



Appeal Decision

Site visit made on 17 November 2022

by Frances Mahoney MRTPI IHBC

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

Decision date: 27th July 2023

Appeal Ref: APP/J1915/W/21/3279181

Plot 64, Land opposite Mill View, Hare Street, Buntingford SG9 0DX

- 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 Mr Simon Doherty against East Herts Council.
 - The application Ref 3/20/2139/FUL, dated 31 October 2020.
 - The development proposed is the change of use of land to Gypsy and Traveller residential with the siting of four caravans of which no more than two would be static caravans, part retrospective.
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Decision

1. The appeal is dismissed, and planning permission refused.

Preliminary matters

2. This appeal began its progress through the appeal process identified as requiring to be heard by means of a Hearing. This was at the request of the Appellant.
3. The Hearing was booked to sit for two days on the 16 and 17 November 2022. However, as of the 30 September 2022 the Appellant's appointed agent withdrew his support for the Appellant and his case, and informed the case officer that he would take no further part in the proceedings¹.
4. Efforts were made to contact the Appellant over the intervening period². However, the only contact details available to either the Planning Inspectorate or the Council was the address of the appeal site. A number of letters were sent³ in attempts to engage with the Appellant as to how he wished to proceed⁴. However, no response was received.
5. The Council also visited the appeal site to ascertain whether the Appellant was in residence. This proved not to be the case and the mobile home and touring caravan which were stationed close to the appeal site and were thought to have been occupied by the Appellant earlier in the year⁵, were damaged with

¹ However, the Statement of Case and accompanying documents submitted with the Planning Appeal Form was not withdrawn by the Appellant's appointed agent and so remained as evidence to support the appeal.

² End of September to the date of the opening of the Hearing (16 November 2022).

³ Some registered delivery some hand delivered to the static caravan.

⁴ Further documents submitted by the Council prior to the Hearing were also sent to the Appellant at the address of the appeal site.

⁵ Observations of the Council's Officers on previous visits to the site.

- windows smashed, furniture in disarray and were left open to the elements, with no sign of occupancy being evident⁶.
6. Without any pre-Hearing instruction from the Appellant the Hearing went ahead and opened on the 16 November 2022. The Appellant did not attend⁷ nor did any appointed representative for him. As a result, the Hearing was adjourned to make further attempts to contact the Appellant.
 7. The appeal site visit, however, did go ahead on the 17 November 2022.
 8. Subsequently over the next few months both the Council and the Planning Inspectorate went to considerable trouble to seek to make contact with the Appellant⁸. This was to no avail. Comments were received from a family member, but these were not authorised by the Appellant as being pertinent to his case. These have, therefore, been considered on the basis of interested party comments.
 9. Without any contact from the Appellant since his agent stepped back in September 2022, I considered that to maintain an open, impartial, fair and transparent environment for the consideration of this appeal, it was not possible to proceed with the appeal as a Hearing. However, with the Appellant's statement of case being the main body of evidence in support of the proposal, I have considered the appeal on the basis of the written representations submitted.
 10. It has been noted that the description of development expressed on the planning application form⁹ differs from that on the appeal form¹⁰. Block Plan SD02v5 sets out the proposed layout for the appeal site and it shows the siting of a single static home, the stationing of four touring caravans, a shed and three parking spaces, along with the location and pipework run for a package treatment works to deal with foul waste. This plan has been agreed as the relevant plan in respect of the planning application which the Council considered. I consider the description of development expressed on the appeal form describes the layout of the site as shown on the agreed Block Plan. I shall proceed to consider the appeal accordingly.
 11. Within the written cases I have been referred to the existing layout and condition of the appeal site. The initial description of the change of use suggests it would be part retrospective. At the site visit I observed that the existing static caravan along with the tourer were not laid out in accordance with the submitted agreed Block Plan. It also became apparent on closer inspection that these caravans were not standing on Plot 64 but on an adjacent plot (number unknown). Plot 64 was able to be identified through the location of the identified trees on the Block Plan. Therefore, it is clear that no part of the proposed change of use is retrospective and that any existing caravans are located outside of the appeal site¹¹.

⁶ Site was unkempt and overgrown.

⁷ Nor make any contact.

⁸ Letters to the appeal site were observed to either remain in the letter box or were returned by the Post Office as undeliverable. The site was also visited by Council Officers to check if the Appellant had returned to the site.

⁹ As set out in the relevant bullet point above.

¹⁰ Change of use of the land to Gypsy and Traveller residential with the siting of five caravans, of which no more than one would be a static caravan, erection of a shed, the provision of vehicular parking spaces and soft and hard landscaping, installation of a package treatment plant and associated foul drainage, widening of the existing vehicular access and repairs to the internal access road.

¹¹ This is confirmed in paragraph 3.19 of the Appellant's statement of case.

12. In addition, the proposed drainage scheme as shown on Dwg no SD09V4 shows connections from the static caravan and one of the touring caravans and the shed to be connected to a package treatment works. The discharging pipework is proposed to be laid under the existing access road and the treatment works would be installed on land to the south-east of Plot 64. Notice was served on the owner of the plot across the access track¹².
13. This is an appeal against the failure of the Council to give notice within the prescribed period of a decision. The Council's statement of case sets out that the following matters would have formed the basis of putative reasons for refusal:
- Harm highway safety with specific regard to inadequate visibility splays;
 - Unsustainable location of Gypsy and Traveller site;
 - Harm to character and appearance of the area and local landscape;
 - Harm to biodiversity; and
 - Risk of Flooding.

Background

14. There is no issue taken that the status of the Appellant is anything other than a Gypsy¹³. From the evidence before me I see no reason to disagree.
15. The appeal site lies in open countryside outside of the village of Hare Street. It forms part of a predominantly wooded piece of land between the B1368 and the River Quin¹⁴. There are two points of vehicular access into the woodland. The appeal site is proposed to be accessed from the southern most access point along an unmade track which meanders towards the appeal site, which is set some 200 metres from the main road.
16. This wooded, overgrown land, at some point, has been divided into individual plots. These are owned by individuals, some owning a number of plots. This was certainly the case as of September 1976¹⁵. From the site visit it is apparent that much of the land is overgrown and wooded. However, some plots are still discernible due to fencing and there is evidence of old sheds and other structures which would seem to indicate that, at some time some plots were likely used for informal, occasional occupation for recreation/leisure and camping. There was virtually no evidence of any recent use or occupation. The state of the access tracks, both north and south, were such that vehicular access would be restricted by reasons of the poor condition of the unconsolidated surface, including deep potholes susceptible to holding water in wet conditions, particularly the access track to the south¹⁶.
17. In May 1976 the Council served an Article 4 direction appertaining to the wider wooded area, including the appeal site, restricting the erection or construction of gates, fences, walls or other means of enclosure. This has the effect of

¹² The drainage field.

¹³ Accord with the definition as set out in Annex 1 of the Planning policy for traveller sites (PPTS).

¹⁴ Approximately 7 hectares – Appellant's figure – uncontested.

¹⁵ Conveyance dated 27 September 1976 shows land divided into plots.

¹⁶ The Appellant and his brother-in-law have owned Plot 64 since February 2003. This brings with it a right of way over the access track from the B1368.

- preventing the establishment of the subdivision of the woodland into discernible individual plots.
18. The Appellant's static caravan was the only evidence of previous residential use that I observed at my site visit, although the caravan was never connected to mains electricity or a formalised drainage system. In general, the plotlands appeared abandoned, but interested parties have indicated that it is used by dog walkers and local residents, although it is unclear whether public access to this wooded area is authorised¹⁷.
 19. The Appellant and his family have over the years camped at the plotland site with both tents and touring caravans, but they were permanently based in Wood Green, North London on a Council Gypsy and Traveller site. The family made the move to Hare Street as their pitch at Wood Green was small and they felt unsafe in an environment of increasing urban offence. The move was made to the appeal site in November 2018 when the threatening atmosphere towards some family members at the Wood Green site increased markedly. For much of 2019 the family travelled but returned to settle in June 2019 as the children were offered places at the local school.
 20. In October 2019 the Council served an uncontested 'status quo' injunction on the Appellant which, they contend, had the effect of making it impossible for the family to live on the land and forced them into homelessness¹⁸.
 21. The planning application the subject of this appeal was submitted in November 2020¹⁹. Following some exchanges with the Council and apparent unexplained delays the Appellant submitted his appeal in July 2021 for non-determination.

Planning Policy

22. The Development Plan includes the relevant policies of the East Herts District Plan 2018 (LP) and the Buntingford Community Area Neighbourhood Plan.

Matters for consideration

Highways

23. The concerns raised relate to the impact of vehicles accessing the appeal site entering and exiting the plotland via the southern access. As already described the access track is currently unsuitable for vehicles to manoeuvre along its length and considerable work would need to be undertaken to consolidate and level the surface and make it passable in all weathers.
24. The access itself is similarly poorly surfaced with a locked barrier preventing access into the plotland.
25. The B1368 is a secondary distributor road where a speed limit of 60mph is relevant in the vicinity of the access point. The access point would require considerable improvements including widening and consolidated surfacing for 5.1 metres back from the carriageway. However, at present the access can only demonstrate substandard visibility in both directions, which the Highway Authority consider would give rise to harmful conditions to other road users. As I observed at the site visit, vehicles emerging onto the main road would be

¹⁷ Public footpath Hormead 002 runs alongside the River Quin outside of the wooded plotland area.

¹⁸ Appellant's statement of case paragraph 3.12.

¹⁹ A previous application 3/19/2256/FUL was withdrawn.

doing so into potentially fast-moving traffic and would not be readily seen resulting in considerable harm to the safety of highway users.

26. The Highway Authority require visibility splays of 2.4 x 150 metres to the north of the access and 2.4 x 160 metres to the south. This would need considerable removal of frontage hedgerows and tree growth, particularly to the south. In addition, to the north the visibility splay would cross over to the opposite side of the road leaving much of the highway in this direction behind the visibility splay. The tree and hedgerow removal may be possible within the highway verge, but this is unclear and may involve vegetation removal on land not in the control of the Appellant. The Highway Authority has not given consent to remove the vegetation.
27. Therefore, the appeal proposal, in respect of the use and alterations to the existing access to Plot 64 to accommodate the vehicle movements resultant from the proposed change of use, would not provide a safe and suitable access, and would have an unacceptable impact on highway safety, visibility being limited and substandard at the access point²⁰. The identified unacceptable impact on highway safety is ascribed substantial weight in the balance of this decision.

Sustainability of the location

28. PPTS does not preclude the location of Gypsy and Traveller sites within rural areas but does set out at paragraph 25 that sites should be strictly limited in open countryside that is away from existing settlements or outside areas allocated in the development plan. So, the question is whether the appeal site is 'away' from existing settlements.
29. LP Policy GBR2 follows the terms of the PPTS acknowledging that sites in rural areas beyond the Green Belt may in principle be acceptable. This is subject to compliance with the criteria set out in LP Policies HOU9 and HOU10. LP Policies HOU9 requires that sites must be in sustainable locations in terms of accessibility to existing local services. LP Policy TRA1 also requires development to be located which enables sustainable journeys to be made.
30. The appeal site lies outside of the village of Hare Street²¹. There is some 600 metres to the main built environment of the village. There are limited services in the village with no school, shop or doctors. The nearest school is 1.5 kilometres from the site and the nearest shops are in Buntingford 3 kilometres away. The nearest bus stop is within the village itself some 750 metres away, but the service is limited.
31. There is no pedestrian footpath in either direction on either side of the road from the appeal site access. It would be necessary to either walk in the road or cross over and climb a small bank to find a safe walking refuge. Walking with a buggy/young children or children on their own in an area where speeds of traffic could be up to 60 mph would be dangerous and would dissuade walking into Hare Street.

²⁰ Contrary to LP Policies HOU9, TRA2 and the National Planning Policy Framework (the Framework) paragraph 111.

²¹ LP Group 2 village – infill development may be allowed subject to it relating well to the village in terms of location, layout and connectivity, not detract from the openness of the countryside and not add to an isolated group of buildings.

32. Therefore, I am led to the conclusion that the appeal site is 'away' from the nearest settlement and that a private motor vehicle would be the predominant means of transport for the residents of the appeal site. However, I have no doubt it would equally apply to the settled community in the immediate vicinity, including those living in Hare Street itself.
33. Travel distances to services are moderate and no different for those in the traveller community to those in the settled community. Nonetheless, there is a qualified tension with the terms of LP Policies HOU9 and TRA1, along with paragraph 105 of the Framework. That notwithstanding, for the reasons set out above, I ascribe only limited weight to that policy conflict.

Character and appearance

34. LP Policy GBR2 sets out that the rural area beyond the Green Belt is a valued countryside resource and that accommodation for Gypsies and Travellers will be permitted providing that it is compatible with the character and appearance of the rural area, the occupation and use of the site not causing undue harm to the visual amenity and character of the area, and it should be capable of assimilation into the surrounding landscape without significant adverse effect²².
35. The Framework at paragraph 174 identifies that decisions should contribute and enhance the natural and local environment by recognising the intrinsic character and beauty of the countryside²³.
36. The appeal site is located in policy terms in the rural area beyond the Green Belt and within the landscape character area 145 Quin Valley²⁴.
37. It is not part of the Council's case that the appeal site lies within a valued landscape in the terms of paragraph 174 a) of the Framework. However, it is noted that the rural area beyond the Green Belt is highly valued by District residents and visitors, particularly for its open and largely undeveloped nature.
38. The appeal site lies in close proximity to the River Quin at the bottom of a shallow valley with sloping sides. The surroundings are, in the main, open arable farmland, including some intervening hedgerows which are generally low, with limited pockets of woodland, neither of which, as landscape features, interfere with the extensive views across and along the valley which are achievable both from high points as well as from the bottom of the valley, amongst other viewpoints.
39. The rural natural environment of the immediate environs of the appeal site is read in the landscape as part of the wider countryside, even given its proximity to the village of Hare Street and the sporadic homes and buildings along the B1368.
40. Plot 64 is located on a cleared section of a small, wooded area some distance from the main road and the village. The boundary to the River includes an unkempt hedgerow which is not continuous with some areas of sparse growth.
41. From public footpath Hormead 002 running along the river side, Plot 64 would be seen. At the site visit the existing static caravan on the adjacent land to

²² LP Policy HOU9. LP Policies DES2, 3 & 4 all follow on in a similar vein of conserving, enhancing or improving upon the character and distinctive features of the surrounding landscape.

²³ The protective element in this Framework policy is reflected further in PPTS paragraph 4 k.

²⁴ Herts Landscape Character Assessment DPD 2007.

Plot 64 was clearly visible particularly being an unexpected urban feature in an essentially unspoilt rural landscape. This is similarly true when the appeal site is viewed from Anderson's Lane which runs along a high point of the valley at a distance to the east. The proposed single static and four touring caravans, along with the shed, parking for three vehicles, hard surfacing of the plot and other associated domestic paraphernalia and activities, set at a low point in the valley within an environment of cleared land, juxtaposed with the remaining wooded plotland and the open surrounding arable land, would be prominent and alien features which would jar against the pleasant open rural landscape, which, whilst unremarkable, has a character of its own which contributes to the wider countryside of the District.

42. At the site visit it was plain that Plot 64 was not visible from the B1368, there being a thick hedge and trees along the frontage to both the north and south of the access. This hedge, including mature trees, stretches back into the plotland area.
43. However, as explained above in relation to the provision of the required visibility splays for the altered and improved access to serve the appeal proposal, a considerable part of the frontage hedge would need to be removed, particularly to the south of the access. This would result in the area, including Plot 64, being opened to view from the main road and the urbanising domestic character and appearance of Plot 64, once occupied, being visually apparent much as it would be when viewed from the east.
44. In addition, the making up and widening of the access and its hard surfacing, along with the relaying of the track to give ready vehicle access to Plot 64, would also impact on the undeveloped character and appearance of this section of the main road as well as that of the plotland itself.
45. I appreciate there may be some existing structures within the plotland already, but as I saw for myself these are mainly dilapidated small sheds and shelters, predominantly in the wooded area. There was little evidence of consistent and recent use of other plots.
46. The loss of the frontage hedge and trees along this part of the B1368 would also affect the character and appearance of this rural route, diminishing its verdant appearance as it enters the built-up area of Hare Street.
47. Therefore, for the above reasons I consider that the appeal proposal would not conserve, improve or enhance the natural and local environment, the intrinsic character and beauty of the countryside being unacceptably eroded. Thereby the terms of the relevant development plan policies, set out above, would be compromised, the character and quality of the landscape being unsatisfactorily undermined. This policy conflict and impact on character and appearance are ascribed substantial weight in the balance of this decision.

Impact on biodiversity

48. A Preliminary Ecological report (PER) was submitted, although this post-dates the clearance of Plot 64 and its immediate environs. There has been no suggestion that permission from the Council was required to remove trees, bushes and undergrowth. The question of whether the Appellant had the permission of the owners of the adjacent land to carry out such clearance is a civil matter.

49. However, the PER was undertaken outside of the optimal months and has not evidenced any net gains in respect of biodiversity enhancements. This is a matter which could be dealt with by the imposition of a condition requiring a further survey report to be undertaken and mitigating/enhancement measures identified where necessary.
50. However, the proposed necessary removal of the native hedgerow on the frontage with the B1368 to provide visibility splays, is extensive and is likely to result in significant harm to biodiversity. There is limited land in the ownership of the Appellant to undertake likely mitigating measures for such a loss.
51. In my view, in these circumstances of uncertainty in relation to impacts, it is reasonable to conclude that there would be significant harm to biodiversity resulting from the change of use of Plot 64 and the need to alter and expand the access and visibility splays onto the main road. It is difficult to see how adequate mitigation would be provided in the gift of the Appellant. In these circumstances the Framework at paragraph 180 indicates planning permission should be refused²⁵. I give this conflict with national guidance significant weight²⁶.

Flooding

52. The Environment Agency Flood Map for Planning dated 15 January 2020 shows a very small part of Plot 64 being within Flood Zone 2. This does not include any part of the site upon which caravans are proposed to be stationed. The majority of the area of Plot 64 is within Flood Zone 1. In such areas a site-specific flood risk assessment is not required. However, where a more vulnerable use on land that may be subject to other sources of flooding, such as the River Quin or surface water, an assessment should accompany the planning application²⁷. No such assessment was submitted.
53. Therefore, on the evidence before me I cannot be sure that the proposal would not be affected by the environmental hazard of flooding, increasing the risk to people on site which may affect future residents' health or welfare²⁸. It may be that once an appropriate assessment was completed flooding may not prove a barrier to the proposed change of use, but until such time I give the lack of clarity in this regard considerable weight.

Other considerations

General need for and provision of sites

54. The Government's overarching aim is to ensure fair and equal treatment for Travellers, in a way that facilitates the traditional and nomadic way of life of Travellers while respecting the interests of the settled community²⁹. National policy recognises that there is a need to increase the number of Traveller sites in appropriate locations with planning permission, to address under provision and maintain an appropriate level of supply. The PPTS sets out how Gypsy and Traveller accommodation needs should be assessed.

²⁵ The terms of the Framework are reflected in LP Policies NE2 and NE3.

²⁶ I have considered the possibility that compensation could be paid as a last resort for the impact on biodiversity. However, this has not been offered by the Appellant and I give this little weight.

²⁷ Framework footnote 55.

²⁸ Contrary to LP Policies HOU9 and WAT1.

²⁹ Paragraph 3 of the PPTS.

55. Prior to the opening of the Hearing the Council updated their statement of case identifying that in May 2022 a final version of the East Herts Gypsies and Travellers and Travelling Show People Accommodation Needs Assessment was published. This updated the earlier version of May 2016.
56. It identifies an increased need for pitches from that in the 2016 version. For the five-year period 2022/23 to 2026/27 there is a shortfall of 31 pitches for Gypsy and Travellers. Over the whole assessment period 2022/23 to 2036/37 the overall need raises to 43 pitches. The needs of the Appellant and his family were factored into the survey work underpinning the assessment.
57. Clearly there is a pressing need for appropriate pitches within the District, and if considered appropriate, Plot 64 would make a contribution to the woeful shortfall in available pitches in the District. The Council acknowledge that it is currently unable to demonstrate a five-year supply of pitches to match identified need³⁰. This factor weighs significantly in favour of the proposal.

Alternatives

58. No alternative suitable Gypsy sites were promoted by the Council as being available to accommodate the Appellant and his family.
59. However, whilst at some point in late 2018 the Appellant and his family were living on the land adjacent to Plot 64, by mid-2022³¹ they were gone with the static caravan and one touring caravan being in an uninhabitable condition. The site appeared to have been abandoned for some time³².

Personal circumstances

60. At the time the planning application was submitted the Appellant's family consisted of Mr and Mrs Doherty, 8 children of which 3 are over 18 years of age, 3 would be of secondary school age and 2 of primary school age³³.
61. 2 family members have health problems, but these were being treated by medical intervention.
62. At the time that the initial evidence for the appeal was produced 2 of the children were in local primary school education, 1 at a local nursery and 1 at the local middle school.
63. At some time in 2022, I understand, the family had fragmented with the Appellant no longer residing with his family. Clearly the family circumstances have changed. I have no information about where the Appellant is resident having had no contact from him in nearly a year. I understand some of the family are staying with relatives, but with the static caravan previously occupied by the family being in an uninhabitable state, without basic services/facilities on the appeal site, and the access track being almost impassable, a return is not an option.
64. The children are no longer attending the local schools³⁴ and I have no information whether they are now back in education. Living at a settled base,

³⁰ Council's letter dated 27 October 2022.

³¹ When visits to the appeal site were made by the Council trying to make contact with the Appellant on behalf of the Inspector.

³² Observation by the Inspector at the site visit in November 2022.

³³ As of July 2023.

³⁴ Appellant's statement of case paragraph 5.21.

as opposed to a life on the road, would maintain access to education for the children³⁵. However, I have noted that Mrs Doherty and the children do travel to Scotland and to Gypsy fairs and Gypsy Christian conventions being only intermittently on the land adjacent to Plot 64 between late 2018 and the end of June 2019.

65. Achieving a safe and secure home base in which all the children can thrive, both in terms of their overall health and educational needs, is a primary consideration. Even in the situation of not knowing what the circumstances of the family and, more particularly the children are, their well-being and education does weigh heavily as a primary consideration in the balance of the decision³⁶.

Whether the proposal represents intentional unauthorised change of use

66. The Appellant and his family did move onto the land adjacent to the appeal site in June 2018, but their occupation was intermittent as they travelled considerably that year and into 2019. In addition, I note that the family did spend time at the land prior to this date camping for a break from their Wood Green life.
67. A planning application was submitted in November 2019, but was subsequently withdrawn, with the application the subject of this appeal being submitted in November 2020. The appeal for non-determination was submitted in July 2021. This indicates a desire to engage with the planning system.
68. Over some of this period the children were attending school and also the Country suffered from the extraordinary circumstances of the COVID pandemic which meant that, in general, we all had to stay put.
69. Although the Appellant occupied the plot adjacent to Plot 64, he did so under the impression he was on his own land. The works carried out were limited and were to create basic conditions where the family could live on the land. From what I saw at my appeal site visit none of the works were such that they could not be relatively easily reversed. This does not apply to the removal of trees, but I am not aware of the extent of that removal, nor the offence caused in that instance.
70. Therefore, I am satisfied that, considering the circumstances described in the evidence before me, as well as a lack of readily available Gypsy sites within the District whilst an intentional unauthorised change of use has been carried out, I afford this little weight in the balance of this decision.

