in support of planning obligations sought towards Hertfordshire County Council Services (Property Services)
- 31. Email from Alexandra Stevens, Planning Obligations Officer, Hertfordshire County Council dated 14 December 2015
- 32. Secretary of State decisions dated 11 August 2015 relating to appeals at Sewell Park, St. Albans (Refs: APP/B1930/A/12/2180486 and APP/B1930/A/13/2201728)
- 33. Letter from Chief Legal Officer dated 15 July 2011
- 34. Planning obligations guidance - toolkit for Hertfordshire, January 2008, Hertfordshire County Council

**By other third parties:**

- 35. Joint statement of Walkern Parish Council, Walkern Parish Neighbourhood Plan Group and Walkern Action



## Appeal Decision

Site visit made on 3 February 2016

by **J A B Gresty MA MRICS**

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

Decision date: 11 February 2016

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### Appeal Ref: APP/J1915/D/15/3137646

#### 1 Poets Gate, Widford, Hertfordshire SG12 8SA

- 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 Gover Jones against the decision of East Hertfordshire District Council.
  - The application Ref 3/15/0854/HH, dated 24 April 2015, was refused by notice dated 11 August 2015.
  - The development proposed is a two-storey side extension to dwelling.
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### Decision

1. The appeal is allowed and planning permission is granted for a two-storey side extension to dwelling at 1 Poets Gate, Widford, Hertfordshire SG12 8SA in accordance with the terms of the application, Ref 3/15/0854/HH, dated 24 April 2015, 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 development shall match those of the existing dwelling.
  - 3) The development hereby permitted shall be carried out in accordance with the following approved plan: JPT/TGJ/0315/001Rev.B

### Main Issue

3. The main issue in this case is the effect of the proposed development on the character and appearance of the local area.

### Reasons

4. The appeal property is a small, two-storey, end of terrace house. It is situated on the corner of the junction of a residential cul-de-sac, Lambs Gardens, with Hunsden Road and is in the Widford Conservation Area. Whilst a relatively new building, the house is of generally traditional appearance and the terrace of five dwellings is an attractive feature which complements the many older buildings which characterise the Conservation Area.
  5. The proposal is for the construction of a small, two-storey side extension. The extension would have a pitched, tiled roof similar in design to that of the host
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- building. The ridge of the roof would be set below the main house roof and the front of the extension would be stepped back from the front elevation of the main house. In these respects the extension would appear subservient to the host property and it would be in keeping with the character and appearance of the terrace as a whole.
6. The terrace is set back from Hunsden Road and the houses have attractive front gardens which contribute positively to the street scene. The appeal property also has a small area of side garden which fronts onto Lambs Gardens and is open to public view. Whilst this side garden complements the front garden, it has the backdrop of the flank wall of the house and the close board timber fencing which surrounds the property's private back and side garden. This backdrop limits the sense of openness of the side garden when viewed from the adjoining roads.
  7. The front corner of the proposed extension would stand about 0.4 metres from the plot boundary with the pavement on Lambs Gardens. The back corner of the extension would be about 1.4 metres from the boundary. Whilst the extension would occupy a large proportion of the small open area of side garden, there would remain some space for planting and the main area of visible open space at the front of the property would remain unchanged.
  8. Elsewhere in the Conservation Area there are buildings situated on corner plots which abut the pavement with no garden space. In this case the closeness of the proposed extension to the pavement on Lambs Gardens would be in keeping with the varied pattern of development found elsewhere in the Conservation Area.
  9. Unlike the appeal property, 1 Lambs Gardens on the other side of the junction is set back several metres from the road behind a driveway. Because of their different orientations and layouts, the two properties do not have a strong visual relationship to each other in the street scene. The proposed extension would have limited effect on the visual relationship of the two properties and in this respect the development would not adversely affect the character or appearance of this part of the Conservation Area.
  10. The terrace of houses has a symmetrical appearance. However, views of the front of the terrace are limited by the narrowness of the road and the symmetry of the terrace is not a prominent feature of the street scene. Consequently, the slight loss of symmetry which would result from the development would not adversely affect the character or appearance of the local area.
  11. There is a duty imposed by Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 requiring decision makers to have special regard to the desirability of preserving or enhancing the character or appearance of a Conservation Area. This is reflected by the general thrust of section 12 of the National Planning Policy Framework (the Framework) which seeks to conserve and enhance the historic environment. The proposed extension would result in a change in the appearance of the appeal property and of the road junction. However, the design of the extension would reflect that of the host property and the close proximity of the side of the extension to the pavement would not



be out of keeping with appearance of other properties in the locality. Therefore, on balance, I conclude that the proposed development would be preserve the character and appearance of the Conservation Area and it would comply with the aims of good design sought by Policies ENV1, ENV5, ENV6 and BH5 of the East Herts Local Plan Second Review.

### **Conclusion**

12. At the heart of the Framework, there is a presumption in favour of sustainable development and housing applications should be considered in the context of this presumption in favour of sustainable development. Good design is a key aspect of sustainable development and it should make places better for people. The development would be in keeping with the character and appearance of the Widford Conservation Area and it would provide useful additional living space for the occupiers of the appeal property. Therefore, on balance and for the above reasons, I conclude that the proposed extension would represent sustainable development as sought by the Framework and that the appeal should be allowed.

### **Conditions**

13. In order to protect the character and appearance of the host property, I impose a condition requiring the materials to be used in the construction of the external surfaces of the development to match those used in the existing building.
14. For the avoidance of doubt and in the interests of good planning, I impose a condition requiring the development to be carried out in accordance with the approved plans.

