The Planning Inspectorate

Appeal Decision

Site visit made 14 December 2010

by Richard High BA MA MRTPI

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

Decision date: 27 January 2011

Appeal Ref: APP/J1915/A/10/2138014
90 South Street, Bishops Stortford, Hertfordshire, CM23 3BG

- 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 Memet Cavusoglu, against the decision of East Hertfordshire District Council.
- The application Ref 3/10/0416/FP, dated 5 March 2010, was refused by notice dated 29 April 2010.
- The development proposed is change of use from vacant retail unit to food Take-Away.

Decision

1. I dismiss the appeal.

Main Issues

2. The main issues are:

   1) the effect of the development on the vitality of this part of the town centre;

   2) the effect of the development on the living conditions of the occupants of nearby dwellings, particularly the flats in Archers Place, in relation to noise, disturbance and smell.

Reasons

Town centre vitality

3. The appeal site lies at the end of a row of four modern shop units fronting South Street of which only one is occupied, by a food store. It lies within a secondary shopping frontage on the edge of the town centre of Bishop's Stortford. It is not far from the heart of the centre, but this part of South Street has a relatively low pedestrian footfall contrasting markedly with the much more vibrant character of the semi-pedestrianised part which lies to the north of Station Road. There are relatively few retail uses and a wide range of service uses of the sort commonly found on the edge of a town centre.

4. I understand that the three vacant units have been marketed without success for two years. While I accept this may be partly attributable to the unfavourable economic climate, I have also noted the generally vibrant

character of the primary shopping frontages with relatively few vacant shop units. In my judgement, the separation of these units from the main town centre means that the prospects for attracting genuine retail uses in this location are not good, and the continued vacancy of this block of units would do nothing to enhance the vitality of this part of the town centre.

5. Policy STC3 of the East Herts Local Plan Second Review 2007 (EHLP) provides for a range of non-retail uses on secondary shopping frontages providing this does not result in an over concentration of such uses. I accept that the proposed use would mean that more than 50% of the uses in this part of the town centre would be in non retail use. However this figure is regarded as a general guideline rather than a rigid threshold.

6. There is considerable uncertainty regarding the future of this part of South Street. Planning permission has been granted for the redevelopment of the site at 75 South Street where there are three hot food take-away businesses including the one intended to occupy the appeal premises. The redevelopment would provide a hotel with retail premises on the ground floor and could substantially change the character of this part of South Street. However, it cannot be assumed that it will be implemented and, if it is, the uses in the proposed retail units are unknown. I note the appellant's statement that the premises vacated by the business would not be relet but this is an assertion which could not be enforced through this decision and I can therefore not attach weight to it.

7. I cannot speculate as to the outcome of this uncertainty but accept that one of many possible scenarios is that the proposed development could lead to an increase in the number of hot food take away outlets in the vicinity. However, some clustering of uses of this sort on the edge of a town centre is not unusual and for the reasons I have given I do not consider that it would be harmful to the vitality of this part of the town centre or the town centre as a whole and would therefore be consistent with the aims of saved Policy STC3.

Living Conditions

8. It is clear from the many representations received that there is already considerable noise and disturbance late at night in this part of the town centre. This appears to be associated with the presence of a night club and several fast food outlets in the vicinity. I accept the appellant's assertion that such outlets are legitimate uses in and around town centres. In consequence the residents of these areas may be expected to experience a greater level of disturbance than in more residential areas.

9. However, in this case the proposal would be a potential source of noise and disturbance closer to the substantial development of flats at Archers Place than the existing outlets on the other side of South Street. Thus those using the hot food outlet would be likely to congregate on the same side of the road as the premises and in the access to the side causing an increase in the level of disturbance. There would also be potential for noise from cooking processes and extraction systems. Moreover residents may well experience noise and disturbance from customers queuing within the premises late at night as well as an increase in the disturbance on the street which they already suffer.

10. Turning to the issue of cooking smells, it is clear that the proposed extraction outlet would be to the side of the premises and below the windows of some of the flats. The information submitted on the possible extraction system suggests that it may well be possible to eliminate much of the potential problem and the Council's Environmental Health Officer, while indicating that the location of the extraction outlet would not be ideal has suggested the imposition of detailed conditions rather than objecting to the proposal. However, while details of the proposed technical solution there is no detailed assessment of the effect of technical solution proposed in this particular situation. Indeed the letter from Purified Air states that it cannot be guaranteed because there are many variables.

11. Because of the considerable uncertainty I have only attached slight weight to the possible nuisance from smells. However, this would add to the substantial weight I have attached, in reaching my decision, to the probability of harm from additional noise and disturbance.

12. I have not attached weight to concerns about fire as I am satisfied that this is a risk that could be managed. Similarly while there would be a risk of additional litter, the imposition of a condition requiring improved litter disposal facilities could mitigate this.

13. I conclude on the second issue that the proposed development would cause harm to the living conditions of local residents through an increase in the level of noise and disturbance, contrary to saved Policy ENV1(d) of the EHLP.

Other Matters

14. I acknowledge the difficulty in finding suitable premises for a business of this sort, but that is not a justification for allowing development that would be harmful to a substantial number of local residents. I have also noted the appellant's willingness to accept a restriction on opening hours in association with an A3/A5 use, however that is not what is proposed in the application and I therefore cannot consider it.

15. No details of the recent decisions of the Council to allow hot food take-away outlets at 23 Church Street and 3 Northgate End are before me and I have therefore considered this proposal on its own merits.

16. I have not attached found any harm to the concerns raised by local residents about the availability of parking. This was not a reason for refusal and it appears likely to me that a large proportion of the potential users of the outlet would be on foot.

Conclusion

17. Although I have found that the development would not be harmful to the vitality of this part of the town centre or the town centre as a whole, this does not outweigh the high probability of harm to the living conditions of local residents that would result. Therefore, having considered all other matters that have been raised, I conclude that the appeal should be dismissed.

Richard High

INSPECTOR

The Planning Inspectorate

Appeal Decisions

Hearing held on 18 January 2011
Site visit made on 18 January 2011

by Diane Lewis **BA(Hons) MCD MA LLM MRTPI**

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

Decision date: 18 February 2011

Appeal 1 Ref: APP/J1915/X/10/2135567
62 Mangrove Road, Hertford SG13 8AN

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against a refusal to grant a certificate of lawful use or development (LDC).
- The appeal is made by Ms Morag Tait against the decision of East Hertfordshire District Council.
- The application Ref. 3/10/0453/CL, dated 12 March 2010, was refused by notice dated 28 July 2010.
- The application was made under section 191(1)(b) of the Town and Country Planning Act 1990 as amended.
- The development for which a certificate of lawful use or development is sought is side dormers.

Summary of Decision: The appeal is dismissed.