Planning balance³⁷

71. At the onset of considering the issues in the planning balance I have borne in mind the duty placed on me within the Public Sector Duty. I have also considered the best interests of the children as a primary consideration.
72. Conflict with development plan policy and that of the Framework and PPTS has been identified in respect of the impact of the proposal on the character and

³⁵ PPTS paragraph 13 c).

³⁶ The best interests of the child must be consider first - Article 3(1) of the United Nations Convention on the Rights of the Child.

³⁷ Hierarchy of weighting used - Considerable (at the lower end) – significant – substantial (at the upper end).

appearance of the countryside landscape, on highway safety, on biodiversity and to a lesser degree in respect of the harm in flooding terms and locational sustainability. The harms identified in combination represent a total amount of great harm which is substantial and would weigh against the proposal.

73. On the other side of the balance is the benefit that the proposal would contribute to meeting a pressing unmet need and towards achieving a five-year supply of deliverable land for the provision of new Gypsy and Traveller sites, which is a significant material consideration.
74. In addition, the appeal site would offer a settled base for the family. This would maintain their traditional Gypsy way of life whilst providing the opportunity for the children to access education and the health issues of the family could be continued to be addressed.
75. The likely consequences of the lack of provision would be a serious interference with the individuals' rights to respect for private and family life and the home³⁸. This existence would also not be in the best interests of children or a family unit.
76. All of these matters, in combination, attract significant weight in favour of the proposal. However, taking into account the extent of the harms identified above, particularly those relating to highway safety and impact on the character and appearance of the locality, I consider the harms of such substantial weight as to outweigh the matters in favour of the proposal.
77. I have given consideration to whether a temporary permission might be appropriate, but I am conscious that to make Plot 64 habitable a package treatment plant and drainage field would need to be installed. This would be on land not in the ownership of the Appellant and I have no reassurance that the permission of the landowner has been secured³⁹. Further there would need to be considerable investment in providing the treatment plant, and basic services, along with bringing a considerable length of access track to a standard where vehicles, including caravans, could pass over it, and creating an environment on Plot 64 capable of supporting family occupancy.
78. In addition, to make the existing vehicular access safe for all road users, albeit for a temporary period, the same works of widening and removal of an extensive part of the frontage hedge would be required. The same weight of harm in respect of the impact on highway safety and character and appearance would apply even in the case of a temporary permission.
79. Therefore, I consider that the grant of a temporary permission would place an unreasonable burden of financing the installation of the Gypsy accommodation on the Appellant, and the substantial weight identified to the harms to the permanent proposal would equally apply in the case of a temporary permission.
80. This leads me to the conclusion that a temporary permission would be equally objectionable as that of a permanent permission, even when weighed against the consequences of not granting permission.

³⁸ Article 8 of the European Convention on Human Rights.

³⁹ I am aware notice was served on the owner.

Conclusion

81. From the evidence before me I have come to the conclusion that Plot 64 is just not suitable for the purpose of accommodating a Gypsy and Traveller pitch, even when the best interest of the children and the rights of the individuals' to a private life and a home, which is all any of us hope for, is factored into the balance.
82. With the disengagement of the Appellant from this process I have had to consider the proposal without updates or explanation. The family are not resident at the appeal site, and I am informed are living with relatives. I am not aware of the whereabouts of the Appellant nor of any other changes in circumstances for the family. The dismissal of this appeal would not make the family homeless as I understand the evidence. I am, therefore, satisfied that in the circumstances of the evidence before me, the level of harms identified are sufficiently weighty to warrant the dismissal of this appeal.
83. Therefore, this appeal for a change of use of the land to Gypsy and Traveller residential with the siting of five caravans, of which no more than one would be a static caravan, erection of a shed, the provision of vehicular parking spaces and soft and hard landscaping, installation of a package treatment plant and associated foul drainage, widening of the existing vehicular access and repairs to the internal access road is dismissed and planning permission refused.

Frances Mahoney

INSPECTOR



Appeal Decision

Site visit made on 16 May 2023

by R Bartlett PGDip URP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10 July 2023

Appeal Ref: APP/J1915/W/22/3304110

Elbow Lane Farm, Elbow Lane, Hertford Heath SG13 7QA

- 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 Teresa Walker of Ladkarn Developments Ltd against the decision of East Hertfordshire District Council.
 - The application Ref 3/21/1326/FUL, dated 13 May 2021, was refused by notice dated 16 May 2022.
 - The development proposed is demolition of existing stable block and partial demolition of existing equestrian block, and the development of the remaining equestrian block to include 4No. 4 bedroom 6 person dwellings and 4No.3 bedroom 5 person dwellings, including associated site landscaping.
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Decision

1. The appeal is dismissed.

Main Issue

2. The Council's second reason for refusal related to insufficient information being submitted to minimise future energy demands generated by the development. The Council has suggested a planning condition that could address this matter, which I agree would be reasonable. It is therefore not necessary for me to consider this matter further.
3. Consequently, the main issue is whether future occupiers of the proposed development would have adequate access to services and facilities without undue reliance on private car use.

Reasons

4. The site is located in the open countryside and is detached from any built-up settlement. It forms part of the wider Elbow Farm site, which comprises a former farmhouse and garage together with 13 other dwellings, which have been created through the conversion of former agricultural, equestrian and holiday let buildings. The appeal relates to the partial demolition and conversion of the last remaining equestrian building, which is in the centre of the site.
5. Vehicular access is via Elbow Lane, a private block paved access road off Mangrove Lane to the south. To the north of the farmhouse, Elbow Lane becomes an unsurfaced byway, providing mainly for pedestrian and cycle access to and from the village of Hertford Heath.
6. From the evidence before me, walking into Hertford Heath from the site, via the unlit and unsurfaced public byway (the shortest route), would be between 1.5 and 2km and would take approximately 20 to 30 minutes. A round trip

would be double this. The larger settlements of Herford and Hoddesdon, which provide larger supermarkets, health care and employment, are over 3km away and again would not be easily accessible other than by private car due to the narrow country roads being unlit and having no footpaths.

7. Reference has been made to PPG13 and the Manual for Streets (MfS) suggesting that 2km is an appropriate walking distance. PPG13 was replaced by the National Planning Policy Framework (the Framework) in 2012 and as such I afford this no weight. Although the MfS makes reference to the former PPG13, it also states that walkable neighbourhoods are typically characterised by having a range of facilities within 10 minutes (up to about 800m) walking distance of residential areas, which residents may access comfortably on foot.
8. The distance between the nearest facilities and the appeal site is approximately double this, and I would anticipate most people would not walk 2km, other than for leisure purposes, if they had the option of driving, particularly in the hours of darkness, bad weather, when carrying shopping or visiting multiple destinations.
9. I have also been referred to the Hertford Heath Neighbourhood Plan. Whilst I have not been provided with a copy of this, or its current status, I have no reason to disagree that the village of Hertford Heath has a range of services, facilities and public transport links. Nevertheless, as the appeal site is not within or close to the village, I afford this very little weight.
10. I acknowledge that the appellant has no control over where the local bus routes run. However, national and local planning policies seek to control the location of new development to ensure amongst other things that it is located where it would be well served by services and facilities, including public transport. It is not therefore unreasonable to refuse planning permissions on the basis that the site does not have appropriate access to these.
11. The increase in home working and delivery services and the availability of super-fast broadband would not in my view significantly reduce the number of times most people would leave their homes or use their cars.
12. I therefore conclude that future occupiers of the proposal would not have adequate access to services and facilities without undue reliance on private car use. The proposal is therefore contrary to Policies DPS2 and TRA1 of the East Herts District Plan (October 2018), which set out a hierarchy of development locations and seek, amongst other things, to ensure that new development is primarily located in places which enable sustainable journeys to be made to key services and facilities to help aid carbon emission reduction. The proposal would also conflict with the Framework in this respect.

Other Matters

13. The historic use of the site as a pharmaceutical company and then an equestrian centre would inevitably have generated significant traffic movement. The submitted Design and Access Statement advises that at its peak the 27 stables would have generated 40 vehicle movements per day. However, these uses ceased in 2002 and 2017. Moreover, these uses would have been subject to different planning policies and had different locational needs to that of new residential development.

14. There is no evidence before me to suggest that the building to be converted in this case has any lawful use that would generate the same level of private car use as the proposal for 8 family dwellings. The 8 dwellings proposed, in addition to the 13 dwellings already approved on the wider site, could potentially generate a greater number of private car movements than the historic uses.
15. The appellant has submitted copies of two appeal decisions, which were allowed, and granted prior approval for the conversion of buildings on the wider Elbow Lane Farm site to dwellings. However, as these appeals related to prior approvals, the matter of access to services and facilities was not before the Inspectors or indeed the Council for their consideration.
16. The fact that other dwellings recently approved at Elbow Farm and on other similar nearby former farm sites have equally poor access to services, is not a reason to allow more dwellings in such locations. I do not have the full details of each of the cases I have been referred to, but from the information before me, it would appear that these earlier approvals comprise a combination of schemes for smaller numbers of dwellings, prior approvals, full applications for amended schemes that had a fallback position, and the removal of holiday let conditions due to lack of interest from holidaying horse owners and the decline of the equestrian business. As the circumstances do not appear to be directly comparable to the case before me, I afford these decisions very limited weight. I have dealt with this case on its own merits.
17. The Council accepts that it has less than a five-year supply of housing land. Consequently, paragraph 11(d) of the Framework, is engaged. This advises that planning permission should be granted unless the adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework as a whole.
18. The proposal is on previously developed land and would re-use part of an existing building, which is supported by paragraph 119 of the Framework. However, given the extent of new building work required, the sustainability benefits of reusing limited parts of the existing building would be very modest. The partial demolition of the building would increase the level of open space within the site, which would enhance the openness of the Green Belt as well as improving the outlook and surroundings for occupiers of the adjacent dwellings and potentially delivering biodiversity net gains. As there is nothing before me to suggest that this redundant building could not be fully or partially demolished anyway, I afford these benefits only moderate weight.
19. I recognise that there would be economic benefits during the construction phase and that future occupiers of the proposal would potentially support the viability and vitality of some village facilities and services. However, given the poor access to these village services it is more likely that future occupiers of the development would drive to the larger settlements, in which new housing should be located. I therefore afford these benefits limited weight.
20. I note the intention to use heat pumps, to provide electric vehicle charging points and cycle parking, but as all new homes are required to meet energy efficiency standards and to provide measures to encourage sustainable travel, such measures are neutral and do not weigh in favour of the proposal.

21. The proposal would make a modest contribution to the supply of housing, which would form part of a small existing community and I afford this significant weight. However, this must be balanced against its location.
22. Future occupiers of the development would have poor access to services and facilities. Whilst I acknowledge and have taken account of the fact that sustainable transport solutions vary between urban and rural areas, paragraph 105 of the Framework is very clear that significant development should be focussed on locations which are or can be made sustainable, through limiting the need to travel and offering a genuine choice of transport modes. The proposal, particularly when taken with other recent development on the site, is significant and I attach substantial weight to this matter.
23. When assessed against the policies in the Framework taken as a whole, I consider that the harm I have identified would significantly and demonstrably outweigh the modest benefits of the proposal.

Conclusion

24. I conclude that the proposal would conflict with the development plan as a whole. There are no other considerations, including the provisions of the Framework, which outweigh this finding. Accordingly, the appeal is dismissed.

R Bartlett

INSPECTOR



Appeal Decisions

Site visit made on 23 May 2023

by **Robert Naylor BSc (Hons) MPhil MRTPI**

an Inspector appointed by the Secretary of State

Decision date:

Appeal A Ref: APP/J1915/W/22/3292976

Collier House, Mead Lane, Hertford SG13 7AX

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under Article 3(1) and Schedule 2, Part 3, Class O of the Town and Country Planning (General Permitted Development) (England) Order 2015.
 - The appeal is made by Mr Richard Mordain of Tuner and Co (Glasgow) Ltd against the decision of East Hertfordshire District Council.
 - The application Ref 3/21/1834/ODPN, dated 7 July 2021, was refused by notice dated 10 September 2021.
 - The development proposed is for a change of use from office use (Class B1(a)) to residential use (Class C3) to create 10 one bedroom flats and 7 two bedroom flats.
-

Appeal B Ref: APP/J1915/W/22/3303513

Collier House, Mead Lane, Hertford SG13 7AX

- 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 planning permission.
 - The appeal is made by Mr Richard Mordain of Tuner and Co (Glasgow) Ltd against East Hertfordshire District Council.
 - The application Ref 3/21/3006/FUL, is dated 29 November 2021.
 - The development proposed is for the erection of access ramp and stairs to create accessible route to widened towpath (2 metres) and external alterations to conservatory and window openings.
-

Decision

1. **Appeal A** is dismissed.
2. **Appeal B** is allowed and planning permission is granted for the erection of access ramp and stairs to create accessible route to widened towpath (2 metres) and external alterations to conservatory and window openings at Collier House, Mead Lane, Hertford SG13 7AX in accordance with the terms of the application, Ref 3/21/3006/FUL, dated 29 November 2021, subject to the conditions in the attached schedule.

Preliminary Matters

3. The description of development for **Appeal A** cited in the planning application form differs to that contained within the decision notice and appeal form. There is no evidence that this change was formally agreed. The latter more accurately reflects the scope of the proposed plans which were submitted, consulted upon, determined by the Council and are now the subject of this appeal. As no parties' interests would be prejudiced, in the interests of clarity I rely upon that latter description for the purposes of the heading above.

4. The Council has highlighted that the description of the development in respect to **Appeal B** has also changed. However, the amended description to incorporate the widening of the towpath to 2 metres instead of 1.8 metres as referred to in the application form has been agreed by both parties, along with the amended plans. Therefore, in the interests of clarity I rely upon the agreed description for the purposes of the heading above and paragraph 2 of my Decision.
5. Office to dwellinghouse conversions are permitted development under the provisions of Schedule 2, Part 3, Class O of the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO). Under paragraph O.2 of the GPDO, the developer is required to apply to the Local Planning Authority as to whether prior approval is required.
6. The prior approval matters are concerned with transport and highway impacts of the proposed development; contamination risks on site; flooding risks on the site; impacts of noise from commercial premises on the intended occupiers of the development and the provision of adequate natural light in all habitable rooms of the dwellinghouses.
7. The Council refused to grant prior approval for the scheme under Class O of the GPDO, as they considered the proposal had transport and highway safety implications, failing to provide safe access for pedestrians. The Council further considered that operational development was also required in order to provide adequate natural light in habitable rooms of the proposal, which cannot be approved under the prior approval regulations.
8. Paragraph W (10)(b) of Part 3 of Schedule 2 of the GPDO is clear that applications for prior approval should be determined having regard to the National Planning Policy Framework (the Framework) so far as it is relevant to the subject matter of the prior approval, as if the application were a planning application. I have determined **Appeal A** on this basis.

Background and Main Issues

9. The appeal site is a three-storey brick building currently in use as an office located at the northern end of Mead Lane industrial estate, adjoining the south bank of the River Lea. The site is accessed from Mead Lane via an unnamed accessway which runs through the industrial estate, although there is also a pedestrian access from the towpath which runs along the riverside.
10. A previous appeal¹ at the site, also for prior approval, was dismissed as the Inspector found that the development would not provide safe and suitable access for pedestrians, concluding that the scheme would have an unacceptable impact on highway safety. Following the appeal, the appellant submitted a planning application² which was approved by the Council, for improved access to the towpath to the north of the appeal site and adjacent to the River Lea. However, this permission was never implemented and has now lapsed, although the details are similar to that currently proposed under **Appeal B**.
11. The main issue in regard to **Appeal A** is whether sufficient information has been provided to demonstrate that the proposed development complies with

¹ PINS Ref: APP/J1915/W/19/3223464

² East Hertfordshire District Council Planning Ref: 3/19/1412/FUL

condition O.2 (1) (a) of Part 3 of Schedule 2 of the GPDO regarding transport and the highway impacts of the proposed development, and condition O.2 (1) (e) the provision of adequate natural light in all habitable rooms of the dwellinghouses.

12. The main issues of **Appeal B** are the effects of the proposal on i) the character and appearance of the area; ii) the neighbouring amenity and iii) the accessibility of the building.

Reasons

13. In regard to **Appeal B** the Council have indicated that had they determined the application, they would have granted planning permission for the proposed scheme. This was on the basis that the application replicated the previously allowed scheme which lapsed in September 2022. As such they do not seek to contest the appeal, given they have found no harm from the proposed scheme. In regard to the effects of the proposal on the character and appearance of the area, the neighbouring amenity and the accessibility of the building, I would concur with the Council's opinion that there would be no harm as a result of the proposal, as I have been presented with no substantive evidence to reach an alternative view. Subject to the conditions as set out in the attached Schedule, the proposal would be acceptable.
14. I now turn to **Appeal A**. The Framework identifies that opportunities to promote sustainable transport modes should be taken up, depending on the type of development and its location, further highlighting that safe and suitable access to these sites should be achieved for all users. Paragraph 111 of the Framework states that development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe.
15. The appeal site is located at the end of an unnamed accessway within the Mead Lane industrial estate. The accessway is in constant use for the businesses located on the estate which includes uses such as steel fabricators, car repairs and a haulage company (Matthews Haulage) which is located in close proximity to the access of the proposed site. The existing office can be accessed from the north and south of the site. The south access is via the aforementioned accessway, while the northern access is along a towpath running adjacent to the River Lea and is pedestrian access only. Neither route is illuminated, and the unnamed accessway is a narrow route which does not benefit from a pavement.
16. The previous appeal was dismissed as the Inspector found that the development would have an unacceptable impact on highway safety, opining that whilst *'Collier House is favourably located to access town centre amenities, the poor pedestrian environment could deter future occupiers from walking to the town centre, despite the short distances involved. I conclude that the use of this service road by pedestrians would be highly unsatisfactory and likely to have an adverse effect on their future safety.'* I have no evidence before me to highlight that there has been any change in circumstance for either access under which the previous scheme was assessed.
17. The County Highway Authority maintain their concerns that the proposal would have implications for the free and safe flow of public highway users, and future occupiers of the development, including those with mobility issues. As well as

the ability to access the site by sustainable travel modes other than the private motorcar. As part of the application, the appellant submitted a revised Transport Statement³ (TS) which included traffic/pedestrian surveys undertaken around the appeal site. Unsurprisingly, given the industrial nature of the surrounds and lack of pavement, the surveys highlight that a total of 872 vehicular movements (89%) took place at the entrance to the unnamed accessway, with only 109 pedestrian and cycle movements (11%) in the same 12-hour period.

18. During my site observations there was a distinct lack of pedestrian activity, whilst there were several large vehicles utilising the accessway. Furthermore, the accessway appeared heavily parked, reducing passing points which would require pedestrians to venture into the road to negotiate parked vehicles given the absence of a pavement. The higher percentage of vehicular movements in this location, would result in conflict between vehicle and pedestrian users along the accessway effecting the pedestrian safety of future occupiers. This conflict would be further exacerbated for pedestrians at the southern access of the appeal site, given its close proximity to the access for the existing haulage firm.
19. However, the TS suggests that the primary pedestrian access will be the traffic free towpath to the north of the site, with the southern accessway being secondary, should pedestrians choose this route. The traffic/pedestrian surveys highlight that a significant number of pedestrians and cyclist already use the towpath. The TS indicates a total of 359 pedestrians and 51 cyclists were recorded in the 12-hour period. This included 37 pedestrians and cyclist movements between 1700-1900 hours, when it was dark.
20. In allowing **Appeal B**, these works would enable a new ramped access and steps to be provided at the site, allowing better more accessible pedestrian connections to the towpath route. Furthermore, the associated works to widen the towpath to 2 metres outside the appeal site would also significantly improve pedestrian links. The appellant has indicated that a negatively worded condition and/or a planning obligation could be used to secure the works are undertaken before the scheme subject to **Appeal A** is occupied.
21. Furthermore, the appellant indicates that the works to the towpath would be undertaken in conjunction with works at the adjoining site, where planning permission has been secured on appeal⁴ for 375 residential dwellings, including associated works to access, open space and landscaping. However, I have no evidence before me in regard to any approved works associated with either external lighting and/or improvements to the towpath at the adjoining site.
22. Whilst the principle of the works to the towpath have been accepted by the Canal and River Trust (CRT), who could undertake the towpath improvements under their permitted development rights, they are clear that the towpath should not be relied upon as a primary access to the site. Nor would the CRT accept the location of any lighting bollards on land within their ownership.
23. Given these issues, I share the previous Inspectors' concerns regarding the suitability of the towpath for regular usage, as this route would remain largely unlit, and where the towpath adjoins the appeal site, would be too narrow for

³ Prepared by Patrick Parsons Ltd dated June 2021 Ref: A21134 V2.0

⁴ PINS Ref: APP/J1915/W/19/3234842

- multi-user routes, particularly in respect to future occupiers who might have pushchairs or mobility issues.
24. Even if I was to accept the use of a Grampian condition or suitably worded planning obligation, the proposed improvement works to the towpath do not outweigh the harm I have identified in respect to the highway safety issues associated with the pedestrian access along the unnamed accessway to the south of the site.
25. Whilst I acknowledge that the appeal site is located in a relatively sustainable location, the lack of pavement along the unnamed accessway, the uncertainty in respect to the improvements to the towpath, and the unlit nature of both routes is such that travelling by more sustainable means such as walking or cycling would be unlikely, particularly for occupants with mobility issues or with young children, and especially in the dark or during inclement weather. As such, the proposal would not provide safe and suitable access for pedestrians, resulting in significant adverse transport and highways impacts contrary to paragraphs 110, 111 and 112 of the Framework.
26. In regard to the operational development required to provide larger window openings to ensure adequate natural light in all habitable rooms, the appellant has indicated a Grampian condition could be attached to any approval. This would secure that the ramped access, external alterations to the window openings and the improvements to the towpath, can be delivered before the scheme subject to **Appeal A** is occupied. I have considered that the use of the negatively worded condition to prevent occupation of the proposed dwellings until the approved works have been carried out, is an obvious solution to allowing the change of use to occur.
27. However, even if the Grampian condition could secure the works necessary to address condition O.2 (1) (e) of Part 3 of Schedule 2 of the GPDO, this does not negate the harm I have identified in respect to highway safety. Given that the development would not provide safe and suitable access for pedestrians, the scheme would have an unacceptable impact on highway safety, and is therefore not permitted development, under O.2 (1) (a) of the GPDO.

Conditions

28. I have considered the Councils suggested conditions in respect to **Appeal B** having regard to the tests set out at paragraph 56 of the Framework. As a result, I have amended some where necessary for the sake of consistency, brevity, clarity and to ensure that they meet the tests in the Framework.
29. In addition to the standard time limit condition, I have imposed a condition specifying the approved plans for the avoidance of doubt and in the interest of certainty. I also have imposed a condition in respect to materials to match those stated on the application form in order to ensure an acceptable visual effect.
30. I have attached conditions to provide soft treatments to the bank, verge and hedge and the site boundaries which should be provided and maintained thereafter to protect the character and appearance of the area, whilst also meeting with CRT specifications.

31. There is a need to protect biodiversity and nesting birds given their ecological value. I have imposed the condition that incorporates the requirements set out in the Council's suggested conditions in regard to this matter.
32. Conditions controlling the use of external lighting are also required, in the interest of the appearance of the proposal and impacts on ecology and biodiversity.

Conclusion

33. In regard to **Appeal A** I have found the proposal would not meet the conditions of paragraphs O.2 and W.(3) of the GPDO in respect of transport and highway safety at the site. Prior approval is required for this matter, and I have found, based on the evidence before me, that it should not be granted. The proposal is not therefore permitted development and **Appeal A** is dismissed.
34. In regard to **Appeal B** the proposal would accord with the development plan, when read as a whole and the Framework. Having considered all material considerations and other relevant matters raised, I therefore conclude that **Appeal B** is allowed.