*J A B Gresty*

INSPECTOR

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## Appeal Decision

Site visit made on 29 January 2016

by **F Rafiq BSc (Hons), MCD, MRTPI**

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

Decision date: 11/02/2016

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**Appeal Ref: APP/J1915/D/15/3136805**  
**55 Musley Hill, Ware, Herts SG12 7NA**

- 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 Trevor Bassett against the decision of East Hertfordshire District Council.
  - The application Ref 3/15/0998/HH dated 13 May 2015 was refused by notice dated 12 August 2015.
  - The development proposed is a detached store/shed.
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### Decision

1. The appeal is allowed and planning permission is granted for a detached store/shed at 55 Musley Hill, Ware, Herts SG12 7NA in accordance with the terms of the application, Ref 3/15/0998/HH dated 13 May 2015, 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: D150401/1 and D150401/2.
  - 3) No development shall commence until samples of the materials to be used in the construction of the external surfaces of the development hereby permitted have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved samples.

### Main Issues

2. I consider the main issues are the effect of the proposal (1) on the character and appearance of the area, and (2) on highway safety.

### Reasons

#### *Character and Appearance*

3. The appeal site is situated in a very mixed area. Buildings along Musley Hill are on a hillside and there is a mix of modern and traditional style of properties that includes bungalows, detached, semi-detached and terraced dwellings. This gives the area a mixed residential character and appearance. Many dwellings,
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like the appeal property have off-road parking, which in some instances includes integral and detached garages.

4. The appeal proposal is to excavate the rear garden area to create a store with a garage type door accessed off Lime Close. The store would have a flat roof that would form a rear garden area to the appeal dwelling. The proposed store would be a large size but the increase in height along Lime Close would be small over the existing brick wall. The Council have raised particular concerns regarding the size and materials of the proposed doorway, which they state would have a harsh appearance in the streetscene. I acknowledge that the doorway would be located directly facing the pavement but there are many garage doors visible in the area around the appeal property, particularly on Musley Hill. Although the Council make reference to a metal door, the appellant states that a timber style door is to be used. The application form however states that a 'steel up and over door' is proposed, but I accept that this is a matter that could be addressed by a materials condition.
5. I acknowledge that the proposed works could result in the loss of some trees and shrubs to the side and rear of the site, but given the elevated positioning of the existing rear garden area, I do not consider there would be any adverse harm to the visual amenities of the area.
6. I therefore conclude that the proposal would not harm the character and appearance of the area and as such, it would not conflict with Policy ENV1 of the East Herts Local Plan Second Review, which requires, amongst other matters, for all development proposals to be of a high standard of design and reflect local distinctiveness. It would also not conflict with the core principles of the National Planning Policy Framework (Framework), which requires development to take account of the differing roles and character of different areas.

#### *Highway Safety*

7. The appellant states that the proposal is for a store and the application form also confirms that it is for a store/shed. I note that the appeal application does not include for a vehicle crossover and that the Highway Authority have stated that a crossover would not be acceptable. Nevertheless, given the size of the proposed building and the door opening, and that a separate planning application would not be required to convert a store to a domestic garage, this potential future use of the building is a material consideration in my determination of this appeal.
8. I acknowledge the footway is narrow and that double yellow lines exist along Lime Close, to the side of the appeal site. In addition to these misgivings, there may be limited visibility for drivers leaving the garage. However, Lime Close is a cul-de-sac which is lightly trafficked, and vehicles emerging from any future garage would be doing so at slow speed. I do not therefore consider that the appeal proposal would have an undue adverse effect on highway safety, including on pedestrian safety if it was to be utilised as a garage. It is also possible that the appeal proposal may result in the loss of a single parking space but there is no evidence before me that this would give rise to parking problems.
9. For the above reasons, I do not consider the proposal would adversely affect highway safety. The Council have not cited any relevant policies within the

refusal notice, but I find there would be no conflict with paragraph 35 of the Framework, which requires development to minimise conflict between different highway users.

### **Other Matters**

10. Some concerns have been expressed that the proposal would lead to the obscuring of light to No. 57's rear rooms and to its garden. I appreciate that this neighbouring property is an older building and that it has a well-tended garden. However, despite the floorarea of the proposed building, it would only result in a small increase in height over the existing garden as illustrated on the submitted drawings. I do not therefore consider that it would result in an unacceptable impact on the living conditions of neighbouring occupiers.
11. If the proposed store were to be used for commercial activities that were not incidental to the enjoyment of a dwellinghouse, then this would necessitate a future planning application that would be considered on its own merits.
12. I have considered all other comments made in the objection letters, including in relation to subsidence and increased surface water run-off and there is nothing, which would lead me to a different decision.

### **Conclusion**

13. For the reasons given above and having taken into account all other matters raised, I conclude the appeal should be allowed.

### **Conditions**

14. The Council have suggested a number of conditions. In addition to the standard time condition, the condition requiring external facing materials to be approved is necessary to ensure the appearance of the building is acceptable. I also consider it necessary to impose a condition to secure compliance with the approved plans, for the avoidance of doubt and in the interests of proper planning.

*F Rafiq*

INSPECTOR

## Appeal Decision

Site visit made on 3 February 2016

by **J A B Gresty MA MRICS**

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

Decision date: 22 February 2016

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**Appeal Ref: APP/J1915/W/15/3134664**

**White Acres, Hooks Cross, Watton-at-Stone, Hertfordshire SG14 3RY**

- 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 K Basra against the decision of East Hertfordshire District Council.
  - The application Ref 3/15/1071/FUL, dated 22 May 2015, was refused by notice dated 8 July 2015.
  - The development proposed is demolition of existing detached dwelling and replacement with new detached dwelling.
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### Decision

1. The appeal is dismissed.

### Main Issues

2. The main issues in this case are:
  - Whether the proposal constitutes inappropriate development in the Green Belt,
  - Its effect on the openness of the Green Belt,
  - Whether the proposed development would comply with the aims of local development plan policies with regard to its effect on the character and appearance of the area, and
  - If it would be inappropriate development whether the harm by reason of inappropriateness, and any other harm to the Green Belt, is clearly outweighed by other considerations, so as to amount to the very special circumstances necessary to justify the development.

