



Appeal Decision

Site visit made on 16 October 2023

by R Aston BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12 DECEMBER 2023

Appeal Ref: APP/J1915/W/23/3316232

Ivy Cottage, 9 Malting Lane, Braughing, Ware, Hertfordshire SG11 2QZ

- 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 Brendon Scott against the decision of East Hertfordshire District Council.
 - The application Ref 3/21/2763/HH, dated 19 January 2021, was refused by notice dated 14 December 2022.
 - The development proposed is described as '*demolition of outbuilding. Garage conversion to create one-bedroom self-contained annexe with two storey side extension. Removal of garage door with two replacement ground floor windows, infill of door opening to front, insertion of 1.2 metre wooden rail and post fence*'.
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Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs form was submitted by Mr Brendon Scott against East Hertfordshire District Council. However, the application was incomplete as it provided no reasons for the application. No reasons were provided by the final comments stage, and in accordance with the Planning Practice Guidance¹ I have not therefore considered the application any further.

Procedural Matters

3. In addition to this s78 Householder appeal an appeal against the refusal of listed building consent was also submitted². However, in accordance with the Planning (Listed Buildings and Conservation Areas) Act 1990 (the Act) the building to which the appeal relates is not listed in itself and was constructed after 1948, so is not a curtilage structure for the purposes of the Act.
4. Further, it is not referred to in the listing description or as a listed building in the relevant conservation area appraisal. I sought the comments of the parties on this matter who both confirmed that consent is not required. The appellant has confirmed that the appeal will be withdrawn, and I have not therefore considered that appeal any further in this decision.
5. As the proposal affects the setting of a listed building and is in a conservation area, I have had special regard to sections 66(1) and 72(1) of the Act.

¹ Paragraph 035 Reference ID: 16-035-20161210.

² APP/J1915/Y/23/3316231 pursuant to LPA ref: 3/21/2764/LBC.

6. Amended plans were submitted some weeks prior to the Council's decision but were not considered in determining the application. Having sought clarification from the parties, the plans were submitted because the parish council brought to the appellant's attention that a public right of way (the PRow) was located to the rear. Amended plans were therefore submitted showing the PRow but with no other changes to the proposal³.
7. The development is not so changed that to consider the plans would be to deprive those who should have been consulted on the changed development of the opportunity of such consultation. There would be no prejudice to any party from my consideration of the amended plans in determining the appeal and I have therefore taken them into account.

Main Issues

8. The main issues are the effect of the proposal on the setting of the Grade II listed building, Ivy Cottage, and whether the proposal would preserve or enhance the character or appearance of the Braughing Conservation Area (the BCA).

Reasons

Setting of Ivy Cottage

9. Section 66(1) of the Act requires decision makers to have special regard to the desirability of preserving a listed building or its setting or any features of special architectural or historic interest. This is the case when considering whether to grant planning permission for development which affects a listed building or its setting.
10. Ivy Cottage was listed in 1984 and dates from the 18th century. Timber framed with a red brick sill and part stuccoed it sits under a steep red tile roof with gable dormers on the front facing elevation. I consider that the significance and special interest of the listed building, insofar as it relates to this appeal, derives from its age, architectural features, and historic fabric and as a repository of past building traditions and technologies within a historic rural settlement.
11. The garage and pool room (the outbuildings) are sited in proximity to the north and adjacent to an outdoor swimming pool. Despite the contention that they are incongruous structures I observed they were of a simple form and traditional appearance entirely sympathetic to the rural vernacular and the building's setting. There is nothing substantive before me to indicate they are no longer fit for purpose structurally or aesthetically.
12. The setting of a heritage asset is defined as the surroundings in which that heritage asset is experienced. The setting of the building, insofar as it relates to this appeal, is primarily associated with the historic importance of the building and the semi-rural character of the settlement at this point, sited above the River Quin.
13. Experienced from within its grounds, including the PRow and further afield across the valley, the outbuildings complement and are subservient to Ivy Cottage due to their domestic proportions and appearance. In views across the valley from the east the open setting above the river course positively

³ Revised drawing no. 1046_YPUK_P001 Rev P2.

- contributes to the appreciation and understanding of the special interest and significance of the building within its rural landscape.
14. As with the existing outbuildings, the proposal would extend slightly beyond the building line of the prominent southeast facing elevation of Ivy Cottage. Despite the use of sympathetic materials and fenestration and with only a small increase in footprint, between the two existing structures, in such proximity the resultant elongation of the pitched roof across the full extent of the outbuildings and introduction of a gable end would result in an overly large and prominent structure close to the listed building. Of a comparable height and scale the eye would be unacceptably drawn to the unduly large expanse of roof plane, with little articulation or visual relief other than rooflights on the rear elevation facing away from the listed building.
 15. I do not agree with the appellant that it would be physically and aesthetically subservient to Ivy Cottage. Rather, its size and appearance, with the use of black weatherboarding at first floor level, would visually compete and detract attention away from the historic building. Given the local topography the effects would be apparent within the immediate area surrounding the building, from the PRoW and across the River Quin valley. This would harmfully erode the contribution that the setting makes to the significance and special interest of Ivy Cottage.
 16. The property has extensive gravel parking areas and even in losing additional undercover parking space from the loss of the garage, vehicles are parked within the immediate setting around the building. The addition of further domestic vehicles would not be significant and would preserve the significance of the building in terms of its setting. The proposed post and rail fencing would be sympathetic to the existing fencing and given its extent, location, and acceptable rural appearance it would preserve the setting of the listed building.
 17. I have been referred to an allocated housing site within the Braughing Neighbourhood Plan (the NP) that the appellant contends would affect the setting of the listed building. However, on the evidence before me an associated application⁴ has yet to be determined so the submitted site plan and consultation comments submitted are not entirely determinative. That site is located to the west of the appeal site and heritage impacts would need to be considered as part of the determination of that proposal.
 18. I also observed rear elevations and buildings associated with properties along Green End are visible from the appeal site on higher ground to the west. Even if built form ends up being closer to the appeal site, the NP contains criterions that must be met, including the retention of a significant landscaped buffer along the eastern boundary with the appeal site. I have also identified specific effects in terms of the effects on the setting of Ivy Cottage that would be readily apparent from the east across the valley and within the immediate surroundings of the building and the PRoW. Consequently, it does not alter my view or justify the harm to the setting of the listed building that I have identified.
 19. The National Planning Policy Framework (the Framework) advises that when considering the impact of development on the significance of a designated heritage asset, great weight should be given to the asset's conservation. I find

⁴ 3/20/0793/FUL.

the harm to be less than substantial in this instance but nevertheless of considerable importance and weight. I return to this in the balancing exercise below.

20. For these reasons, the proposal would fail to preserve the setting of the designated heritage asset. This would fail to satisfy the requirements of the Act, the Framework and would conflict with Policies HA1 and HA7 of the East Herts District Plan (the LP) and Policy 10 of the NP insofar as they seek, amongst other things, to ensure proposals preserve and where appropriate enhance the historic environment, result in no adverse effect to a listed building's setting and protect the historical assets of Braughing parish. As a result, the proposal would not be in accordance with the development plan.

Braughing Conservation Area

21. Braughing is a historic village of two settlements sited on high ground on either side of the River Quin. A typical rural village it was once an important centre with a large number of historic and listed buildings with important Roman routes evident within the BCA, including a ford crossing at the centre of the village at the bottom of Green Hill. Braughing is mentioned in the Domesday Book with the medieval settlement focused on the medieval Church of St Mary.
22. Case law⁵ has established that proposals must be judged according to their effect on a conservation area as a whole. The BCA has maintained a tranquil rural quality and contains a variety of styles and sizes of buildings, mainly two storeys, of a traditional construction and with some variety in the size, form, and appearance of associated outbuildings to the properties. I observed such outbuildings were a characteristic of the BCA as a whole. Notwithstanding the harm that would be caused to the setting of the listed building I do not find that the proposal would be detrimental to the character or appearance of the BCA, as a whole and so would preserve its significance.
23. For these reasons, in terms of the effect on the character and appearance of the BCA the proposal would accord with Policy HA4 of the LP and Policy 10 of the NP in terms of the requirement for development in conservation areas to preserve or enhance the special interest and that new development should not 'go against the grain' of the existing pattern of housing and preserve the attractive appearance of the rural community.

Balancing exercise

24. Given the harm I have identified to the setting of the listed building the Framework advises that this harm should be weighed against the public benefits of the proposal, which includes the securing of optimal viable use of listed buildings. I acknowledge that the appellant may have a pressing personal need but providing additional accommodation for the appellant's family is a private benefit that is not sufficient to outweigh the great weight I give to the harm that I have identified to the designated heritage asset, in terms of its setting.