Appeal 2 Ref: APP/J1915/A/10/2135562
62 Mangrove Road, Hertford 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 Ms Morag Tait against the decision of East Hertfordshire District Council.
- The application Ref. 3/10/0777/FP, dated 24 April 2010, was refused by notice dated 29 July 2010.
- The development proposed is veranda to front, side dormers, rear first floor dutch roof aspect to be modified as to original approved planning permission ref. 3/07/2446/FP.

Summary of Decision: The appeal is dismissed.

Background

1. The dwelling at 62 Mangrove Road was originally built in the 1930's as a detached 2 bedroom bungalow on a corner plot. The building was essentially the same when it was bought by Ms Tait around 2007, although planning permission had been granted in 2006 for a rear and side extension and loft conversion, including the formation of 5 no. dormer windows (ref. 3/06/1683). Planning permission was then granted in January 2008 for an alternative scheme involving a rear extension and new dormer windows, namely 2 to the front, 2 to the rear and 1 gable window each side (ref. 3/07/2446, the 2007 scheme). However, an additional gable window (otherwise described as a side dormer) was built on each of the side elevations, together with a dutch hip roof on the rear elevation. Therefore the work, as carried out, substantially deviated from the approved plans. Planning permission was sought

retrospectively but permission was refused for a two storey rear extension with side dormers, dutch hip roof and new front veranda (ref. 3/08/0343). This decision was upheld on appeal in November 2008.

2. The Council issued an enforcement notice dated 18 July 2008 against the construction of unauthorised developments to the dwelling to include a roofed veranda, roof alterations, dormer windows and dormer features and the erection of unauthorised fencing. The notice requires the removal of the unauthorised extensions and fencing and reinstatement of the building to either its original condition or in accordance with any extant planning permission. An appeal against the notice was allowed in so far as it related to the fencing and planning permission granted but the notice, as corrected and varied, was upheld and planning permission refused in respect of the unauthorised developments to the dwelling. This decision is being challenged by Ms Tait. Therefore the notice is in force but it has not taken effect.

APPEAL 1 Ref. APP/J1915/X/10/2135567

Reasons

3. Operations are lawful at any time if (a) no enforcement action may then be taken in respect of them, whether because they did not involve development or require planning permission, and (b) they do not constitute a contravention of any of the requirements of any enforcement notice then in force (s191(2)).

4. I confirmed with the principal parties that the LDC application was for the four side dormers as built, as shown on plan ref. 1086-A1-101. The burden of proof is on the appellant, whose case rested on permitted development rights.

5. The definition of development includes the carrying out of building operations. There is no dispute that development has taken place. The main issue is whether the development is permitted under the Town and Country Planning (General Permitted Development) Order 1995 (the GPDO).

6. The permitted development rights against which the dormers must be considered are derived from the GPDO in force at the date of the commencement of the work. I was informed at the hearing that the work started about the end of 2007. Therefore the relevant provisions of the GPDO are those prior to the amendment in October 2008. In Schedule 2 of the GPDO, Part 1 Class B permits the enlargement of a dwellinghouse consisting of an addition or alteration to its roof. The circumstances where this form of development is not permitted are set out in B.1. These include extensions projecting beyond the plane of any roof slope which fronts onto any highway, which the appellant primarily relied on. However, also very relevant to this case are the limits on height and the increase in volume.

7. There was no dispute that the total volume of the four side dormers is about 40 cubic metres. If the enlargement of the dwellinghouse, by way of an addition or alteration to its roof, was confined solely to the side dormers, then the development would be within the 50 cubic metre limit. However, the appellant has not demonstrated that the dormers can be constructed independent of additional alterations to the roof. I am not satisfied that the 50 cu m limit is met. There is also a control on the increase in the cubic content of the resulting building compared to the original dwelling house. When the four dormers were substantially complete, other forms of extension work would have been carried out. On the basis of the figures presented, the resulting

building exceeds the limit, confirmed to be 70 cu m in this case. Therefore the four side dormers are not development permitted under Class B. The necessary planning permission for their construction has not been obtained.

8. As I have stated above, the enforcement notice is in force. The dormers are a contravention of the requirement of the notice. Consequently the development cannot satisfy the provisions of s191(2) of the 1990 Act as amended.

9. I conclude that the four side dormers are not lawful. The Council's refusal to grant a certificate of lawful use or development in respect of these dormers was well-founded and the appeal fails. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended.

Decision

10. I dismiss the appeal.

APPEAL 2 Ref. APP/J1915/A/10/2135562

Background and main issues

11. The appeal site is outside a main settlement or category 1 or 2 village and is in the Metropolitan Green Belt. Consistent with national policy in Planning Policy Guidance Note 2: Green Belts (PPG2), Policy GBC1 of the East Herts Local Plan Second Review maintains a presumption against inappropriate development. Limited extensions or alterations to existing dwellings in accordance with Policy ENV5 are not inappropriate. The character, appearance and amenities of the dwelling and any adjoining dwelling should not be significantly affected to their detriment. In addition, an extension should 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 nor intrude into the openness or rural qualities of the surrounding area.

12. Against this background the main issues are:

- The effect of the extensions on the size of the original dwelling and the openness of the area.
- The effect of the north facing side dormers on the privacy of the adjoining occupiers.
- If the proposal is inappropriate, whether the resulting harm, and any other harm, is clearly outweighed by other considerations, so as to provide the very special circumstances necessary to justify such development.

Reasons

Size of dwelling and effect on openness

13. The original dwelling was a detached bungalow, modest in size and appearance with a compact footprint and a hipped roof. The living accommodation, on the ground floor only, comprised four main rooms and a small conservatory at the back.

14. The dwelling has been extended at the back to give a larger footprint. The other significant alterations occur at roof level. At the front there is now a pitched roof with gables and two small dormers, instead of a simple hip. There

would be four side dormers and two small dormers in the rear hipped roof slope. These alterations would enable the provision of a ground floor living room, together with four bedrooms and a bathroom within the roof space. The current proposal also includes a roofed veranda to partially enclose the front entrance to the dwelling.

15. The original dwelling would be much increased in size. Nevertheless I recognise that the Council considered the 2007 scheme was acceptable and did not disproportionately alter the size of the dwelling. Therefore that scheme provides a yardstick to assess the effects of the current proposal. The front veranda has timber supports and glazing for the roof. It is a lightweight, open sided structure that provides some small amount of cover to the front entrance area. It has little effect on the appearance of the dwelling. The roof of the rear elevation, as in the 2007 scheme, would reflect the simple hip of the original bungalow and the inset dormers would be suitably small in size and proportion. The main difference, and the element in dispute, is the additional two dormers towards the rear of the side elevations.

16. The single dormer on each side elevation in the 2007 scheme allowed the hipped roof form to be dominant element, thereby retaining a reference back to the original bungalow. The introduction of an additional dormer has resulted in visually strong features because of their size, design, and elevated position. They add significantly to the bulk at roof level and emphasise that in effect the bungalow would be converted into two storey dwelling. The identity of the original bungalow would be lost, a strong indication that this form of extension would be disproportionate.