### Reasons

#### *Inappropriate Development*

3. The appeal property is a detached house situated within the Metropolitan Green Belt. The proposal is for demolition of the existing house and building a new one in more or less the same position. The National Planning Policy Framework (the Framework) states that a local planning authority should regard construction of new buildings as inappropriate in the Green Belt. This is subject
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to exceptions listed in the Framework which include construction of a replacement building provided that the new building is in the same use and not materially larger than the one it replaces. Notwithstanding that the proposed new house would have second floor accommodation built into its roof space, the evidence presented indicates that alone the area of the ground and first floors of the proposed new house would be significantly greater than that of the existing dwelling. Also, the overall roof heights and the eaves heights of the new dwelling would be greater than existing and, taking into account the proposed mansard roof design, it would appear that the new house would be significantly bulkier than existing. Accordingly, I conclude that the new house would be materially larger than the one it would replace and the development would be inappropriate development in the Green Belt as defined by the Framework.

#### *Openness*

4. The Framework confirms that inappropriate development is by definition harmful to the Green Belt. The essential characteristics of Green Belts are their openness and their permanence. As a consequence of its size and bulk, the proposed replacement dwelling would inevitably reduce the openness of the Green Belt, resulting in significant harm to one of the Green Belt's essential characteristics.

#### *Character & Appearance*

5. Saved Policy GBC1 of the East Herts Local Plan Second Review (LP) provides that new buildings in the Green Belt will be inappropriate unless they meet certain criteria, including replacement buildings which are in accordance with the requirements of saved LP Policy HSG8. LP Policy HSG8 indicates that in the Green Belt the replacement of dwellings, which are of poor appearance or of construction not capable of retention, may be permitted so long as they meet certain criteria, including that they are not materially larger than the dwelling they would replace, plus any unexpended permitted development rights, and that the new dwelling would be no more visually intrusive than the dwelling it replaced.
6. Whilst the existing house may be inconvenient to extend, it is designed with varied roof profiles and low eaves, which enables the building to sit reasonably unobtrusively in the local landscape. Overall, the building is not of poor appearance and evidence has not been presented to indicate that it is beyond reasonable repair. Therefore, in these respects the proposed replacement of the existing building would be contrary to LP Policy HSG8.
7. Also, the new building would be materially larger than the existing dwelling and it is unclear how unused permitted development rights could affect the size of the existing house. Accordingly, it is not possible to conclude that the proposed development would comply with criteria (b) of LP Policy HSG8.
8. The appeal property is situated in a small hamlet which comprises mainly of a fragmented ribbon of the houses on each side the road. The surrounding area is predominantly rural with rolling grass fields to the rear of the appeal property. The house is set back from the road and is visible from distance

across the open countryside to the rear. The proposed new house would, as a consequence of its greater height and visual bulk, stand out in the rural landscape considerably more prominently than the existing dwelling and, consequently, it would detract from the character and appearance of the local area. In this respect the proposed development would not accord with criteria (c) of LP Policy HSG8 and would be contrary to the thrust of LP Paragraph 3.14.3 which explains that in rural areas the Council is anxious to maintain the character of the District.

*Other Matter*

9. The appellant has provided evidence of a replacement dwelling approved by the Council, Planning Permission Ref: 3/14/1909/FP. However, it is apparent that the approved dwelling would be of substantially different design to the appeal scheme, including that the replacement dwelling would be of single-storey design with accommodation in the roof space. It is, therefore, unclear how comparable the two schemes are. Notwithstanding this, each case must be considered on its own merits and I attach little weight to Planning Permission Ref: 3/14/1909/FP in considering the appeal proposal.

*Very Special Circumstances*

10. Inappropriate development is by definition harmful to the Green Belt and should not be approved except in very special circumstances. Very special circumstances will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations. The proposed development would be inappropriate and it would reduce the openness of the Green Belt. Also, the new house would detract from the rural character and appearance of the area. Whilst the appellant indicates that the existing house could be extended under permitted development rights, details of potential permitted development have not been presented and it is unclear that the appellant would carry out such works to the property. Therefore, I attach limited weight to this potential fallback position in considering this case and, on balance, I conclude that evidence has not been presented to demonstrate that very special circumstances exist to clearly outweigh the harm to the Green Belt.

**Conclusion**

11. On balance and for the above reasons, I conclude that the appeal should be dismissed.

*J A B Gresty*

INSPECTOR

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## Appeal Decision

Site visit made on 3 February 2016

by **J A B Gresty MA MRICS**

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

Decision date: 16 February 2016

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### **Appeal Ref: APP/J1915/Z/15/3135625**

### **Garden House, 23 London Road, Hertford, Hertfordshire SG13 7LG**

- 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 Garden House Solicitors against the decision of East Hertfordshire District Council.
  - The application Ref 3/15/1262/ADV, dated 12 June 2015, was refused by notice dated 6 August 2015.
  - The advertisement proposed is a temporary cloth type banners fitted for a maximum of three weeks each.
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### **Application for Costs**

1. An application for costs was made by Garden House Solicitors against East Hertfordshire District Council. This application is the subject of a separate decision.