Other Matters

25. Whilst I note the appellant's apparent frustrations as to the Council's handling and determination of the applications, such matters have no bearing on the

⁵ South Oxfordshire DC v SSE & J Donaldson [1991] CO/1440/89.

planning merits of the proposal before me and I have considered the costs application above.

Conclusion

26. Drawing everything together, the proposal would conflict with the development plan, when read as a whole. Material considerations, including the Framework do not indicate that a decision should be made other than in accordance with the development plan.
27. Having regard to all other matters raised, including the lack of objection from Braughing Parish Council and neighbouring occupiers, I conclude that the appeal should be dismissed.

Richard Aston

INSPECTOR



Appeal Decision

Site visit made on 7 November 2023

by V Simpson BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 1st December 2023

Appeal Ref: APP/J1915/D/23/3316333

1 Harrison Lane, Balls Park, Hertford SG13 8FE

- 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 Richard Pascoe against the decision of East Hertfordshire District Council.
 - The application Ref 3/22/0356/HH, dated 15 February 2022, was refused by notice dated 18 November 2022.
 - The development proposed is described as first floor extension over existing ground floor lounge area. Modifications to ground floor external walls.
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Decision

1. The appeal is dismissed.

Background and Main Issue

2. The appeal site is within the Green Belt. Policy GBR1 of the East Herts Council East Herts District Plan dated October 2018 (the district plan) indicates that planning applications within the Green Belt, will be considered in line with the provisions of the National Planning Policy Framework (the Framework).
3. Paragraph 147 of the Framework states that inappropriate development is by definition, harmful to the Green Belt. Paragraph 149 then says that new buildings in the Green Belt should be deemed to be inappropriate. A stated exception to this is for the extension or alteration of a building provided it does not result in disproportionate additions over and above the size of the original building.
4. The Council has found that the development proposals would not amount to inappropriate development in the Green Belt. From the evidence and my observations on site, I have no reason to conclude otherwise.
5. Therefore, the main issue is the effect of the development on the character and appearance of the area.

Reasons

6. A detached dwelling is located on the appeal site. It forms one of a pair of dwellings which are located either side of a gated entrance to the Balls Park estate. Together, the pair of houses and the gated entrance form a small cluster of development located adjacent to London Road and framed by trees. Even though from the evidence and my observations on site, traffic passing the site along London Road is generally fast moving, the small collection of development remains readily visible when passing the site.

7. Furthermore, and although not symmetrical, there are strong similarities in the design detailing, scale, materials and siting of the pair of dwellings either side of the gates. These similarities afford the development within the cluster a clear and pleasant sense of balance, which positively informs the character and appearance of the area.
8. The ridge height of the first-floor extension would be slightly lower than that of the existing dwelling. However, the building lines and main roof pitches of this part of the proposed extension would read as a continuation of the existing dwelling rather than as a subservient addition to it.
9. In terms of the design detailing and external materials that would be used, the proposed development would effectively emulate features of the original house. Nevertheless, the first-floor extension would be substantially taller, larger, and more visually prominent than the flat-roofed single-storey part of the house it would replace. Furthermore, and although the width of the first-floor extension would be approximately half the width of the existing 2-storey part of the house, the height and length of the ridge would be similar to that of the original dwelling. The proposed development would therefore significantly increase the scale of the house, and harmfully erode the balance of the pair of houses either side of the entrance gates.
10. For the reasons given above, the development would cause harm to the character and appearance of the area. Consequently, it would conflict with policies DES4 and HOU11 of the district plan. Amongst other things, these policies require development to be of a high standard of design and layout to reflect and promote local distinctiveness, and that extensions should generally appear as a subservient addition to the dwelling. It would also conflict with chapter 12 of the Framework, which seeks to ensure that developments add to the overall quality of the area; are sympathetic to local character; and maintain a strong sense of place.

Other Matters

11. The evidence suggests that the appeal site forms part of the Balls Park estate. The estate contains the large grade I listed former country house known as Balls Park, as well as several other grade II listed buildings, and a grade II listed park and garden. In addition, Jenningsbury and the separately listed garden wall to the north of Jenningsbury, both of which are located to the southeast of the application site, are grade II listed. Albeit consulted, Historic England have not commented on the proposals subject of this appeal.
12. Section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires special regard to be given to the desirability of preserving the listed building or its setting or any features of special architectural or historic interest which it possesses. Paragraph 199 of the Framework guides that when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation.
13. The significance of Balls Park, the park and garden and the other listed buildings within the wider estate lie, partly, in their historic fabric and collective group value. The estate is close to the edge of the town of Hertford. It also contains a range of more modern housing developments, some of which are located close to the listed buildings. In so far as it relates to this appeal, the

setting of the listed buildings on the estate is therefore informed not only by other nearby listed buildings, but also by the more recent housing developments, as well as by the nearby parkland and agricultural land.

14. The significance of the buildings at Jenningsbury, arise in part, from their historic fabric, as a moated house and a redbrick wall along the line of the inner bank of the moat, and, from the historic uses of the property as both a farmhouse and a moated manor. The setting of these buildings is largely informed by a group of nearby houses as well as by the neighbouring large open fields.
15. The proposed development would be separated from the listed buildings within the Balls Park estate and Jenningsbury, and from the listed park and garden, by large fields and intervening trees and woodland. Given the separation distances between the proposed development and the listed buildings, park and gardens, and the significant screening afforded by the trees, the setting of these heritage assets would be preserved. Furthermore, and for the same reasons, no harm would be caused to the significance of these heritage assets or their settings. Consequently, there would be no conflict with the Framework as it relates to the conservation of the historic environment.
16. The appeal site forms part of a wider area of land subject of a tree preservation order. However, the Council has indicated that the development would have no impact on any trees on or bordering the site. Given the distance of the trees from the dwelling, and, that increases in the footprint of the building would not project beyond areas of existing hardstanding, I have no reason to take an alternative view.
17. If implemented the proposed development would facilitate the creation of an additional and larger 1st floor bedroom, which would bring the ground and first floor accommodation into better proportion to each other, and which would enlarge the size of the house. However, only very limited weight can be attributed to the private benefits resulting from the enlargement of the house.
18. That the proposed development would not cause harm to the living conditions of occupiers of neighbouring properties is a neutral consideration. Furthermore, the absence of objections from neighbours or statutory consultees does not weigh in favour of the scheme.

Conclusion

19. The proposal conflicts with the development plan when taken as a whole, and there are no material considerations, either individually or in combination that outweigh the identified harm and development plan conflict.
20. For the reasons given above, I conclude that this appeal should be dismissed.

V Simpson

INSPECTOR



Appeal Decisions

Hearing Held on 17 October 2023

Site visit made on 18 October 2023

by R Merrett Bsc(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 05 December 2023

Appeal A: APP/J1915/C/22/3291052

Land at Quinbury Farm, Hay Street, Braughing, Ware, Hertfordshire

SG11 2RE

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mr Adam Saggars, Quinbury Farm Estate Limited, against an enforcement notice issued by East Hertfordshire District Council.
- The enforcement notice was issued on 21 December 2021.
- The breach of planning control as alleged in the notice is Without planning permission, the erection of 4no dwelling houses.
- The requirements of the notice are 1 Permanently remove from the land the 4no dwelling houses including footings and drains; 2 Remove from the Land all the resultant materials following compliance with (1).
- The period for compliance with the requirements is 6 months.
- The appeal is made on the grounds set out in section 174(2)(a), (b), (d), (f) and (g) of the Town and Country Planning Act 1990 as amended. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.

Summary of Decision: The appeal is allowed, the enforcement notice is quashed and planning permission is granted in the terms set out below in the Formal Decision.

Appeal B: APP/J1915/W/23/3317491

Quinbury Farm, Hay Street, Braughing, Ware, Hertfordshire SG11 2RE

- 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 Adam Saggars, Quinbury Farm Estate Limited, against the decision of East Hertfordshire District Council.
- The application Ref 3/22/0813/FUL, dated 11 April 2022, was refused by notice dated 2 February 2023.
- The development proposed is "Continued erection of four dwellings to the same design and appearance as previously approved under ref. 3/14/1204/FP together with all supporting infrastructure following removal of the original barns."

Summary of Decision: The appeal is allowed and planning permission is granted subject to conditions set out below in the Formal Decision.

Application for costs

1. At the Hearing an application for costs was made by Mr Adam Saggars, Quinbury Farm Estate Limited, against East Hertfordshire District Council. This application is the subject of a separate Decision.