17. Turning to the effect on openness, residential development extends along Mangrove Road and along Mangrove Drive. Number 62 is seen as part of this spacious built development, with open land to the east. However, the small bungalow on its generous corner plot would have detracted little from the open setting. The built form of the hipped gable at the back of the dwelling and the side dormers have led to considerable erosion of the feeling of space and openness across the roof line of number 62, a conclusion also reached by the Inspector in the 2008 appeal decision. The replacement of the hipped gable with a simple hip and rear dormers would do much to overcome this problem. The two side dormers towards the back would add some extra mass to the dwelling at roof level and to this limited extent they would have a negative effect on openness.

18. In conclusion, the proposal would be harmful to the character and appearance of the dwelling. It is of a scale and size that would disproportionately alter the size of the original dwelling if considered by itself and cumulatively with the other extensions. There would be a small, yet significant, adverse effect on openness.

Effect on privacy

19. The bungalow is sited close to the common boundary with number 64. The 2007 scheme allows a single side dormer facing towards the neighbouring dwelling. The window openings should be fixed, fitted with obscured glass and with an opening fanlight only.

20. On the site visit I was able to see the effect of the two side dormers from the kitchen of number 64. The height and position of the dormers relative to the kitchen are such that the dormers appear overbearing and lead to a loss of

privacy for the neighbours. The use of non-opening windows with obscure glazing would reduce overlooking in practice. Even so I consider that the presence of the two windows and the dormers would be somewhat intrusive and give rise to a sense of being overlooked. The effect would be harmful when compared to a single dormer and an area of receding roof. The amenities of the adjoining dwelling would be significantly harmed.

Inappropriate development

21. My conclusion is that the proposal does not satisfy the criteria of Policy ENV5. The proposal would not be a limited extension and consequently it would be inappropriate development as defined by Policy GBC1. In view of the advice in PPG2 I attach substantial weight to this matter.

Other considerations

22. The extensions and alterations to the original bungalow have been carried out in order to renovate a dwelling that was in a poor state and to make a family home. These reasons are commendable but because of the size of the extensions they conflict with the intentions of Green Belt policy. In this instance, where alternative options to meet accommodation needs would have been available, I attach limited weight to the individual requirements of the family.

23. Consistency in the application of policy in decision making is important. Ms Tait considers the dormer extensions to be modest in comparison with extensions that have been allowed on properties nearby on Mangrove Road and Mangrove Drive. I have some sympathy with this point but in applying Green Belt policy the acceptability of a house extension is assessed against the original dwelling. I have to assess the merits of the current proposal where the original bungalow was much smaller than other dwellings in the locality. This has acted as a constraint on the size of extension(s) that may be allowed. Also, even if there may have been a questionable decision in the past, it would not be a good precedent to follow and adds little weight in support of the proposal.

24. The 2006 planning permission for a rear and side extension, loft conversion and dormer windows was not commenced. The permission has no weight because it is no longer extant.

Conclusions

25. Inappropriate development is by definition harmful to the Green Belt. Additional harm is caused to the amenity of the neighbours. The other considerations do not clearly outweigh this identified harm. Very special circumstances do not exist to justify the development and the proposal is contrary to Policy GBC1 of the Local Plan and national policy in PPG2.

Decision

26. I dismiss the appeal.

Diane Lewis

Inspector

APPEARANCES

FOR THE APPELLANT:

Morag Tait	The appellant
Joe D'Urso	G D'Urso Design

FOR THE LOCAL PLANNING AUTHORITY:

Susie Defoe MRTPI	Planning Officer, East Herts District Council
Charles Allingham TechRTPI	Enforcement Officer, East Herts District Council

DOCUMENTS submitted at and after the hearing

1 Letter of notification of the hearing and list of people notified
2 Summary report for LDC ref 3/10/0453/CL
3 Plans and photograph of original bungalow
4 Appeal decision dated 5 November 2008 ref. APP/J1915/A/08/2076119
5 Enforcement notice issued 18 July 2008
6 Appeal decision ref. APP/F5540/X/09/2112522 and extracts from GPDO and 1990 Act
7 Summary of *Stevenage Borough Council v Secretary of State for Communities and Local Government, Aberdeen Property Investors (UK) Ltd* [2010] EWHC 1289 (Admin)
8 Appeal decision dated 18 August 2009 ref. APP/J1915/C/08/2083169
9 Lawful permitted development for side dormers Plan ref. 1086-A1-101A
10 Information leaflet
11 Decision notice ref. 3/07/2446/FP
12 Forms for enforcement notice appeal
13 Approved plans ref. 3/06/1683/FP
14 Information on East Herts Local Plan
15 East Herts Local Plan Second Review Proposals Map
16 Decision notice ref. 3/06/2125/FP, report and set of plans
17 Decision notice ref. 3/08/0710/FP, report and set of plans
18 Decision notice ref. 3/08/1128/FP, report and set of plans

PLANS Appeal 1 Ref. APP/J1915/X/10/2135567

A Existing and proposed plans and elevations 1086-A1-101

PLANS Appeal 2 Ref. APP/J1915/A/10/2135562

B.1 Site location
B.2 Site/block plan 1086-A4-102D
B.3 Existing and proposed plans and elevations 1086-A1-101B

The Planning Inspectorate

Appeal Decision

Hearing held on 16 December 2010
Site visit made on 16 December 2010

by Michael Ellison MA (Oxon)

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

Decision date: 28 January 2011

Appeal Ref: APP/J1915/A/10/2132483
Riverside Garden Centre, Lower Hatfield Road, Hertford, SG13 8XX

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under Section 73 of the Town and Country Planning Act 1990 for the development of land without complying with a condition subject to which a previous planning permission was granted.
- The appeal is made by Riverside Garden Centre Ltd ("the Appellants") against the decision of East Hertfordshire District Council ("the Council").
- The application Ref 3/10/0704/FO, dated 20 April 2010, was refused by notice dated 30 June 2010.
- The application sought permission for a replacement garden centre, retail and restaurant building and new sewage treatment plant without complying with a condition attached to planning permission Ref 3/09/0939/FP dated 23 September 2009.
- The condition in dispute is No 9, which states that: *The use of the premises shall be restricted to the hours 08.00 to 23.00 Monday to Saturday and 10.00 to 22.00 on Sundays and Bank Holidays.*
- The reason given for the condition is: *In the interests of the amenities of nearby properties.*
- Condition No 9 has subsequently been varied by the Council, first by way of Ref 3/10/1226/FO to amend the permitted hours of the restaurant on Thursdays to Saturdays to allow opening between 08.00 and midnight with provision for further extension on up to six occasions in each year, and secondly by Ref 3/10/1227/FO to make it clear that condition 9 applies only to the use of the restaurant by customers. The reason for the amended condition remains the same.
- The Appellants seek a further variation of the condition in dispute to allow use of the restaurant by customers until 23.30 on Mondays to Wednesdays, 00.30 on Thursdays to Saturdays, and the possibility of extensions until 01.00 on up to fifteen occasions each year.