### **Decision**

2. The appeal is dismissed.

### **Main Issue**

3. The main issue is the effect of the proposed display on the visual amenity of the local area.

### **Reasons**

4. The appeal property is a substantial, detached, two-storey house which has been converted to office use. It is situated in a corner plot at the junction of Park Road with London Road and, as a consequence of its open corner location and raised position above the level of London Road, the property stands out prominently in the local landscape.
  5. Most of the nearby properties on both sides of London Road and on Park Road are residential. Part of the next door property at 25A London Road is used as an office by a firm of solicitors but the building has a residential appearance and it is not readily apparent that it is in non-residential use when viewed from the road. Whilst this part of London Road is dual carriageway and there is a change in the character and appearance of area about 100 metres to the north of the appeal property, where there are several large commercial and utilitarian type buildings, this part of London Road has a distinctly residential character and appearance.
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6. The appeal concerns an application for installation of a 4 metre long x 1.5 metre high banner advertisement. The application details of the proposal are limited but at the time of inspection there was a substantial banner advertisement fixed to a wooden board situated on the London Road boundary fence line of the appeal property. I estimate this banner to be of similar dimensions and general specification to that proposed. The banner had the appearance of a temporary feature and, due to its prominent location, size, design and soft plastic costed material, it stood out very prominently in the local landscape as a stark and alien feature which detracted significantly from the character and appearance of the host property and local area.
7. The appellant provides examples of banner displays in out-of-town centre locations elsewhere in Hertford. However, large or prominent advertisement displays are not a feature of this part of London Road or the nearby commercial area to the north when viewed from by the appeal property. Accordingly, the appellant's examples of other displays elsewhere in the town add very little weight in favour of the appeal proposal.
8. Also, as a consequence of the harm the proposed banner would do to the visual amenity of the local area, the proposal would not comply with the aims of Policy ENV29 of the East Herts Local Plan. This does not weigh in favour of the appeal proposal.

**Conclusion**

9. I conclude that the proposed banner display would be harmful to the visual amenity of the appeal property and local area and, for the above reasons, the appeal should be dismissed.

*J A B Gresty*

INSPECTOR

## Appeal Decision

Site visit made on 3 February 2016

by **J A B Gresty MA MRICS**

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

Decision date: 13 February 2016

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**Appeal Ref: APP/J1915/D/15/3137704**

**90 Mangrove Road, Hertford, Hertfordshire SG13 8AN**

- 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 Alison Chastell against the decision of East Hertfordshire District Council.
  - The application Ref 3/15/1279/HH, dated 17 June 2015, was refused by notice dated 20 August 2015.
  - The development proposed is a single-storey rear extension.
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### Decision

1. The appeal is allowed and planning permission is granted for a single-storey rear extension at 90 Mangrove Road, Hertford, Hertfordshire SG13 8AN in accordance with the terms of the application, Ref 3/15/1279/HH, dated 17 June 2015, 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 development shall match those of the existing dwelling.
  - 3) The development hereby permitted shall be carried out in accordance with the following approved plans: 2021/012 A, 2021/011 A, 2021/010 A, 2021/007, 2021/06, 2021/005, 2021/004, 2021/003A, 2021/002 A & 2021/001 A.

### Main Issues

2. The main issues in this case are:
    - Whether the proposal constitutes inappropriate development in the Green Belt,
    - Its effect on the openness of the Green Belt,
    - The effect of the proposed development on the character and appearance of the local area.
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## Reasons

### *Inappropriate Development*

3. The appeal property is a semi-detached, two-storey house situated within the Metropolitan Green Belt. The proposal includes demolition of an existing conservatory and construction of a single-storey rear extension. The National Planning Policy Framework (the Framework) states that a local planning authority should regard construction of new buildings as inappropriate in the Green Belt. This is subject to exceptions listed in the Framework which include the extension or alteration of a building provided that it does not result in disproportionate additions over and above the size of the original building.
4. The appeal property has been extended in the past and the floor space of the existing building is some 79% greater than the original dwelling. Taking into account the proposed demolition of the conservatory, the evidence presented indicates that the proposed development would result in an increase in floor area of the dwelling of between about 3 and 7 square metres, a cumulative increase in size of the original dwelling of up to some 87%. Whilst this is a significant cumulative increase in size of the original dwelling, it is evident that the appeal property would remain noticeably smaller than some of the other nearby semi-detached dwellings which appear to be of similar original scale and design.
5. Saved Policy GBC1 of the East Herts Local Plan Second Review (LP) indicates that limited extensions to dwellings in the Green Belt may be permitted if constructed in accordance with LP Policy ENV5. LP Policy ENV5 requires extensions not to adversely affect the amenities of the dwelling and any adjoining dwellings to a significant extent and, outside the main settlements and larger villages, an extension to a dwelling will be expected to be of a scale and size that would either by itself, or cumulatively with other extensions, not disproportionately alter the size of the original dwelling. Whilst the Council indicates that it has a desired increase in floor space limit of 60%, evidence has not been presented to indicate that this is adopted policy and LP paragraph 8.9.2 holds that it is not possible to state categorically what maximum size of extension is likely to be permissible, given the wide range of existing dwelling types and sizes which comprise the rural housing stock.
6. The relatively modest increase in floor space of the appeal dwelling which is proposed would have limited practical effect on the overall size of the dwelling and visually it would be difficult to tell whether or not its size had been increased as a result of the development. Whilst the resulting cumulative increase in size of the appeal property of some 87% may be greater than would be reasonable in other circumstances, taking into account the character and appearance of the appeal property in the context of its location within a row of similar scale houses, many of which have been extended considerably, I conclude that the proposed demolition of the conservatory and construction of the extension would not result in a disproportionate increase in the size of the original dwelling. Therefore, the proposed extension would not be inappropriate development in the Green Belt as defined by the Framework and it would accord with LP Policy GBC1 in this respect.