Preliminary Matters

2. With regard to Appeal A, the appeal on ground (b) is that the alleged development has not occurred as a matter of fact. The Council conceded, prior to the event, that the breach of planning control, as alleged in the notice, was somewhat erroneously described and therefore misleading. This is because the four dwellings referred to are only in the very early stages of construction.
3. The Council suggested the allegation could be corrected by the insertion of words qualifying that the breach concerned 'works for' the erection of 4 dwellings, with consequential amendments to the notice requirements. The appellant accepted that correcting the notice accordingly would not result in prejudice and I have no reason to take a contrary view. The ground (b) appeal therefore succeeds to this limited extent.
4. If, as in this case, the allegation is corrected, then the deemed planning application is changed accordingly and thus forms the basis for assessing the ground (a) appeal. Case law, as referred to by the appellant, does not persuade me otherwise¹.
5. The appellant confirmed in advance of the Hearing that the appeal on ground (g) was withdrawn. I therefore take no further action with regard to this element of the appeal.
6. With regard to Appeal B, I have taken the description of development from that given on the application form, which I consider adequately captures what is proposed.

Background

7. The appeal site, part of a former farmstead, which included cattle and storage barns, has a lengthy planning history. In December 2005 the Council granted planning permission for the change of use of redundant agricultural buildings to four holiday cottages². In August 2014 the Council granted planning permission for the change of use, alteration and extension of existing barns to form 4 no 4 bed dwellings³. This followed in the wake of an Inspector's decision to dismiss a planning appeal for a similar development at the appeal site, albeit where the reasons for that decision were confined to matters of detailed design.
8. In very brief terms, the appellant's case is that the buildings associated with the 2014 permission had in the meantime suffered extensive and severe physical deterioration and were structurally unstable or contaminated. Consequently the buildings were subject to collapse and / or demolition, such that they were removed in their entirety. The proposal, the subject of Appeal B, is to rebuild identically the approved 2014 scheme. Indeed, the Council accepted within its delegated officer report that the size, scale, massing, form and siting of the structures would be the same as the pre-existing barns. Therefore the 2014 planning permission is of particular relevance to the current proposals and, as discussed later, a key material consideration in this decision.

¹ *Tapecrown Ltd v FSS & Vale of White Horse DC* [2006] EWCA Civ 1744 & *Ahmed v SSCLG & Hackney LBC* [2014] EWCA Civ 566

² Planning permission reference 3/05/1815/FP

³ Planning permission reference 3/14/1204/FP

Appeal A on ground (d)

9. The ground of appeal is that at the date when the notice was issued, no enforcement action could be taken in respect of any breach of planning control. S171B(1) of the Act provides that no enforcement action may be taken in respect of any unauthorised operational development after the end of the period of four years beginning with the date on which the operations were 'substantially completed'.
10. The appellant's ground (d) appeal is confined to the excavation and infilling of a 2.5 metre long foundation, which was the subject of a building control completion certificate in February 2009, and the completion of drainage works, the subject of a building control inspection report in May 2017. These works were carried out in connection with the aforementioned planning permissions.
11. The Council confirmed that it accepts these works have become immune from enforcement and therefore lawful due to the passage of time. I have no reason to take a contrary view, and therefore the ground (d) appeal succeeds to this limited extent.

Appeal B

Main Issues

12. The main issues are i) the effect of the development on the character and appearance of the surrounding area and ii) whether the appeal site is in a sustainable location.

Reasons

Local Policy Context

13. The following development plan policies are relevant to the main issues identified. Policy DES4 of the East Hertfordshire District Plan 2018 (LP) seeks to achieve a high standard of design by reflecting and promoting local distinctiveness. Policy GBR2 is concerned with maintaining the Rural Area Beyond the Green Belt as a valued countryside resource and permits certain types of development, provided they are compatible with the character and appearance of the rural area. Clause (d) states that such development includes the replacement of buildings, provided the 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.
14. Policy INT1 of the LP aligns with the overarching National Planning Policy Framework (the Framework) objective of presuming in favour of sustainable development. Policy DPS2 sets out the development strategy for the District in terms of a hierarchy of preferred site locations. With sustainability in mind this is focused on the larger settlements. However Policy GBR2(e) does allow for the limited infilling or redevelopment of previously developed sites in sustainable locations. Policy TRA1 seeks to achieve accessibility improvements and to promote sustainable transport usage. In addition Policy VILL1 recognises that Group 1 category villages should accommodate at least a ten per cent increase in the housing stock, appropriate in scale and character amongst other things. This is reflected in Policy 1 of the Braughing Parish Neighbourhood Plan (NP) which seeks to steer new development to previously

developed or infill sites within the village, whilst avoiding harm to local character and undesirable ribbon development.

15. The parties agreed at the Hearing that to comply with Policy GBR2(d) it was not necessary for a proposed replacement building to be in the same use as its predecessor. They also agreed that if I found the development to be acceptable in relation to Policy GBR2(d), then it would be compliant with that policy overall and there would be no need for me to go on to consider the development in relation to clause (e) of the same policy.

Character and Appearance

16. The appeal site is situated in a valley location, in broadly undulating countryside. Open fields with pockets of woodland and mature hedge lines predominate, with parts of small settlements evident in some longer distance views. The land rises to the east and west away from the site, with the linear hamlet of Hay Street running along a ridge, parallel to the B1368 road, a relatively short distance to the west. The village of Braughing is situated at greater distance to the south. Although the site is relatively close to these places there is no dispute that it is in the countryside, outside settlement boundaries, albeit the parties agreed at the Hearing that the site is not in a physically isolated location.
17. The immediate surroundings of the site are varied in appearance. Quinbury Farm House, essentially a large red brick building, with tall chimneys, slate roof, and some smaller ancillary buildings and Quinbury Farm Cottage, a two storey dwelling with cream painted render are to the south and north respectively. On the eastern side is a large, ageing storage building associated with the former farmstead, with a small scale equestrian related development to the north-west. The appeal site occupies the land between these various structures. Despite its diverse appearance, the location has an agricultural and rural character, reinforced by the surrounding grassed paddocks and open land.
18. The proposed buildings themselves are a combination of single and two storey structures. Traditional materials would be utilised, with elevations constructed in brickwork or weatherboarding and roofs in slate or pantiles. Each of the buildings would incorporate extensive floor to ceiling glazed areas, reminiscent of the large openings that one might associate with a former barn. The buildings would be designed to emulate the scale, form, siting and appearance of the residential conversion scheme in relation to the buildings that previously occupied the site, and for which the Council previously granted planning permission, as referred to above.
19. The parties agreed at the Hearing that the most important visual receptor locations for the development would be the byway close to the site entrance (from which access into the site is taken) and at greater distance a bridleway on higher ground to the north-east. At shorter range, near the site entrance, the proposed buildings would appear appropriate in scale, form and design to their immediate surroundings, broadly referencing the form and layout of development that was originally present on the site in any event.
20. From further away to the north-east, they would, for the most part, be substantially screened by mature intervening planting, but where visible would appear nestled and assimilated next to adjacent buildings and against a rising landform. Also, when viewing the site from the public footpath network to the

south, the development would appear largely screened or filtered by existing buildings or vegetation. The development would not therefore draw the eye as an obtrusive or alien feature in the landscape. I am satisfied that general residential paraphernalia could be screened by appropriate boundary treatment.

21. Drawing the above considerations together I conclude that the development would respect local distinctiveness and would represent replacement buildings appropriate to the character, appearance and setting of the site and its surroundings, rather than urbanisation of the rural area or undesirable ribbon development. Indeed, recreating and promoting understanding of the historic layout of the original farm buildings would, in my judgement, provide limited heritage benefit and improvement to existing character. Accordingly I find that the development would accord with Policies DES4 and GBR2(d) of the LP, summarised above. In addition, although the appeal site lies outside the village boundary, on the evidence before me I do not find the development to be in conflict with the wording of Policy VILL1 of the LP or with Policy 1 of the NP as referred to above. Furthermore the development would meet the high quality design sought by the Framework.
22. At the Hearing the Council said that leaving the site empty and open would be more akin to the rural character. I consider that leaving the site undeveloped and open would not necessarily be harmful to character and appearance. However this does not undermine the positive assessment I have made above.

Sustainable Location

23. The site is undisputed to lie outside the Braughing village boundary, as defined in the NP. Whilst it has a primary (including nursery) school, a church and village hall and three public houses which would be accessible via a number of walking routes, Braughing is undisputed to have only a limited range of services. It would therefore be necessary for residents at the appeal site to travel to larger settlements further afield, in order to access various day to day services and facilities such as shopping, secondary education and medical care. Furthermore, footpaths and bridleways are for the most part unlit, with some being poorly surfaced and would not necessarily present a safe or attractive alternative during darkness or bad weather.
24. The site is within walking distance of bus stops on the B1368 Road from where bus routes provide connectivity with larger centres such as Ware, Hertford and Royston. However, services are hourly, at best, and therefore relatively infrequent. I acknowledge that an 'on demand' community bus service is provided by Herts Lynx. However, even so, I have not been provided with evidence to persuade me that this would be sufficiently flexible and responsive to provide a realistic alternative to the car. Furthermore, the Council expressed doubt at the Hearing as to the likely continuity of this service, and from the information before me I cannot be sure that it is well established and dependable into the future.
25. With regard to connectivity it would be realistic to conclude that for convenience and distance reasons, and safety during hours of darkness, there would need to be significant reliance on private vehicles in order to gain access to everyday services and facilities. I am not therefore persuaded that the appeal site could reasonably be described as being in a sustainable location.