Robert Naylor

INSPECTOR

SCHEDULE OF CONDITIONS

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: 3449 01 B; 3449 23 C; 3449 24 A; 3449 28 A; 3449 29 and PP101 P8.
- 3) The external materials of construction and finishes for the ramp and building works hereby permitted shall match those stated on the application form, unless otherwise agreed in writing by the Local Planning Authority.
- 4) Prior to the commencement of works to the towpath, detailed plans shall be submitted to and approved in writing by the Local Planning Authority illustrating the dimensions of the improvements to the towpath relative to the bank, verge and hedge. The information shall also provide details of boundary treatment, soft and hard landscaping including works required for the extended towpath width and linkages to the towpath at the site boundaries. The works shall be carried out in accordance with the approved details and maintained thereafter.
- 5) All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding seasons following the completion of the development; and any trees or plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species.
- 6) No vegetation clearance shall be undertaken during the bird nesting season (March to August inclusive) unless a checking survey including a working method statement has first been undertaken by a suitably qualified ecologist to confirm the absence of nesting birds. The checking survey and working method statement shall be submitted to and approved in writing by the Local Planning Authority. The works shall be carried out in accordance with the approved details.
- 7) Prior to the commencement of works to the ramp and stairs, details of any proposed lighting shall be submitted to and approved in writing by the Local Planning Authority.
- 8) No lighting shall be installed along the towpath without the prior consent of the Local Planning Authority.

END OF SCHEDULE



Appeal Decision

Site visit made on 28 June 2023

by J Hobbs MRTPI MCD BSc (hons)

an Inspector appointed by the Secretary of State

Decision date: 22 August 2023

Appeal Ref: APP/J1915/D/22/3296289

Keepers, High Wych, Sawbridgeworth, Hertfordshire CM21 0LA

- 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 Matthew Waterson against the decision of East Hertfordshire District Council.
 - The application Ref 3/21/2694/HH, dated 26 October 2021, was refused by notice dated 2 March 2022.
 - The development proposed is first floor extension to existing dwelling.
-

Decision

1. The appeal is allowed and planning permission is granted for first floor extension to existing dwelling at Keepers, High Wych, Sawbridgeworth, Hertfordshire CM21 0LA in accordance with the terms of the application, Ref 3/21/2694/HH, dated 26 October 2021, and the plans submitted with it, subject to the following conditions:
 - 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
 - 2) The development hereby permitted shall be carried out in accordance with the approved plan, ref. 2542/6.
 - 3) The materials to be used in the construction of the external surfaces of the development hereby permitted shall match those used in the existing building.

Preliminary Matters

2. The appellant has stated in the application form that works have already started but have not been completed. During my site visit, I observed that works were ongoing, and the proposed development had not been completed. For these reasons, throughout my decision I will refer to the works as the proposed development; however, some aspects may have already been completed and I have assessed the appeal on that basis.
3. Whilst not referred to in the reason for refusal, the development for the area includes the Gilston Area Neighbourhood Plan (GANP) which is referred to in the officer report. I have therefore taken it into account in my determination of the appeal and as the appellant has referred to it in their evidence, I have not sought any further comments on the matter.

Main Issue

4. The main issue of the appeal is the effect of the proposed development on the character and appearance of the area.

Reasons

5. The appeal site comprises two large, detached dwellings, sited fairly close together within a triangular plot of land. The appeal site accommodates a number of outbuildings as well as a shared driveway which opens up to a small lawned area. The site is remote from other neighbouring dwellings. The wider rural area is characterised by relatively flat, open fields which are largely free from development with sporadic clusters of woodland, including one opposite the appeal site. These factors combine to create a spacious and verdant character.

The wider rural area is characterised by relatively flat, open fields interspersed with sporadic clusters of woodland, including one opposite the appeal site. Within the wider landscape, there are some pockets of residential properties surrounded by landscaping that is domestic in appearance. Overall, notwithstanding that there are some buildings, the area has an open and verdant character. However, it should be noted that the appeal site forms part of a large site that has been allocated for residential development. On the evidence before me, it is not clear whether the allocation will be delivered and across what timescale. Nevertheless, it is a material consideration in this appeal.

6. The proposed first floor extension would be constructed above the existing ground floor extension and would not alter the footprint of the building. Notwithstanding, the overall size and massing of the appeal property would increase. However, the eaves and ridge height of the proposed extension would be below the eaves and ridge height of the existing property.
7. The proposed development in combination with the previously permitted extensions, would lead to a larger property. However, the original property was a substantial residential dwelling which disrupted the spacious and verdant qualities of the rural character. The proposed development would not materially affect the rural character as it would be a relatively small extension, in relation to the original dwelling and the other extensions and would be viewed in conjunction with the two dwellings and various outbuildings. As such, it would not appear as visually dominant or as an imposing feature in the wider area.
8. The Council contend that the brickwork of the partially built side extension does not match the existing building and therefore the extension would appear incongruous. Nevertheless, a condition requiring materials of external surfaces to match the existing building would be imposed, which would ensure that the appearance of the proposed extension is in keeping with the existing extensions and the original building.
9. For these reasons, I conclude that the proposed development would not have a harmful effect on the character and appearance of the area. The proposed development would therefore be in accordance with policies HOU11, DES4 and GBR2 of the East Herts District Plan, October 2018. These policies indicate that proposals for extensions must be of a size, scale, mass, form, siting, design and materials that are appropriate to the character, appearance and setting of

the dwelling, particularly in the Rural Area Beyond the Green Belt; and, all proposals must be of a high standard of design and layout to reflect and promote local distinctiveness. The proposed development would also comply with GANP Policy AG1 as it would maintain the countryside character of the landscape setting, amongst other things.

Conditions

10. The Council has indicated the conditions that it considers would be appropriate. I have considered these in light of the guidance contained within the Planning Practice Guidance and paragraph 56 of the National Planning Policy Framework.
11. Conditions specifying a time limit to implement the permission and the approved plan are required in the interest of certainty. A condition requiring the materials of the external surfaces to match the existing building is required in order to ensure the character and appearance of the area is conserved.

Conclusion

12. The proposed development complies with the development plan when considered as a whole and there are no material considerations, either individually or in combination, that outweigh this.
13. Therefore, for the reasons given above I conclude that the appeal is allowed, and planning permission is granted.

J Hobbs

INSPECTOR



Appeal Decision

Site visit made on 5 July 2023

by R Gee BA (Hons) Dip TP PGCert UD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21 August 2023

Appeal Ref: APP/J1915/W/22/3313458

Borley Green Barn, Conduit Lane, Brent Pelham SG9 0AJ

- 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 M Benjamin against the decision of East Hertfordshire District Council.
 - The application Ref 3/21/2871/FUL, dated 8 November 2021, was refused by notice dated 15 November 2022.
 - The development proposed is described as erection of new build residential unit.
-

Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are:
 - i) whether the appeal site is a suitable location for residential development having regard to development plan policy and the accessibility of services and facilities; and
 - ii) the effect of the development proposed on the character and appearance of the area.

Reasons

Location and accessibility

3. Policy DPS2 of the East Hertfordshire District Plan 2018 (District Plan) sets out a broad development strategy in the form of a hierarchy. Development is directed to sustainable brownfield sites in the first instance followed by sites in urban areas, urban extensions and then infilling in villages. The other policies in the development plan flow from this overarching strategy.
4. Policies VILL 1-3 categorise the villages in the district into three groups depending on their size and the facilities and services available. The amount of development directed to each village flows from the group it is put in, with Group 1 villages likely to see more growth than Group 2 and 3 villages.
5. The appeal site lies within a Rural Area beyond the Green Belt, outside of any recognised settlement boundary as set out in the District Plan. Therefore, the appeal site is part of the countryside. The nearest settlement listed within the policy is Brent Pelham, approximately 1km away, which has limited services.
6. Under Policy VILL3 of the District Plan, Brent Pelham is classed as a Group 3 Village. Group 3 Villages are identified in Policy VILL3 as the least sustainable

locations for development in the district. This policy permits limited infill development in Group 3 villages if identified in an adopted Neighbourhood Plan (NP). I have not been directed to any adopted NP and therefore the proposal does not glean support from Policy VILL3.

7. As the appeal site is located in the Rural Area Beyond the Green Belt (the 'Rural Area') and therefore Policy GBR2 is relevant. It lists several types of development that will be permitted in the Rural Area in addition to that set out in the VILL policies, provided they are compatible with the character and appearance of the area. The types of development permitted by Policy GBR2 include limited infilling or the partial or complete redevelopment of previously developed land in sustainable locations.
8. The appeal site would be separated from the adjacent dwelling and outbuildings at Borley Green Barn by a paddock. Given this intervening space, and open fields beyond, the proposed dwelling would not be located within a group of existing properties and would not constitute infill development.
9. The appellant states that the appeal site has been close mown grass that has been used by the occupiers of Borley Green Barn for over 15 years as formal garden and constitutes previously developed land. Having regard to the National Planning Policy Framework (the Framework) definition of previously developed land, I have little evidence to substantiate that the appeal site comprises such.
10. I therefore do not concur that the proposed development comprises a form of development set out as acceptable in Policy GBR2 of the District Plan.
11. The Framework promotes sustainable development in rural areas, including by requiring housing to be located where it will enhance or maintain the vitality of rural communities. Paragraph 103 of the Framework acknowledges that opportunities to maximise sustainable transport solutions will vary between urban and rural areas.
12. From the evidence before me access to the settlements and their services is limited. Conduit Lane, which links the appeal site to Brent Pelham, is an unlit, road with no pavement and is subject to the national speed limit. Whilst I note the health benefits and lower carbon emissions derived from sustainable travel, given the distances involved, the limitations of the immediate rural roads road and limited public transport, the future occupants of the proposed dwelling would be unlikely to walk or cycle and would be reliant upon private vehicle use to meet their basic day-to-day needs. In these circumstances the proposed development would not provide the opportunity to maximise the use of sustainable transport facilities, even when accepting that the site is in a rural location.
13. The appellant refers to a number of appeal decisions¹ stating that these provide support to the appropriate location of the site. It is acknowledged that great weight should be applied to a Decision granted by the Secretary of State or an Inspector, and the Planning Practice Guidance which refers to the importance of determining similar cases in a similar manner. I am not party to the evidence before the Inspector, however, based on the limited information before me, I do not consider the cases to be directly comparable to the appeal

¹ APP/J1915/W/16/3147738, APP/J1915/W/18/3205669 and APP/J1915/W/20/3258799

before me as the description of development, site location and context differ. In any event, I have determined this case on its own merits.

14. For the reasons outlined above, I conclude that the appeal site is not in a suitable location for residential development having regard to development plan policy and the accessibility of services and facilities. As a result, the development would conflict with policies DPS2, GBR2, VILL3 and TRA1 of the District Plan. Collectively, these policies seek to direct development to be located in places that enable sustainable journeys to be made to key services and facilities. It would also conflict with the Framework which seeks to promote sustainable development and protect the open countryside.

Character and appearance

15. The construction of a dwelling on the site would encroach into a field. The dwelling would be set back from the highway and screened in part by the substantial boundary hedge, however, the removal of sections of hedging to provide vehicular access would reduce the attractiveness of the continuous boundary hedge within the landscape.
16. The curtilage to the proposed dwelling would be large and disproportionate to the size of the dwelling. The domestication of the plot, including the proposed garage, would give rise to a suburban appearance, contrary to the character and appearance of the site and open countryside.
17. Dwellings within surrounding areas vary in scale and design. The scale, design and mass of the proposed dwelling would be reflective of the nearby dwelling and outbuildings at Borley Green Barn. Whilst a suitable external finish and landscaping could be conditioned, the very presence of development would have a negative impact on intrinsic character and beauty of the countryside.
18. Even if I were to consider the proposal as previously developed land, in addition to concluding that the site would not be in a suitable location for housing, the proposed development would erode the contribution the appeal site makes to the rural character and appearance of the area contrary to the District Plan policy.
19. For these reasons, I conclude that the proposed development would harm the character and appearance of the area in conflict with Policies GBR2 and DES4 of the District Plan. Collectively, these seek control to be exerted over development within the Rural Area beyond the Green Belt to safeguard the highly valued countryside and its open and largely undeveloped nature and to respect the character of the site and the surrounding area. The development would also conflict with the Framework which requires development to contribute to and enhance the natural and local environment by recognising the intrinsic character and beauty of the countryside.

Other Matters

20. I appreciate that the appellant wishes to construct the dwelling so that family can continue to reside in the locality and to provide support for any future needs they may have. However, I have not been provided with any evidence that the personal circumstances of the appellant would be enough to outweigh the harm associated with the location of the development and the character and appearance of the area.

21. I note the environmental credentials of the proposed development in terms of the inclusion of energy efficiency measures and biodiversity improvements. However, these factors carry no more than limited weight in favour of the development. There would be moderate, social and economic benefits associated with the proposal relating to construction employment, spend within the local economy once the dwelling is occupied and the personal well-being benefits of residing in a countryside location. The dwelling would also contribute towards housing provision, noting that the Framework is supportive of small and medium sized sites, which can make an important contribution to meeting the housing requirement of an area, and are often built out relatively quickly. However, given the small scale of the proposed development the weight afforded to these benefits is limited.
22. The availability of superfast broadband to support the potential for homeworking and home delivery services are noted. As is the absence of objections from statutory consultees or neighbouring properties. However, these are neutral factors in the determination of the appeal.

Conclusion

23. For the reasons given above, having had regard to the development plan and Framework as a whole, the appeal is dismissed.

R Gee

INSPECTOR



Appeal Decision

Site visit made on 28 June 2023

by J Hobbs MRTPI MCD BSc (hons)

an Inspector appointed by the Secretary of State

Decision date: 15th August 2023

Appeal Ref: APP/J1915/W/22/3311426

How Green Farm, Baldock Road, Buntingford, Hertfordshire SG9 9RH

- 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 Seamus Deezan against the decision of East Hertfordshire District Council.
 - The application Ref 3/22/0786/FUL, dated 9 April 2022, was refused by notice dated 23 August 2022.
 - The development proposed is described as 'retention of conversion of workshop to 1 detached house, raising the roof height to create first floor accommodation, Two storey side extension, single storey rear extension, 4 front dormers, 4 rear dormers and alterations to fenestration'.
-

Decision

1. The appeal is dismissed.

Preliminary Matters

2. The appellant has indicated on the Application Form that the works had started but had not been completed, at the time of submitting the application. The Council has considered the appeal proposal as retrospective development. The built development I observed during my site visit did not match the application plans, for example there was additional fenestration on the dwelling that has been built. My decision is based upon the application plans only, and I will therefore refer to the works as the proposed development throughout my decision; albeit certain aspects have already been constructed.
3. The appellant has indicated within their representations that they believe the site is in the Green Belt. However, the site is not within the Green Belt.

Main Issues

4. The main issues are:
 - the effect of the proposed development on the character and appearance of the area; and
 - whether the appeal site is an appropriate location for the proposed development, having regard to the development strategy and the accessibility of services; and
 - the effect of the proposed development on the living conditions of future occupiers of the proposed dwelling and residents of How Green Farm, with regard to privacy, noise, and disturbance.

Reasons

Character and appearance

5. The appeal site is the farmyard associated with How Green Farm. The proposal would convert and extend a smaller, shorter workshop and would be sited close but perpendicular to the existing farmhouse on the same hardstanding.
6. The farmyard is accessed via a long narrow driveway, leading from Baldock Road, and is largely surrounded by open fields with agricultural buildings further beyond the farmhouse. Whilst there are several agricultural buildings within the farmstead these are largely screened by the farmhouse and trees. Given its size, massing and prominent location within the farmyard, the farmhouse is one of the most dominant features within long range views from the site access and Baldock Road.
7. The surrounding area is characterised by a patchwork of fields, largely free from development, which alongside low hedgerows creates a spacious and verdant character. The farmyard includes a significant amount of built development, in a relatively small area and therefore it appears as a densely developed farmyard. However, most of this development appears to be associated with an agricultural use which contributes to the rural character.
8. Given the size and prominence of the existing farmhouse, it has a suburbanising effect on the site and wider area, but the prevailing character is of an agricultural site associated with a working farmstead, surrounded by open fields.
9. From the evidence before me, it is not clear whether the original workshop was utilised as part of the wider agricultural unit or whether it was used in association with another type of business, or as a standalone workshop. Regardless, based on the application plans, it was utilitarian in appearance and looked similar to an agricultural building. This would have contributed to the wider rural character.
10. The proposed dwelling would be similar in height, but slightly shorter than the existing farmhouse, and it would utilise similar materials for the external surfaces including the windows. It would therefore be similar in appearance. Notwithstanding, the proposed development would not be sympathetic to the existing farmhouse as it would lead to the subdivision of the farmyard, for further residential development, and therefore it would interrupt the rural setting of the farmhouse.
11. The proposed dwelling would be sited on existing hardstanding and not on open fields. Nevertheless, it would be sited closer to the road and would therefore appear as a more dominant feature in wider views and incongruous when compared to the surrounding agricultural buildings and rural character. The introduction of an additional dwelling would appear visually intrusive when viewed alongside the surrounding fields which are generally free from development. This would have a suburbanising effect on the character of the wider area due to its domestic appearance. Given its proximity to the existing farmhouse, this suburbanising effect would be amplified as there would be two dwellings, domestic in appearance, sited close together.
12. The appellant accepts that the introduction of a new dwelling would lead to an intensification of use of the site. The increase in activity associated with the

residential properties would also have a suburbanising effect. Nevertheless, the appellant contends it would improve the appearance of the site. However, the existing workshop is in keeping with the wider rural character, but the appeal proposal would not be for the reasons given above.

13. The appellant contends that upward extensions should be allowed where they are consistent with the prevailing height of surrounding buildings. However, in this instance, it would lead to a large dwelling which is at odds with the rural character of the area. Furthermore, whilst the appeal proposal would potentially make an efficient use of the land it would not maintain the area's prevailing character and setting. Finally, there is no substantive evidence before me that either the workshop or the surrounding land was underutilised or could not be utilised more effectively without the proposed change of use. Therefore, I cannot conclude that the appeal proposal would lead to a more effective use of the land and building.
14. Having come to the conclusions above, the proposed development would have a materially harmful effect on the character and appearance of the area. It would therefore conflict with DP policies GBR2 and DES4 that seek amongst other things to ensure that development proposals must be of a high standard of design and are compatible with the character and appearance of the rural area. In reaching this conclusion I have had regard to paragraphs 120, 124, 126 and 130 of the Framework.

Appropriate location

15. DP Policy DPS2 sets out the strategy to deliver sustainable development and provides a hierarchy of where development will be directed to. Sustainable brownfield sites are top of the hierarchy, followed by sites within identified settlements, urban extensions to other identified settlements and limited development in villages.
16. The appellant contends that the appeal site is not outside of a village as it is within the curtilage of the existing farmhouse. Notwithstanding, it is accepted by both parties that the site is outside of the recognised village boundaries. Therefore, for the purposes of the development plan, the appeal site is not within a village, and it is located within the rural area beyond the Green Belt.
17. DP Policy GBR2 outlines specific exceptions where development would be supported in the rural area beyond the Green Belt. Criterion (e) supports the complete redevelopment of previously developed sites in sustainable locations, where appropriate to the character, appearance and setting of the site and/or surrounding area.
18. As above, there is no substantive evidence before me on the previous use of the workshop for me to conclude that it was not being used for agricultural purposes. Therefore, I cannot conclude on whether it could be considered as previously developed land, as per the definition in the Framework.
19. Nevertheless, even if the workshop and surrounding land could be considered as previously developed land, the appeal proposal would be harmful to the character and appearance of the area for the reasons given above.
20. The appeal site is remote from the nearest settlement which accommodates key services and facilities. This section of Baldock Road is a single carriageway road and is subject to the national speed limit and it does not benefit from a

footpath or street lighting. Moreover, the appellant acknowledges there is no public transport provision in this rural area and has not demonstrated how the proposal would contribute to or support local transport networks. Therefore, given the significant distance to key services and facilities and the above characteristics of Baldock Road, future residents would be disincentivised from using sustainable transport modes (cycling/walking) and are likely to be highly reliant on the use of private transport.

21. The appellant has identified that a family member would reside in the proposed dwelling, and they would use an electric car. The application is for a dwelling with an unfettered use and there is no substantive evidence before me which indicates that the family member is required to reside close to the existing farmhouse. The proposed use of an electric car is acknowledged; however, the proposed dwelling may not always be occupied by the appellant's family and therefore the ongoing availability and use of an electric car is not guaranteed.
22. In conclusion, the appeal site is not an appropriate location for the proposed development, having regard to the development strategy and the accessibility of services. The appeal proposal would be contrary to DP Policies DPS2, GBR2, INT1 and TRA2 that seek amongst other things to direct development to the most sustainable locations. In reaching this conclusion I have had regard to paragraphs 111, 119, 120 and 130 of the Framework.
23. As the appeal site is in the rural area beyond the Green Belt there is no conflict with DP Policy VILL3 as this specifically relates to development in identified villages only.

Living conditions

24. The proposed dwelling would include dormers to the front of the property which would be in proximity to the existing farmhouse. Given, the siting of the proposed dwelling, perpendicular to the existing farmhouse, there would be no direct views toward the farmhouse, but there would be indirect views.
25. The section of the existing farmhouse closest to the proposed dwelling only accommodates ground floor windows, the proposed dormers would be above these windows. Whilst there would be obscured views, given the lack of fenestration on the farmhouse in proximity to the proposed dormers and direct views would be of a shared space, the proposed development would not lead to an increase in the extent of perceived overlooking.
26. The number of bedrooms within the proposed dwelling is not quantified; however, it appears to be capable of accommodating a single family. There would be an increase in vehicle movements, nevertheless, the increase in movements is not expected to be significant given the scale of the proposed development.
27. The limited increase in vehicular movements associated with a single dwelling would not materially affect the residents of the proposed dwelling. Likewise, the vehicular movements associated with the existing farmhouse would be limited and would not have a harmful effect on future residents of the proposed dwelling.
28. I conclude that the proposed development would not have a harmful effect on the living conditions of future occupiers of the proposed dwelling and residents of How Green Farm, with regard to privacy, noise, and disturbance. In this

respect it would be in accordance with DP Policy DES4 where it explains that development should avoid significant detrimental impacts on the amenity of occupiers of neighbouring property and land. Also, in this regard, it is in accordance with paragraph 130 of the Framework, which indicates that planning decisions should ensure developments create places with a high standard of amenity.

Other Matters

29. The Council acknowledge that they cannot demonstrate a five-year supply of deliverable housing sites. Accordingly, the presumption in favour of sustainable development, identified within paragraph 11 of the Framework is engaged. Consequently, the provision of 1 additional dwelling would be a benefit, although the proposal would have a negligible impact on addressing the recognised shortfall in housing supply. The scheme has been designed with the aim of reducing carbon emissions as such this would be a limited environmental benefit given the modest scale of the development.
30. I have no reason to doubt that the proposal would result in little disturbance to neighbours as it would be in proximity to only one property; also, that there is not a need for significant earthworks or major landscaping. The provision of off-street parking, the retention of the existing security arrangements, a lack of an effect on the trees, the workshop not being listed, the appeal site not being within a Conservation Area or subject to Article 4 directions are all highlighted within the appellant's representations. Nonetheless, these are all neutral factors.
31. The appellant has provided 3 examples of where they consider that the Council has permitted similar developments. However, each of these examples include sites which are within a recognised village boundary and are therefore materially different to the appeal proposal.
32. The appellant contends that the proposed development would preserve a heritage asset. There is no substantive evidence before me that there are any designated assets within or close to the appeal site. Without further evidence, I cannot conclude that the proposed development would preserve a heritage asset.
33. It is acknowledged that a farmhouse is already sited within the appeal site. However, the application for a replacement farmhouse was approved in 1985 and was assessed against a different development plan. On the evidence before me, it is not clear whether that permission was implemented, or whether the existing farmhouse predates that application. For these reasons, the existing residential use holds little weight when considering the appeal proposal.