Decision

1. I allow the appeal and grant planning permission for a replacement garden centre, retail and restaurant building and new sewage treatment plant at Riverside Garden Centre, Lower Hatfield Road, Hertford, SG13 8XX in accordance with the application Ref 3/10/0704/FO without complying with condition 9 attached to planning permission Ref 3/09/0939/FP dated 23 September 2009, as varied by planning permissions 3/10/1226/FO and 3/10/1227/FO, both dated 22 September 2010, but subject to the other conditions imposed in planning permission 3/09/0939/FP so far as the same are still subsisting and capable of taking effect, and subject to the following new conditions:

   A) *The use of the restaurant by customers shall be restricted to the hours of 08.00 to 23.30 on Mondays to Wednesdays; on Thursdays, Fridays*

and Saturdays to the hours between 08.00 and 00.30 on the following day in each case; and to the hours between 10.00 and 22.00 on Sundays and Bank Holidays. Notwithstanding those restrictions, the restaurant may be used by customers on a maximum of fifteen occasions in each calendar year (including New Year's Eve on whatever day it falls, but not otherwise commencing on Sundays or Bank Holidays) until 01.00 on the following day, subject to at least seven days' notice being given in writing to the Local Planning Authority in advance of each such special occasion.

B) The doors and windows between the restaurant and the riverside terrace on the northern elevation of the building shall be kept closed after 22.00 on any day on which the restaurant is in use.

C) The doors and windows to the restaurant kitchen on the eastern elevation of the building shall be kept closed after 22.00 on any day on which the restaurant is in use.

Procedural matters

2. The accompanied site visit was carried out during the course of the hearing. I had also made an unannounced and unaccompanied site visit to the area of the appeal site during the previous evening, 15 December 2010.

3. An application for an award of costs was made on behalf of the Appellants against the Council. That application is the subject of a separate decision.

Main issue

4. The main issue in this case is the effect which varying the condition in dispute in the way requested would have on the living conditions of adjoining occupiers.

Background

5. The appeal site lies within the Metropolitan Green Belt on the edge of the River Lea. It is accessed from Lower Hatfield Road (B158), and there is a surfaced and marked out parking area for around 70 vehicles between the road and the garden centre.

6. There has been a garden centre on the site for many years. Originally, it sold produce grown on the site, but additional buildings were permitted at various times during the 1970s and the 1980s, including a new farm shop. In 1996, a condition preventing the sale of produce not originating from the nursery was removed. Subsequently, the garden centre continued to expand.

7. The garden centre was acquired by the Appellants in 1999. In December 2005, retrospective permission was granted for a part change of use of the land to a bistro, with an outdoor, covered seating area. The bistro provided for up to 140 covers, and was potentially open nightly, though in fact it was not always open on every night of the week. The evening use as a restaurant open to the public had developed from the café which originally provided refreshments during the day to customers of the garden centre. The 2005 application was made to regularise the position. It was not the

subject of any objection from any quarter in relation to noise or disturbance, despite the fact that the restaurant use had clearly already been in operation for some time.

8. In February 2009, part of the appeal premises was severely affected by flooding. The damage was such that complete rebuilding was necessary. Planning permission for a replacement garden centre, retail and restaurant building was granted in September 2009. That permission has been implemented, and the replacement building is now fully operational. The condition in dispute was imposed for the first time on the 2009 permission, despite the fact that there was again no objection to that application on the ground of noise or disturbance to the application. There had previously been no restriction on the hours of operation of the business on the site.

9. The amendments to the disputed condition which have already been agreed by the Council in September 2010 make it clear that the restriction on hours of use applies only to the use of the restaurant by customers (not to other elements of the business on the site, and not to staff working at the premises), and that some variation of the hours imposed by the original condition is regarded as acceptable by the Council.

Reasons

10. The area surrounding the appeal site is predominantly rural. There is one residential property in the immediate vicinity. This is Burrowfield, a detached house erected by a previous owner of the garden centre but not sold with the garden centre on that owner's disposal of the centre. Burrowfield lies to the east of the appeal site, and is shielded from it by heavy, mature tree screening which prevents any view into the appeal site. It was agreed between the parties at the hearing that the distance between the closest elevation of Burrowfield and the eastern edge of the appeal site car park is 27 metres; to the closest part of the restaurant it is 54 metres; to the closest part of the restaurant kitchen it is 58 metres; to the entrance to the garden centre and restaurant it is 77 metres; and to the road entrance to the appeal site it is 103 metres. Burrowfield is also set back by 30 metres from the B158.

11. When the application to vary the disputed condition was being considered by the Council, there were objections from the occupier of Burrowfield on grounds including noise and disturbance, and similar objections from two other local residents living respectively 500 metres and 1.6 kilometres from the appeal site. A local Councillor argued that noise travels for some distance from the appeal site, which is in a natural amphitheatre. Bayford Parish Council also objected, but primarily on the basis of a change in the nature of the use of the property from its original role simply as a garden centre, an issue also picked up by the other objectors.

12. Some of the objectors referred in addition to the Green Belt location of the appeal premises, and this was also mentioned in the Council officer's report to the Development Control Committee. It did not, however, form any part of the reason for refusal of the appeal application, and on 3 September 2010 the Council expressly accepted in writing that Green Belt policy should be excluded as a relevant consideration in relation to the present appeal. This reflects the fact that both the Class A1 and the Class A3 elements of the

existing use are the subject of a specific planning permission notwithstanding the Green Belt location of the appeal premises.

13. In determining the appeal application, the Council noted that, despite the low level of objection relating to noise and disturbance, in addition to Burrowfield, there were other residential properties some 350 metres to the west of the appeal premises; 500 metres to the north; 600 metres to the south; and 550 metres to the east. The Council continued to believe that the restriction on operating hours imposed by condition 9 in its amended form was justified and should be maintained. The Council considered that the operation of the premises on Mondays to Saturdays until 01.00 on the following day (which the Appellants originally sought in the appeal application) would give rise to both noise and disturbance to the occupiers of unspecified neighbouring properties, arising not just from the live or recorded music played on the premises (which are the subject of an entertainment licence until 01.00 and a drinks licence until 00.30) and from noise arising from the operation of the restaurant, but also from patrons leaving the premises after the restaurant had closed. The Council also expressed particular concern regarding noise during the summer months, when the folding doors of the restaurant might be open, with patrons dining on the outdoor terrace alongside the River Lea. No condition was imposed, however, to address this perceived problem.

14. The Council concluded that it was necessary that the hours of operation of the premises should continue to be limited despite the fact that their Environmental Health Department reported that they had received no recent complaint of noise or disturbance regarding the appeal premises and therefore raised no objection to the application. The Council considered that a planning judgement needed to be made as to the likelihood of an adverse impact on the living conditions of adjoining occupiers, an interest protected by Policy ENV1 of the East Herts Local Plan Second Review adopted in April 2007 ("the LP") which forms part of the Development Plan for the area. LP Policy ENV24 expects noise generating development to be designed and operated in such a way as to minimise the impact of noise on the environment. Both of the policies mentioned have been saved to continue in operation by direction of the Secretary of State under the Planning and Compulsory Purchase Act 2004.