Accordingly I consider that residential development of the appeal site would be in conflict with the Council's spatial development strategy, as encompassed within the hierarchy in Policy DPS2 of the LP, which seeks development to take place in sustainable locations. It would also conflict with Policy TRA1 of the LP insofar as it seeks to ensure a range of sustainable transport options, with a view to enabling sustainable journeys to be made to key services and facilities.

26. However, the Framework acknowledges that opportunities to maximise sustainable transport solutions will vary between urban and rural areas. In this context, and having regard to the availability of some services in the smaller, nearby centres of Puckeridge and Buntingford, also to the relatively limited scale of the proposed development, I consider that the length, duration and number of journeys necessary to access essential services and facilities, even if taken by car, would not in this case be excessive for a rural location. I am also mindful that the parties agree to a planning condition being imposed requiring the installation of electric vehicle charging points at each of the dwellings, which would also serve to facilitate and promote, albeit not guarantee, the use of more sustainable transportation. These factors therefore serve to reduce the adverse weight that I give to this matter to a moderate level.
27. Nevertheless, in my judgment, the development strategy and use of sustainable transport are key elements of the Local Plan and accordingly I find that the proposal would be in conflict with the development plan when read as a whole.
28. I have considered the various decisions, either by the Council or at appeal, that were referred to me by the parties regarding sites elsewhere in the District, where sustainability of the location was an issue. It would appear that sites at Labdens House and Gore Lane were either closer to a village centre or within a settlement boundary and not therefore directly comparable to the present site. Similarly it would appear that the site at Bockings, where residential development was found to be acceptable⁴, was close to a village containing facilities which included a post office and convenience store, unlike the appeal site. The scale of development proposed at Whempstead Road⁵, Toad Hall⁶ and at Elbow Lane Farm⁷, when taken with other recent development on that site, was in each case greater than in this case. It is also relevant that each site must be considered on its individual planning merits.

Other Matters

29. Braughing Parish Council has objected to the proposed development. It is concerned that the standard of access to the site, via a bridleway, is inferior and would endanger driver and pedestrian safety. I drove and walked the access route during my site visit. The surface of the track is informal, uneven and not finished to a high standard. It is nevertheless navigable and narrow grassed verges on either side would allow for the passing of vehicles and act as a refuge area for pedestrians. Accordingly, I am satisfied that there would not be danger to highway or pedestrian safety.
30. I have considered the argument that the grant of planning permission would set a precedent for other similar developments. However, each application and

⁴ Planning permission reference 3/22/2243/FUL.

⁵ Appeal refs APP/J1915/W/22/3303408 amongst others.

⁶ Appeal ref APP/J1915/W/21/3276833.

⁷ Appeal ref APP/J1915/W/22/3304110.

appeal must be determined on its own individual merits and a generalised concern of this nature would not in itself justify withholding planning permission in this case.

Other Material Considerations

National Planning Policy Framework

31. It is undisputed that the Council is unable to demonstrate a five-year supply of deliverable housing sites. The Council refers within its statement, as confirmed at the Hearing, to having a 4.41 year supply, equating to a shortfall of 760 dwellings.
32. Paragraph 11(d) of the Framework is therefore engaged. This means that decision makers should apply a presumption in favour of sustainable development, such that planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole. The Framework sets out that achieving sustainable development means the planning system has overarching economic, social and environmental objectives.
33. From an economic perspective, in broad terms the development would benefit the local economy during the construction period and as a result of additional spending by the various new occupiers. However, these benefits would be tempered by the relatively small number of units involved and I therefore attach limited weight in this regard.
34. The buildings would be constructed to good environmental standards, incorporating various energy and water saving measures. This would be in keeping with Policies CC1 and CC2 of the LP which seek that developments allow for climate change adaptation. However, these measures serve to help offset the impact of the development and accordingly are neutral in the planning balance. The proposal would allow for biodiversity improvement through measures such as additional landscaping. However, in light of the limited scale of development, I consider this factor should be granted very limited positive weight.
35. In social terms, a small number of additional dwellings would be provided, adding to the choice of units in the context of an acknowledged significant shortfall of housing land supply in the District. Recreating and promoting understanding of the historic layout of the original farm buildings would provide limited heritage benefit and improvement to the existing character of the site and its surroundings. The development, incorporating features and materials referencing the site's agricultural past, is well-designed. I am also mindful that the appeal site is well related to the rights of way network and is in close proximity to open countryside and various attractive walking routes. Access to such recreation opportunities would be conducive to health and well-being. Overall the social benefits of the development attract moderate positive weight.
36. The appellant considers the appeal site to constitute previously developed land and that as such the development would accord with the Framework inasmuch as it encourages the use of previously developed land where suitable opportunities exist. However, the site was previously occupied by agricultural buildings, which are specifically excluded from the definition of previously

developed land. Whilst the appellant has referred to the previous existence of an office and other businesses on the site, there is no evidence that these became lawful primary uses there. Whilst the driveway area serving the appeal site would also serve existing adjacent residential properties, I am not persuaded that this equates to the lawful primary use of the appeal site being residential. I conclude that the appeal site does not constitute previously developed land and this is not therefore a factor weighing in support of the development.

37. As set out previously in my decision the proposed development would not be in a sustainable location and would be in conflict with the development plan when read as a whole. However, for the reasons given I have attached moderate adverse weight to this harm. In terms of paragraph 11(d) of the Framework any adverse impacts of granting planning permission would not significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole. Accordingly, it would constitute the sustainable development in relation to which the Framework presumes in favour.

Planning History of the site

38. The Council confirmed at the Hearing that its decision to grant planning permission for the change of use of the farm buildings, that previously existed on the site, to residential properties was based on a supporting design and access statement and the findings of a structural engineer's report⁸. This report concluded that conversion was possible without the need to demolish or use significant or disproportionate reconstruction. The report did, however, say that that conclusion was subject to detailed design surveys.
39. The Council conceded that whilst it had expected the conversion scheme to be implemented without significant reconstruction, the plans and supporting information, accompanying the 2014 permission, were not specific regarding the exact parts of buildings which would be retained; also that changes to ground levels shown on a number of the approved plans would have a knock-on effect in terms of the reconstruction of elevation walls in any event. Neither did the Council dispute that it had agreed the use of new materials in relation to certain parts of the buildings.
40. With the benefit of hindsight this raises the question as to what the Council might reasonably have expected from the conversion scheme and how any retained materials could genuinely have been valued. Furthermore, I acknowledge the appellant's point that the Council's refusal reason on character and appearance grounds, regarding the Appeal B planning application, did not expressly refer to the loss of historic building materials.
41. Indeed, it seems to me any proposition that the previous 2014 permission can be distinguished from the present proposals on the basis that historic parts of the building would have been retained, which would have been of value to the scheme, does not stand up easily to scrutiny, because of the ambiguity over the nature and quantity of materials that were to be kept. I am also mindful that the Council's original statement in relation to its enforcement case against

⁸ Q.A. Byrom Associates, dated 22 May 2012

four dwellings indicated the Council had no objection to the development on grounds which included design, layout and character and appearance⁹.

42. It also seems, from the evidence before me, that notwithstanding the introduction of a new policy framework since the 2014 permission, and differences in the wording of the relevant character and appearance policies, this would have resulted in very little, if any, material change to how the effects of development on character and appearance per se were assessed. In any event, reference to the officer report in 2014 indicates that the visual effect of the development was not considered to be harmful as, by way of my own assessment of the proposed development, continues to be the case now.
43. With all of this in mind, whilst it is undisputed that demolishing the remaining parts of the original buildings and starting again would require a separate planning permission, the 2014 planning permission is nevertheless an important material consideration. I have taken into account that the demolition of an existing building and creation of a wildflower area in its place, part of the 2014 proposals, no longer forms part of the current scheme. Notwithstanding this, I attach significant positive weight to the fact that the outcome of the proposed scheme would essentially replicate the scheme of converted buildings that gained planning permission from the Council in 2014.
44. I have had regard to case law referred to by the Council¹⁰, in relation to which it distinguishes that case from the current appeal, on the basis of a proportion of the original building materials being retained. This, however, for the reasons given, does not alter my aforementioned conclusions. Furthermore, I find the Council's stance to be somewhat at odds with its recent decision regarding a site elsewhere in the District¹¹. In that case a residential barn conversion scheme had been allowed on appeal. This was cited by the Council as a fallback position which supported its decision to grant planning permission for a new build residential development in its place.