Planning Balance and Conclusion

34. The main benefit of the appeal proposal is the provision of an additional dwelling. Moreover, I accept that there would be a very limited environmental benefit from the proposal. Furthermore, I have found that the proposal would not result in harm to the living conditions of future occupiers of the proposed dwelling and residents of How Green Farm.
35. However, I have found that the appeal site is not an appropriate location for the proposed development, having regard to the development strategy and the accessibility of services and that material harm would be caused to the

character and appearance of the area. Consequently, the proposed development conflicts with the development plan when considered as a whole and there are no material considerations including the provisions of Paragraph 11 of the Framework, either individually or in combination, that outweigh the identified harm and associated development plan conflict.

36. Therefore, for the reasons given above I conclude that the appeal should be dismissed.

J Hobbs

INSPECTOR



Appeal Decision

Site visit made on 20 June 2023

by **P Eggleton BSc(Hons) MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 4th July 2023

Appeal Ref: APP/J1915/D/23/3319377

62 Warwick Road, Bishops Stortford, Hertfordshire CM23 5NW

- 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 R Hawkins against the decision of East Herts Council.
 - The application Ref 3/22/0862/HH, dated 20 April 2022, was refused by notice dated 13 January 2023.
 - The development proposed is a first floor extension and re-roofing of existing house.
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Decision

1. The appeal is dismissed.

Main Issue

2. The main issue is whether the proposal would preserve or enhance the character or appearance of the conservation area.

Reasons

3. The property is situated within the Bishop's Stortford Conservation Area. In the vicinity of this dwelling, the tree lined road, the grass verges, adjoining high front boundary hedges and mature garden landscaping provide a positive contribution to the character of the area. In addition, at intervals along the road, there are numerous period properties which provide architectural interest and quality. The appeal property is one of these quality period dwellings and sits alongside similar detached houses with matching original distinctive features at number 64 and 66 Warwick Road. The distinctive angled front bays of these houses face travellers heading east. This corner detail within the frontage, draws views into the properties allowing the depth and detailing of the side elevations to be experienced. This is particularly the case with regard to numbers 62 and 66 given the separation distance from the nearest dwelling to the west, which allows more open views.
 4. The proposal would extend the dwelling at two storey level to the rear, as a continuation of the existing roof form. Although the roof height is reduced at the rear, the projection would nevertheless be indistinguishable from the original built form. The new window details have to some extent, sought to limit or integrate this greater depth of development in order to provide a more satisfactory composition. However, given the particular characteristics of the original design which draws attention into the site, this new element would be
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relatively prominent in views given the openness of the frontage at first floor level. The proposal would detract from the proportions of the house and would result in harm to its character and appearance. Although limited to being perceived in only a small area of the conservation area, given that this property is a positive feature, this would result in harm to the character and appearance of the conservation area.

5. The Planning (Listed Buildings and Conservation Areas) Act 1990 imposes a duty requiring that special attention be paid to the desirability of preserving or enhancing the character or appearance of conservation areas. The *National Planning Policy Framework* is clear that any harm to a heritage asset, such as a conservation area, should be weighed against the public benefits of the proposal. In this case, the proposal would not preserve or enhance the character or appearance of the conservation area and would result in less than substantial harm as described by the *Framework*.
6. With regard to the design overall, the loss of the detailed gable, despite being reproduced, would be unfortunate. The composition of the new rear elevation, which would be dominated by the large first floor glazing panels, would be entirely at odds with the overall design and would appear incongruous alongside the replaced and original gable detailing. The infill area of the extension would be contrived and at odds with the design of the house overall. Whilst the rear of the property would not be publicly viewed, these combinations do not represent good design and detract from the overall character of the property. Whilst the ground floor modern extension has been accepted, this is clearly distinguishable from the original design and offers a subservient, positive juxtaposition. This would not be the case with the new first floor elements nor would they sit comfortably together.
7. The proposal would conflict with Policy HA4 of the East Herts District Plan 2018 (DP) as it would fail to preserve or enhance the special interest, character and appearance of the conservation area. It would also conflict with the design objectives of DP policy DES4 and HOU11 as it would not represent a high standard of design given this particular context; it would not be appropriate to the character, appearance and setting of the existing dwelling; nor would it appear as a subservient addition. The proposal would also be in conflict with policy HDP2 of Bishop's Stortford Neighbourhood Plan for All Saints, Central, South and part of Thorley 2022 for the same reasons.
8. DP policy HA1 relates to heritage assets and follows the requirements of the *Framework*, requiring that less than substantial harm should be weighed against the public benefits of the proposal.
9. The works referred to at 66 Warwick Road have altered its overall form and character. Permission was granted before the property was included in the conservation area and under different development plan policies. That development is also significantly different to that now being proposed. Nevertheless, it is evident that similar considerations were taken into account at that time. Given the differing circumstances however, it does not provide significant weight in favour of this proposal.
10. Warwick Road is characterised by the trees, hedges and the relatively spacious perception provided by the set back of buildings. As such, changes to the rear

of properties have a lesser impact than those located nearer to the road. I have had regard to this and the lack of any changes to the frontage in my assessment. However, I have also taken into account the particular circumstances and design details of this property.

11. There would be public benefits from the improved fabric of the building with regard to insulation. There are also economic benefits that would result from the works and social benefits from the general improvement of the living accommodation. However, whilst I have had regard to the matters put forward, the public benefits are not sufficient to outweigh the less than substantial harm that would result to the conservation area. The proposal therefore conflicts with the heritage requirements of DP policy HA1 and the similar requirements of the *Framework*. My other design reservations add to this concern. I therefore dismiss the appeal.

Peter Eggleton

INSPECTOR



Appeal Decision

Site visit made on 11 July 2023

by R Bartlett PGDip URP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14 July 2023

Appeal Ref: APP/J1915/W/22/3313115

Fryars Farm, Fryars Lane, High Wych, Hertfordshire, CM21 0LB

- 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 Simon Thake against the decision of East Hertfordshire District Council.
 - The application Ref 3/22/1193/FUL, dated 8 June 2022, was refused by notice dated 31 August 2022.
 - The development proposed is change of use of agricultural and forestry stores, workshops and maintenance building to one residential dwelling, including single storey lean-to extension and other external alterations, landscaping, erection of single storey detached garage building and new entrance gate.
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Decision

1. The appeal is allowed and planning permission is granted for change of use of agricultural and forestry stores, workshops and maintenance building to one residential dwelling, including single storey lean-to extension and other external alterations, landscaping, erection of a single storey detached garage building and new entrance gates at Fryars Farm, Fryars Lane, High Wych, Hertfordshire, CM21 0LB in accordance with the terms of the application, Ref 3/22/1193/FUL, dated 8 June 2022, subject to the conditions set out in the attached schedule.

Main Issue

2. The main issue is whether the site is in a suitable location for a residential conversion.

Reasons

3. The appeal site is located within a small group of dwellings in the open countryside, outside of any identified settlement limits. Consequently, the proposed dwelling would be some distance from services and facilities, and future occupiers of it would be heavily reliant upon a car to access these.
4. Whilst the location of new development is significant in terms of assessing its overall sustainability and its long-term effects on the environment, this is only one of several considerations. In this case, although future occupiers of the proposal would be reliant upon private car use to access services and facilities, neither the length of such journeys, nor the number of journeys generated by a single family dwelling, would be significant. The Local Highway Authority comments on the proposal state that traffic generation will not be significant compared to the existing use.

5. Policy DPS2 of the East Herts District Plan (October 2018) (EHDP) is a strategic policy that makes no reference to conversions in rural areas. Policy TRA1 requires development proposals to be primarily, not solely, located in places which enable sustainable journeys to be made to key services and facilities. This flexibility reflects paragraph 105 of the National Planning Policy Framework (the Framework) and the supporting text to Policy TRA1, which recognise that opportunities to maximise sustainable transport solutions will vary between urban and rural areas.
6. The proposal relates to the extension and alteration of an existing building. It is not disputed that these works would be appropriate in terms of scale, design and materials, to the character, appearance and setting of the site and its surroundings. Accordingly, the development would fall within category (d) of Policy GBR2 of the EHDP. There is nothing within this policy that would prevent or restrict the conversion of a rural building to a dwelling. Moreover paragraph 80 of the Framework is clear that isolated homes in the countryside can be acceptable where the development would, amongst other things, re-use a redundant or disused building and enhance its immediate setting. I do not consider category (e) of Policy GBR2 to be relevant as this relates to the re-development of previously developed land, the definition of which specifically excludes agricultural buildings.
7. The building to be converted is in excellent condition. Despite only being built in 2008, it is of traditional design and appearance, which reflects its rural surroundings. It is no longer required for agricultural purposes and its reuse for any other purpose would be likely to result in some related travel by car. The high-quality residential conversion proposed would make effective and beneficial use of this attractive building, ensuring that it continues to enhance its rural setting.
8. I therefore conclude that due to the fact the proposal relates to the conversion of an existing building, the site is a suitable location for a residential use of the scale proposed. The proposal would accord with Policy GBR2(d) of the EHDP, which seeks to maintain the rural area beyond the Green Belt as a valued countryside resource, and Policy INT1, which reflects the presumption in favour of sustainable development set out in the Framework. I also find no direct conflict with Policies DPS2 and TRA1, which do not seek to resist the conversion of buildings in rural areas.

Other Matters

9. My attention has been drawn to three linked appeals in Bennington. These each relate to much larger development proposals, involving new build housing, and as such are not comparable to the proposal before me.
10. Whilst not referred to in its reason for refusal, the Council's appeal statement suggests that the large garden of the proposed dwelling could contain residential paraphernalia that would adversely impact upon the character and appearance of the rural area. However, given the mature landscape screening that surrounds the site and the presence of other nearby residential properties, I do not concur with this view. I also note that the original officer report concluded that the proposal would not be readily seen from outside of the site and would be acceptable in design terms.

Conditions

11. The Council has provided a list of conditions, which the appellant has agreed to. I have considered these in line with the relevant tests set out at paragraph 56 of the Framework.
12. I have imposed the standard time limit condition for commencement of the development and a condition listing the approved drawings for the avoidance of doubt. Conditions controlling external materials and protecting existing trees and hedges are necessary to preserve the rural character and appearance of the area. The removal of some permitted development rights, to restrict roof and upward extensions, is reasonable to preserve the rural character of the building and its surroundings. Biodiversity net gains are necessary to enhance the nature conservation value of the site and water efficiency measures are imposed due to the site being in an area of high water stress.
13. However, I do not consider it necessary to remove all permitted development rights for extensions and outbuildings or to require additional landscaping, as the new single storey extension and garage building would be adequately screened by existing buildings and landscaping. A construction hours condition is not necessary given the relatively small scale nature of the development and the space between the site and neighbouring dwellings. Hard surfaces and boundary treatments are shown on the approved drawings and are largely to remain as existing.

Conclusion

14. For the reasons given above, having had regard to the development plan as a whole and all other matters raised, I conclude that the appeal should be allowed.

R Bartlett

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: 134_PL_001 Rev.B, 134_PL_200 Rev.A, 134_PL_201 Rev.A, 134_PL_202 Rev.A, 134_PL_203 Rev.A, 134_PL_220 Rev.A, 134_PL_221 Rev.A and 134_PL_240 Rev.A.
- 3) The development hereby permitted shall be carried out using the external materials shown on drawing nos. 134_PL_220 Rev.A, 134_PL_221 Rev.A and 134_PL_203 Rev.A.
- 4) All existing trees and hedges shall be retained, unless shown on the approved drawings as being removed, and shall be protected during the course of the development in accordance with BS5837:2012. In the event that any trees and hedges are damaged or destroyed during the course of the development or within 5 years of its completion, these shall be replaced with new trees and hedges of the same or similar species, within the next available planting season.
- 5) Prior to the occupation of the dwelling hereby approved, the biodiversity enhancements set out in section 7 of the submitted Bat Survey, dated July 2022, shall be provided on the site and shall thereafter be retained in perpetuity.
- 6) Prior to the occupation of the dwelling hereby approved, measures shall be provided to ensure the development can achieve a water efficiency standard of 110 litres (or less) per person per day. These measures shall thereafter be retained in perpetuity.
- 7) Notwithstanding the provisions of Schedule 2, Part 1, Class AA, Class B or Class C, of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) or any subsequent order, no upward extensions or extensions or alterations to the roof of the dwelling hereby approved, shall be undertaken without the prior written permission of the local planning authority.



Appeal Decision

Site visit made on 20 June 2023

by **P Eggleton BSc(Hons) MRTPI**

an Inspector appointed by the Secretary of State

Decision date: **1st August 2023**

Appeal Ref: APP/J1915/W/22/3312866

Land at Gilston Lane, Gilston Park, Gilston, Hertfordshire CM20 2SF

- 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 J O'Driscoll against the decision of East Herts Council.
 - The application Ref 3/22/1349/FUL, dated 1 August 2022, was refused by notice dated 7 November 2022.
 - The development proposed is stables and associated use of land for equestrian use.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are the effect on the character and appearance of the area; and the adequacy of the site with regard to the welfare of the horses.

Reasons

3. The proposal is for a complex of three stables, a barn and a tack room. In addition, there would be a cobbled yard and an additional extensive area for parking and turning. The site area is given on the application form as 0.234Ha. The stable floorplan and yard area, together with the parking and turning areas, would occupy a large part of the southwest area of the site. It is not clear if the area between these and the western boundary would be suitable for grazing or as an area for the horses to be put out. The area to the north is very restricted due to the triangular nature of the site and the level of vegetation on the boundaries. The main remaining area for either grazing or exercise for the horses would therefore be along the southeast and eastern boundaries.
 4. The appellant is clear that the horses would be fed from straw rather than grazed and that they would be exercised locally on the bridlepaths and within the surrounding countryside. Little other information has been provided as to how the horses would be managed although it is suggested that a condition could be attached to a permission to secure a Pasture Management Plan which could confirm details of arrangements for feeding, grazing and exercise.
 5. As the council do not raise an in principle objection to the use of the site for stabling or the keeping of horses, it is evident that it is the size of the facility and the scale of the supporting land, in combination, that is of concern. Policy
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- GBR2(b) of the East Herts District Plan 2018 (DP) allows for equine development that accords with policy CFLR6 (Equine Development). Policy CFLR6 seeks to permit equine development if certain criteria are met. This includes part (c) that the siting, scale and design of the proposal is in keeping with the character of the area, with adequate pasture to support horses.
6. At present, the land lies within open countryside with the nearest properties being clearly separate from this site to the north and screened from it. The site is well screened by the boundary and surrounding vegetation, apart from one section along the southern boundary in the vicinity of the proposed access. From this point, the new works would be clearly evident and would dominate the site given the scale of hardstanding and the scale of the building proposed. The nature of the parking and turning area surface would help to reduce its prominence and there is potential for further boundary planting which would assist further. However, given the shape of the field and the need to retain the boundary planting, the new works and any associated vehicles and trailers situated on the large parking area, would result in the activity and the buildings being dominant within this relatively small site. This would be a relatively large area of development on a very constrained site.
 7. Whilst the design and materials proposed are not uncommon for such a development, given the scale of the building and its surfaced surrounds, which would be in the most prominent part of the site, it does not appear to have been sited or designed to minimise its visual intrusion. It would avoid concerns with regard to flood risk associated with the building works and the boundary landscaping could be enhanced. However, no justification has been provided as to why a development of this scale would be necessary. It represents an overly large development within the restricted confines of this site.
 8. When taking away the stables, yard and parking; and the areas more likely to flood, together with the need to protect the boundary landscaping, the amount of useable remaining space would be limited. No evidence or figure has been provided as to what useable space would remain. The appellant has made reference to the Code of practice for the welfare of horses, ponies, donkeys and their hybrids 2017 (the Code). This advises that as a general rule, each horse requires approximately 0.5 to 1Ha of grazing of a suitable quality if no supplementary feeding is being provided but also that a smaller area may be adequate if a horse is principally housed and grazing areas are used only for occasional turnout. Clearly, as the entire site extends to only 0.234Ha this would not provide anything like the pasture recommended for three horses.
 9. The appellant is clear however that the horses would be hay fed and as such a smaller area referenced by the Code may be adequate. However, the areas suitable within the site have not been defined and there is nothing before me that suggests that such a limited area would be adequate. The Code advises that stabled horses benefit from daily turnout in the field to allow them to graze and socialise with other horses. This is to ensure that the horses are able to behave normally as required by the Animal Welfare Act 2006. It is not clear from the evidence if this is anticipated or feasible. The Code does identify that if turnout is not feasible, stabled horses should receive appropriate exercise daily. The appellant has advised that offsite exercise would be undertaken but is not clear if this would amount to the full extent of the horses out of stable experience.

10. The lack of space for turning out these horses would clearly result in management challenges and increase the need for offsite exercise. The Code goes into some detail as to the need to prevent over-grazing, maintaining good drainage and the need for an adequately sized, well drained area of pasture on which horses can stand and lie down, and on which to be fed and watered. The appellant suggests that these matters could be addressed in a Pasture Management Plan.
11. It is not clear from the application material or the statement of case how these matters would be addressed given that the areas of suitable land is likely to be very limited. This information is particularly relevant and necessary given that the proposal does not satisfy the policy requirement of DP policy CFLR6(c) or therefore, policy GBR2(b). Given the information submitted as part of the application and appeal, I would not be satisfied that such a condition would be suitably precise nor that the likely contents of such a document would suggest that a decision at odds with the policies should be reached.
12. A Framework Paddock Management Plan was submitted with the appellant's final comments and is dated April 2023. In addition, the final comments indicate that discussions have taken place with the British Horse Society and quotes from them are included, although the document from which these are copied is not provided. The purpose of final comments is to allow the appellant to comment on the council's statement of case. This is new information that neither the council nor third parties have had an opportunity to respond to. Accepting this new information without the opportunity for it to be scrutinised would prejudice the council and other interested parties. In any event, the document does not appear to address the space limitations or identify what land would be available and useable by the horses.
13. Reference has been made to a previous decision in 2006 that accepted this building as proposed. Although some works were undertaken, it is not being claimed that the permission was lawfully commenced and is therefore extant. It is not for this appeal to assess lawfulness in any event and therefore, I must assume that the permission has expired. That decision was based on previous development plan policies and although it has been suggested that the countryside policies have not materially changed, the historic policies have not been provided for comparison. The previous decision does not therefore represent a fallback position and as it has expired, the current development plan policies must be applied. The Code was also introduced well after that decision. In these circumstances, the previous permission can be afforded little weight.
14. The proposal would result in an active use of this currently overgrown site. Given its countryside location and its likely biodiversity value, I am not satisfied that this would bring significant ecological benefits. It would bring economic benefits from construction works and private social benefits from its use. Its use, even as a private stable, would undoubtedly also bring further economic benefits to the rural economy. These matter weigh in its favour.
15. An extract from the development plan has been provided which indicates that much of the surrounding land falls within an allocation for the Gilston Area Urban Development which the appellant suggests would change the context of the site which may, in the future, be experienced as part of the new

settlements. Given the nature of the allocation, I am not satisfied that it provides weight in favour of this development.

16. Whilst there would be some benefits to the proposal and there is no in principle objection to the use, my main finding is that the proposal represents an overly large development on a very limited site which would detract from the character and appearance of the site and the surrounding area. The lack of clarity as to whether the number of horses could be adequately managed, adds to this concern. As the matters put forward do not outweigh these concerns, I dismiss the appeal.

Peter Eggleton
INSPECTOR



Appeal Decision

Site visit made on 7 June 2023

by Robert Fallon B.Sc. (Hons) PGDipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 4 July 2023

Appeal Ref: APP/J1915/W/22/3307717

**Stansted Road Street Works, Stansted Road, Bishop's Stortford,
Hertfordshire, CM23 2FP**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under Article 3(1) and Schedule 2, Part 16, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).
 - The appeal is made by CK Hutchison Networks (UK) Ltd. against the decision of East Hertfordshire District Council.
 - The application Ref 3/22/1385/TEL dated 2 July 2022, was refused by notice dated 25 August 2022.
 - The development proposed is a 5G telecoms installation: H3G street pole and additional equipment cabinets.
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Decision

1. The appeal is dismissed

Procedural matter

2. The provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended (the 'GPDO'), under Article 3(1) and Schedule 2, Part 16, Class A, Paragraph A.3(4) require the local planning authority to assess the proposed development solely on the basis of its siting and appearance, taking into account any representations received. My determination of this appeal has been made on the same basis.

Planning Policy

3. The provisions of Schedule 2, Part 16, Class A of the GPDO do not require regard be had to the development plan. I have had regard to the policies of the development plan and the Framework¹ only in so far as they are a material consideration relevant to matters of siting and appearance.

Main issue

4. The principle of development is not subject to consideration in a prior approval application as this is established by virtue of the GPDO.
5. The main issue is the effect of the siting and appearance of the proposed installation on the character and appearance of the area and, if any harm would occur, whether this is outweighed by the need for the installation to be sited as proposed taking into account any suitable alternatives.

¹ National Planning Policy Framework, Ministry of Housing, Communities and Local Government, 20 July 2021.

Reasons

6. The proposed installation would be located on a small grassed area that fronts onto the busy Stansted Road (B1383). It forms one half of a pair of prominent small green spaces that sit either side of the entrance to Cannons Close, both of which are set against a backdrop of mature trees and hedgerows.
7. Although the street scene surrounding the proposed installation includes utilitarian highway paraphernalia such as a street light column, telegraph pole, grit bin and equipment cabinets, these are; (1) on the periphery of the small green space; (2) commonly found in the public realm adjacent to roads; and (3) set behind the adjacent public footway directly adjacent to the trees and hedgerows. As a consequence, their prominence and visual impact in the street scene is muted.
8. On the other hand, the proposed installation, with 15 metre high monopole mast, would be taller than the street light column & telegraph pole and be positioned forward of the public footway on the small grassed area. It would as a consequence appear as an intrusive and prominent feature in the street scene and cause significant harm to the character and appearance of the area.
9. Paragraph 115 of the Framework states that where new sites are required (such as for 5G), equipment should be sympathetically designed and camouflaged where appropriate. Set against this context, I recognise that the appellant has designed the installation to be as low as possible and finished in green to mitigate its impact against the backdrop of existing trees & hedges. I also acknowledge that there is a lamp post, telegraph pole, grit bin and equipment cabinets nearby, along with inspection chambers, a post box, road sign and tree within the grassed area, and that the site does not fall within a conservation area. However, none of these factors are sufficient to mitigate the harmfully incongruous and intrusive appearance of the proposal in this prominent location.
10. Reference has been made to various social and economic benefits but these have not been taken into account in considering the matters of siting and appearance.
11. In view of the above, and insofar as they are material considerations relevant to matters of siting and appearance, I conclude that the scheme's harm to the character and appearance of the area would conflict with Policies ED3 and DES4 of the District Plan², which collectively seek, amongst other things, that; - (1) new structures are sympathetically and appropriately located; and (2) that proposals respect the character of the site and surrounding area.
12. The Government has set out its commitment to supporting the deployment of gigabit broadband across the country and bringing digital connectivity to local businesses & residents to enable faster economic growth and social inclusion³.
13. This is reinforced by Paragraph 114 of the Framework which states that 'advanced, high quality and reliable communications infrastructure is essential for economic growth and social well-being' and that 'planning decisions should

² East Herts District Plan, October 2018, East Herts Council.

