



Appeal Decision

Site visit made on 29 August 2023

by A Price BSc MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23 January 2024

Appeal Ref: APP/J1915/W/22/3313327

Land opposite Amwell Grove, Cautherly Lane, Great Amwell SG12 9SP

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr John Van Hage against the decision of East Herts Council.
 - The application Ref 3/22/1146/FUL, dated 27 May 2022, was refused by notice dated 17 October 2022.
 - The development proposed is the construction of a detached two-storey, three-bedroom dwelling.
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Decision

1. The appeal is allowed and planning permission is granted for the construction of a detached two-storey, three-bedroom dwelling at Land opposite Amwell Grove, Cautherly Lane, Great Amwell SG12 9SP in accordance with the terms of the application Ref 3/22/1146/FUL, dated 27 May 2022, subject to the conditions appended to this appeal.

Preliminary Matters

2. I have used the Council's description of development as this more accurately describes the proposal. I note that this features on the appellant's appeal form.
3. The appeal relates to proposed development in proximity to listed buildings and which is located within a conservation area. Accordingly, I have had special regard to the requirements of sections 66(1) and 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the Act).
4. Since the appeal was lodged, a revised version of the National Planning Policy Framework (the Framework) was published (19 December 2023). This does not materially change the planning policy context in respect of the main issues.

Main Issues

5. The reasons for refusal in the Council's decision notice refer to harm to the setting of designated heritage assets and the conservation area. Although not referenced on the decision notice, the officer's report also refers to the effect of the proposed development on non-designated heritage assets.
6. Taking the above into account, I consider the main issues are:
 - the effect of the proposed development on the character and appearance of the site and surrounding area; and
 - whether the proposed development would preserve the settings of adjacent Grade II* and Grade II listed buildings and identified non-

designated heritage assets, and the extent to which the development would preserve or enhance the character or appearance of the Great Amwell Conservation Area.

Reasons

Character and appearance

7. The appeal site comprises a parcel of land set between Cautherley Lane and St Johns Lane. The surrounding area is made up, predominantly, of residential properties, although the George IV public house lies adjacent to the site and the Parish Church of St John the Baptist lies opposite.
8. There is significant variation in the scale, period and detailed design of properties within Great Amwell. However, consistent features typically exist including the setback of properties from roads, within large, well landscaped garden plots. Similarities also exist in the use of materials, which typically comprise brick and render.
9. The proposed development would be reasonably prominent from Cautherley Lane by reason of the site's elevated position relative to this road. The site would also be clearly visible from St Johns Lane and from the private vantage points of neighbouring properties. As such, the proposed development would undoubtedly change the appearance of the site and its relationship with the surrounding area. However, the development would be set amongst established built form of a varied scale, style and period, and I observed that both the boundary wall of Amwell Grove and the west elevation of the George IV public house form prominent structures along the edge of Cautherly Lane. Moreover, the proposed development would not be the first contemporary intervention in the village, nor is the built form of the village entirely cohesive or unadulterated. Notwithstanding the planned elements of Great Amwell, in particular the landscape to the north of the site, the established development in the surrounding area is the result of the evolution of the village over time.
10. Although the majority of properties within the village feature traditional roof profiles, examples of contemporary flat roof designs, as well as more traditional parapet roof features, are visible. Accordingly, the proposed flat roof design, rather than a suggested pitched roof (which is not before me), would not appear unduly out of keeping with the wider area.
11. Based on the submitted information, together with my observations on site, I do not find that the overall size and bulk of the proposed dwelling would be substantial or out of proportion with the site or the established properties within the surrounding area. Rather, the proposed development would respond to, and complement, those adjoining properties, respecting the change in levels between the public house and The Mount. Ultimately, the scale and design of the proposed dwelling would have an acceptable effect on the character and appearance of the site and surrounding area. I consider that further details of the external materials and landscaping, including boundary treatments and hard landscaping, can be satisfactorily dealt with by condition.
12. For the above reasons, I conclude that the proposed development would have an acceptable effect on the character and appearance of the site and surrounding area, in accordance with the relevant provisions of Policies DES2, DES3 and DES4 of the East Herts District Plan (DP, 2018). These policies, in

summary, seek to achieve high quality design in development which respects its context, including the historic environment. This is in a similar vein to the provisions of the Framework insofar as good design is concerned.