Overall Planning Balance conclusion

45. Therefore, despite the proposal conflicting with the development plan, material considerations, including having regard to the Framework and the planning history of the site, indicate that a decision should be taken otherwise than in accordance with the plan. This approach is recognised by Policy INT1 of the LP.

Appeal A on ground (a)

46. As set out above the deemed planning application, as corrected, is in relation to works for the erection of 4 dwelling houses. It was evident from my visit that the works in question were relatively limited, and included the construction of foundations and formation of ground floor level blockwork platforms.
47. I have concluded from the above analysis that planning permission should be granted for the four dwellings. The works subject to the deemed planning application would therefore inevitably become subsumed as construction work progresses. I am not persuaded that the development as it stands to date, albeit only partly finished and in relation to which the enforcement notice, as corrected, is targeted, results in the sustainability harm that underpinned the

⁹ See paragraph 3.18.

¹⁰ *Vallis v SSCLG and Another* 2012 EWHC 578

¹¹ Meesden Bury Farm – planning permission ref 3/21/2977/FUL – February 2023

reason for serving the notice. Nor do I consider the limited degree of development results in any other harm.

48. I therefore conclude that planning permission ought to be granted.

Conditions

49. I have considered the various conditions suggested by the Council, as discussed at the Hearing. Conditions specifying the plans and requiring details of the external materials, boundary treatments, hard surfaced areas, landscaping and tree protection are needed to safeguard the character and appearance of the area. Conditions regarding the timing of building operations, the management of waste materials associated with the development, dust control measures during construction and the control of external lighting are all required to ensure the living conditions of nearby residents are protected. A condition requiring that the adjacent public right of way is not obstructed is needed so as to protect that route.
50. Conditions removing permitted development rights for extensions and alterations to the dwellings, for the erection of curtilage buildings and future alterations to means of enclosure are required to protect the character and appearance of the area and the living conditions of residents. A condition to ensure that the internal rooms are protected from excessive noise is required in order to protect the living conditions of occupiers of the dwellings.
51. The completion of hard surfaced areas is required in the interests of safety and the character and appearance of the area. A condition to manage any ongoing risk of contamination, remediate any contamination present on the site and to validate remediation measures undertaken is necessary in the interests of environmental protection. The specification of any gas fired boilers on the site and water efficiency measures are controlled for the same reason. A condition requiring the installation of an electric vehicle charge point at each of the dwellings is required in order to promote sustainable transport and minimise air quality impact. A condition requiring details of biodiversity gains is required to secure environmental improvements to the site.
52. I have made some minor alterations to the wording of some of the suggested conditions for clarification and to ensure they meet the tests for conditions as specified in national planning guidance.
53. I have decided that a suggested condition to control heat and water usage in the interests of reducing energy and water demand is not required as such sustainability details form part of the approved plans. Details of waste and recycling storage and collection have been satisfactorily demonstrated as part of the submitted documentation and need not be the subject of further control.

Conclusions

Appeal A

54. For the reasons given above I conclude that the appeal should succeed on ground (a). I shall grant planning permission for the development as described in the notice as corrected. The appeal on ground (f) does not therefore fall to be considered.

Appeal B

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

Formal Decisions

Appeal A

56. It is directed that the enforcement notice be corrected within Section 3: by the insertion of the words "works for" immediately before the words "the erection of 4no dwelling houses".

57. Subject to this correction the appeal is allowed and the enforcement notice is quashed. Planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended, for the development already carried out, namely works for the erection of 4no dwelling houses at Quinbury Farm, Hay Street, Braughing, Ware, Hertfordshire SG11 2RE as shown on the plan attached to the notice.

Appeal B

58. The appeal is allowed and planning permission is granted for the Continued erection of four dwellings to the same design and appearance as previously approved under ref. 3/14/1204/FP together with all supporting infrastructure following removal of the original barns at Quinbury Farm, Hay Street, Braughing, Ware, Hertfordshire SG11 2RE in accordance with the terms of the application, Ref 3/22/0813/FUL, dated 11 April 2022, subject to the conditions set out in the schedule below.

R Merrett

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:
NWA-12-005-LOC_E Rev B Location Plan; H2140 005 Sustainable Design Strategy; NWA-12-005-6 Rev E Proposed Site Plan; NWA-12-005-8 Rev C Proposed Elevations Plots 1 & 2; NWA-12-005-7 Rev D Proposed Floor Plans Plots 1 & 2; NWA-12-005-9 Rev E Proposed Plans and Elevations Plot 3; NWA-12-005-10 Rev G Proposed Plans and Elevations Plot 4; NWA-12-005-11 Rev A Proposed Car Port Plot 3.
- 3) No development shall take place until samples of all external facing materials have been submitted to and approved by the local planning authority in writing. The relevant works shall be carried out in accordance with the approved sample details.
- 4) The Public Right of Way shall remain unobstructed by vehicles, machinery, materials, tools and any other aspects of the construction at all times during works and must not deteriorate as part of the works.
- 5) The noise levels in rooms at the development hereby approved shall meet the amenity standards set out in BS 8233:2014 'Guidance on sound insulation and noise reduction for buildings'. Construction methods and materials / noise mitigation methods to achieve this shall be implemented prior to occupation of the development and thereafter be permanently retained.
- 6) All waste materials and rubbish associated with demolition and / or construction shall be contained on site in appropriate containers which, when full, should be promptly removed to a licensed disposal site.
- 7) Best Practicable Means shall be used in controlling dust emissions during all site preparation, demolition, construction and ancillary activities.
- 8) Any external artificial lighting at the development hereby approved shall not exceed lux levels of vertical illumination at neighbouring premises that are recommended by the Institution of Lighting Professionals Guidance Note 9/19 'Domestic exterior lighting: getting it right'. Lighting should be minimised and glare and sky glow should be prevented by correctly using, locating, aiming and shielding luminaires, in accordance with the Guidance Note.
- 9) Site preparation, demolition or construction works shall take place only between the hours of 8:00 – 18:00 hours on Monday to Friday, 8:00 – 13:00 hours on Saturdays and shall not take place at any time on Sundays or on Bank or Public Holidays. Vehicles arriving at and leaving the site must do so within these working hours.
- 10) The development shall not be occupied until details of both hard and soft landscape works have been submitted to and approved in writing by the local planning authority. These details shall include earthworks showing existing and proposed finished levels or contours; hard surfacing

materials; planting species, sizes and densities; retained landscape features and an implementation programme.

The landscaping works shall be carried out in accordance with the approved details and in accordance with the agreed implementation programme. The completed scheme shall be managed and/or maintained in accordance with an approved scheme of management and/or maintenance.

- 11) 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.
- 12) All existing trees and hedges shall be retained, unless shown on the approved landscaping drawings as being removed. All trees and hedges on and immediately adjoining the site shall be protected from damage as a result of works on the site, to the satisfaction of the local planning authority in accordance with BS5837: 2012 Trees in relation to design, demolition and construction, or any subsequent relevant British Standard, for the duration of the works on site and until at least five years following contractual practical completion of the approved development. In the event that trees or hedging become damaged or otherwise defective during such period, the local planning authority shall be notified as soon as reasonably practicable and remedial action agreed and implemented. In the event that any tree or hedging dies or is removed without the prior consent of the local planning authority, it shall be replaced as soon as is reasonably practicable and, in any case, by not later than the end of the first available planting season, with trees of such size, species and in such number and positions as may be agreed with the authority.
- 13) Prior to the first occupation of the respective dwellings any boundary walls, fences or other means of enclosure associated with the plot in question shall be erected in accordance with details to be previously agreed in writing by the local planning authority.
- 14) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that Order with or without modification) the enlargement, improvement or other alteration of any dwellinghouse under Schedule 2, Part 1, Classes A, AA, B, C and E shall not be undertaken without the prior written consent of the local planning authority.
- 15) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that Order with or without modification) no fences, gates or walls shall be erected within the curtilage of any dwellinghouse without the prior written consent of the local planning authority.
- 16) Prior to the first occupation of the development hereby approved full details of net biodiversity gains shall be submitted to and agreed in writing by the local planning authority. The development shall then be implemented in accordance with those details and subsequently maintained as such.

- 17) Prior to the first occupation of the development hereby approved the hard surfaced areas of the development, including roads, pavements, driveways and car parking areas shall be surfaced in accordance with details submitted to and approved in writing by the local planning authority.
- 18) Prior to the first occupation of the development, measures shall be incorporated within the development to ensure a water efficiency standard of 110 litres (or less) per person per day is provided.
- 19) The additional monitoring and mitigation laid out in the accompanying document entitled 'Remediation Strategy & Verification Plan' produced in 2015 by Go contaminated Land Solutions needs to be complied with in full.