15. It was confirmed at the hearing that, in reaching their conclusion on the appeal application, the Council had not had the benefit of any acoustic assessment of the noise arising from the operation of the restaurant or of the noise arising from the use of the car park. The Council had no information regarding the level of use of the car park in the evenings, the time pattern of vehicles leaving the car park, or the proportion of the traffic passing along the B158 in the evening which vehicles leaving the car park would represent. In response to a question from me, the Council indicated that their case in relation to an adverse impact on the living conditions of adjoining occupiers rested solely on the impact of the appeal proposal on the occupier of Burrowfield.

16. The Council had regard to the fact that the redevelopment of the premises had moved part of the restaurant around 9 metres closer to Burrowfield than had been the position prior to the flooding and redevelopment of the premises, and that the restaurant element of the overall development took

up a greater floorspace (at 428 square metres) than the 291 square metres which was in fact involved in the previous restaurant use. The restaurant can now cater for up to 180 covers. No reference was made, however, to the facts that the structure of the building had been changed from a cast aluminium frame with glass/polycarbonate wall and roof panels to walls made of 1.6cm stainless steel sheets with 2.4cm of foam insulation cladding and a plasterboard internal finish and a roof of 2.4cm insulated stainless steel sheets; the windows had been changed from single glazed to double glazed units; the roof had been changed from one with an opening vent across the full width to a solid roof given the installation of air conditioning in the new building; the east wall of the building facing Burrowfield had been given an extra thickness of 4.7cm; the restaurant had been located behind a second set of internal entrance doors when previously there had been no lobby; and the outdoor seating area had been reduced in size by around 40%.

17. Against that background, I find it surprising that there are now objections regarding the escape of noise from the restaurant when previously there was none. I accept, however, that the changes to the structure of the building have no effect on noise or disturbance which might arise from patrons and vehicles leaving the premises.

18. Five sources of information are available to me regarding noise from the operation of the restaurant. These comprise an acoustic report prepared at the request of the Appellants; the information contained in written representations relating to the case; my own observations gathered on my unaccompanied visit to the area of the site on 15 December 2010; the evidence given at the hearing; and the observations made on the accompanied site visit which took place during the hearing on 16 December 2010. I summarise the product of each of these sources in turn.

19. Objective information is contained in ***the professionally produced acoustic report***. This is based on a noise survey carried out between 21.30 on Friday 3 September 2010 and 01.00 on Saturday 4 September 2010. It was undertaken by a qualified noise and vibration consultant using appropriate noise measuring equipment. This was a dry, calm night, and therefore represents robust testing conditions. Restaurant patrons were not aware that a survey was being undertaken. For part of the testing period, the rear doors of the restaurant were open, and occasionally some patrons were outside the restaurant on the riverside terrace.

20. Measurement was carried out at the boundary of the appeal property with Burrowfield, and therefore in the open air, some 27 metres from the closest external façade of Burrowfield. Following closure of the restaurant and the departure of the last customer at 22.40, the music volume in the restaurant was increased between 23.00 and midnight to a level far higher than that which would apply during normal operation of the restaurant. This was undertaken to simulate the level of noise which might be generated by a special function. The rear doors of the restaurant were also kept open for part of that period.

21. The results of the noise survey indicate that noise levels at the boundary with Burrowfield are dominated by the sound of vehicles travelling along the B158, trains passing on the nearby railway line, and regular overflying by

aircraft. Ambient noise levels were within the range 44 to 55dBA $_{LAeq(5\ mins)}$ and remained relatively constant throughout the testing period. There was no significant measured change in noise level as customers left the premises. Groups of customers left during 8 of the 16 five minute periods between 21.30 and 22.45. The lack of impact of this activity on noise levels arose from the dominance of road traffic noise from vehicles passing the site, often at high speed. Vehicle movements from the site between 21.30 and 22.40 amounted to 16 of the total of vehicles passing the site of 96. After midnight, vehicles were still passing the site at the rate of 52 per hour, as a result of which there was little or no difference in the ambient noise levels from those recorded while the restaurant was in operation. The noise levels experienced at the closest façade of Burrowfield would be between 3dBA and 6dBA lower than those measured at the boundary allowing for distance and intervening objects.

22. The consultant noted that, during lulls in the noise from traffic, trains or aircraft, low frequency music noise became subjectively slightly audible at the boundary with Burrowfield. Such low frequency noise could be reduced and controlled by the installation of a music volume limiter into the restaurant sound system, an action which he recommended, and which has been taken by the Appellants. The limiter operates by closing down the amplification system if the level of noise produced exceeds a set level.

23. The conclusion of the consultant is that a later final closing time for the restaurant would have no discernable impact on ambient noise levels in the area.

24. There were four ***written representations*** made in connection with the appeal. Bayford Parish Council supported the change in approach of defining opening times in terms of customer use of the restaurant (which the Council accepted in September 2010 – see paragraph 9 above). They considered, however, that the daily closing time of 01.00 which the Appellants were originally seeking would be excessive. They believed that there should be a limit on the number of occasions during the year when opening times could be extended, and that there should be some restriction on the level of sound emanating from the site in the evening. This last point was also taken up by Mr David Wright, who argued for objective information to be provided by way of an independent noise assessment. Both the Parish Council and Mr Wright considered that some one who sold their garden centre business but retained the adjoining house should expect some impact from the existence of the operation which was sold. An employee of the garden centre argued that it was not accurate to suggest that noise from the restaurant could be heard at a great distance. She stated that the only noise in the restaurant was of background music, and that this could not be heard in the restaurant kitchen, let alone outside the premises. Councillor Pam Grethe pointed out that the Sele Farm Community Centre, which is owned by the Council, is closely surrounded by extensive residential property (a fact which was confirmed on the accompanied site visit) and is allowed to open until 23.30 each night without giving rise to a single complaint in three years of operation.

25. My ***unaccompanied visit*** to the site on 15 December 2010 took place between 21.15 and 21.50. The restaurant was in use. *(It was confirmed at the hearing that there had been 34 diners that evening.)* There were a

dozen or so cars in the car park. At the boundary of the car park I could hear no sound of music from the appeal property. Between 21.50 and 22.15 I visited other locations mentioned in the appeal file to the west, north west, south west, east and north east of the appeal premises. I could hear no noise from the appeal premises at any of those locations, despite the still, quiet conditions.