Heritage assets – special interest and significance

Parish Church of St John the Baptist

13. Parish Church of St John the Baptist is a Grade II* listed building¹. It is a largely 15th century building, with some intact 14th century features. The building has evolved over time to include 19th century elements. It is set within an historic graveyard, enclosed and largely obscured by walls and mature landscaping. Based on the evidence before me, the special interest and significance of the listed building is largely derived from its historic and architectural interest. Important contributors in these regards are its age, its dominant presence within its grounds, its surviving historic fabric and its historic and continued use as a place of religious congregation.
14. Pertinent to this appeal, the building's special interest and significance are also derived, in part, from its setting. The grounds and graveyard of the church have an historic, visual and functional connection with the heritage asset. These grounds are clearly defined by boundary treatments including walls and mature landscaping. These grounds form the asset's immediate setting, and it is from here that the asset is best appreciated. This immediate setting contributes considerably to the asset's special interest and significance.
15. Beyond this, the surrounding area, of which the site forms a part, is made up of loosely arranged, predominantly residential, development. This is indicative of the evolution of the surrounding village over time. Some glimpsed views of the asset are possible between gaps in landscaping, including from St Johns Lane. This surrounding area, including the appeal site, forms the asset's wider setting. The surrounding village development has altered how the asset is experienced to a degree. Whilst the asset might once have formed a very prominent and imposing building within the wider landscape, the later residential development and now mature landscaping that surrounds it has, to a degree, altered how the asset is experienced from the surrounding public realm. This moderates the contribution this wider setting makes to its special interest and significance.

Amwell Grove

16. Amwell Grove² is a Grade II listed building, set within expansive grounds. Designed by Robert Mylne, it dates from the 18th century, with later extensions and alterations. Based on the evidence before me, the special interest and significance of the listed building is largely derived from its historic and architectural interest. Important contributors in these regards are the association with the architect Robert Mylne and its surviving historic fabric.
17. Pertinent to this appeal, the building's special interest and significance are also derived, in part, from its setting. The well enclosed and landscaped grounds of Amwell Grove are largely set away from public views. It is from these closely related grounds that the asset is best appreciated. This forms the asset's immediate setting. This immediate setting contributes somewhat to the asset's

¹ List Entry Number: 1341839

² List Entry Number: 1101799

special interest and significance. Beyond this, the surrounding area is made-up of established development and mature landscaping. This surrounding area, which includes the appeal site, forms the asset's wider setting. There is some, but very limited, intervisibility between the wider setting and heritage asset. This moderates the contribution the wider setting makes to the asset's special interest and significance.

Gatepiers, screen wall, gate and gateway at Amwell Grove (hereafter referred to as 'the Amwell Grove wall and gatepiers')

18. The Amwell Grove wall and gatepiers³ form a mid-19th century structure of tall yellow brick piers, with moulded stone details, positioned either side of the gateway to Amwell Grove. The adjoining walls are of flint and yellow brick. Based on the evidence before me, the special interest and significance of the listed structure is largely derived from its historic and architectural interest. Important contributors in these regards are the association with Amwell Grove and the architect Robert Mylne, together with its surviving historic fabric.
19. Pertinent to this appeal, the structure's special interest and significance are also derived, in part, from its setting. The asset is best appreciated from adjoining, verdant Cautherley Lane. The lane forms, in part, the immediate setting of the asset, which contributes somewhat to the asset's special interest and significance. Beyond this, the surrounding area is made-up of established development and mature landscaping. This surrounding area forms the asset's wider setting. The established development to the east of the structure, and the unused space formed of the appeal site, alter how the asset is experienced from surrounding public realm and moderates the contribution this wider setting makes to the asset's special interest and significance.