If during the works contamination is encountered which has not previously been identified, then the additional contamination shall be fully assessed in an appropriate remediation scheme which shall be submitted to and approved in writing by the local planning authority.

A validation report detailing the proposed remediation works and quality assurance certificates to show that the works have been carried out in full accordance with the approved methodology shall be submitted prior to first occupation of the development. Details of any post-remedial sampling and analysis to demonstrate that the site has achieved the required clean-up criteria shall be included, together with the necessary documentation detailing what waste materials have been removed from the site.

- 20) One electric vehicle charging point per dwelling (dwelling with dedicated parking) shall be provided.
- 21) Any gas-fired boiler shall meet a minimum standard of less than 40 mgNO_x/kWh.

END OF SCHEDULE OF CONDITIONS

APPEARANCES

FOR THE APPELLANT:

Paul Stinchcombe KC	Barrister
Jane Orsborn	Planning Consultant
Salvatore Amico	Agent
Adam Sagers	Appellant
Duncan Murdock	Chartered Surveyor
Simon Cove	Architect
Colin Wilson	Structural Engineer

FOR THE LOCAL PLANNING AUTHORITY:

Charles Merrett	Barrister
Amit Patel	Principal Officer Development Management
Neil Button	Strategic Sites Development Team Leader
Jon Wragg	Planning Enforcement Team Leader

Documents Submitted at the Hearing:

1. Amendments to the list of suggested conditions.



Costs Decision

Hearing Held on 17 October 2023

Site visit made on 18 October 2023

by R Merrett Bsc(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 05 December 2023

Costs application in relation to:

Appeal A: APP/J1915/C/22/3291052

Appeal B: APP/J1915/W/23/3317491

Land at Quinbury Farm, Hay Street, Braughing, Ware, Hertfordshire SG11 2RE

- The application is made under the Town and Country Planning Act 1990, sections 78, 174, 320, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Mr Adam Saggars, Quinbury Farm Estate Limited, for a full award of costs against East Hertfordshire District Council.
 - The Hearing was in connection with appeals against an enforcement notice alleging Without planning permission, the erection of 4no dwelling houses (Appeal A) and the refusal of planning permission for "Continued erection of four dwellings to the same design and appearance as previously approved under ref. 3/14/1204/FP together with all supporting infrastructure following removal of the original barns." (Appeal B).
-

Decision

1. The application for a full award of costs is refused. However, a partial award of costs against East Hertfordshire District Council is approved in the terms set out below in the Costs Order.

Reasons

2. Paragraph 030 of the Government's Planning Practice Guidance (PPG)¹ 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.

Substantive Matters

3. Paragraph 049 of the PPG² advises that Local Planning Authorities are at risk of an award of costs if they behave unreasonably with respect to the substance of the matter under appeal. I set out below my findings with regard to the various examples of unreasonable behaviour, as claimed by the appellant in this case.

¹ Reference ID: 16-030-20140306

² Reference ID: 16-049-20140306

i) Not determining similar cases in a consistent manner

4. The Council set out in its enforcement statement that it did not object to the development on grounds including relating to design, layout, character and appearance³. By that time the former agricultural buildings had been demolished and as such the Council must have been contemplating a new-build development. This stance is at odds with refusing planning permission for four new build dwellings on grounds which included character and appearance. The Council explains that this anomaly needs to be viewed in the context of its suggested amendment to the alleged breach of planning control to “works for the erection of 4no dwelling houses”. However, whilst I acknowledge the notice was corrected accordingly, I am in no doubt that that the Council’s enforcement statement is directed against 4 dwellings, rather than just their preliminary works⁴. I find that the Council’s inconsistent approach in this regard amounted to unreasonable behaviour.
5. There are further inconsistencies in the Council’s position regarding character and appearance matters. Whilst its enforcement statement refers to the development going beyond limited infill⁵, the planning officer report states that it does not constitute an infill scheme. The officer report also refers to the site being in an isolated rural area, whereas at the Hearing the Council conceded that it was not an isolated location.
6. Drawing these considerations together I find the Council’s position with regard to character and appearance to be somewhat confused and ambivalent. It has not articulated its opposition to the scheme on character and appearance grounds consistently.
7. However, for the avoidance of doubt, I consider that the Council’s decision not to grant planning permission for an identical design to that approved in 2014 did not in itself amount to an inconsistent approach. Whilst I found this to be a significant material consideration, ultimately the baseline for the schemes were distinguishable, with the former a conversion scheme and the latter a new build.

ii) Acting contrary to, or not following, well-established case law.

8. The appellant relies on the *Vallis* case to support their claim that the Council failed to factor into its conclusions, on whether enforcement action should be taken and planning permission granted, the previous 2014 grant of planning permission to convert farm buildings on the site.
9. I have set out in my main decision that this was an important material consideration. I concur with the appellant that *Vallis* is authority for weighting similarities between a proposed new build scheme and barn conversion which had earlier been permitted. However, the Council’s officer report regarding the planning application did acknowledge the existence of the case law, that it was a material consideration, but that the present case was distinguished by the lack of materials that could be re-used, variation to the site boundary and change to the policy framework.

³ See paragraphs 3.17 and 3.18. Reference to the need for updated or new information appears to be specifically directed to matters of climate change and sustainable design, flood risk and ecology.

⁴ See for example para. 3.2 which states that “... the appellant considers that planning permission should be granted for the erection of 4no dwelling houses” and “It is the Council’s view that the erection 4no dwellinghouses would not comply with the District Plan”.

⁵ See paras 3.7 and 11.1.

10. Whilst the lack of original material was not explicitly cited in the eventual refusal reason, reference later in the officer report to the site not containing any remnants of the barn structure suggests that this factor was at least in the minds of officers. It also seems to me that the significance of the *Vallis* case not being covered in the Council's decision making leading up to enforcement action can reasonably be explained by the development being in its early stages at that point. Whilst I did not reach the same judgment, that the Council found the previous grant of planning permission not to be determinative, did not equate to unreasonable behaviour.
- iii) Persisting in objections to a scheme or elements of a scheme which the Secretary of State or an Inspector has previously indicated to be acceptable.
11. Notwithstanding the resistance in the earlier plan to new build residential development in the countryside, when comparing the wording of the character and appearance related policies in the 2007 and 2018 development plans, I find that in practice there is very little, if any, material difference between requirements "not to detract significantly from"⁶ and to be "compatible with" or "appropriate to"⁷ and "to demonstrate compatibility with"⁸ and "respecting or improving"⁹.
12. However, whilst it was a significant material planning consideration, the earlier scheme can be distinguished as it concerned conversion rather than new-build. The previous Inspector's decision had indicated the conversion scheme, not a new-build scheme as presently proposed, was acceptable in principle.
13. I am not persuaded that the Council was duty bound to grant planning permission in this case, on the basis of the previous grant of planning permission in 2014. It is simply not the case, as a matter of fact, that the Council are opposing a scheme that an Inspector had indicated to be acceptable. It would have been possible to conclude differently in relation to the two schemes without offending this principle. I am not persuaded that the Council have been inconsistent in this specific regard.
- iv) Preventing or delaying development which should clearly be permitted, having regard to its accordence with the development plan, national policy and any other material considerations.
14. Whilst I found the development to be satisfactory when taking into account other material considerations, I nevertheless found it to be in conflict with the development plan as a whole. It required the various factors in support of and against the scheme to be weighted, and the application of the so-called tilted balance, set out at paragraph 11d) of the National Planning Policy Framework and subsequently the statutory planning balance as set out at section 38(6) of the Planning and Compulsory Purchase Act 2004. As such the claim that development was prevented which should clearly [my emphasis] have been permitted is simply not compelling.

⁶ Policy GBC9 - 2007

⁷ Policy GBR2 - 2018

⁸ Policy ENV1 - 2007

⁹ Policy DES4 - 2018

- v) Failure to produce evidence to substantiate each reason for refusal on appeal; making vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis.

15. The appellant says the Council failed to substantiate its reason for refusing planning permission on character and appearance grounds. I did not concur with the Council that there was character and appearance harm. However, it seems to me that ultimately this was a matter of judgment and, notwithstanding the concerns I have already expressed above regarding consistency, that it did within the body of the Appeal B defence explain its reservations in this respect regarding new-build development on the site¹⁰.

Procedural Matters

16. Paragraph 047 of the PPG¹¹ advises that Local Planning Authorities are at risk of an award of costs if they behave unreasonably in relation to procedural matters at appeal. I set out below my findings with regard to the examples of unreasonable behaviour, as claimed by the appellant in this case.