³ Written statements by the Department for Digital, Culture, Media & Sport and Ministry of Housing, Communities and Local Government dated 7 March 2019 and 27 August 2000.

support the expansion of electronic communications networks, including next generation mobile technology (such as 5G) and full fibre connections.'

14. Set against the above context, I recognise that the purpose of the installation is to provide new 5G coverage which would facilitate significantly improved connectivity for the target coverage area and that the scheme would accordingly provide public benefits in accordance with the economic and social objectives of the Framework. I also acknowledge that it would be available for sharing by another operator.
15. Nevertheless, the Framework also states at Paragraph 117 that for a new mast or base station, evidence must be supplied that the operator has explored the possibility of erecting antennas on an existing building, mast or other structure. Although the appellant states that they have carried this objective out and considered a variety of other locations, I do not consider it has been sufficiently evidenced and demonstrated that there exist no other; (1) masts in the locality that could be shared; and (2) alternative sites in a less prominent position, potentially accompanied by a more inconspicuous design of mast, that could also prove suitable and less harmful (such as the Shell garage to the north or whether the installation/sharing of a taller mast in the industrial estate to the north or the leisure centre to the west of the main rail line could provide the necessary coverage over a larger area, or by combining a monopole mast with an existing street light column). As a consequence, I am not convinced that no suitable alternatives exist that would prove less harmful.
16. The proposed installation is not therefore acceptable in respect of its siting and appearance.

Conclusion

17. For the reasons given above, I conclude that the appeal should be dismissed.

Robert Fallon

INSPECTOR



Appeal Decision

Site visit made on 20 June 2023

by **P Eggleton BSc(Hons) MRTPI**

an Inspector appointed by the Secretary of State

Decision date: **1st August 2023**

Appeal Ref: APP/J1915/W/22/3311566

Highfield Nursery, Wellpond Green, Standon, Hertfordshire SG11 1NL

- 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 planning permission.
 - The appeal is made by Mr Barry Pestell against East Herts Council.
 - The application Ref 3/22/1433/FUL is dated 23 June 2022.
 - The development proposed is the demolition of agricultural building and erection of one four bedroom single storey detached dwelling.
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Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by Mr Barry Pestell against East Herts Council. This application is the subject of a separate Decision.

Procedural matters and main issues

3. The appeal is lodged against non-determination of the application. The council's delegated report recommends refusal for two reasons. The first relates to the impact on the character and appearance of the rural area. The second relates to the sustainability of the location with regard to access to facilities and services.
 4. The existing building has permission under Class Q of the Town and Country Planning (General Development Order) (England) 2015 to be converted from an agricultural use to a residential use. This proposal would replicate that permission in terms of replacing the building with a new one of the same size and design. The main difference would be the size of the garden area which would be larger under the appeal proposal than is allowed by the Class Q permission. The building works associated with the Class Q consent are currently underway and nearing completion.
 5. The main issues are therefore the effect on the character and appearance of the area; and whether the proposal would be located in a sustainable location with regard to access to facilities and services.
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Reasons

6. A recent appeal decision APP/J1915/W/22/3302750, dated 7 March 2023, related to a proposal to replace existing buildings on this site, including this building, with new build dwellings. The designs of the replacement dwellings differed from the original Class Q permissions and as such, the appeal considerations were different. However, the Inspector's findings with regard to the location of the site are directly relevant.
7. The East Herts District Plan 2018 (DP) policy DPS2 sets out a sustainable settlement hierarchy which directs new development to larger settlements. Outside of these, development should be proportionate to local needs. The policy is supported by policy TRA1 which aims to encourage development in locations which would allow access to services by a genuine choice of transport modes. The policies are consistent with the *National Planning Policy Framework*. The appeal site is not on a bus route, local roads are unlit and do not have the benefit of pedestrian footways. New residential development in this location would therefore conflict with both the development plan and the *Framework* with regard to the accessibility of this location.
8. There is however a fallback position which would result in the creation of a new dwelling, by conversion, which would be identical in many respects. There is now no doubt about the likelihood of this fallback position being implemented as the works are nearing completion. I agree with the conclusions of my colleague that whilst there is conflict with DP policies DPS2 and TRA1, the fallback position is a material consideration and it is sufficient to indicate that an alternative conclusion should be reached in this regard.
9. The remaining issue relates to the effect on the character and appearance of the area. The previous appeal included buildings of differing design and as such, although much of the assessment is comparable, the findings are not directly relevant to this proposal.
10. Wellpond Green is a rural settlement set in open countryside. The settlement pattern largely comprises of short stretches of detached residential properties fronting roads with occasional large properties set away from roads in extensive gardens. The introduction of new housing beyond the back gardens of the roadside properties and in an open area with a former nursery use, would consolidate development within this open area and be at odds with the existing rural character. Policy DES3 requires new development to respect the character of its surrounding area which this would not. This policy is supported by policy GBR2 which seeks to protect the rural areas beyond the Green Belt from development. This would introduce new residential development beyond the settlement into this backland area which would erode its rural character and that of the wider area. The proposal would clearly conflict with the development plan policies.
11. The fallback position to convert this former agricultural building is however a material consideration. In terms of the building works, the impact on the character and appearance of the area would be the same as the permitted development as the building structure would be new but the external appearance would be the same. In this respect, it cannot be concluded that the

- proposed building works, when compared to the fallback position, would harm the character or appearance of the area.
12. The only significant difference between the Class Q conversion and this proposal relates to the curtilage of the respective dwellings. The Class Q plans show a tightly drawn curtilage with a total area of 316m². This would provide only a very narrow strip of garden to each side of the converted building for domestic use. The current proposal illustrates a much larger area to all sides and is annotated as being in excess of 700m².
 13. The limited extension of the curtilage to the north and west would be towards an existing building and adjacent to the heavily landscaped rear garden boundary of the residential property, The Old House. This small area would be closely related to the new dwelling and would be of a small size and irregular shape. Its contribution towards the openness of this area is limited. To the east there is an existing glasshouse. The evidence before me is that a change of use of that building, or its surrounds, has not been accepted and it therefore retains its lawful agricultural use. The proposed minor change in alignment of this boundary would result in only a narrow additional strip of residential curtilage beyond the Class Q approval which would allow for the necessary parking and turning of vehicles. Given this limited change and close proximity of this area to the dwelling, although extending the residential character further, it would not result in a significant change to the original consent or increase its wider impact.
 14. The land to the south is now predominantly grassed but was originally the site of large areas of glasshouses. The original nursery house, Sandwood, now sits in isolation to the southeast and does not appear to have a defined residential curtilage. The appellant suggests that the substantial area between these two buildings and around that house, already resembles a residential garden rather than an agricultural holding. However, there is nothing before me to suggest that any of the open land has a lawful use other than agriculture. Although currently mown grass, it does not have the characteristics of a garden closely associated with a dwelling and the current management regime may not persist into the future.
 15. The scale of the extension of the curtilage to the south would be significant. Although a boundary fence has been erected and may not require consent, the change of use would change the character of this area of land from open grassland to domestic garden. The council are concerned that this would allow for the erection of domestic buildings which would further change the open character of this area. This could be brought under control by a condition removing permitted development rights. However, general paraphernalia associated with gardens and changes with regard to planting, boundary treatments and maintenance regimes would inevitably change its character in any event. Once established as a garden with a domestic character, it would be more difficult to justify any restrictions on garden buildings. Whilst I acknowledge that this area of land is not publicly visible, it is evident from its surrounds, albeit in private views. The use of such a large area as garden would however change the character of this open land and it would make other similar changes more difficult to resist.

16. The scale of the proposed curtilage, particularly its extension to the south, would result in harm to the character and appearance of this area. It would therefore conflict with DP policies VILL3(iii), GBR2 and HOU12(a&b) as it would extend the domestic area of this group of isolated buildings to the detriment of the surrounding rural character and appearance of the area.
17. In conclusion, a new dwelling in this location would conflict with the development plan. However, this conflict would be outweighed by the weight attributed to the fallback position, which is currently being implemented. The extension of the curtilage beyond that accepted by the fallback position would domesticate more of this open land within the countryside and it would individually and cumulatively erode the rural character and appearance of the area.
18. I have had regard to the appeal decisions submitted and the High Court judgement referred to and these support the above general approach to the fallback position. The appeal decision APP/H0502/W/17/3170904 supports the approach with regard to the extended curtilage.
19. The benefits of this scheme compared to that of the fallback position are put forward as including the improved construction of the dwelling which may offer improved energy efficiency. There is no overall energy/carbon comparison between these schemes but I do not underestimate the benefits of improved energy efficiency during the lifetime of the property. The improved curtilage would offer some private benefits to future occupants. Overall, whilst there would be some benefits to this proposal compared to the Class Q development, there are no matters that are sufficient to outweigh my concerns with regard to the large extended garden. I therefore dismiss the appeal.

Peter Eggleton

INSPECTOR



Costs Decision

Site visit made on 20 June 2023

by **P Eggleton BSc(Hons) MRTPI**

an Inspector appointed by the Secretary of State

Decision date: **1st August 2023**

Costs application in relation to Appeal Ref: APP/J1915/W/22/3311566 Highfield Nursery, Wellpond Green, Standon, Hertfordshire SG11 1NL

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Mr Barry Pestell for a full award of costs against East Herts Council.
 - The appeal was made against the failure of the council to issue a notice of their decision within the prescribed period on an application for planning permission for the demolition of an agricultural building and erection of one four-bedroom single storey detached dwelling.
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Decision

1. The application for an award of costs is refused.

Reasons

2. *Planning Practice Guidance* advises that costs may be awarded where a party has behaved unreasonably; and the unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process.
 3. It is alleged that the council acted unreasonably by failing to take into account the fallback position on the appeal site despite well-established case law.
 4. The first requirement for the council during its assessment of a case is to consider its compliance or otherwise with the development plan. The council carried out this assessment and found there to be clear conflict with regard to each main issue. It must then have regard to other considerations and determine whether these are sufficient to indicate that an alternative decision should be reached. It is evident from the council's delegated report that the fallback position was considered. The report does not clearly set out the balancing exercise which would have been helpful. However, there is nothing to suggest that all appropriate matters were not taken into account.
 5. It is for the decision maker to determine the weight to be attributed to the fallback position on a case by case basis. I am not satisfied that the council acted unreasonably in reaching its decision.
 6. The applicant makes reference to an appeal at the same site reference APP/J1915/W/22/3302750 which addressed issues which remained for the second appeal. That appeal decision was issued on 7 March 2023. It therefore
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was issued after the council's decision and the submission of the second appeal in November 2022. The appellant's statement of case for the second appeal was also dated before the first appeal decision. The council did not submit a statement but wrote to say that they would be relying only on their delegated report. The council at that time, were in possession of the first appeal decision and appended it to their letter but did not address its conclusions.

7. This new information was material to the second appeal and it would have been helpful if the council had addressed it. This may have limited the extent of the final comments made by the appellant. Any wasted costs would however only relate to the second part of the appellant's final comments submission. In any event however, although it would have been helpful had the council addressed this new information directly, I am not satisfied that they acted unreasonably in relying on their delegated report, particularly as they forwarded the first appeal decision with their response to ensure that it formed part of the appeal documents.
8. Overall, I am unable to conclude that the actions of the council fall within the examples of unreasonable behaviour set out in the *Guidance*. Whilst these are not exhaustive, I do not agree that they behaved unreasonably. I therefore find that unreasonable behaviour resulting in unnecessary and wasted expense, as described in the *Guidance*, has not been demonstrated and an award of costs is not therefore justified.

Peter Eggleton

INSPECTOR



Appeal Decision

Site visit made on 20 June 2023

by **P Eggleton BSc(Hons) MRTPI**

an Inspector appointed by the Secretary of State

Decision date: **1st August 2023**

Appeal Ref: APP/J1915/W/22/3312961

167 Ware Road, Hertford, Hertfordshire SG13 7EQ

- 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 D Karia against the decision of East Herts Council.
 - The application Ref 3/22/1488/FUL, dated 12 July 2022, was refused by notice dated 16 November 2022.
 - The development proposed is a two storey building including side dormers to create two one-bedroom dwellings with private amenity space, bin storage, bicycle parking and off-street parking including landscaping.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are the effect on the character and appearance of the area; the effect on the living conditions of neighbouring residents; the effect on highway safety; and whether the proposal would be sufficiently adaptable to climate change.

Reasons

3. The proposed building would extend across the full width of this site and although the first-floor accommodation would be contained within the roof form, it would be of a significant height. At present, the area is characterised by the frontages of the predominantly semi-detached houses on the north side of Cromwell Road and the back gardens of the properties on Ware Road. These back gardens contain many garden type structures which are generally low level in height and also some trees which bring some greenery. Otherwise however, the narrow road and prominence of parked cars to both sides, together with the outbuildings and high boundary fences ensure that the south side of Cromwell Road has the character of a residential service or access road.
 4. As the proposal would cover the entirety of the width of the site it would be a dominant new feature and given its height, it would be prominent in views despite its set back. The set back would provide the parking and utility areas but there would be little opportunity for meaningful planting of any scale. The proposed design, which includes blank, side facing, dormers above the large forward facing gable, would not be of any significant architectural interest. It
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- would appear cramped within the plot and it would dominate the appearance of the backs of these properties.
5. The boundary trees, which lie within the neighbouring property, would either need to be severely pruned or more likely, would not survive much beyond the building works. This scale of development, on such a limited plot, would entirely change the character of this immediate area. Given its current character, the site and its neighbours, may be able to accommodate some positive built interventions but this proposal would represent overdevelopment; it would not be of a high design standard particularly as it would appear so cramped and would allow for so little landscaping; and if repeated, it would result in an overly urban character which would be at odds with the area in general.
 6. The proximity of the proposed building to the boundary would result in it being unacceptably overbearing when in the garden of 169 Ware Road and when viewed from the rear of that house. The proposed rear facing first-floor windows would increase overlooking of the neighbouring private garden and rear rooms of that property. Concentrating outdoor activity into such a small area at the rear would also be likely to harm the enjoyment of the neighbouring garden and patio area. The proposed block plan and distances shown by the appellant confirm these inadequate relationships. The proposal would be entirely unacceptable with regard to the harm to the living conditions of the residents of number 169 with regard to outlook, privacy and noise. These concerns, with regard to privacy and amenity would also apply to the residents of number 165 although the impact on outlook would be more limited.
 7. Given the above, the proposal would not be of a high standard of design and layout and would not reflect or promote local distinctiveness. It would result in unacceptably harmful impacts on the amenity of occupiers of neighbouring properties. It would therefore conflict with the design and amenity requirements of policy DES4(a & c) of the East Herts District Plan 2018 (DP). As this policy generally accords with both the design and amenity requirements of the *National Planning Policy Framework*, it must be afforded full weight.
 8. In addition to the above, the amenity areas proposed for the new houses would be inadequate in size and outlook for the future residents. The rear facing living room and bedroom windows would similarly have particularly poor outlooks. Although the appellant advises that the properties would meet the Nationally Described Space Standards (2015) which is a positive matter, the standards do not address these relationships. In addition, the rear of the shop is dominated by noise from the cooling systems and nothing has been submitted to demonstrate that this would not remain the case. It has also not been demonstrated that the large commercial waste bin associated with the shop would be satisfactorily re-located away from the garden areas. Even if the impacts of the shop could be avoided, the dwellings would not provide adequate amenity for future residents. This adds to my concerns.
 9. The council has raised concerns about visibility from the access. The appellant does not have control of the neighbouring rear boundaries and cannot therefore secure significant visibility splays for vehicles leaving the proposed parking areas, particularly to the east. However, this is a common feature

along this road and vehicle speeds are limited. Highway safety issues do not add to my concerns.

10. The remaining issue raised by the council relates to how the development would be adaptable to climate change. This is a matter that could, to some extent, be addressed by conditions as suggested by the appellant. The loss of greenery and open space is a matter that weighs against the proposal and the potential for new planting and sustainable drainage provisions would be limited. Whilst further information would be required in this regard generally, given my main findings, this is not a matter on which my decision would turn.
11. Reference has been made to 2 Cromwell Road which is a one-bedroom dwelling that was permitted in 2014. The current proposal mimics, to some extent, the form of that dwelling although the side dormers would be at odds with the characteristics of the neighbouring house. The spatial relations with the adjoining properties also differ. It does however provide weight in favour of the principle of some form of development although not the relationships currently proposed. It was also allowed prior to the adoption of the policies of the current development plan. Whilst offering some support for the principle of development, it does not offer support for the details put forward.
12. It is suggested that there would be a realistic fallback position for the conversion of the existing outbuilding. No lawful development certificate has been provided to support this potential alternative development. However, the conversion of the existing building would not result in the same level of harm, particularly with regard to the impact on the character and appearance of the area or the reduction in outlook that would be experienced by the residents of number 169 in particular. This is not therefore a matter that provides weight in favour of the proposal.
13. The development would assist in boosting housing provision by making a more efficient use of this space within the built-up area. This gains support from DP policy DPS2. The additional housing, the building works and the future occupiers would also contribute to the social and economic objectives of the *Framework*.
14. In conclusion, whilst there are matters that provide weight in favour of this proposal, particularly the provision of additional houses, they are not sufficient to outweigh my concerns particularly with regard to living conditions but also with regard to the impact on the character and appearance of the area. I therefore dismiss the appeal.

Peter Eggleton

INSPECTOR



Appeal Decision

Site visit made on 7 June 2023

by Robert Fallon B.Sc. (Hons) PGDipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 4 July 2023

Appeal Ref: APP/J1915/W/22/3312678

Land adjacent to the A1184, London Road, Spellbrook, Bishop's Stortford, Hertfordshire

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under Article 3(1) and Schedule 2, Part 16, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).
 - The appeal is made by CK Hutchison Networks (UK) Ltd. against the decision of East Hertfordshire District Council.
 - The application Ref 3/22/1513/TEL dated 15 July 2022, was refused by notice dated 23 September 2022.
 - The development proposed is the installation of a new monopole 15m in height together with 3 no equipment cabinets at the base of the column and ancillary development
-

Decision

1. The appeal is dismissed.

Procedural matters

2. The address on the application form and appeal form does not correspond with that on the decision notice. I have used the one shown on the decision notice as I consider this to be more accurate and am satisfied that dealing with the appeal on this basis has not prejudiced the interests of any party.
3. The submitted drawings and appeal statement reveal that the proposed monopole mast and equipment cabinets would be coloured grey (RAL-7035). However, this conflicts with the application supplementary information which states that the equipment cabinets would be green. For the avoidance of doubt, I have assessed the scheme on the basis of the former documents, namely that the proposed monopole mast and equipment cabinets would be coloured grey.
4. The provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended (the 'GPDO'), under Article 3(1) and Schedule 2, Part 16, Class A, Paragraph A.3(4) require the local planning authority to assess the proposed development solely on the basis of its siting and appearance, taking into account any representations received. My determination of this appeal has been made on the same basis.

Planning Policy

5. The provisions of Schedule 2, Part 16, Class A of the GPDO do not require regard be had to the development plan. I have had regard to the policies of the

development plan and the Framework¹ only in so far as they are a material consideration relevant to matters of siting and appearance.

Main issue

6. The principle of development is not subject to consideration in a prior approval application as this is established by virtue of the GPDO.
7. The main issue is the effect of the siting and appearance of the proposed installation on the character and appearance of the area and, if any harm would occur, whether this is outweighed by the need for the installation to be sited as proposed taking into account any suitable alternatives.

Reasons

8. The proposed installation would be located on a grass verge on the western side of the busy London Road (A1184), to the north of the built-up area of Spellbrook and within the open countryside. The proposed location is set against a backdrop of mature trees and hedgerows of varying and limited height. Overall, I found the area to have an edge of settlement countryside character.
9. Although the street scene surrounding the proposed installation includes utilitarian highway paraphernalia such as a circular speed limit sign, small equipment cabinet, bus stop shelter with associated refuse bin, telegraph pole and street light columns, these are of a limited height and commonly found in the public realm adjacent to roads. As a consequence, their prominence and visual impact in the street scene is muted.
10. On the other hand, the proposed installation, with 15 metre high monopole mast, would project well above the trees & hedgerows, bus stop shelter, refuse bin, speed limit sign, telegraph pole & street light columns and be positioned in a highly exposed location such that it would be clearly visible on the grass verge when approaching in both directions. It would as a consequence appear as an intrusive and prominent feature in the street scene and cause significant harm to the character and appearance of the area.
11. Paragraph 115 of the Framework states that where new sites are required (such as for 5G), equipment should be sympathetically designed and camouflaged where appropriate. Set against this context, I recognise that the appellant has designed the installation to be as low as possible to mitigate its impact against the backdrop of existing trees & hedges. I also acknowledge that there is a speed limit sign, telegraph pole, bus stop shelter with refuse bin and small equipment cabinet close-by, along with a lamp post on the opposite side of the road, and that the site does not fall within a conservation area. However, none of these factors are sufficient to mitigate the harmfully incongruous and intrusive appearance of the proposal in this prominent location.
12. Reference has been made to various social and economic benefits but these have not been taken into account in considering the matters of siting and appearance.

¹ National Planning Policy Framework, Ministry of Housing, Communities and Local Government, 20 July 2021.

13. In view of the above, and insofar as they are material considerations relevant to matters of siting and appearance, I conclude that the scheme's harm to the character and appearance of the area would conflict with Policies ED3 and DES4 of the District Plan², which collectively seek, amongst other things, that;- (1) new structures are sympathetically and appropriately located; and (2) that proposals respect the character of the site and surrounding area.
14. The Government has set out its commitment to supporting the deployment of gigabit broadband across the country and bringing digital connectivity to local businesses & residents to enable faster economic growth and social inclusion³.
15. This is reinforced by Paragraph 114 of the Framework which states that 'advanced, high quality and reliable communications infrastructure is essential for economic growth and social well-being' and that 'planning decisions should support the expansion of electronic communications networks, including next generation mobile technology (such as 5G) and full fibre connections.'
16. Set against the above context, I recognise that the purpose of the installation is to provide new 5G coverage which would facilitate significantly improved connectivity for the target coverage area and that the scheme would accordingly provide public benefits in accordance with the economic and social objectives of the Framework. I also acknowledge that it would be available for sharing by another operator.
17. Nevertheless, the Framework also states at Paragraph 117 that for a new mast or base station, evidence must be supplied that the operator has explored the possibility of erecting antennas on an existing building, mast or other structure. Although the appellant states that they have carried this objective out and considered a variety of other locations, including the utilisation of existing rooftops, I do not consider it has been sufficiently evidenced and demonstrated that there exist no other; (1) masts in the locality that could be shared; and (2) alternative sites in a less prominent position, potentially accompanied by a more inconspicuous design of mast, that could also prove suitable and less harmful (such as the installation of a mast within and to the rear of;- (a) the Hilton Suzuki site to the north; (b) the industrial unit site on Spellbrook Lane West; or (c) the commercial area adjacent to the railway line on Spellbrook Lane East). As a consequence, I am not convinced that no suitable alternatives exist that would prove less harmful.
18. The proposed installation is not therefore acceptable in respect of its siting and appearance.