26. In ***evidence to the hearing***, Mrs Cook, the occupier of Burrowfield, stated that the noise had been excessive on the evening of 15 December, commencing from 22.00. She had particularly heard the noise of drumming. Mr Byrne, who was dining at the appeal premises on that evening , gave evidence that there had been no celebration or entertainment commencing at 22.00, and that no drums had been used. Dr Berridge had also been present on that evening, and gave evidence that he had gone into the car park at one stage to establish whether there was any noise from the restaurant which could be perceived outside the premises. He had been satisfied that there was not.

27. On behalf of Mrs Cook, it was stated that there had been no problem at Burrowfield arising from the restaurant use until the redevelopment took place following the 2009 planning permission. It was accepted that the new building appeared potentially to have better noise containing qualities than the building that was in place previously, but the redevelopment moved the restaurant closer to Burrowfield. Mrs Cook had objected to the 2009 application on that basis, and her concerns had proved to be well founded. Not only was the noise from music being played in the restaurant intrusive at Burrowfield, especially on warm summer evenings when the riverside doors were open, but disturbance was caused by the noise of patrons' cars or taxis leaving the premises when the restaurant closed. This was a particular problem when special functions took place. On those occasions, the majority of the customers left at the same time, which caused considerable noise and disruption. The fact that Mrs Cook had owned the garden centre business until 1997 was irrelevant, since the business now operating from the site was of a completely different character from the quiet nursery which sold predominantly locally grown produce without any form of café or restaurant facility which she had operated.

28. The ***accompanied site visit*** took place during the hearing between 12.00 and 12.50. Recorded music was played using the equipment in the restaurant at the maximum possible level while the visit took place. This was a much louder level than would normally be the case for background music in the restaurant, even when it was crowded during a function. Given the reference to the audibility of the noise of drumming, music involving drumming was chosen. Within the restaurant premises, I found the noise level of the music played for testing purposes uncomfortably loud. Even at that level of reproduction, however, the noise of music could barely be heard at the car park boundary with Burrowfield. Whenever a vehicle passed the site, the noise it caused drowned out the noise of the music. Music could not be heard at all on the Burrowfield side of the boundary, and it could certainly not be heard inside Burrowfield, whether in the kitchen, the lounge or the bedroom. I cannot accept the evidence given by Mrs Cook that in the evening it is possible to hear music from the appeal premises in the lounge of Burrowfield when the windows to that property are closed and the television is operating.

29. The acoustic consultant indicated that the opening of the restaurant rear doors to the riverside terrace would increase the level of noise escaping from the building. The Appellants say that the rear doors are closed in the evenings from roughly 19.00 to avoid gnats and other biting insects from the river environment entering the restaurant. The Appellants would accept a condition imposing this as a requirement, and I have therefore added a condition requiring the doors and windows to be kept closed after 22.00 (a time I have chosen having regard to the noise issue, rather than the practical point raised by the Appellants) on any day when the restaurant is in use.

30. I noted on the accompanied site visit that the kitchen doors and windows are located quite close to the boundary with Burrowfield, and I consider that noise from the kitchen could potentially affect the amenity of the occupier of Burrowfield. I have therefore also imposed a condition requiring the kitchen doors and windows to be kept closed after 22.00 on any day on which the restaurant is in use. This will not have an unacceptable effect on conditions in the kitchen, because it was confirmed at the site visit that the area concerned is air conditioned. The Appellants indicated at the hearing that they would be happy to accept such a condition.

31. Both of these new conditions are imposed in the interests of the living conditions of the adjoining occupiers at Burrowfield.

32. I accept that vehicles leaving the appeal premises after the closure of the restaurant represent a separate source of noise, as do vehicles conveying staff home from the premises at a somewhat later time. The only objective evidence which has been placed before me, however, is that such noise does not register as more disruptive than the noise of passing traffic on the B158.

33. The totality of the evidence in this case suggests to me that the perception of noise and disturbance from the operation of the restaurant is more apparent than real. I note that there is a variety of ongoing disputes apart from this case between the Appellants and the adjoining occupier involving High Court proceedings, and that those disputes apparently include a boundary dispute. It was for that reason that I required the distances set out in paragraph 10 above to be agreed between the parties. For the avoidance of any doubt I have worked on the basis that the boundary between the car park of appeal premises and Burrowfield is that marked by the line of substantial mature trees 27 metres from the nearest façade of Burrowfield.

34. The restaurant currently supports 12 full time and 8 part time jobs. It is clear that it is a resource valued by many people given the extent of the support contained in letters to the Council when they were considering the appeal application and in the evidence given at the hearing. The restaurant needs to be able to meet the expectations of existing and new customers, and that includes extended hours at Christmas, New Year and other special occasions such as a charity function for the Mayor of Hertford which was held there and occasions such as wedding receptions and family celebrations. On the other hand, the restaurant does not remain open to the maximum permitted hours at present, and evidence was given at the hearing that there would be no intention that it would do so in the future.

The limits sought by the Appellants are requested in order to set a maximum within which there would be flexibility to meet customer demand.

35. I accept that the fact that the current occupier of Burrowfield previously owned the garden centre is irrelevant to the issue of whether the disputed condition should be maintained. If the condition is reasonable and necessary to avoid an adverse impact on the living conditions of the present and any future adjoining occupiers, I would consider that it should be maintained.

36. While I understand the need for care in setting the permitted hours of use of the restaurant, however, I have heard no evidence which persuades me that the current form of condition 9 (as amended by the Council in September 2010) is necessary and reasonable, two of the tests required by Circular 11/95 to be met for a condition on a planning permission to be acceptable. I consider, on the basis of the evidence I have heard, that the revised hours sought by the Appellants at this hearing can reasonably be accepted.

37. I have made detailed amendments (which were discussed at the hearing) to the form of the condition on hours sought by the Appellants in order to

    a. reflect the fact that on Thursdays to Saturdays the operation of the restaurant would continue into the following day;

    b. make it clear that it is New Year's Eve (not New Year's Day) opening which can run into the following day (on whatever day of the week it falls);

    c. make it clear that the year for the allowance of special occasions is to be the calendar year; and

    d. require seven days' written notice to the Council of each special occasion as an aid to overall enforcement.

38. Subject to these points and to the imposition of the two additional conditions referred to in paragraphs 29 to 31 above. I have concluded that the appeal should be allowed and that the amended former condition 9 should be replaced by the new conditions A, B and C which I have set out in paragraph 1 of this decision. I conclude that those new conditions are reasonable and necessary in all the circumstances to protect the amenities of the occupiers of Burrowfield, and that they meet the other tests for conditions set out in Circular 11/95.