- vi) lack of co-operation with the other party or parties

17. The appellant alleges that the Council has failed to be cooperative and has unreasonably delayed matters. I have had regard to the timeline of correspondence with the Council, submitted by the appellant in support of the planning appeal. I agree that the planning application process, which took almost ten months to complete, was somewhat protracted.

18. However, I am mindful that the appellant had the right to appeal against the Council's failure to determine the application, however did not do so. In addition, it is not at all certain that further meetings with the Council would have resulted in a different outcome. I am not therefore persuaded from the information before me that there is evidence to substantiate a claim that any lack of co-operation in this case has resulted in wasted expense.

- vii) introducing fresh and substantial evidence at a late stage necessitating an adjournment, or extra expense for preparatory work that would not otherwise have arisen.

19. I found that the Council introduced a reason to refuse the development on character and appearance grounds, which was at odds with its stance on the enforcement case. However, despite the inconsistent approach, the character and appearance reason formed part of the Council's formal decision on the planning application and was known to the appellant prior to the appeal being lodged. This did not give rise to any adjournment in the appeal proceedings and the appellant has had the opportunity to argue their case fully against the grounds on which planning permission was refused.

Conclusion

20. I therefore find that unreasonable behaviour resulting in unnecessary expense, as described in the PPG, has been demonstrated having regard to not determining similar cases in a consistent manner (in relation to ground i) above

¹⁰ The Council, for example, referred to the residential characteristics and inward facing nature of the development that would not address the street.

¹¹ Reference ID: 16-047-20140306

and as defined in the Costs Order). A partial award of costs is therefore justified on this basis.

21. However, for the above reasons, I find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated in relation to the other claimed grounds.

Costs Order

22. In exercise of the powers under section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990 as amended, and all other enabling powers in that behalf, IT IS HEREBY ORDERED that East Hertfordshire District Council shall pay to Mr Adam Saggars, Quinbury Farm Estate Limited, the costs of the appeal proceedings, **limited to those costs incurred in respect of identifying inconsistency between the Council's enforcement and planning cases regarding character and appearance matters**; such costs to be assessed in the Senior Courts Costs Office if not agreed. The proceedings concerned an appeal more particularly described in the heading of this decision.
23. The applicant is now invited to submit to East Hertfordshire District Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

R Merrett

INSPECTOR



Appeal Decision

Site visit made on 14 November 2023

by D Wilson BSc (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15 December 2023

Appeal Ref: APP/J1915/W/23/3318301

Brookfield Farm Car Park, Aston End Road, Stevenage SG2 7EY

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under Schedule 2, Part 16, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).
- The appeal is made by MBNL on behalf of MBNL, EE Ltd & H3G (UK) Ltd against the decision of East Hertfordshire District Council.
- The application Ref 3/22/1547/TEL, dated 19 July 2022, was refused by notice dated 13 September 2022.
- The development proposed is the installation of a 20m lattice tower, 6 no. antennas, 4 no. 600mm transmission dishes, 4 no. equipment cabinets and development ancillary thereto inside a 1.8m high palisade fence compound.

Decision

1. The appeal is allowed and approval is granted under the provisions of 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 GPDO) for the siting and appearance of 20m lattice tower, 6 no. antennas, 4 no. 600mm transmission dishes, 4 no. equipment cabinets and development ancillary thereto inside a 1.8m high palisade fence compound at Brookfield Farm Car Park, Aston End Road, Stevenage SG2 7EY in accordance with the terms of the application Ref 3/22/1547/TEL, dated 19 July 2022, and the plans submitted with it including: 1624188_EHE110_79936_SG0648_M010 002 Site Location Plan Issue E, 1624188_EHE110_79936_SG0648_M010 215 Max Configuration Site Plan Issue E and 1624188_EHE110_79936_SG0648_M010 265 Proposed Max Configuration Site Elevation Issue E.

Preliminary Matters

2. During the course of the appeal scheme the appellant has submitted a large number of amended plans and two updated International Commission on Non-Ionising Radiation Protection (ICNIRP) certificates.
3. On submission of the appeal the appellant submitted a first set of amended plans¹ which proposed an alternative scheme whereby the location of the lattice tower was altered, and the equipment cabinets moved and altered in size. The first updated ICNIRP was submitted to address the Council's second reason for refusal. However, this still contained the incorrect road name.

¹ 1624188_EHE110_79936_SG0648_M009 002 Site Location Plan Issue D5
1624188_EHE110_79936_SG0648_M009 100 Existing Site Plan Issue D5
1624188_EHE110_79936_SG0648_M009 150 Existing Site Elevation Issue D5
1624188_EHE110_79936_SG0648_M009 215 Max Configuration Site Plan Issue D5
1624188_EHE110_79936_SG0648_M009 265 Proposed Max Configuration Site Elevation Issue D5

4. The appellant has clarified at the final comments stage that the first set of amended plans were submitted incorrectly, and no changes are proposed to the scheme originally considered by the Council. As such, a second set of amended plans² were provided at this stage which seek to provide clarification and confirm that the plans originally considered by the Council were correct. A selection of photomontages³ have also been submitted. However, no changes to the scheme are proposed through these amended plans and photomontages. Accordingly, no one would be prejudiced were my decision to have had regard to these amended plans and photomontages. I have therefore done so.
5. The second updated ICNIRP certificate has clarified the address of the site and confirms that the proposal has been designed to comply with the guidelines published by the ICNIRP. In these circumstances, the Framework advises that health safeguards are not something which a decision-maker should determine. No sufficiently authoritative evidence has been provided to indicate that the ICNIRP guidelines would not be complied with or that a departure from national policy would be justified.
6. 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 within their officer report, of whether or not the proposal represents inappropriate development in the Green Belt does not arise. I have therefore not had regard to these matters in defining the main issues of this appeal.
7. The provisions of 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.
8. The provisions of Schedule 2, Part 16, Class A of the GPDO 2015 do not require regard be had to the development plan. I have had regard to the policies of the development plan and the National Planning Policy Framework (the Framework) only in so far as they are a material consideration relevant to matters of siting and appearance.

Main Issue

9. The main issue is the effect of the siting and appearance of the proposal on the character and appearance of the area.

Reasons

10. The appeal site is a car parking area associated with Brookfield Farm opposite, which contains a butchery and village store. The appeal site is raised and is accessed from Aston End Lane which is a narrow single-track lane lined with extensive hedgerows. The surrounding area consists of rolling fields bounded

² 1624188_EHE110_79936_SG0648_M010 002 Site Location Plan Issue E
1624188_EHE110_79936_SG0648_M010 100 Existing Site Plan Issue E
1624188_EHE110_79936_SG0648_M010 150 Existing Site Elevation Issue E
1624188_EHE110_79936_SG0648_M010 215 Max Configuration Site Plan Issue E
1624188_EHE110_79936_SG0648_M010 265 Proposed Max Configuration Site Elevation Issue E

³ Photomontage Viewpoint VP1: Existing View; Wireframe View; Proposed View
Photomontage Viewpoint VP2: Existing View; Wireframe View; Proposed View
Photomontage Viewpoint VP3: Existing View; Wireframe View; Proposed View

by trees and hedgerows. As such, the area has a distinctive rural and open character and appearance.

11. There is a water tower next to the car parking area which is a large feature but due to its functional design, sits unassumingly within the landscape. The proposal would be taller than the water tower, but it would be much narrower and not be as bulky, due to its lattice design. As such, while long distance views would be possible due to its elevated position, the proposal would sit well in the landscape as a functional structure, like the water tower, that would not be unusual in its setting. It would therefore not result in an unduly prominent or conspicuous feature.
12. The proposal includes equipment cabinets and palisade fencing which will surround the base of the mast. However, due to the elevated site and extensive screening from hedgerows and trees, very little would be visible from the adjacent road. Furthermore, as the proposal is not located immediately next to the water tower, a general sense of openness would remain, it would therefore not result in a cluttered appearance.
13. In reaching my view I have had regard to the photomontages provided by the appellant which show that from wide and distant views that the proposal would not be a dominant feature on the landscape.
14. I therefore conclude that the siting and appearance of the proposal would be acceptable.

Other Matters

15. I have had regard to the appeal decisions⁴ provided by the Council. However, these sites are located within more urban areas which differs from the appeal site.
16. Furthermore, with respect of these appeal decisions and comments from interested parties, the Framework seeks to minimise the number of such sites and encourages the use of existing masts and buildings for new equipment. However, in this case there is evidence that sequential approach has been undertaken and such options have been explored and discounted for specified reasons.
17. Also, as I have identified that the siting and appearance of the proposed development would be acceptable, it is unnecessary for me to consider the detailed merits of any potential alternative site or the possibility of erecting antennas on an existing building, mast or other structures.
18. Notwithstanding this, I note the appellant's reasoning within their sequential approach for discounting other sites and that they consider the lower height is a limiting factor in continuing to use the water tower. The Council have not raised any evidence to suggest that this is not the case and I have no reasons to disagree with the appellant's findings.
19. Consequently, the proposal, which would support the expansion of high-quality electronic communications networks, would accord with the Framework in respect of new telecommunications sites. This is notwithstanding that there are already masts nearby.