### *Openness*

7. The Framework confirms that inappropriate development is by definition harmful to the Green Belt. The essential characteristics of Green Belts are their openness and their permanence. As a consequence of its size and bulk, the extension would inevitably have some effect on the openness of the Green Belt. However, I have concluded that it would not be a disproportionate addition to the original building. Accordingly, the effect on openness would be limited and would not cause material harm to the Green Belt.

### *Character and Appearance*

8. The appeal property has a modest sized single-storey kitchen extension which projects about 3 metres from the back wall of the house. The proposed extension would sit beyond this and would appear rather isolated in relation to the host building. Also, the extension would also have a hipped roof which would be noticeably taller than the existing conservatory and kitchen extension roofs. However, on its own the extension would reflect the design of the host building and it would be subservient in size and appearance to the existing dwelling.
9. The appeal property forms part of a ribbon of similar scale detached and semi-detached housing on the east side of Mangrove Road. These properties do not follow a precise building line which, in conjunction with the many rear extensions, gives the backs of the properties on this side of Mangrove Road an irregular layout and appearance when viewed from the appeal property's garden. Whilst the back wall of the proposed extension would be over 6 metres from the rear elevation of the main house, its layout would be in keeping with the varied building line and layout of other properties nearby.
10. Although the extension would be visible from the nearby houses to rear, it would not be open to wide public view and it would have very limited effect on the character and appearance of the wider area. On balance, whilst the extension would not be conventional in layout or appearance, I conclude that it would be in keeping with the character and appearance of the host property and local area as a whole. In this respect the development would accord with LP Policies ENV1, ENV5 and ENV6.

### **Conclusion**

11. At the heart of the Framework, there is a presumption in favour of sustainable development. Good design is a key aspect of sustainable development and should make places better for people. Whilst it is inevitable that the development would have a modest affect the openness of the Green Belt, overall I conclude that the development would be in keeping with the character and appearance of the host building and the local area. Further, the proposal would provide improved living space for the appellant and her family and enable more practical access to and from the garden. Consequently, the development would meet the Framework's aims of good design which makes places better for people and it would represent sustainable development as sought by the Framework. Therefore, on balance and for the above reasons, I conclude that the appeal should be allowed.

**Conditions**

12. In order to protect the character and appearance of the host property, I impose a condition requiring the materials to be used in the construction of the external surfaces of the development to match those used in the existing building.
13. For the avoidance of doubt and in the interests of good planning, I impose a condition requiring the development to be carried out in accordance with the approved plans.

*J A B Gresty*

INSPECTOR



## Appeal Decision

Site visit made on 18 January 2016

by **Jonathan Price BA(Hons) DipTP MRTPI DMS**

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

Decision date: 24 February 2016

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**Appeal Ref: APP/J1915/W/15/3136776**

**Whitehill Farm, Dane End, Ware, Hertfordshire SG12 0JS**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under Schedule 2, Part 3, Class Q of the Town and Country Planning (General Permitted Development) (England) Order 2015.
  - The appeal is made by Lord Carter of Coles against the decision of East Hertfordshire District Council.
  - The application Ref 3/15/1367/ARPN, dated 16 June 2015, was refused by notice dated 18 August 2015.
  - The development proposed is change of use of existing agricultural store/livestock pens into three residential dwellings.
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### Decision

1. The appeal is dismissed.

### Application for costs

2. An application for costs was made by Lord Carter of Coles against East Hertfordshire District Council. This application is the subject of a separate Decision.

### Main Issues

3. The main issues are whether the proposal would constitute permitted development and meet the conditions for prior approval set out in the GPDO.

### Reasons

#### *Permitted development*

4. Schedule 2 Part 3 Class Q of the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO) permits development consisting of a change of use of a building and any land within its curtilage from a use as an agricultural building to a use falling within Class C3 (dwellinghouses). Paragraph X provides interpretation for Part 3 in which 'curtilage' means, for the purposes of Class Q, R or S only, (a) the piece of land, whether enclosed or unenclosed, immediately beside or around the agricultural building, closely associated with and serving the purposes of the agricultural building, or (b) an area of land immediately beside or around the agricultural building no larger than the land area occupied by the agricultural building, whichever is the lesser (*my emphasis*).
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12. The definition of 'established agricultural unit' for the purposes of Class Q is given in paragraph X simply as 'agricultural land occupied as a unit for the purposes of agriculture'. Case law<sup>1</sup> has established that an agricultural unit is not the same as the planning unit. The agricultural unit might be co-extensive with a single planning unit or might be spread over a number of separate parcels of land comprising several planning units. The Council's concern centres upon the lack of information provided as to the extent of the established agricultural unit in this case, and whether it might refer to the other buildings or land upon this site or could include more extensive land holdings. It is reasonable to assume that, in the light of this concern, the appellant might have been able to provide further evidence, such as a map, to show the extent of the established agricultural unit.
13. In the absence of evidence of the extent of the established agricultural unit I can appreciate the Council being unable to establish whether this proposal would meet the further criteria of Q.1, particularly in respect of (c) any separate Class Q dwellings already provided and (f) any agricultural permitted development having been carried out since 20 March 2013.
14. There is adequate information provided to establish that there is no agricultural tenancy pertaining to the appeal site (criteria d and e), that the details of the scheme would satisfy criteria (g) in respect of building dimensions and criteria (i) in respect of building operations and that the land/building does not involve any of the designations set out in criteria (j) – (m). However, apart from these matters, and notwithstanding the appellant's written confirmation in respect of meeting all these criteria, the remaining criteria in Q.1 can only be satisfactorily assessed with reference to fuller details over the extent of the established agricultural unit.
15. The proposal would not be permitted development by virtue of the definition of curtilage in paragraph X. Were this not to be the case, the application has not provided sufficient information as to the extent of the established agricultural holding necessary to ascertain whether Class Q permitted development would otherwise apply to his proposal.