Conclusion

19. For the reasons given above, I conclude that the appeal should be dismissed.

Robert Fallon

INSPECTOR

² East Herts District Plan, October 2018, East Herts Council.

³ Written statement by the Department for Digital, Culture, Media & Sport and Ministry of Housing, Communities and Local Government dated 27 August 2000.



Appeal Decision

Site visit made on 7 June 2023

by Robert Fallon B.Sc. (Hons) PGDipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 4 July 2023

Appeal Ref: APP/J1915/W/22/3307861

Great Hadham Road, Bishop's Stortford, Hertfordshire

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under Article 3(1) and Schedule 2, Part 16, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).
 - The appeal is made by CK Hutchison Networks (UK) Ltd. against the decision of East Hertfordshire District Council.
 - The application Ref 3/22/1540/TEL dated 19 July 2022, was refused by notice dated 13 September 2022.
 - The development proposed is a 5G telecoms installation: H3G 20m street pole and additional equipment cabinets.
-

Decision

1. The appeal is dismissed.

Procedural matters

2. Although the appellant's appeal statement is accurate in relation to the site address, development details and plans, it refers to an application reference number of 3/22/1385/TEL, which is incorrect. I also observed that the cell area & discounted options in this document differ from those shown in the site specific information & planning justification statement. For the avoidance of doubt, I have therefore assessed the scheme on the basis of both sets of discounted options and have treated the reference to 3/22/1385/TEL as a typing error.
3. The provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended (the 'GPDO'), under Article 3(1) and Schedule 2, Part 16, Class A, Paragraph A.3(4) require the local planning authority to assess the proposed development solely on the basis of its siting and appearance, taking into account any representations received. My determination of this appeal has been made on the same basis.

Planning Policy

4. The provisions of Schedule 2, Part 16, Class A of the GPDO do not require regard be had to the development plan. I have had regard to the policies of the development plan and the Framework¹ only in so far as they are a material consideration relevant to matters of siting and appearance.

¹ National Planning Policy Framework, Ministry of Housing, Communities and Local Government, 20 July 2021.

Main issue

5. The principle of development is not subject to consideration in a prior approval application as this is established by virtue of the GPDO. As a consequence, the matter referred to by the Council of whether or not the proposal represents inappropriate development in the Green Belt does not arise.
6. Accordingly, the main issues are the effect of the siting and appearance of the proposed installation on the character & appearance of the area and pedestrian safety, and if any harm would occur, whether this is outweighed by the need for the installation to be sited as proposed taking into account any suitable alternatives.

Reasons

7. The proposed installation would be located on a public footway on the northern side of Great Hadham Road (B1004), a main route leading into the centre of Bishop's Stortford. The Council states that the appeal site also falls within the Metropolitan Green Belt and an adopted Green Wedge. This stretch of the road is enclosed by a woodland belt to its northern side and a large area of parkland to the south screened by mature trees and hedgerows. Overall, I found the area to have a semi-rural character.
8. Although the street scene surrounding the proposed installation includes a street light column, this is of a limited height and commonly found in the public realm adjacent to roads. As a consequence, its prominence and visual impact in the street scene is muted.
9. On the other hand, the proposed installation, with 20 metre high monopole mast, would project well above the woodland belt and street light column and be positioned in a highly exposed location such that it would be clearly visible when approaching in both directions on Great Hadham Road. It would as a consequence appear as an intrusive and prominent feature in the street scene and cause significant harm to the character and appearance of the area.
10. Paragraph 115 of the Framework states that where new sites are required (such as for 5G), equipment should be sympathetically designed and camouflaged where appropriate. Set against this context, I recognise that the appellant has designed the installation to be as low as possible to mitigate its impact against the backdrop of the existing woodland belt. I also acknowledge that there is a lamp post nearby, along with inspection chambers, and that the site does not fall within a conservation area. However, none of these factors are sufficient to mitigate the harmfully incongruous and intrusive appearance of the proposal in this prominent location.
11. The safety and free flow of pedestrians would also be significantly impaired by the scheme's obstruction of the footway. Whilst I recognise that the development proposes a footpath extension into the grass verge to enable pedestrians to walk around the equipment, this would constitute an abrupt change in the footway's straight alignment that would be more difficult to navigate for parents with pushchairs and people with disabilities/mobility difficulties, such as those with a guide dog/white mobility cane or in wheelchairs/mobility scooters. This harm would be intensified by the equipment restricting visibility of oncoming pedestrians, which would lead to conflict

- between users of the footway. The scheme would as a consequence result in harm to pedestrian safety.
12. Reference has been made to various social and economic benefits but these have not been taken into account in considering the matters of siting and appearance.
 13. In view of the above, and insofar as they are material considerations relevant to matters of siting and appearance, I conclude that the scheme's harm to the character & appearance of the area and pedestrian safety would conflict with Policies ED3 and DES4 of the District Plan², which collectively seek, amongst other things;- (1) that new structures are sympathetically and appropriately located; (2) that proposals respect the character of the site and surrounding area; and (3) that development maximises accessibility of the public realm and enables easy navigation and movement through space.
 14. Furthermore, I also find that insofar as it is a material consideration relevant to matters of siting and appearance, that the scheme's harm to pedestrian safety would conflict with Paragraph 112 of the Framework which seeks, amongst other things, to ensure: (1) the needs of people with disabilities and reduced mobility are addressed; and (2) the creation of safe places that minimise the scope for conflicts between pedestrians.
 15. The Government has set out its commitment to supporting the deployment of gigabit broadband across the country and bringing digital connectivity to local businesses & residents to enable faster economic growth and social inclusion³.
 16. This is reinforced by Paragraph 114 of the Framework which states that 'advanced, high quality and reliable communications infrastructure is essential for economic growth and social well-being' and that 'planning decisions should support the expansion of electronic communications networks, including next generation mobile technology (such as 5G) and full fibre connections.'
 17. Set against the above context, I recognise that the purpose of the installation is to provide new 5G coverage which would facilitate significantly improved connectivity for the target coverage area and that the scheme would accordingly provide public benefits in accordance with the economic and social objectives of the Framework. I also acknowledge that it would be available for sharing by another operator.
 18. Nevertheless, the Framework also states at Paragraph 117 that for a new mast or base station, evidence must be supplied that the operator has explored the possibility of erecting antennas on an existing building, mast or other structure. Although the appellant states that they have carried this objective out and considered a variety of other locations, I do not consider it has been sufficiently evidenced and demonstrated that there exist no other; (1) masts in the locality that could be shared; and (2) alternative sites in a less prominent position, potentially accompanied by a more inconspicuous design of mast, that could also prove suitable and less harmful (such as recessing the mast into the Woodland belt to the north, or within the parkland to the south towards its edge where it could be screened by new and existing landscaping, or by combining a monopole mast with an existing street light column). As a

² East Herts District Plan, October 2018, East Herts Council.

³ Written statements by the Department for Digital, Culture, Media & Sport and Ministry of Housing, Communities and Local Government dated 7 March 2019 and 27 August 2000.

consequence, I am not convinced that no suitable alternatives exist that would prove less harmful.

19. The proposed installation is not therefore acceptable in respect of its siting and appearance.

Conclusion

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

Robert Fallon

INSPECTOR



Appeal Decision

Site visit made on 31 July 2023

by Les Greenwood MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23rd August 2023

Appeal Ref: APP/J1915/D/23/3320176

8 Glebe View, Walkern, Hertfordshire SG2 7PQ

- 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 Anthony John Packer against the decision of East Hertfordshire District Council.
 - The application Ref 3/22/1562/HH, dated 21 July 2022, was refused by notice dated 7 February 2023.
 - The development proposed is a ground floor extension on the back of the property.
-

Decision

1. The appeal is dismissed.

Main Issue

2. The main issue is whether the proposal would preserve or enhance the character or appearance of the Walkern Conservation Area.

Reasons

1. Section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires decision makers to give special attention to the desirability of preserving or enhancing the character or appearance of the conservation area. Policy HA4 of the East Herts District Plan 2018 (DP), Policy 3 of the Walkern Parish Neighbourhood Plan 2017-2033 (NP) and the National Planning Policy Framework (the Framework) consequently give great weight to the conservation of heritage assets including conservation areas. The conservation area is characterised by a wide variety of buildings, which fit within a traditional rural style but with a range of different sitings, forms and materials. This creates a multi-faceted yet harmonious rural character.
2. 8 Glebe View is a detached house within a late 20th Century housing development on the edge of the village and just within the conservation area. These houses are noted to be 'neutral features' in the Council's Walkern Conservation Character Analysis Map. They are handsome buildings, set out informally around the cul-de-sac with traditional proportions, features and detailing, but enough variation in materials and siting to accord with the mixed character of the conservation area. No 8 is typical of the houses here, a 2.5 storey house with a single storey pitched roof garage to the side. It sits at the

head of the cul-de-sac in a focal point for views along the street. The proposal is to convert part of the garage to annexe accommodation, with a change of one vehicular garage door to 2 person doors at the front and a large single storey extension with a zinc roof at the back.

3. The submitted drawings appear to show the 2 proposed personal doors at the front in a modern style which conflicts with the more refined, vernacular design of the rest of the frontage including the simply designed garage doors. The new doors would be prominent features, detracting from the presentation of the building in the street scene. The appellant says that the joinery details would match existing, but it appears that the existing door they would match is at the back of the garage, out of public view.
4. The proposed rear extension would be of contemporary form, style and materials, in contrast to No 8 and surrounding houses. Modern extensions can, however, sometimes be successfully added to traditionally designed buildings. In this case, although the extension would have a large footprint and irregular shape, it would be low in height and would fit comfortably within the large garden area so that it would be a subsidiary feature that would not cramp or overdevelop the site.
5. The rear extension would be tucked away at the back so that it would not readily be seen in any public views. The Council refers to views from the field to the rear, but this appears to be private land and I have seen no evidence of any public rights of way nearby. The rear extension would nevertheless be seen by neighbours and this part of the proposal is once again let down by the somewhat crude detailing shown on the submitted drawings including the new glazing and awkward, shallow pitched and asymmetrical roof. I am left unconvinced that this structure would be of sufficient quality to fit in well.
6. Although I find no objection to the conversion of the garage and to the general location and scale of the proposed rear extension, I conclude that due to the poor detailing shown on the submitted plans the proposal would unacceptably harm the character and appearance of the conservation area. The proposal conflicts with the shared aims of DP policies HA4, DES4, GBR2, HOU11 and HOU13, NP Policy 3 and the Framework, to protect heritage assets and to ensure that extensions are designed to a high standard which complements the surrounding area.
7. The harm to the conservation area, in the terms of Framework paragraph 199, would be less than substantial and would be towards the lower end of that broad spectrum. I note that the house is well separated from nearby listed buildings so that it would not affect their settings. I recognise the appellant's reasonable wish to improve the property and the minor contribution this would make towards the Framework's social objective of providing homes to meet the needs of present and future generations. I nevertheless give great weight to the harm that would be caused to the conservation area and, with reference to Framework paragraph 202, find no public benefits that would outweigh this harm to the significance of a designated heritage asset.
8. I have considered all other matters raised, including a neighbour's comments about living conditions and parking. I agree with the Council that there would not be any undue effects on in regard to these issues. The rear section of No 9 next door appears to gain its main light and outlook from the rear, rather than

from the ground floor side windows facing the site of the proposed extension. Privacy could be protected by a condition requiring obscure glazing of any proposed side windows and/or by fencing on the boundary. Disruption due to construction works should be a temporary. The house would retain parking spaces to the front and the proposal should not significantly increase traffic or pressure for on-street parking on this cul-de-sac.

9. For the reasons set out above in regard to the main issue, I conclude that the appeal should not succeed.

Les Greenwood

INSPECTOR



Appeal Decision

Site visit made on 8 August 2023

by Nick Bowden BA(Hons) Dip TP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24 August 2023

Appeal Ref: APP/J1915/D/23/3319818

High Trees, Great Hornead, Hertfordshire SG9 0NR

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mrs Kathryn Stacey against the decision of East Hertfordshire District Council.
 - The application Ref 3/22/1849/HH, dated 1 September 2022, was refused by notice dated 13 January 2023.
 - The development proposed is the construction of a single storey side extension with a first floor balcony above behind tiled mansard roof, single storey glazed front porch extension, two storey side / rear / front extension incorporating enlargement of first floor front and side windows.
-

Decision

1. The appeal is dismissed.

Main Issue

2. The main issue is the effect of the design of the proposed extensions on the host dwelling and the street scene and whether the development would preserve or enhance the character or appearance of the Great Hornead Conservation Area (CA).

Reasons

3. High Trees is a detached, circa 1970s, brick-built dwelling with timber cladding to the first floor and under a tiled, pitched roof. It is set within a substantially sized plot and surrounded by numerous mature trees. The dwelling is separated from the road by a generous lawn and a small stream.
4. The property is within the Great Hornead CA which is characterised by a variety of buildings and uses in the vicinity, albeit that much of the area is residential in nature. To the south side of the road, lower density detached homes of varying sizes prevail. To the north are a mix of comparatively smaller dwellings, the village hall, and current and former agricultural buildings. Most buildings are set within well landscaped plots with some barely visible in the public realm. Those that are closer to the road provide group interest due to their form and features neatly punctuating the vegetated nature of the area. The existing dwelling at High Trees represents a comparatively modern addition to the immediate locality. Its modest scale, use of wooden cladding to much of the upper floor and sylvan setting is such that it makes a neutral contribution to the CA.

5. The proposed extensions would considerably enlarge the existing dwelling. This would introduce a transverse gable with half hipped ends to front and rear and a further single-storey extension to the opposing side. The large two-storey extension to one side would noticeably unbalance the proportions of the house with the mix of half hips, full hip to one side and overhanging eaves failing to reflect the proportions of the existing dwelling. The use of patio glazing at ground floor level jars with the comparatively small windows to the upper floor which, in combination, gives a squat, unbalanced and excessively wide appearance. The extensions would fail to integrate with the existing dwelling in a satisfactory manner to the detriment of its present simple form.
6. S72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 places a duty on me to pay special attention to the desirability of preserving or enhancing the character or appearance of the CA. The extensions to the dwelling do not integrate in a satisfactory manner and they would fail the statutory test. I accept that the dwelling is set back from the road and within a substantial plot. However, this only assists in rendering the current dwellings presence in the CA as neutral, whereas enlarging the dwelling in the manner proposed would fail to preserve this situation.
7. Paragraph 202 of the National Planning Policy Framework (NPPF) stipulates that in situations where the harm to the CA is less than substantial, as in this case, this harm should be balanced against the public benefits. The appellant notes that the proposed extensions are for family use, as a home for life. This is a perfectly reasonable aspiration, but it is not a public benefit and does not outweigh the harm to the CA. Reference is also made to a previously permitted scheme for three new dwellings to replace the existing one. Details of this scheme have not been provided as evidence and as such I must give this negligible weight.
8. I conclude that the proposed extensions would fail to integrate satisfactorily with the existing dwelling to the detriment of its simple form and scale and to that of the street scene. It would, therefore, fail to preserve or enhance the character or appearance of the Great Hormead CA. The proposed development thus conflicts with policies HOU11, DES4 and HA4 of the East Herts District Plan (2018) and the NPPF. These policies seek a high standard of design and layout and to preserve or enhance the special interest, character and appearance of the area.

Conclusion

9. For the reasons given above, and having regard to all the evidence before me, including representations in support, I conclude that the appeal should be dismissed.

Nick Bowden

INSPECTOR



Appeal Decision

Site visit made on 20 June 2023

by **P Eggleton BSc(Hons) MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 3rd July 2023

Appeal Ref: APP/J1915/D/23/3316763

7 Cozens Road, Ware, Hertfordshire SG12 7HH

- 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 Katrina Willicombe against the decision of East Herts Council.
 - The application Ref 3/22/2102/HH, dated 5 October 2022, was refused by notice dated 5 December 2022.
 - The development proposed is a two storey rear and side extension and porch.
-

Decision

1. The appeal is allowed and planning permission is granted for a two storey rear and side extension and porch at 7 Cozens Road, Ware, Hertfordshire SG12 7HH in accordance with the terms of the application, Ref 3/22/2102/HH, dated 5 October 2022, subject to the following conditions:
 - 1) The development hereby permitted shall be begun before the expiration of three years from the date of this decision.
 - 2) The development hereby permitted shall be carried out in accordance with the following approved plans: 22007.100-104 & 22007.300-304.
 - 3) The works hereby permitted shall be carried out in accordance with the description of materials set out in the application form.

Main Issues

2. The main issues are the effect on the character and appearance of the area; and the effect on highway safety.

Reasons

3. The works would represent a re-modelling of this property, utilising the area to its side which is currently bounded by a brick wall and accommodates single storey, flat roofed structures. The proposed design would result in these, and the rear extension, being replaced by a two storey addition. The design includes a front and rear facing two storey gable and a large front porch with a pitched roof. The property is currently of a simple design and these new interventions would add to its interest. Although the roof form to the rear would be slightly contrived, overall, the property would have an improved appearance.
-

4. This is a prominent corner location and the works would benefit the character and appearance of the area. It therefore gains support from policy DES4 of the East Herts District Plan 2018 (DP) which seeks to make the best possible use of the available land by respecting or improving upon the character of the site and the surrounding area. DP policy HOU11(a) requires that development is appropriate to the character and appearance of the dwelling and surrounding area and is generally subservient. Although not subservient, the proposal would satisfy the main objectives of this policy.
5. The proposal includes the provision of a front vehicular access and parking for vehicles within the site. There would be visibility from this access which would be sufficient for the speed of traffic that navigates the bend outside the house. The new access would be similar to that of the neighbouring property. This is a residential street where accesses are common. On-street parking takes place along the road at certain points and given the curvature of the road at this point, off-street parking is likely to offer benefits in terms of forward visibility for drivers compared to on-street parking. The proposal is unlikely to significantly change driving conditions given the current driveway provisions locally.
6. The highway authority have objected to the proposal on the basis that each point of access onto the highway creates an additional point where conflicts can occur and therefore seek to keep access points to a minimum in the interests of highway safety, particularly where the vehicle access crosses a footway. They go on to advise that additional accesses on many occasions will remove kerbside parking, thus having a detrimental effect on highway amenity.
7. The geometry of this road is such that on-street parking outside this property on the inside of the bend would add to highway safety concerns. Furthermore, there is no evidence of parking stress in this area so there would be little impact on highway amenity. Footway users have good visibility across this frontage and indeed across that of the neighbouring property and as a result, this additional access would not significantly alter safety or convenience for footpath users. This appears to be an unusual situation whereby the garage to the property requires access over third party land. The legal position regarding the use of the garage or the land outside it, is not clear. However, the issue is whether the additional access would result in harm with regard to highway safety. Whilst the highway authority may wish to limit access points generally, this is not a requirement of DP policy TRA2. The proposal needs to be considered on the specific circumstances of this individual case and there is no evidence to suggest that there would be conflict with that policy or any significant change with regard to highway safety.
8. In terms of the exact position and detail of the footpath crossover, this is outside the application site and is a matter that can be addressed when an application to drop the kerb is made to the responsible local authority.
9. The final matter raised by the council relates to the certificate served with the application which failed to consider any potential intrusion of foundations or eaves beyond the boundary of the site into the wide grass verge area. The appellant has now served a notice on the owners and no comments have been received. It is not clear where the adopted highway extends to, but in any

event, it would appear that all parties are now fully aware of the proposal and would not be prejudiced.

10. Overall, the proposal would improve the appearance of the property and would not result in any material change with regard to highway safety. There would be no conflict with the development plan policies or those of the *National Planning Policy Framework* with regard to design or road safety. As there are no other matters that weigh significantly against the proposal, I allow the appeal.
11. I have imposed conditions relating to the commencement of development and the details of the approved plans for the avoidance of doubt and in the interests of proper planning. The application form sets out the details of the materials to be used and a condition would require that these details are implemented to ensure that the development would have a satisfactory appearance.

Peter Eggleton

INSPECTOR



Appeal Decision

Site visit made on 31 July 2023

by Les Greenwood MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23rd August 2023

Appeal Ref: APP/J1915/D/23/3320047

Longacre, High Elms Lane, Benington SG2 7DG

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr Nick Dobie against the decision of East Hertfordshire District Council.
 - The application Ref 3/22/2341/HH, dated 1 November 2022, was refused by notice dated 19 January 2023.
 - The development proposed is the remodelling of the existing property including the demolition and reconstruction of the existing roof form.
-

Decision

1. The appeal is dismissed.

Main Issue

2. The main issue is the effect of the proposal on the character and appearance of the house and the local area.

Reasons

3. Longacre is a detached house of modest 20th Century design, located on an extensive corner plot in the countryside well outside of the village of Benington. The area around the property is characterised by occasional residential dwellings, mainly of traditional rural design and scale, including a detached house opposite, across High Elms Lane, and a pair of semi-detached houses further along Whempstead Road. The next plot on High Elms Lane is occupied by a much taller house of more modern and unusual design, Larkins. That house has almost triangular side gables, with a deep plan and a tall roof providing accommodation at both first and second floor levels within the roof space.
4. The proposal would fundamentally change Longacre. The roof would be raised and extensions added to the front and rear, deepening the plan form and providing second floor level accommodation. The roof would change from a traditional pitched roof to a crown roof, with a flat roof section in the middle surrounded by pitched roof sections. A long, single storey, flat roofed swimming pool extension would be added at the back, next to the Whempstead Road boundary and behind a new side extension. A new double garage is also

proposed, but I understand that the Council raises no objection to this particular part of the proposal.

5. The alterations would make the house much bulkier and give it a much more modern appearance, with glazed gable features dominating the front elevation and extensive glazing to the rear. Policy HOU11 of the East Herts District Plan 2018 (DP) says that extensions should generally appear as subservient additions. There will be exceptions to this general stricture, however, where in the words of DP policies DES4 and GBR2, the proposal is of high standard of design and its size, scale, mass, form, siting, design and materials of construction are appropriate to the character, appearance and setting of the site and/or surrounding areas.
6. This is a large plot which should potentially be capable of accommodating a large house. A house of the proposed height, bulk and modern design would, however, stand out dramatically from the other, more modestly designed and scaled houses along this part of Whempstead Road. It would be prominent and dominant in views from both roads, especially in the months when deciduous trees and hedges have lost their leaves. The cumulative effect of the various changes would be a building that would fail to respect its rural context.
7. The appellant points to Larkins next door as an example of the varied size and design of houses in the locality. That house is itself somewhat exceptional in its design, form and scale, however, and does not sit comfortably with other houses in the area. It is set well away from Whempstead Road and has no material effect on the character of that road, as would the appeal proposal. I find that the existence of Larkins does not justify this particular proposal.
8. I note the appellant's argument that the swimming pool extension could be built as an outbuilding without the need for a planning application, under permitted development rights¹. I give this limited weight as a fall-back position as it has not been confirmed by a Lawful Development Certificate and I have seen no specific details. This would not be a determining factor for this appeal in any case. I also understand that a new planning application for a replacement dwelling of the same design as the appeal proposal has been submitted to the Council. I have not been advised of any decision on that application.
9. I conclude that the appeal proposal would unacceptably harm the character and appearance of the house and the local area. It therefore conflicts with the shared aim of DP policies HOU11, DES4 and GBR2 and the National Planning Policy Framework to secure a high standard of design that is appropriate to local character.
10. For the reasons set out above, and having regard to all other matters raised, I conclude that the appeal should not succeed.