⁴ APP/J1915/W/22/3312678, APP/J1915/W/22/3307861 and APP/J1915/W/22/3307717

20. I have had regard to the appeal decision⁵ for the conversion of the water tower and I share the view of the Inspector that the water tower has a functional appearance. I also consider that the proposed lattice would have a similarly functional appearance which would not be unusual in a rural location. I note that the Council consider that replacement equipment on the water tower would have less of an impact and that the appellant has not demonstrated that it is not possible to continue using the antennas on the water tower. However, while this is not a specific consideration before me, the Council have not advanced any evidence to suggest that the coverage could be achieved at the reduced height of the water tower.
21. I note that interested parties have raised concern over the appearance of the proposal and suggest camouflaging or changing its colour. The appellant has not proposed this, and it is therefore not before me to consider and in any case, I have found the functional appearance to be acceptable.
22. Concern has been raised by interested parties that the proposal would be located within 3km of Bennington airfield. However, the Schedule 2, Part 16, Class A of the GPDO only requires the developer to notify, and the Council to consult the Civil Aviation Authority, Secretary of State for Defence or the operator of the civil safeguarding area if the proposal would be located within a civil safeguarding area or a defence safeguarding area. Whilst within 3km of the airfield, I have been provided with no evidence to suggest that the appeal site is within a civil safeguarding area or a defence safeguarding area and I have therefore not sought to explore this matter further.

Conditions

23. The GPDO does not provide any specific authority for imposing additional conditions beyond the deemed conditions for development by electronic communications code operators contained within it. These specify that the development must be carried out in accordance with the details submitted with the application, begin within 5 years of the date of the approval and be removed as soon as reasonably practicable after it is no longer required for electronic communications purposes and the land restored to its condition before the development took place.

Conclusion

24. For the reasons given above, I conclude that the appeal should be allowed and prior approval should be granted.

D Wilson

INSPECTOR

⁵ APP/J1915/W/22/3302528



Appeal Decision

Site visit made on 21 November 2023

by A James BSc (Hons) MA MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11th December 2023

Appeal Ref: APP/J1915/D/23/3324542

12 Highfield Farm, Mangrove Lane, Brickendon, Hertfordshire SG13 8QJ

- 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 Michael Kirby against the decision of East Hertfordshire District Council.
 - The application Ref 3/23/0349/HH, dated 23 February 2023, was refused by notice dated 20 April 2023.
 - The development proposed is single storey rear extension.
-

Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are:
 - whether the proposed development would be inappropriate development in the Green Belt having regard to the National Planning Policy Framework (the Framework) and any relevant development plan policies;
 - the effect of the proposed development on the openness of the Green Belt; and,
 - if the proposal is inappropriate development, would the harm by reason of inappropriateness, and any other harm, be clearly outweighed by other considerations as to amount to the very special circumstances required to justify the development.

Reasons

Inappropriate development

3. The appeal site lies within the Green Belt and consists of a modest, end of terrace bungalow, which has a small rear garden. The original building was previously a stable, which has been split into four dwellings. The appeal property has two rear, single storey projections, which the appellant advises were constructed prior to the building being first occupied as a dwelling.
4. The fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open. Inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. Substantial weight should be given to any harm, and very special circumstances will not exist unless the potential harm to the Green Belt

- by reason of inappropriateness, and any other harm resulting from the proposal, is clearly outweighed by other considerations.
5. Policy GBR1 of the East Herts District Plan (the District Plan) October 2018, requires that planning applications within the Green Belt are considered in line with the provisions of the Framework. Within the Framework, the construction of new buildings is deemed to be inappropriate development within the Green Belt. However, there are a number of exceptions to this, including paragraph 149 c) of the Framework, which relates to the extension or alteration of a building provided that it does not result in disproportionate additions over and above the size of the original building.
 6. Annex 2 of the Framework defines the original building as a building as it existed on 1 July 1948 or, if constructed after 1 July 1948, as it was built originally. The Council advises that the original floorspace of this part of the building was 35 sqm. The building has been extended to the rear, which provides a further 35 sqm of floorspace. The proposal seeks to provide a single storey rear extension, which would infill a gap between the existing rear projections and neighbour's rear projection. The proposed extension would create an additional 11.6 sqm of floorspace.
 7. There is no definition of what constitutes a disproportionate addition within local or national planning policy. I appreciate that the proposed extension would be modest in size. However, in combination with the existing additions, the proposal would result in a significant increase in volume and 133% increase in floorspace when compared to the size of the original building, which would be disproportionate.
 8. For the reasons given above, I conclude that the proposal would result in a disproportionate addition over and above the size of the original building. As a result, the proposal would be inappropriate development in the Green Belt. The proposal would conflict with Policy GBR1 of the District Plan, which requires that planning applications within the Green Belt are considered in line with the provisions of the Framework. The proposal would also conflict with paragraph 149 c) of the Framework, which requires that extensions to buildings within the Green Belt do not result in disproportionate additions over and above the size of the original building.
 9. While the Delegated Officer Report concludes that there would be conflict with Policy DES4 of the District Plan, this policy is not referenced in the reason for refusal. Policy DES4 is a general design policy, which among other things covers character and appearance and living conditions. There is no evidence before me to suggest that the Council has any concerns relating to the design of the proposed extension or its effect on the character and appearance of the area or the living conditions of neighbouring properties. Consequently, I do not find any conflict with this policy.

Openness

10. Openness is an essential characteristic of the Green Belt that has spatial as well as visual aspects. The proposed extension results in additional volume and massing on site, which would cause a spatial loss of openness to the Green Belt, albeit this would be limited given the size of the extension.

11. The proposal would be single storey in height. Its ridge would be lower than the principal part of the building and the existing rear projections. The proposal would not extend as far rearwards as the projections either side and would partly infill a gap between the host property and neighbouring property's rear projection. Consequently, the proposal would not be visible from the front elevation or from either side of the property. There would be limited views of the extension from the rear above the boundary treatment. Given the infill nature of the proposal and its modest size, I do not find that it would result in a visual loss of openness to the Green Belt.
12. For the reasons given above, I conclude that the proposal would result in a small loss of spatial openness to the Green Belt and would therefore conflict with the Framework, which seeks to keep land permanently open.

Other considerations

13. The appellant has drawn my attention to the preamble to Policy HOU11 of the District Plan, which states that extensions in the Green Belt should not result in disproportionate additions over and above the size of the original dwelling. As this wording does not form part of a policy, I give it limited weight in my decision. I give great weight to Policy GBR1 of the District Plan, which requires that development in the Green Belt is considered in line with the provisions of the Framework, which refers to the original building, rather than the original dwelling.
14. My attention has been drawn to an extension at 14 Highfield Farm (No 14). The appellant argues that the development at No 14 results in a similar sized building to that sought in this appeal and was not found to be disproportionate by the Council. I appreciate that the Council has dealt with the two applications differently and I afford this other consideration moderate weight in favour of the proposal.
15. The appellant has drawn my attention to other appeal decisions. In the Crabtree Cottage appeal, the Inspector concluded that the historic evidence indicated that the building was larger on 1 July 1948 than asserted by the Council. This led the Inspector to reach a contrary conclusion to the Council. The Old Quarry House appeal resulted in a far smaller percentage increase when compared to the original building than the appeal scheme before me. Nevertheless, the other schemes fall within a different local authority area and as a result the local policy context is materially different and not comparable. In any event, I am required to determine the appeal on its own merits.
16. I note that the Parish Council raise no objection to the scheme if the footprint is the same as that included at No. 14. However, this does not alter my findings set out above.

Green Belt Balance

17. The proposed development would be inappropriate development in the Green Belt, which is by definition harmful to the Green Belt. Furthermore, there would be harm caused by the small loss of openness to the Green Belt from the proposed development. Paragraph 148 of the Framework is clear that substantial weight should be given to any harm to the Green Belt. Overall, I afford the other considerations advanced in this case moderate weight in favour of the development. Accordingly, very special circumstances do not exist

that clearly outweigh the harm to the Green Belt, by reason of inappropriateness and harm to openness.

Conclusion

18. For the reasons given above, the proposal would conflict with the development plan as a whole and there are no other material considerations, including the Framework, that would outweigh that conflict. Therefore, I conclude that the appeal should be dismissed.

A James

INSPECTOR