*Conditions for prior approval*

16. Although the Council does not accept that this proposal provides sufficient information to establish whether it would be permitted development it has nevertheless proceeded to refuse prior approval in relation to the conditions for this set out in Paragraph Q.2. This followed the prior approval procedure in Schedule 2 Part 3 W(3). The consultation necessary had been carried out by the Council prior to making this decision.
17. The provisions of the GPDO require the local planning authority to assess the proposed development solely on the basis of its impacts on transport and highways; noise; contamination risks on the site; flooding risks; whether the location or siting makes it otherwise impractical or undesirable for the building to change from agricultural use to a dwellinghouse; and the design and external appearance of the building. My determination of this issue has been made in the same manner.
18. The Council's refusal to grant prior approval for this proposal rests on condition (e) of the Conditions in Paragraph Q.2 of GPDO Class Q which requires

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<sup>1</sup> Decision of the Court of Appeal in *Fuller v SSE (1988) 56 P. & C.; [1988] 1 P.L.R. 1.*

5. The submitted survey drawing (reference 11734-S001-A) includes a 1:1250 scale location plan showing the building hatched and surrounded by a red line defining land around it to the east and south. I take this red line to be intended as showing the curtilage proposed. From a visual assessment, the curtilage area on this plan appears to be slightly greater than the area occupied by the building. This is confirmed by the application form which states the building floor area and the area of curtilage to be 345m<sup>2</sup> and 360 m<sup>2</sup> respectively.
6. Whilst the area of curtilage might be amended to be no greater than the floorspace of the building it is not the purpose of the appeal process to evolve a scheme and it is important that the facts before me are essentially those considered by the Council and others consulted. As a consequence I have not sought further comment from the parties on this matter.
7. Although the curtilage area only slightly exceeds the building footprint it would need to be no larger than this to comply with the definition prescribed by paragraph X. As the application clearly shows the curtilage to be larger than the footprint of the building, and this does not meet the restrictive definition in Paragraph X, I must conclude that the requirements of Class Q are not met and this proposal would not be permitted development.
8. The Council's reasons for refusal do not refer to the matter of curtilage size. Reason 2 relates to the sufficiency of information necessary to assess whether development would be permitted under Class Q based on the criteria set out in Paragraph Q.1 and Reason 2 is linked to the conditions for prior approval set out in paragraph Q.2. Although I have concluded that the proposals would not constitute Class Q permitted development, due to the extent of curtilage shown in the application not meeting the restrictive definition in Paragraph X, I have addressed the Council's decision as this is the basis of an application for costs made by the appellant.
9. Paragraph Q.1.(a) of the GPDO states that Class Q development is not permitted if the site was not used solely for an agricultural use as part of an established agricultural unit on (i) 20 March 2013, or (ii) in the case of a building which was in use before that date but was not in use on that date, when it was last in use. At the time of my visit the buildings were vacant but appeared to be in a reasonably sound state of repair and capable of being used again for agricultural purposes. There was no evidence from my inspection to suggest this building was last used for anything other than for agricultural purposes and that any other use had taken place in the intervening period.
10. The Council's delegated report confirms my view that the structure in question is located within a group of agricultural buildings which form a farm, all of which appeared not to be in use. The planning history referred to in the Council's report refers to approval in 1952 for a farm homestead which is the building to which this conversion to three dwellings relates. Further buildings were permitted in 1970 which are likely be the agricultural storage sheds currently sited adjacent and to the east of the building that is the subject of this appeal.
11. The application states that the building in question is currently or was last in agricultural use on 20 March 2013 as part of Whitehill Farm, which forms part of a larger agricultural unit owned by the applicant. A solicitor's letter is submitted in confirmation of this.



consideration of whether the location or siting of the building makes it otherwise impractical or undesirable for the change of use from agricultural to residential.

19. Paragraph 108 of the Planning Practice Guidance (PPG) states that this permitted development right does not apply a test in relation to the sustainability of locations. This is deliberate as many agricultural buildings will not be in settlements and may not be able to rely on public transport for their daily needs. Instead the consideration can be whether the location and siting of the building would make it impractical or undesirable to change use to a house.
20. Paragraph 109 of the PPG advises that whilst 'impractical and undesirable' are not defined in the regulations a reasonable ordinary dictionary meaning should be applied in making any judgement. Impractical is stated as reflecting that the location and siting 'would not be sensible or realistic' and undesirable that it would be 'harmful or objectionable'. The PPG further advises that when considering whether it is appropriate for the change of use to take place in a particular location this should start with the premise that the permitted development right grants approval, subject to the prior approval requirements. Where an agricultural building is in a location where permission would not normally be granted for a dwelling this is not a sufficient reason for refusing prior approval.
21. The sustainability of the location is central to the Council's decision and, having considered the advice of the PPG, greater weight has been given to Paragraph W (10) (b) of the GPDO over regard being had to the National Planning Policy Framework (the Framework) as far as relevant to the subject of the prior approval as if it were a planning application. The Council is therefore basing its decision on the Framework, and specifically Paragraph 49 in respect of considering housing applications in the context of the presumption in favour of sustainable development and Paragraph 55 in respect of enhancing or maintaining the vitality of rural communities, avoiding new isolated homes in the countryside and for the re-use of farm buildings leading to an enhancement to the immediate setting.
22. Government legislation, policy and guidance should be considered in the round. The intention of GPDO Class Q is to encourage the re-use of redundant farm buildings and the PPG qualifies the presumption in favour of sustainable development in the Framework in recognition of such buildings often being located outside of a settlement.
23. Therefore, I find no reason that the siting or location of this proposal would make the change of use from agricultural building to three dwellings either impractical or undesirable. I have considered the case made by the Council over the sustainability of this location but, having had regard to Paragraph 108 of the PPG, do not consider refusal of prior approval for this reason would have accorded with recent and explicit Government advice. Were this proposal permitted development under Class Q then I consider this scheme would have satisfied all the conditions in paragraph Q.2, with the proviso that any contamination risks identified could have been addressed by means of a condition.