Les Greenwood

INSPECTOR

¹ Town and Country Planning (General Permitted Development)(England) Order 1995 (as amended)



Appeal Decision

Inquiry held 4 – 7 July 2023

Site visit made unaccompanied on 5 July 2023

by Jonathan Price BA(Hons) DipTP MRTPI DMS

an Inspector appointed by the Secretary of State

Decision date: 18th August 2023

Appeal Ref: APP/J1915/W/23/3318094

41 Railway Street, Hertford, Hertfordshire SG14 1BA

- 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 planning permission.
 - The appeal is made by Churchill Retirement Living Ltd (CRL) against East Hertfordshire District Council (EHDC).
 - The application Ref 3/22/2346/FUL, is dated 4 November 2022.
 - The development proposed is redevelopment to form 34 retirement living apartments for older persons including associated communal facilities, access, parking and landscaping and 3 retail units (Use Class E).
-

Decision

1. The appeal is allowed and planning permission is granted for redevelopment to form 34 retirement living apartments for older persons including associated communal facilities, access, parking and landscaping and 3 retail units (Use Class E) at 41 Railway Street, Hertford, Hertfordshire SG14 1BA in accordance with the terms of the application, Ref 3/22/2346/FUL, dated 4 November 2022, subject to the conditions set out in the schedule attached to this decision.

Preliminary Matters

2. The appellant submitted to the Inquiry a draft unilateral undertaking (UU), made to EHDC and Hertfordshire County Council (HCC) under section 106 of the Town and Country Planning Act 1990. A copy of a completed version dated 4 August 2023 was subsequently provided. The UU secures a developer contribution of £490,612 towards off-site affordable housing. Various non-affordable housing contributions are also provided for. The amounts sought by EHDC¹ are secured. The contributions fall somewhat short of those towards the funding of libraries and waste recycling/transfer required by HCC. The UU contains a 'blue pencil' clause allowing a reallocation towards off-site affordable housing of any other contributions found to fail the tests in Regulation 122(2) of the Community Infrastructure Levy (CIL) Regulations 2010. I set out my findings over the UU later on in this decision.

Background and Main Issues

3. The appeal relates to a cleared site, originally intended for an 86-bed hotel. This formed part of a wider mixed-use redevelopment in this part of Hertford

¹ These include financial contributions towards bowls, sports hall, swimming pool, fitness gym, studio space, village and community centres, and parks, gardens and amenity green space.

town centre that is otherwise nearing completion. The planning application was made originally for 36 retirement living apartments with three retail units. Following meetings with the Council the design was amended, reducing the number of residential units to the 34 under consideration in this appeal.

4. A main statement of common ground (SoCG) sets out the issues agreed between the parties. The proposed land use is found acceptable in principle and to comply with policies HERT1 and RTC4 of the East Herts District Plan of October 2018 (DP).
5. It is common ground that the Council can currently demonstrate only a 4.41-year supply of deliverable housing land, less than the five-year amount specified in paragraph 74 of the National Planning Policy Framework (the Framework). It is agreed that there is an identified unmet need for specialist older persons' housing in East Herts. The SoCG confirmed there to be no highway safety objections to the proposal and that drainage and flood risk could be satisfactorily addressed by conditions.
6. CRL have a business model to provide schemes of all market accommodation for older people. On this basis, the Council has agreed to affordable housing requirements being met by a financial contribution towards off-site provision, as allowed for under DP policy HOU3. The amount the scheme can viably contribute towards off-site affordable housing remains a central matter of dispute between the parties.
7. The appeal is over non-determination and so the Council provided four putative reasons why permission would have been refused had it been in a position to make a decision. The main issues in the appeal reflect these in summary form. They are whether the proposal would:
 - make appropriate contributions towards affordable housing provision and other infrastructure;
 - be of a contextually satisfactory design, including in respect of designated heritage assets; and
 - provide acceptable living conditions for future occupiers, with particular regard to outlook, ventilation and communal outside space.

Reasons

Whether adequate contributions are made towards affordable housing provision and other infrastructure.

8. The UU secures the non-affordable housing contributions sought by EHDC. There is a relatively small shortfall in meeting the contributions sought by HCC and this weighs in the overall balance. Much the largest financial contribution from the scheme, both sought and offered, is towards affordable housing. Therefore, in respect of this main issue, the focus of the Inquiry concerned what the scheme could viably contribute towards this.
9. Policy HOU3 of the DP requires 40% affordable housing for residential developments of more than 15 gross additional dwellings, such as in this case. As set out in its affordable housing supplementary planning document², the Council will seek to secure financial contributions broadly equivalent to the cost

² East Herts Affordable Housing SPD May 2020.

of providing the affordable housing on-site. In its viability evidence, the Council shows the residual value of the appeal scheme provides a net surplus of £1,133,000 over a scheme with 13 affordable units provided on-site. This figure was not challenged and I have taken it to be approximately the *in lieu* requirement for 40% affordable housing.

10. Policy HOU3 may permit a lower affordable housing contribution if it is demonstrated that the 40% cannot be achieved due to viability reasons. In accordance with this policy, the appellant had provided a financial viability assessment (FVA) to justify the level of contribution towards affordable housing and other requirements. The Council had provided an independent review of this. Paragraph 58 of the Framework states that the weight given to a viability assessment is a matter for the decision maker, having regard to all the circumstances in the case. The Planning Practice Guidance (PPG) sets out the key principles in understanding viability in decision taking³.
11. The parties had reached agreement over the Gross Development Value (GDV) of the appeal proposal and found little difference over its Residual Land Value (RLV). Where the parties were significantly apart was over the Benchmark Land Value (BLV) attributed to the site. This is critical since any excess in RLV over the BLV is generally accepted to represent the amount a scheme can viably contribute to financial obligations, in this instance off-site affordable housing and other infrastructure.
12. The site has been cleared in advance of redevelopment. As such it provides no reasonable basis for deriving a BLV based upon an existing use; the approach generally advocated by the PPG⁴. Instead, the appellant has relied on an assessment of alternative use value (AUV), related to the extant 86-bed hotel consent. The PPG⁵ acknowledges that AUV may be informative in establishing a BLV. This is where the use is policy-compliant and capable of implementation, as the recent hotel planning permission would suggest.
13. The hotel had originally been intended as a Premier Inn, but owners Whitbread had stepped back in September 2020 on account of the Covid pandemic. This situation thus made way for the later CRL proposal. The unprecedented effects of Covid provide a reasonable explanation, required by PPG paragraph 017, why that alternative use had not been pursued.
14. There is no dispute that AUV is an appropriate methodology for establishing BLV in this case. However, PPG paragraph 017 requires AUV to reflect a demonstrable market demand. The viability of the appeal scheme should be assessed against the alternative use providing the greatest BLV. The parties differ widely over a BLV based on the permitted hotel use. The appellant's hotel BLV is one of around £2m. This is compared to the Council's calculation of about £0.25m.
15. As an alternative to the hotel, the Council has tested a conventional flatted residential scheme on the appeal site, with a policy-compliant 40% on-site affordable housing, and found this to generate a residual value of £1.16m. Using this residential figure in an AUV, and deducting it from the RLV for the CRL proposal, the Council shows the appeal scheme to generate a surplus

³ Viability - GOV.UK (www.gov.uk)

⁴ Paragraph: 013 Reference ID: 10-013-20190509

⁵ Paragraph: 017 Reference ID: 10-017-20190509

- sufficient to fully meet the in lieu 40% off-site affordable housing payment, as well as the other infrastructure contributions.
16. Therefore, the determinative matter becomes whether a BLV based on the permitted hotel exceeds that of a policy compliant market housing scheme and comprises a reasonable AUV for assessing a viable appeal scheme contribution. The fact that the parties are so far apart over the hotel BLV reveals valuation to be a highly inexact discipline. It is evident that relatively small variations in assumptions and inputs can generate widely differing BLV outputs.
 17. The AUV is a theoretical exercise to assess the viable level of contributions from the CRL scheme. If it is to be based on a hotel, this should reflect a continuing market demand. Covid stalled the Hertford Premier Inn scheme, which was then overtaken by events with CRL stepping in with its retirement housing proposal. Whitbread has confirmed an ongoing interest in the site for a Premier Inn⁶, although is clearly not in a position to pursue this with the current involvement of CRL. I note also that Hertford/Ware features on the expansion list targeted by Travelodge; the other main budget hotel operator.
 18. The data illustrates that market performance among branded budget hotels in the area has returned strongly post-pandemic. However, this is not conclusive evidence that a hotel would offer the highest BLV for the site, in the context of a high demand for housing in this area. Premier Inn already has a successful local presence with its Ware operation. A generally strong market demand might indicate a hotel BLV higher than estimated by the Council. However, this would not necessarily suggest to me this exceeds that generated by a general residential scheme.
 19. Although giving rise to similar figures, much was made of the appellant's original August 2022 hotel valuation⁷ being based on a profits method and being revised shortly before the Inquiry by one applying an investment approach⁸. The Council's substantially lower site hotel value was a profits-based assessment. The RICS Valuation Practice Guidance, advisory and not mandatory, states that certain trade related properties, including hotels, are valued using the profits method guidance. However, there might be some justification for the amended investment-based approach. This is because the majority of budget hotels are held as investments⁹, and transactions take place on this basis. The appellant's adopted hotel valuation reflects the advisory RICS iSurv Material on Hotels. This advises that the valuer must adopt the prevalent methodology of the active buyers in the local hotel market, which is mainly investment based.
 20. The Council finds the appellant's investment approach valuation too high. Contributory factors include too great an anticipated market rent, based on comparison with higher value, metropolitan locations, such as central Manchester. I acknowledge, however, that the comparators used reflect the appellant's valuer's particular experience in the hotel market.
 21. The appellant applies its profits approach to cross check the investment valuation. I find the Council's criticisms on this quite persuasive. I agree that

⁶ letter from Whitbread dated 20 June 2023.

⁷ Valuation Report Proposed Hotel Development, Railway Street, Hertford SG14 1BA by Christie and Co dated 5 August 2022.

⁸ Christie and Co letter of 14 June 2023.

⁹ 47% Premier Inn, 100% Travelodge

food and beverage income is unlikely to experience a 22% annual increase factored into the calculation, in a location with a high level of existing competition. Even with ongoing lean hotel management processes, a general shortage of labour puts into question the anticipated reduced wage bill. Current high energy costs also place a question mark over the reduced overheads factored in by the appellant. Overall, the Council's financial estimates over revenues, costs and net operating profit provide a sound challenge to those put forward by the appellant.

22. The Council also considers the appellant is over-estimating Average Daily Rate (ADR) for a hotel here. The relatively high ADR shown by the Ware Premier Inn would likely be less with competition from a second facility located close by in Hertford. The Council's lower ADR figure is substantiated by the widely used STR evidence and is reasonable in my view.
23. For developer profit the PPG indicates 15%-20% of GDV in relation to establishing the viability of plan policies. However, I accept that for a custom-built budget hotel there is a lower risk profile and 6% might be an acceptable contractor's profit in the AUV calculation.
24. Considering the evidence in the round, and accepting valuation is not an exact discipline, a hotel BLV could fall somewhere within a wide range. Such a margin provides reasonable scope for judging that, on the balance of probabilities, a policy compliant market housing scheme provides the appropriate basis for AUV. The agreed RLV of the appeal scheme would most likely provide a surplus over a residential BLV sufficient to meet 40% off-site affordable housing and other contributions.
25. The appellant's FVA does not adequately substantiate the lower than 40% equivalent payment offered towards off-site affordable housing, in conflict with DP Policy HOU3. The harm from this policy conflict is of a substantial magnitude, since the UU proposes only in the order of 43% of the affordable housing contribution that this scheme might viably make. However, there is a realistic fallback situation, with implementation of the extant hotel consent resulting in no affordable housing contributions whatsoever. Giving weight to this fallback, the overall harm arising from the inadequate affordable housing contribution then reduces significantly.
26. The shortfall in the scheme contributions towards libraries, waste recycling and waste transfer is not contested and leads to the proposal conflicting with DP policies CFLR7 and DEL2. The harm from these policy conflicts is quite small in degree, related to the scale of deficit.

Whether a contextually satisfactory design, including in respect of designated heritage assets.

27. The vacant appeal site forms a corner segment of an area previously occupied by the twentieth century Bircherley Green shopping centre. Adjacent parts have been replaced by the now well-advanced re-development, which fronts onto the River Lea to the north. This part of Hertford town centre has more recent development, of a comparatively larger scale. In addition to the Bircherley Green re-development, this includes the adjacent multi-storey car park and four storey Bircherley Court apartment complex opposite to this. To its west and south, Bircherley Green gives way to a finer grain of development in the more historic parts of the town centre.

28. The appeal scheme would be broadly comparable to the approved hotel in scale, height, position and footprint. Fronting closely onto Bircherley Street and Railway Street, it would reflect a historic built pattern. To one side the scheme would face the contemporary four-storey Bircherley Court development. The other side is adjacent to and across from the smaller scale of historic development running along Railway Street. To the other sides, the scheme abuts existing development, including the adjacent multi-storey car park. The visually more accessible views of the proposal are from Bircherley and Railway Streets. The corner aspect of the scheme, at the junction of these streets, would be a prominent feature in views into the town centre from a main eastern entrance.
29. The revision to the scheme, from 36 to 34 apartments, allowed for a reduction in overall height, scale and massing. The lowered ridge and eaves heights adjoining the existing two-storey building at 31-33 Railway Street better manage the transition in scale to the smaller historic buildings adjacent and opposite.
30. The original Bircherley Green development had overridden the historic plot pattern in this part of Hertford town centre, which otherwise remains largely undisturbed. These historic plots are generally quite long and narrow, leading to a varied and vertical rhythm of street frontages. In the appeal scheme, the southern elevation onto Railway Street includes a projecting central section, of a contrasting white brick to the buff sections either side, that rises to a triangular parapet. The rectangular bay, with the recessed sections to either side, articulates the prevailing plot widths and would help restore a historic built rhythm along Railway Street.
31. The corresponding eastern elevation repeats this articulation, providing the scheme a balanced appearance. The mixture of buff and white brickwork reflects the facing materials used in the contemporary Bircherley Court development opposite. It is the design of the prominent corner section, between these southern and western elevations, to which the Council's objections relate. As the tallest element of the scheme, this creates an appropriate landmark feature, announcing a main entry point to the historic core of Hertford. This full four-storey corner element rises to a triangular parapet, repeating those to both sides and concealing the pyramidal roof structure behind.
32. Like the triangular parapets, the repetitive nature of the fenestration provides balance and coherence to the scheme overall. The larger windows and tall brick piers, along with the tall central parapet, provide strong emphasis to the focal point of the scheme. The building heights and window sizes then moderate at each side, blending in appropriately with their surroundings. Whilst the arches above the windows might be decorative rather than structural, this is not a fatal flaw in a scheme that possesses a satisfactory appearance overall.
33. The scheme provides no access to public realm, such that part III of DP Policy DES4 regarding maximising legibility must apply. Whilst the entrance is to the rear, rather than more obviously at the corner, the scheme nonetheless possesses architectural legibility. It clearly reads as a landmark feature, responding to a visually significant location and emphasising, in distinct design terms, the junction between contemporary redevelopment and a more preserved historic core. The proposal satisfies the relevant part I of DES4, by

- providing a high standard of design and layout to reflect and promote local distinctiveness. It satisfies part I (a) by respecting and improving the character of the site and surroundings in terms of scale, height, mass and design features.
34. DP Policy HERT7 expects proposals to take account of, and contribute positively to, the Hertford Town Centre Urban Design Strategy (HTCUDS). This strategy promoted the Bircherley Green re-development. The appeal scheme would be an appropriate alternative to the approved hotel. It would equally mark the eastern entrance to a main connecting spine that the HTCUDS identifies as linking key places within the town centre, thus satisfying Policy HERT7.
35. The appeal site is within the Hertford Conservation Area¹⁰ (CA) and there are several listed buildings within its vicinity. I have duties under Sections 66(1) and 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990. These are to have special regard to the desirability of preserving the settings of any listed buildings affected and to pay special attention to the desirability of preserving or enhancing the character or appearance of the CA.
36. The CA is quite large and covers the historic part of Hertford. This proposal is located on the eastern side of the Central Historic Core, as defined in the CA Appraisal¹¹. It is significant for its high concentration of listed buildings and historic street pattern and development frontages. Of the nearby listed buildings, the Grade 1 listed Friends' Meeting House, and its neighbouring Grade 2 listed Priory Rooms, lie further to the east on Railway Street, set apart by intervening modern development. The retrusive settings of these historic buildings would not be adversely affected by the proposal, and their significance would be preserved.
37. The Grade 2 listed buildings¹² fronting Railway Street relate more closely to the CRL proposal. As listed buildings these are also all of national significance, related to their architectural and historic interest as well as their group value. The empty gap in the street currently detracts from their settings. The appeal scheme would restore development with a series of shop fronts that reflect the plot rhythm and street appearance. The views of these listed buildings would not be significantly reduced and appreciation of their settings would be improved by a sympathetically designed sequence of new shop fronts. Therefore, the proposal would preserve the settings of all affected listed buildings and comply with DP Policy HA7.
38. The proposal would respect the established built pattern, be of an appropriate scale, height and form for its location and suitable traditional materials might be conditional. I have addressed the Council's detailed design concerns above, which relate only to the corner elevation. I consider this taller element, with its triangular parapet, pyramidal roof and larger openings, to provide a suitable landmark feature. The design of this keystone section fits in suitably with an overall scheme which would preserve the character and appearance of the CA, in full accordance with Policy HA4.
39. As I find that it would not cause harm to the significance of the designated heritage assets discussed, this proposal satisfies DP Policy HA1. Concluding on

¹⁰ As designated in 1967, revised in 1981 and further amended in 1996.

¹¹ Hertford Conservation Area Appraisal and Management Plan - adopted March 2017

¹² Nos. 28-30, 32, 34 and 36 opposite the scheme and 23 - 25 and 27 - 29 beyond to the west.

this main issue, the proposal would be of a contextually satisfactory design, including in respect of designated heritage assets, in conformity with development plan policy.

Living conditions provided for future occupiers, with particular regard to aspect, ventilation and outside space.

40. As part of achieving well-designed places, paragraph 130 of the Framework seeks that developments promote health and well-being, with a high standard of amenity for existing and future users. The issue of whether this scheme would provide acceptable living conditions for its future occupiers is a proper matter in the overall consideration of design. This is regardless of relevant DP Policy DES4 referring only to the amenity of neighbouring occupiers. I agree with the Council that market forces should not be the sole arbiter of what amounts to acceptable living conditions.
41. In this context, it is necessary to consider the particular living requirements of a likely older occupier and the trade-offs made in choosing to live in a town centre. I have no reason to doubt the CRL evidence that a purchaser might typically be of an advanced age and seeking single person accommodation for independent living, but within a communal environment with a degree of on-site assistance available. Further motivations would be to downsize to a smaller, more manageable home which is close to shops and services and where there would not be a dependence on private car use, once that option needs to be relinquished.
42. The appeal site offers proximity to public transport and a good range of town centre facilities. Being on an urban site, and to fit in with its surroundings, the scheme provides the relatively high density of accommodation typical of a town centre apartment development. There are no private balconies or roof terraces, which might have offered better living conditions. Nevertheless, the single aspect nature of most of the apartments, and the lack of private amenity space, is not unusual for town centre flats and would provide satisfactory living conditions.
43. In this case the occupiers would instead have the benefit of the communal lounge, with the small external sitting out area leading from this to use in suitable weather. Clearly, larger external grounds, with sunnier spots, would have provided improved living conditions. However, the external area fails no set standards and is not of an inadequate size given its more passive function. The site circumstances, whereby a compatible scheme must front onto the adjacent streets, dictate the location of the communal open space. There will be the expected background noise resulting from the town centre location and a degree of vehicular activity to the outer sides of the external amenity space. Whilst not reducing this noise, the fencing and planting around the perimeter would provide the sitting out area a secluded and pleasant feel, as the scheme illustrations show. The area would enjoy some direct sunlight in summer months and, overall, provide occupiers with a pleasant outside space to enjoy at appropriate times.
44. The general high level of activity, including an evening economy, means that a town centre location cannot guarantee the same lower noise environment provided by a suburban site. In this case, the Council notes in particular the live music hosted on the opposite side of Railway Street, at the Hertford Bell public house. However, satisfactory internal noise levels within the apartments

would be provided by closed windows, with mechanical ventilation providing fresh air and cooling when required. This would be an arrangement common to numerous town centre apartment schemes, allowing effective use of urban sites to provide housing. DP Policy EQ4, quoted in the Council's putative refusal reason is not relevant, since this relates to the effect of development on air quality. Otherwise, the proposal would provide acceptable living conditions for future occupiers, including in respect of the outlook and ventilation to all apartments and the quality of the communal outside space.

Planning obligation

45. The UU secures the financial contributions in the areas sought by HCC; towards waste recycling, waste transfer, libraries, fire and rescue and monitoring fees. Although the amounts offered by the appellant fall somewhat short of those required by HCC, the principle of these obligations is supported by the statement provided. The UU does not reflect the wording that HCC would have recommended in a trilateral agreement. This includes not providing the project flexibility, occupier liability and payment triggers in the way HCC would have sought. Nonetheless, I consider the obligations made remain adequately deliverable and enforceable in the manner set out.
46. The other non-affordable housing obligations are the financial contributions sought by EHDC and the amounts have been agreed. Including that towards off-site affordable housing, the policy justification for requiring these obligations is set out in the Council's CIL compliance statement.
47. On the basis of the evidence and policy justification put to me, I am satisfied that all the obligations made in the UU meet the three tests in Regulation 122(2) of the CIL Regulations 2010, as repeated in Framework paragraph 57. I consider each obligation in the UU to be a) necessary to make the development acceptable in planning terms, b) directly related to the development and c) fairly and reasonably related in scale and kind to the development.

Planning Balance

48. The proposal brings forward a number of benefits and weight is ascribed to these, having regard to the conclusions of Inspectors in the two appeal decisions¹³ drawn to my attention, relating to CRL schemes allowed elsewhere.
49. The 34 residential units will meet DP housing supply policies DPS1 and 3 and help redress the five year undersupply identified in paragraph 6 (above). This benefit attracts substantial weight. That the units will be specialised accommodation for older people will meet an unmet need and principally satisfies DP policies HOU 1 and 6. The PPG¹⁴ refers to a critical need generally to provide housing for older people, and I give this benefit significant weight. This weighting factors in wider social benefits, both in terms of the improved health and well-being of older residents and the freeing up of larger family homes.

¹³ Appeal Ref: APP/N1730/W/20/3261194 Former Fleet Police Station, 13 Crookham Road, Fleet GU51 5QQ – 31 retirement apartments allowed 14 May 2021 and Appeal Ref: APP/H1705/W/20/3248204 Former Basingstoke Police Station, London Road, Basingstoke RG21 4AD – 56 retirement apartments allowed 24 June 2021.