Michael Ellison

INSPECTOR

APPEARANCES AT THE HEARING

For the Appellants:

Justin True, Head of Planning, Dechert LLP

Russell Jeffery, Director of the Appellants

For the Local Planning Authority:

Hazel Izod, Senior Planning Officer

Interested Parties:

Miss Jane Orsborne, Chartered Town Planner for Mrs D Cook, Local Resident, who also spoke at the hearing

Dr T M Berridge, Local Resident

Melvyn Byrne, Local Resident

Ken Gethe, Local Resident

Councillor Pam Gethe, Local Councillor

Brenda Sell, Local Resident

DOCUMENTS PRODUCED AT THE HEARING

APP/1	Skeleton written arguments in support of the costs application
APP/2	Sample restaurant menus
APP/3	Photographs showing car park use on Saturday 11 December 2010
LPA/1	Letter dated 13 August 2010 notifying local residents of the change of appeal procedure to a hearing
LPA/2	Letter dated 30 November 2010 notifying local residents of the hearing
LPA/3	List of persons notified of the hearing
LPA/4	Council response to the costs application

The Planning Inspectorate

Appeal Decision

Site visit made 14 December 2010

by Richard High BA MA MRTPI

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

Decision date: 27 January 2011

Appeal Ref: APP/J1915/A/10/2135708
64 The Wick, Hertford, SG14 3HR

- 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 E Perkins, against the decision of East Hertfordshire District Council.
- The application Ref 3/10/1092/FP, dated 17 June 2010, was refused by notice dated 11 August 2010.
- The development proposed is a two storey side extension and single garage to replace existing garage to No.66.

Decision

1. I allow the appeal and grant planning permission for a two storey side extension and single garage to replace existing garage to No.66 at 64 The Wick, Hertford, SG14 3HR in accordance with the terms of the application, Ref 3/10/1092/FP, dated 17 June 2010 , 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 extension hereby permitted shall match those used in the existing dwelling.

   3) No development shall take place until details of the proposed garage showing proposed elevations and materials have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details.

   4) The development shall be carried out in accordance with the following approved plans: 10113/S/001, 10113/P/001 C and 10113/P/002.

Main Issue

2. The main issue is the effect of the proposed development on the character and appearance of the existing building and the area.

Reasons

3. The Wick is an estate road characterised by relatively small detached, semi-detached and terraced houses on fairly small plots. No.64 is unusual as one of a pair of semi-detached houses positioned side on to the road in a rather more spacious position. The proposed development would replace an existing single storey side extension accommodating a kitchen and garage with a part single and part two storey side extension and provide a replacement garage.

4. I accept that the ground floor of the extension would be wide in relation to the main body of the house but it would be only marginally wider than the existing single storey extension. The first floor would be set back and, while only a little lower than the ridge of the main building, would be clearly subservient.

5. Both elements would have gable ends facing the road. While both the side and front elevations would be very visible, in my judgement the extension would sit comfortably in relation to the original building and would be more attractive in the street scene than the existing flat roofed single storey side extension. The extension would complement the style of the existing building and reflect the individual nature of this site.

6. For these reasons I find that the proposed extension would not be harmful to the character and appearance of the area and would be consistent with Policies ENV1, ENV5 and ENV6 of the East Herts Local Plan (second review) 2007.

7. The proposed replacement garage for No.66 The Wick would be located next to an existing garage on the boundary of No.62 but slightly set back to allow a vehicle to park in front of it and off the road. I accept that no elevations for the proposed garage are included in the drawings, but I am satisfied that a simple flat roofed structure comparable to the garage for No.64, which the appellant states is intended, would not be harmful to the character of the area. A condition requiring the submission and approval of details of the appearance of the garage would secure this and I shall impose such a condition. The small tree that would have to be removed does not make a substantial contribution to the character of the area.

8. In addition to the standard condition relating to the timescale for implementation I have imposed conditions 2, as suggested by the Council, and 3, as discussed above, to protect the character and appearance of the area. Condition 4 is imposed because otherwise than as set out in this decision and conditions, it is necessary that the development is carried out in accordance with the approved plans for the avoidance of doubt and in the interests of proper planning.

Conclusion

9. For the reasons I have given and having considered all other matters raised I conclude that the appeal should be allowed.

Richard High

INSPECTOR

The Planning Inspectorate

Appeal Decision

Site visit made on 7 December 2010

by A D Poulter BA BArch RIBA

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

Decision date: 2 February 2011

Appeal Ref: APP/J1915/A/10/2128345
Little Acres, Dowsetts Lane, Standon, Ware SG11 1EE.

- 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 Miss Kate Hooper against the decision of East Hertfordshire District Council.
- The application Ref 3/09/1329/FP, dated 12 August 2009, was refused by notice dated 11 November 2009.
- The development proposed is to put on the land a dark green lorry body container, erect a small barn, and front these with a small hardstanding.

Decision

1. I dismiss the appeal.

Main Issues

2. The appeal site is part of an area of open, mainly arable and grazing land. It is situated in the designated Rural Area Beyond the Green Belt, where (saved) Policies GBC2 and GBC3 of the East Herts Local Plan Second Review (EHLP)(2007) are applicable. The main issues are therefore: whether the development proposed would be appropriate development for the purposes of Policies GBC2 and GBC3; and, if not, whether material circumstances indicate the development should be permitted as an exception.

Reasons

3. The above description of the development proposed is taken from the application form. The container and barn would be used to store equipment and materials associated with a landscaping business, and hay for a horse kept for the appellant's leisure use.

4. The storage of equipment and materials for a landscape business is a use that is capable of being carried out within a built-up area. It has not been demonstrated that it is essential for it to be located in a rural area to meet a local need. Nor has it been demonstrated that it would assist rural diversification. The proposed development would therefore not be an essential small-scale facility that would fall within category (h) of EHLP Policy GBC3. Landscape contracting and the keeping of horses for leisure purposes do not fall within the definition of agriculture for planning purposes. The proposed development would therefore not fall into category (a). Nor would it fall under any of the other categories set out in the policy. It would therefore not be appropriate development as defined by EHLP Policy GBC3, and would be inappropriate development, for the purposes of EHLP Policy GBC2. In accordance with these policies there is a strong restraint against such development.

5. The proposed new building and container would diminish the rural character of a significant rural resource and environmental asset. I acknowledge that the rural character of the area has been damaged to a significant extent by use of adjacent land in connection with a different landscape contractor's business. The adjacent land benefits from a Certificate of Lawful Use or Development for the reception, sorting and storage of landscape contractor's materials, which was granted on Appeal in 2003[1]. That appeal, however, succeeded only insofar as it related to the long established use of that area of land. At the same time, the same Inspector dismissed an appeal against a refusal to grant planning permission for the storage of landscaping materials on land which now forms the appeal site[2]. He concluded that the use of the land for that purpose would have the potential to harm the quality or appearance of the area, and would be inconsistent with planning policy. The appeal before me is different, in that the stored equipment and materials would be contained within the proposed barn and container. The planning policy context has also changed with the adoption of the Second Review of the EHLP. However, I find nothing in the 2003 appeal decisions that would turn me from the conclusion that the proposed development would be harmful and would conflict with planning policy.

6. It is not for me to determine whether the adjacent land is being put to its lawful use, though it would be open to the local planning authority to investigate and consider whether action would be expedient. Nevertheless, I do not consider that the lawful use of the adjacent site, and associated harm to the character of the area, would justify what would be further harmful development on the appeal site.