## **Conclusions**

24. For the reasons given above this proposal provides insufficient information as to the extent of the established agricultural holding to determine whether development would be permitted under Q.1. Had this been established there is no evidence to conclude that prior approval should not have been granted in respect of the conditions set out in Q.2, including that the location and siting of the building would otherwise make the change of use impractical or undesirable on the basis of the advice set out in the PPG. However, the proposals would not satisfy the requirements of Schedule 2 Part 3 Class Q, as defined by Paragraph X, of the Town and Country Planning (General Permitted Development) (England) Order 2015 and therefore would not be development permitted by it. As a consequence, and having taken account of all other matters that have been raised, I conclude that this appeal be dismissed.

*Jonathan Price*

INSPECTOR

## Appeal Decision

Site visit made on 29 January 2016

by **F Rafiq BSc (Hons), MCD, MRTPI**

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

Decision date: 12 February 2016

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**Appeal Ref: APP/J1915/D/15/3135626**

**Maple Cottage, Danebridge Lane, Much Hadham, Hertfordshire, SG10 6HX**

- 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 G R & Mrs R L Lewy against the decision of East Hertfordshire District Council
  - The application Ref 3/15/1404/HH dated 3 July 2015 was refused by notice dated 25 August 2015.
  - The development proposed is a two storey rear extension and single storey extension and replacement of existing roof with new roof to provide second floor accommodation.
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### Decision

1. The appeal is dismissed.

### Main Issue

2. The main issues are the effect of the development on (1) the character and appearance of the rural area, and (2) protected species.

### Reasons

#### *Character and Appearance*

3. The appeal property is a detached two storey dwelling situated in a rural area, amongst a small group of buildings off Danebridge Lane. The houses are widely spaced and are set back at varying distances from the road. The properties are mostly located within generous plots, which contain mature trees and vegetation. The wider area, beyond the rear boundary of the site is made up of agricultural fields, which together give the area a spacious, open and rural character.
  4. The appeal property has previously been extended, with the Council stating that the dwelling has been extended by around 256%. The current proposals would take the cumulative increase to around 544%. Although I have not been made aware of the detailed calculations, these figures are not disputed by the appellant and would appear to reasonably reflect the scale of the dwelling and the proposals before me.
  5. Policy GBC3 of the East Herts Local Plan Second Review (Local Plan) allows for, amongst other matters, limited extensions to existing dwellings in accordance with Local Plan Policy ENV5. This latter policy states that outside main
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settlements, extensions should be of a scale and size that do not disproportionately alter the size of the original dwelling nor intrude into the openness or rural qualities of the surrounding area. Although these policies do not quantify the terms 'limited' or 'disproportionate', cumulatively, the previous and proposed extensions would represent a large increase in size of the dwelling.

6. I acknowledge however, that other than a numeric assessment, it is necessary to consider the effect of the scale and mass of the proposal on the character and appearance of the existing dwelling and on the locality. The Council accept that the increased roof height would not be significant. However, the increased height would be across the whole of the two storey element of the dwelling, which, in addition to the two storey rear extension, would add significant mass to the building.
7. The appeal dwelling is not a small building but its mass is broken up by its broadly 'T' shaped form and at roof level, by it having a number of interconnected pitched roofs. However, the increase in footprint, albeit limited to the rear corner of the building, as well as the roof alterations, would result in the dwelling being having a single overall mass. This would not respond well to its surroundings and the extensive flat roof form would also be out of character with the pitched roofs of the appeal and surrounding properties. I also note the overall depth and width of the property would not change and that the front would retain an element of balance where the gables would be replaced with hips. These factors would not however outweigh the effect the size and scale of the dwelling would have on its surroundings.
8. I acknowledge that the dwelling does not have any special historic or architectural merit and it sits in large grounds. I was also able to see other large dwellings in the area. Although there would not be an increase in the number of bedrooms, in view of the overall change in scale proposed, I do not consider that the extended dwelling would retain the same spacious presence within this plot. Rather, the proposal development would amount to a disproportionate addition. Whilst the site may lie outside the Green Belt, it is still necessary to consider the impact of the proposal on the character and appearance of the area. The development, for the reasons set out above, would reduce the openness and give rise to visual harm to the rural characteristics of the area.
9. I therefore conclude that the proposal would have an adverse impact on the character and appearance of the rural area. The proposal would be contrary to Local Plan Policies GBC3 and ENV5, which require, amongst other matters, for development to not intrude into the openness or rural qualities of the surrounding area.