¹⁴ Paragraph: 001 Reference ID: 63-001-20190626 Revision date: 26 June 2019

50. The UU makes non-affordable housing contributions that carry small positive weight. This is despite the small shortfall in the amounts sought for libraries and waste recycling/transfer. The benefit of the affordable housing contribution of £490,612 helps meet a critical need and, although not policy compliant, still attracts moderate weight.
51. Substantial weight is given to the benefit of using suitable brownfield land within Hertford town centre for homes, in accordance with Framework paragraph 120 c). This helps deliver sustainable development in accordance with the strategy of DP Policy DPS2. This substantial weight reflects the proposal being in a highly sustainable location, where future residents would enjoy good accessibility to a wide range of services, in compliance with DP Policy DPS2 and paragraph 8 of the Framework. This positive weighting also factors in the scheme making efficient use of land and satisfying DP Policy HOU2 and paragraphs 119, 124 and 125 of the Framework.
52. In accordance with paragraph 81 of the Framework, I attach significant weight to the proposal's economic benefits, including the construction works, new Class E units and increased consumer spend within the town centre. The overall environmental benefits of the scheme attract more modest weight overall, although the swift bricks are particularly beneficial to a declining bird species dependant on nesting opportunities in buildings.
53. Considerable importance and weight is attributed to the satisfaction of the S66(1) and 72(1) duties, and with the proposal addressing a harmful gap within the CA through the provision of an acceptable scheme.
54. On the basis of the planning benefits discussed above, it is clear that the proposal complies with a large number of development plan policies. Nevertheless, the provision of sufficient affordable housing, as specified in Policy HOU3, is an important aim of the DP. This consideration is sufficient for me to conclude that the proposal would conflict with the development plan when considered as a whole. Therefore it is necessary to decide whether material considerations would indicate approval despite this conflict. Of these, the Framework carries considerable weight in policy terms.
55. The Council cannot currently demonstrate a five year supply of deliverable housing sites. Therefore, the DP policies most important for determining this appeal are deemed to be out-of-date by Framework paragraph 11 d, the terms of which must be given considerable weight. Under paragraph 11 d) i, the application of Framework policies protecting designated heritage assets does not provide a clear reason for refusal in this case. The tilted balance under 11 d) ii therefore applies. There is an adverse impact stemming from an affordable housing contribution substantially lower than required by DP Policy HOU3. However, this harm would not be of a magnitude to significantly and demonstrably outweigh the many benefits that would flow from this proposal, when assessed against Framework policies taken as a whole. Material considerations would therefore indicate this appeal should be allowed.

Conditions and conclusion

56. The conditions suggested by the Council, along with the appellant's comments, were discussed at the Inquiry. I have amended, reordered and in some case combined those that meet the tests in paragraph 55 of the Framework, seeking to avoid repetition and to provide clarity and conciseness. Condition 1 applies

- the standard three-year period for commencement. For certainty, condition 2 sets out the plans approved.
57. For the proposal to be acceptable, certain matters have to be agreed before the development can proceed. Such pre-commencement conditions have the appellant's prior written agreement. Condition 3 ensures the finished floor and ridge heights are as shown on the approved plans, in the interests of character and appearance. Conditions 4 and 5 respectively ensure adequate surface water drainage and flood risk measures are put in place. In the interests of highway safety and neighbouring living conditions, condition 6 requires adherence to an agreed Construction Method Statement (CMS).
58. At stages following commencement, a number of conditions are necessary. Condition 7 addresses any previously unidentified site contamination. Condition 8 ensures adequate parking and servicing arrangements, in the interest of highway safety. To reduce carbon emissions, condition 9 requires agreed energy efficiency measures be put in place. Condition 10 requires swift bricks be provided to provide nesting sites for this declining species of bird. In the interest of the satisfactory appearance of the completed development, condition 11 requires detailed approval of all external materials and features. Condition 12 requires agreement to piling methods, including to safeguard nearby underground utilities.
59. A number of conditions need to be satisfied before the approved development can be occupied. Condition 13 is necessary to ensure that the surface water drainage infrastructure is operated, managed and maintained throughout the life of the development. Condition 14 ensures that the shared surface area, parking spaces and access are adequately drained and surfaced. To promote sustainable travel modes, condition 15 is necessary to secure application of an agreed Travel Plan. In the interests of residential living conditions, condition 16 is needed to apply the noise management measures proposed. Condition 17 requires the implementation of external landscaping measures, principally necessary to ensure the quality of the residents' outside sitting area. Condition 18 is necessary to ensure adequate water efficiency standards. Finally, condition 19 is necessary to ensure occupation by the older age groups the scheme has been designed for, and upon which basis the benefits of the proposal have been assessed.
60. Specific conditions governing construction waste management and dust emissions are unnecessary, given these matters are covered by the CMS. Also unnecessary is a condition requiring the access arrangements to be the subject of a Stage 1 Road Safety Audit, as these are as previously approved for a hotel on this site and are found equally acceptable for this proposal. The permission is for three Class E retail units and there are no reasonable grounds for a condition requiring further approval for uses a), b) and c) within that category. Nor is there any necessity for a condition removing permitted development rights for additional storeys, as these do not apply to buildings built after 5 March 2018.
61. Subject to these conditions, I conclude the appeal should succeed.

Jonathan Price

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Neil Cameron of King's Counsel, instructed by Matthew Shellum of Planning Issues Limited

He called:

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Gideon Lemberg BArch RIBA ARB - Eastern Design Director of Planning Issues Ltd

William Bedford BA MCIfA Director of Landgafe Heritage Ltd

R James Mackay BSc(Hons) MRICS (RICS Registered Valuer)
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Karl Hines BSc(Hons) MRICS, Director Christie and Co.

FOR THE LOCAL PLANNING AUTHORITY:

Annabel Graham Paul of Counsel, instructed by Victoria Wilders, Legal Services Manager, EHDC

She called:

Amit Patel BSc (Hons) MSc DipEc - Principal Planning Officer, EHDC

Richard Freeman - Interim Development Management Team Leader, EHDC

Leena Shah BArch MLA CMLI - Conservation and Urban Design Officer, EHDC

Emma Keller Bsc (Hons) - Conservation and Urban Design Officer, EHDC

Andrew Jones BSc MRICS - Director, BPS Chartered Surveyors

Melvin J Gold, FIH - Hotel Industry Consultant of Melvin Gold Consulting

INQUIRY DOCUMENTS (ID)

ID 1 Opening statement on behalf of the appellant by Neil Cameron KC.

ID 2 Opening statement on behalf of the Council by Annabel Graham Paul of Counsel.

ID 3 Copy of appellants' draft UU.

ID 4 HCC's supplementary statement concerning the UU of 6 July 2023

ID 5 Appellant's written agreement to the terms of the pre-commencement conditions suggested pursuant of sections 100ZA(4-6) of the TCPA

ID 6 Closing statement on behalf of the Council by Annabel Graham Paul of Counsel.

ID 7 Closing statement on behalf of the appellant by Neil Cameron KC.

SCHEDULE OF CONDITIONS

Time period for commencement

1. The development hereby permitted shall begin not later than three years from the date of this decision.

The details and drawings subject to which the planning permission is granted

2. The development hereby permitted shall be carried out in accordance with the following approved plans: Site location plan 40043HT-PL01A, site plan 40043HT-PL02A, ground floor plan 40043HT-PL03A, first floor plan 40043HT-PL04A, second floor plan 40043HT-PL05A, third floor plan 40043HT-PL06A, roof plan 40043HT-PL07A, elevations 1 40043HT-PL08A, elevations 2 40043HT-PL09A and elevations 3 40043HT-PL10A.

Pre-commencement conditions

3. Prior to the commencement of development hereby approved, detailed plans showing the existing and proposed ground levels of the site relative to adjoining land, together with the slab levels and ridge heights of the proposed buildings, shall be submitted to and approved in writing by the local planning authority and the completed development shall accord with these approved plans.
4. Prior to the commencement of the development hereby permitted, construction drawings of the surface water drainage network, associated sustainable drainage components, flow control mechanisms and a sustainable drainage scheme (SuDS) construction method statement shall have been submitted to and approved in writing by the local planning authority. The scheme shall then be constructed in accordance with these approved details.
5. Prior to the commencement of the development hereby permitted, full details of all required flood resilient and resistant technical measures shall be submitted to and approved in writing by the local planning authority. The scheme shall then be constructed in accordance with these approved details.
6. Prior to the commencement of the development, a Construction Method Statement (CMS) shall be submitted to and approved in writing by the local planning authority. The CMS shall include:
 - the construction programme;
 - methods for accessing the site, including traffic management measures and wider construction vehicle routing;
 - numbers of daily construction vehicles including details of their sizes;
 - hours of operation and construction vehicle movements;
 - any works to the public highway to facilitate construction;
 - parking, turning and loading/unloading arrangements for operatives and visitors;
 - the erection and maintenance of security hoardings and signage;
 - safety measures for existing public highway users;
 - wheel washing facilities;
 - measures to control the emission of dust and dirt during construction;

- consultation arrangements with neighbouring occupiers;
- a scheme for the recycling/disposing of waste resulting from the construction works.

The approved CMS shall be adhered to throughout the construction period of the development.

Pre-commencement above slab level and other construction stage conditions

7. Any contamination that is found during the course of construction of the approved development that was not previously identified shall be reported immediately to the local planning authority. Development on the part of the site affected shall be suspended and a risk assessment carried out and submitted to and approved in writing by the local planning authority. Where unacceptable risks are found remediation and verification schemes shall be submitted to and approved in writing by the local planning authority. These approved schemes shall be carried out before the development is resumed or continued.
8. No development shall commence above slab level until a management and operation plan for vehicle and cycle parking, servicing, deliveries, refuse collection and emergency vehicle access associated with the development shall have been submitted to and approved in writing by the local planning authority. The plan approved shall thereafter be adhered to.
9. No development shall commence above slab level until details of the design and construction of the development demonstrating how it would minimise overheating in summer and reduce the need for heating in the winter have been submitted to, and approved in writing by, the local planning authority. The development shall thereafter be implemented in accordance with the approved details.
10. No development shall commence above slab level until details of the design and position of swift bricks shall be submitted to and approved in writing by the local planning authority. The development shall then be implemented with swift bricks in accordance with these approved details.
11. No development shall commence above slab level or on the respective part of the development until details or samples of the following have been submitted to and agreed by the local planning authority:
 - facing bricks and roof tiles;
 - all external lighting;
 - rainwater goods, including profiles, positioning, materials, colour and fixings;
 - Juliet balconies, including depth, soffits, railings and attachments;
 - dormers, roof soffits (finishing and fixings) and windows (including materials and colour, a section of the glazing bars and frame moulding, position of the window frame in relation to the face of the wall, depth of reveal, jambs, soffits and sill detail);
 - commercial frontages, including canopies and details of fascia signage zones.

Development shall be carried out in accordance with the approved details.

- 12.No piling shall take place until a piling method statement (detailing the programme for the works, the depth and type of piling to be undertaken and the methodology by which such piling will be carried out, including noise emissions and measures to prevent and minimise the potential for damage to subsurface sewerage infrastructure) has been submitted to and approved in writing by the local planning authority. Any piling must be undertaken in accordance with the terms of the approved piling method statement.

Pre-occupancy conditions

- 13.The development hereby approved shall not be first occupied until details of the operation, maintenance and management of the surface water drainage that shall have been provided in accordance with condition 4 have been submitted to and approved in writing by the local planning authority. The details of the scheme to be submitted for approval shall include:
- a detailed verification report demonstrating the approved construction details and specifications have been implemented in accordance with the surface water drainage scheme,
 - a management and maintenance plan for the lifetime of the development which shall include the arrangements for adoption by any public body or statutory undertaker, or any other arrangements to secure the operation of the sustainable drainage scheme throughout its lifetime.

The approved details shall thereafter be adhered to.

- 14.The building shall not be occupied until the shared service area, accesses and car parking spaces shown in drawing number 40043HT-PL02 rev.A have been drained and surfaced in accordance with details that shall have had the prior written agreement of the local planning authority. These areas shall thereafter be kept available at all times for access, parking and servicing.
- 15.The building shall not be occupied until a Residential Travel Plan (RTP) to promote sustainable travel measures has been submitted to and approved in writing by the local planning authority. The RTP shall thereafter be implemented as approved.
- 16.The building shall not be occupied until noise management measures based on 24Acoustics report ref. R9594-1 Rev 1 have been submitted to and approved in writing by the local planning authority. These details shall ensure noise levels in external amenity areas meet the lower limit for noise specified in BS8233:2014 '*Guidance on sound insulation and noise reduction for buildings*'. Noise levels from building services, including MVHR systems operating at maximum capacity, shall not exceed NR 20 in bedrooms (2300 to 0700 hours) and NR 25 in all habitable rooms (0700 to 2300 hours). The noise management measures shall thereafter be maintained as approved.
- 17.The building shall not be occupied until hard and soft landscaping based on the submitted Landscape Strategy Masterplan (ref: JBA 22/232 - SK02) has been implemented in accordance with details that shall have had the prior written approval of the local planning authority. All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding seasons following the occupation of the buildings or the completion of the development, whichever is the sooner; and any trees or plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or

diseased shall be replaced in the next planting season with others of similar size and species.

18. Prior to the first occupation of any dwelling or other unit, measures shall be incorporated to provide a water efficiency standard of 110 litres (or less) per person per day in accordance with details that shall have had the prior written approval of the local planning authority.

Conditions relating to post occupancy monitoring and management

19. Each dwelling hereby permitted shall be occupied only by; (i) a person aged 60 years or over; (ii) a person aged 55 years or older living as part of a single household with the above person in (i); or (iii) a person aged 55 years or older who were living as part of a single household with the person identified in (i) who has since died.

- End -



Appeal Decision

Site visit made on 1 August 2023

by P B Jarvis BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24 August 2023

Appeal Ref: APP/J1915/D/23/3319414
17 Chadwell, Ware SG12 9JY

- 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 Kendall against the decision of East Herts District Council.
 - The application Ref 3/22/2544/HH, dated 7 December 2022, was refused by notice dated 3 February 2023.
 - The proposed development is first floor rear extension, existing pitched dormer extended.
-

Procedural Matters

1. The Council has described the development as "First floor rear / side extension with rear flat roof dormer extended sideways; pitched roof front dormer extended forward and cropped hip side roof reformed as gable end". This more accurately describes the whole development.
2. I have also been referred to a recent decision of the Council relating to the "removal of rear dormer; proposed first floor rear flat roof dormer extension; pitched roof front dormer extended forward; cropped side roof reformed as gable end" at the appeal property¹. This was approved after this appeal was lodged and being a similar scheme to that before me is a material consideration which I have taken into account.

Decision

3. The appeal is allowed and planning permission is granted for first floor rear / side extension with rear flat roof dormer extended sideways; pitched roof front dormer extended forward and cropped hip side roof reformed as gable end at 17 Chadwell, Ware SG12 9JY in accordance with the terms of application ref: 3/22/2544/HH dated 7 December 2022 and 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: 14481-S001-1st (Existing: plans & elevations) and 14481-P003-A (Proposals).
 - 3) The materials to be used in the construction of the external surfaces of the development hereby permitted shall match those used on the existing dwelling.

¹ Application ref: 3/23/0342/HH

Main Issue

4. The Council does not object to the alteration to the reformed gable end therefore the main issue is the impact of the front and rear dormer alterations on the character and appearance of the host dwelling and wider area.

Reasons

5. The dwelling on the appeal site is a large detached two storey property set on land that slopes up from the road. It has traditional features including round bay windows and forward projecting gable with central front door entrance accessed via steps from the landscaped front garden. There is an attached garage to the side with steep pitched roof above providing first floor accommodation served by a centrally positioned, pitched roof dormer to the front and small flat roofed rear addition.
6. The wider street scene comprises a mixture of older, more traditional properties such as on the appeal site, predominantly detached but with some semi-detached, as well as more modern properties. The properties are located on one side of the road only with a well vegetated embankment between them and the main Hertford Road to the north, which runs parallel to Chadwell. There are a number of mature trees within this area giving the road a pleasant 'green' character.
7. The proposal would involve the enlargement of the existing front dormer extending it forward so that it would be set close to the front edge of the garage roof, just behind the eaves. The additional bulk would be visible in the street scene being set close to the front roof edge, but the extended dormer would remain proportionate in size relative to the roofslope and would not dominate the existing roof form. In views approaching from the west along Chadwell, the dormer would appear noticeably larger but, given the set back of the property from the road frontage and that the dormer would not extend forward of the main front gable of the existing dwelling against which it would be read, it would not appear as a dominant or intrusive addition. Overall, it would be a sympathetic addition in terms of scale and design.
8. The rear addition would not be readily seen within the street scene of Chadwell, with only the side elevation of the addition being visible above the flank elevation of the existing garage which is set forward relative to the adjoining property. Notwithstanding this due to its relatively small scale when seen against the backdrop of the main dwelling, it would be seen as a modest addition in this glimpsed view.
9. In design terms, it would result in a much larger, rear flat roofed addition to a property which has predominantly pitched roofs. In addition, it would occupy virtually the whole of the roofslope resulting in a somewhat over-scaled addition. However, there are a number of examples of similar rear additions to nearby properties, notably the property next door but one to the appeal site, which can be seen in views from Chadwell Rise to the west. However, the proposed dormer would be more discretely located at first floor rather than roof level and would not be visible from this nearby street. Overall, I do not consider that it would be out of keeping or unsympathetic in this context.
10. I note that the recent approval allowed for smaller additions than that now proposed, with the front dormer maintaining a set back from the roof edge and

the existing small rear addition removed and replaced with a more centrally located flat roofed dormer retaining more of the existing roofslope. However, for the reasons set out above, the slightly larger additions in the appeal scheme before me would not be so different as to render them unacceptable.

11. I therefore find that the proposal would not be harmful to the character and appearance of the area. It would thereby accord with Policies HOU11 and DES4 of the East Herts District Plan (2018) which seek, amongst other things, a high standard of design and layout to reflect and promote local distinctiveness and to ensure that extensions and alterations to dwellings are of a size, scale, mass, form, siting and design that are appropriate to the character, appearance and setting of the existing dwelling and the surrounding area and be generally subservient in appearance. Dormers should be appropriate to the design and character of the dwelling and its surroundings and generally of limited extent and modest proportions so as to not dominate the existing roof form.

Conclusions

12. Conditions to ensure that the development is built in accordance with the approved plans and uses matching materials are necessary for the avoidance of doubt and in the interests of the visual amenity of the area.
13. I conclude that the appeal should be allowed and planning permission granted.

P B Jarvis

INSPECTOR



Appeal Decision

Site visit made on 1 August 2023

by **P B Jarvis BSc (Hons) DipTP MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 24 August 2023

Appeal Ref: **APP/J1915/D/23/3320276** **5 North Road Gardens, Hertford SG14 1NH**

- 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 Barnes against the decision of East Herts District Council.
- The application Ref 3/23/0079/HH, dated 18 January 2023, was refused by notice dated 16 March 2023.
- The proposed development is single storey rear extension, part single storey part two storey front extension, existing roof removed and re-pitched with proposed office/study in roof spaces; roof lights to rear.

Procedural Matter

1. The Council has described the development as "Single storey rear extension and first floor rear extension incorporating a rear facing Juliet balcony, part single storey part two storey front extension, existing roof removed and re-pitched with proposed office/study in roof space and 3 roof light windows to rear; new first floor side window, alterations to fenestration, replace all windows with powder coated aluminium framed windows, alterations to external materials to include vertical cedar cladding". This more accurately describes the whole development.

Decision

2. The appeal is allowed and planning permission is granted for single storey rear extension and first floor rear extension incorporating a rear facing Juliet balcony, part single storey part two storey front extension, existing roof removed and re-pitched with proposed office/study in roof space and 3 roof light windows to rear; new first floor side window, alterations to fenestration, replace all windows with powder coated aluminium framed windows, alterations to external materials to include vertical cedar cladding, at 5 North Road Gardens, Hertford, SG14 1NH in accordance with the terms of application ref: 3/23/0079/HH dated 18 January 2023 and 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: 20454-S001-1st (existing – plans and elevations) and 20454-P002-A (option 2: proposed plans and elevations).
 - 3) No development shall take place until samples / details of the materials to be used in the external surfaces of the development have been submitted to and approved in writing by the local planning authority. The approved

details shall be used in the implementation of the development hereby approved.

- 4) No development shall take place until full details of the front parking / garden area have been submitted to and approved in writing by the local planning authority. These details shall include the extent and details of surfacing to be installed and planting to be retained and/or provided. The development shall thereafter be implemented in accordance with the approved details.

Main Issue

3. The main issue is the impact on the character and appearance of the host dwelling, street scene and wider area.

Reasons

4. The appeal site comprises a detached modern dwelling of brick elevations and tiled roof located on the northern side of a small cul-de-sac which slopes up from the main North Road from which it is accessed. It has a single storey addition to the rear. A second dwelling of similar age and appearance is located at the end of the road, to the south of the appeal site, occupying higher land. The remaining properties to the south and south-east side of the road comprise two pairs of older more traditional style dwellings which have projecting gable fronts with roughcast render elevations and mature hedges to the front boundaries.
5. The surrounding area including nearby North Road, is of more varied character with a mixture of modern and traditional dwellings. These include two new contemporary dwellings of white render and grey brick elevations as well as a small estate of modern dwellings which whilst of more 'traditional' design, incorporate white render and brick elevations with grey tiled pitched roofs.
6. Policy HOU11 of the East Herts District Plan (2018) (EHDP) states that in addition to being of a size, scale, mass, form, siting, design and materials appropriate to the character, appearance and setting of the existing dwelling and surrounding area, extensions and alterations to dwellings should also generally appear as a subservient addition to the dwelling.
7. The overall size of the extensions would not be significantly greater in floorspace terms, the main additional areas being the first floor rear extension and the office/study created in the enlarged roofspace and in that respect the proposal would be subservient. However, the increased roof height and resultant additional roof bulk could not be considered subservient; but the proposed extensions effectively result in a redesign of the existing dwelling and, in my opinion, the issue is whether the enlarged dwelling would be appropriate to the character and appearance of its setting and the surrounding area having regard to the factors set out in the relevant policy.
8. The proposed extensions and alterations would result in a dwelling of greater scale and bulk than existing and the increased roof height together with the side and rear first floor additions would be clearly visible in the street scene in approaches from the entrance to the cul-de-sac from where its elevated position is most noticeable.

9. Notwithstanding these visual impacts, I do not consider that the extended dwelling would appear unduly prominent; it would maintain the same setback from the road frontage and the increased ridge height would not be significantly higher and would be seen against the dwelling at the top of the cul-de-sac in respect of which it occupies a lower position.
10. The proposed external materials would be quite different from the existing brick elevations with a dark grey rendered finish to the ground floor elevations, vertical cedar cladding to first floor and a natural slate roof. Whilst these external materials would contrast with the external appearance of the other dwellings in the cul-de-sac, they would complement the proposed design of the extended dwelling. Furthermore, as noted above, there is a much greater variation to the street scene in the wider area encompassing North Road and the proposal would not appear incongruous in this context.
11. Overall, I find that the proposal would be well designed, and whilst resulting in a larger dwelling of different external appearance to those within the immediate street scene, would nevertheless be appropriate in the wider, more varied setting. Indeed, I consider that it would add interest to the street scene.
12. I therefore find that the proposal would not be harmful to the character and appearance of the host dwelling, street scene or wider area and it would accord with EHDP Policies HOU11 and DES4 which in addition to the above seek a high standard of design to reflect and promote local distinctiveness that respects or improves upon the character of a site.
13. With regard to the National Planning Policy Framework (the Framework), I consider that the proposal would comply with relevant policies that seek to achieve good design, by adding to the overall quality of the area and being sympathetic to the surrounding built environment.

Conditions

14. A condition to ensure that the proposal complies with the approved plans is necessary in the interests of clarify and proper planning. Whilst the plans indicate the materials to be used, given that these will be new, a condition to require samples/details of the materials to be used in the external surfaces is necessary in the interests of visual amenity. Given the comments of the Council's highway officer and others and lack of detail shown on the plans, a condition is also necessary to require details of how the front parking and garden area is to be treated in the interests of highway safety and visual amenity.

Conclusions

15. I therefore conclude that this appeal should be allowed and planning permission granted.

P B Jarvis

INSPECTOR