7. The appellant has made it clear in her grounds of appeal that she would be willing to accept a condition limiting the period of a planning permission, whilst she seeks an alternative site. However, the period of 20 years which has been suggested would result in significant harm over a considerable length of time, and there is no clear prospect that she would be able to afford a suitable alternative within a shorter period. Conditions could also to ensure that the planting on the boundaries of the site would be reinforced. However, this would not overcome the harm to the character of the area, particularly in winter when the screening effect of hedges would be less effective.

8. I have taken into account the appellant's need for secure storage for her business following thefts from her current premises, the difficulties of operating her business in the current economic climate, and also her wish to provide shelter for her horse and to harvest some hay from adjacent land in her control. However, I do not consider that these circumstances are sufficiently exceptional to justify an exception to the normal strict control over such development. I have taken into account all other matters that have been raised, including representations made with regard to whether the appeal site is common land. This is a legal matter that has not influenced my decision. Nevertheless, I do not consider that there are material circumstances in this instance that would indicate that planning permission should be granted as an exception to planning policy. I conclude that the appeal should be dismissed.

A D Poulter

INSPECTOR

[1] Appeal Ref APP/J1915/X/02/1094067.
[2] Appeal Ref APP/J1915/X/02/1093881

The Planning Inspectorate

Appeal Decision

Site visit made on 17 January 2011

by C Thorby DIPTP MRTPI IHBC

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

Decision date: 3 February 2011

Appeal Ref: APP/J1915/D/10/2142108
8 Pye Gardens, Bishops Stortford, CM23 2GU

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Mr and Mrs Matthew Clarke against the decision of East Hertfordshire District Council.
- The application Ref 3/10/1427/FP, dated 5 August 2010, was refused by notice dated 5 October 2010.
- The development proposed is a single storey garden room extension to rear elevation.

Decision

1. I dismiss the appeal.

Reasons

2. The main issue in this case is the effect of the proposal on the character and appearance of the appeal property.

3. No 8 Pye Gardens contains a substantial, two storey, detached property within a large, corner garden. The house has been carefully designed, and its symmetry and proportions are elegant and attractive. The existing house is some 11 metres deep. The proposed extension would be 11 metres deep extending across nearly half the width of the rear elevation. The extension would be single storey and therefore subordinate in height. Materials and fenestration would be appropriate for a conservatory style extension. However, its siting and large size would bear no relation to the design and form of the house. The extension would erode the attractive proportions which are an important part of the architectural identity and integrity of the property.

4. Although the extension would be seen by the residents of No 7 Pye Gardens, it would not be visible from the road. However, considerations relating to good design and character are about more than just public visibility. This is recognised in the East Hertfordshire Local Plan policy ENV5 which is permissive of extensions if, among other things, the character and appearance of the dwelling would not be significantly affected to their detriment. Furthermore, policy ENV6 seeks the design of extensions to match or complement the original building. The proposed extension would not complement the original house and would therefore be detrimental to its character and appearance, contrary to the aims of these policies.

5. The Council raise no concern about the effect of the proposal on the Bishop's Stortford Conservation Area. This is a large area which appears to relate to the historic centre of Bishop's Stortford. As the appeal property forms part of a

modern development towards the periphery, the character and appearance of the Conservation Area would be preserved.

6. The proposed extension would be on private land where the appellants wish to extend their property to meet their needs and aesthetic expectations. However, planning decisions are taken in the wider public interest and this includes protection of the quality and character of the built environment. Neither this, nor any other matter raised, would outweigh the aforementioned harm arising from the proposed extension and the appeal is dismissed.

C Thorby

INSPECTOR

The Planning Inspectorate

Appeal Decision

Site visit made on 20 January 2011

By Brian G. Crane, M Hort, P Dip Arb (RFS), Dip Hort, FLS, F Arbor A, MIC For, MI Hort, Chartered Arboriculturist

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

Decision date: 10 FEB 2011

Appeal Ref: APP/TPO/J1915/1456
77 Warwick Road, Bishop's Stortford, Hertfordshire CM23 5NL

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant consent to undertake works to trees protected by a Tree Preservation Order.
- The appeal is made by Mr and Mrs R and F Edwards against the decision of East Hertfordshire District Council.
- The application Ref: P/TPO437 656957, dated 9 June 2010, was refused by notice dated 26 August 2010.
- The proposed work is reduction in overall height by 30-40% or to crown reduce by 30-40% both trees.
- The relevant Tree Preservation Order (TPO) is The East Hertfordshire District Council Tree Preservation Order 40-85 Warwick Road, Bishop's Stortford, Hertfordshire, which was confirmed on 7 January 1998.

Decision

1. The appeal is dismissed.

Main Issues

2. I consider the main issues in this case to be:-

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

   b. Are the appeal trees implicated in structural damage to 77 Warwick Road?

Reasons

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

3. The appeal trees are giant redwoods – also known as wellingtonias (*Sequoiadendron giganteum*) in the mature phases of their life-cycles. Both trees are of good form and appear to be growing with appropriate vigour for their ages and species. They are likely to have long, safe, useful life expectancies. Both trees are on the Warwick Road frontage of the property and are visible from viewpoints to the southwest and northeast and to a more limited extent from the north.

4. Severe reduction of mature trees opens wounds within the crown structure which are liable to colonisation by pathogenic organisms, particularly fungi. In particular the reduction of the main trunk of generally single trunked trees (as here) can be extremely damaging. Removal of foliage cover limits a tree's photosynthetic capability and is likely to lead to loss of vigour and hormonal imbalances. I consider that the works proposed would leave the appeal trees in a condition which would significantly reduce their visual amenity value.

Are the appeal trees implicated in structural damage to 77 Warwick Road?

5. A degree of structural damage has been noted at this property and it is possible that this is due to the presence of the appeal trees, which stand sufficiently close to the building that their roots might reasonably be expected to exert an influence on the moisture content of underlying soil. However, low-rise buildings may experience structural distress for a number of reasons and it is important, when considering the management of trees of perceived amenity value, to determine the causes of any such movement. In establishing a case of vegetation-related building movement it is necessary to provide appropriate evidence. This will include laboratory analysis of soil samples, root identification (these have been supplied here), details of foundation design taken from trial pit excavation and strain gauge (crack monitoring) results from observations carried out over an acceptable period of time. It may also be advisable to carry out a levels survey of the property. In this instance the degree of evidence required to support a claim of vegetation-related subsidence or building movement has not been produced.

Conclusions

6. The appeal trees contribute to the visual quality and landscape amenity of the area. The works proposed would degrade such amenity and have a negative effect on long-term tree vigour and health. Structural distress has been identified at this property. Whilst such distress may be attributable to the presence of the appeal trees this has not been demonstrated to the degree considered appropriate when considering the management of trees protected by a Tree Preservation Order. I therefore dismiss the appeal.

Brian G. Crane

Arboricultural Inspector