#### *Protected Species*

10. The Council have included the lack of an initial inspection survey to assess the presence of bats as a reason for refusal. Hertfordshire Ecology state that if bats are present, they may be affected given the significant modifications proposed to the existing roof.
11. I appreciate that the appellants have resided at the property for many years and have seen no evidence of bats. It may also not have been an issue at the

previous appeal in 2003/2004 when substantial works to the roof were proposed. I also note the costs involved in undertaking survey work. However, in the absence of survey and given the rural location and the presence of woodland and hedgerows, which are important habitats for bats, I cannot be sure that bats would not be affected by the proposal.

12. The appellant has suggested that this is a matter that could be addressed by a condition. However, it is necessary to establish the presence or otherwise of protected species prior to the granting of planning permission, as there cannot be certainty about the outcome of the survey findings and whether or not suitable mitigation (if required) could be put in place. Notwithstanding therefore any suggested conditions by the Council, I do not consider that a condition would be appropriate in this instance.
13. Accordingly, in the absence of this information, it has not been demonstrated that the development would not have a harmful effect on protected species. Although the Council have not referred to any specific policies on the refusal notice relating to this issue, the proposal would be contrary to Paragraph 118 of the Framework.

#### **Other Matters**

14. The proposal would not give rise to any unacceptable harm to neighbouring occupiers living conditions and it would also not adversely affect the supply of affordable housing. These are however neutral considerations and not benefits of the appeal proposal.
15. Given the harm that I have identified in respect of the main issues, I do not consider the proposed development would be the form of sustainable development, that the Framework intends there to be a presumption in favour of.

#### **Conclusion**

16. For the reasons given above and having considered all other matters raised, including the planning history of the site, I conclude that the appeal should be dismissed.

*F Rafiq*

INSPECTOR

## Appeal Decision

Site visit made on 15 February 2016

by **Megan Thomas BA(Hons) in Law, Barrister**

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

Decision date: 7 March 2016

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### **Appeal Ref: APP/J1915/D/15/3137989**

### **Woodbury, 6 East Riding, Tewin Wood, Tewin AL6 0PA**

- 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 Joslin against the decision of East Hertfordshire District Council.
  - The application Ref 3/15/1651/HH, dated 7 August 2015, was refused by notice dated 6 October 2015.
  - The development proposed is the demolition of existing conservatory, utility room, garage and part kitchen and erection of single storey side and rear extension and erection of two storey side extension and replacement of existing roof.
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### **Decision**

1. The appeal is allowed and planning permission is granted for the demolition of existing conservatory, utility room, garage and part kitchen and erection of single storey side and rear extension and erection of two storey side extension and replacement of existing roof at Woodbury, 6 East Riding, Tewin Wood, Tewin AL6 0PA in accordance with the terms of the application, Ref 3/15/1651/HH, dated 7 August 2015, 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: 001, 002, 003, 004, 005, 006, 007, 008, 009 & 010 (all dated 7 August 2015).
    - 3) All existing trees and hedges shall be retained, unless shown on the approved drawings as being removed. All trees and hedges on and immediately adjoining the site shall be protected from damage as a result of works on the site in accordance with BS5837: 2012 Trees in relation to design, demolition and construction (including appropriate fencing), for the duration of the works on site. In the event that trees or hedging become damaged or otherwise defective during such period, the Local Planning Authority shall be notified as soon as reasonably practicable and remedial action agreed and implemented. In the event that any tree or hedging dies or is removed without the prior consent of the Local Planning Authority, it shall be replaced as soon as is reasonably practicable and, in any case, by not later than the end of the first available planting season, with trees of
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such size, species and in such number and positions as may be agreed with the Authority.

### **Main Issues**

2. The appeal site lies within the Metropolitan Green Belt. Consequently, the main issues are:
  - whether the proposal would be 'not inappropriate' development in the Green Belt having regard to the National Planning Policy Framework 'NPPF' and any relevant development plan policies;
  - the effect on openness of the Green Belt,
  - the effect of the proposal on the character and appearance of the host dwelling and the area including surrounding trees.

### **Reasons**

*Whether the proposal would be not 'inappropriate development' in the Green Belt having regard to the NPPF and any relevant development plan policies*

3. The appeal site is a large two storey detached house with a pitched roof and integral garage set in a generous plot in Tewin Wood. It is outside the development envelope for Tewin. The development proposed would result in a substantial change to the character of the property whereby its traditional appearance would be altered to a contemporary home. It would have a main flat roof at a level lower than the existing main roof ridge, and a flat roof to the side addition. There would be many aluminium-framed windows and sliding doors and the walls would be rendered or fitted with Equitone Natura panels.
4. The Council take the view that the proposal is tantamount to a replacement of the dwelling as a whole and that the scheme should be treated accordingly. However, in my view whilst there would be comprehensive changes to parts of the structure of the dwelling, the proposal comprises alterations and extensions to it rather than a replacement of it. I judge, as a matter of fact and degree, that the demolition and construction involved would amount to extensions and alterations of the building and not a replacement of it. I have treated the appeal accordingly. Policy HSG8 of the East Herts Local Plan Second Review (adopted 2007) 'LP' deals with replacement dwellings and is not pertinent to the appeal.
5. The NPPF regards the construction of new buildings in the Green Belt as inappropriate development. Exceptions to this in relation to the construction of new buildings are listed in paragraph 89 and comprise a closed and exhaustive list of exceptions. Bullet point 3 sets out one exception as "*the extension or alteration of a building, provided that it does not result in disproportionate additions over and above the size of the original building.*"
6. The term "original building" is defined in the NPPF as a building as it existed on 1 July 1948 or if constructed after 1 July 1948 as it was built originally. The Council indicate that the building had an original floor area around 170 sqm. The Council also indicate that if the proposal was constructed the overall floor