Non-designated heritage assets

20. Two buildings, namely the George VI public house and The Mount, have been identified as non-designated heritage assets. These lie adjacent to the site. I have noted the Council's reference to the effect of the proposed development on these buildings, although there is no evidence before me to demonstrate that these are locally listed.
21. The Mount is located to the east of the appeal site and is of a modest scale. Despite this, it sits in a reasonably prominent position within the streetscene, adjacent to St Johns Lane and near to the main gateway of the church. The wider St Johns Lane forms the setting of the asset, from which it is best appreciated, particularly from the west approach. As a result, St Johns Lane contributes to how this asset is experienced and so adds to its significance.
22. The public house is a relatively large building which sits in a highly prominent position within the village, at the junction of Cautherley Lane with St Johns Lane. It is best appreciated from both lanes, particularly from the west. These lanes form part of the setting of the asset. As a result, both Cautherley Lane and St Johns Lane contribute to how this asset is experienced and so add to its significance.

³ List Entry Number: 1077995

Conservation Area

23. The appeal site is located within Great Amwell Conservation Area (CA).
24. The special interest and significance of the CA is largely derived from its historic townscape, together with its sunken lanes and planned verdant open space. It includes significant buildings such as the Parish Church of St John the Baptist. Insofar as the appeal is concerned, there is variation in dwelling style and period within the CA. However, the dwellings are typically positioned within large, spacious plots.
25. The appeal site forms an undeveloped site with limited mature vegetation. This creates a gap in established built form, and makes a neutral contribution to the character and appearance of the CA and thereby to its significance as a designated heritage asset.

Heritage assets – appeal proposal and effects

Parish Church of St John the Baptist

26. There is no doubt that the proposed development would be visible, introducing built form to a site where there is currently none, and in a contemporary style. Nevertheless, the physically and functionally separate relationship between the appeal site and listed building would be maintained and the asset's historic and architectural interest would remain unaffected by the proposed development. The retention of a considerable separation distance, intervening landscaping features and highway would all reinforce this. Furthermore, the immediate setting and most of the wider setting that contributes to the asset's significance would remain undisturbed by the proposed scheme.
27. Taking these factors into account, the proposed development would not compromise the setting of Parish Church of St John the Baptist, rather it would have a neutral effect that would not detrimentally alter how the asset would be experienced and would not adversely affect the ability to appreciate its significance. Consequently, the immediate and wider settings of the asset and the contribution that they make to its significance would be preserved.

Settings of Amwell Grove and Amwell Grove wall and gatepiers

28. The position and nature of the proposed development, together with the limited intervisibility between the appeal site and these heritage assets, would mean that the visually and physically separate relationship between the sites would be maintained. The historic and architectural interests of the assets would remain unaffected. The retention of a reasonable separation distance and intervening landscaping features and roads, in particular, would reinforce this. Ultimately, the settings that contribute to the significance of those assets would remain undisturbed by the proposed scheme.
29. Taking these factors into account, the proposed development would not compromise the settings of Amwell Grove or Amwell Grove wall and gatepiers. Rather, it would have a neutral effect that would not adversely affect the ability to appreciate the significance of those assets. Consequently, the settings of the assets, and the contribution those settings make to their significance would be preserved. The Council is of the same view in this respect.

Non-designated heritage assets

30. By reason of the nature, scale and position of the proposed development, set away from the boundaries of the site, in undertaking a balanced judgment, I do not consider the proposal would result in any harmful effects to the setting, and therefore the significance of the identified non-designated heritage assets.

Conservation Area

31. The proposal would be visible in public views, including from Cautherley Lane and St Johns Lane. However, it would be set amongst established built form and setback from the site's boundaries within a landscaped garden plot. The building would be of a scale, height and position which would respond appropriately to the site and adjoining properties, which generally sit within large, landscaped garden plots. The proposed development would also appropriately respond to the site's, and adjoining site's, levels.
32. Whilst clearly contemporary, the proposal would be congruent within a context of relatively varied properties in terms of scale, period and detailed design. The dwelling would be finished in materials including red stock brick and reconstituted stone, which, in my view, would complement and respond positively to the character and appearance of the CA.
33. For the reasons above, I consider that the proposals would have a neutral effect on, and would therefore preserve, the character and appearance of the CA as a whole.

Heritage – conclusion

34. Overall, I conclude that the proposed development would preserve the settings of the Grade II* listed building, Parish Church of St John the Baptist, the Grade II listed buildings, Amwell Grove and Amwell Grove wall and gatepiers, and the identified non-designated heritage assets of The Mount and George VI public house. It would also preserve the character and appearance of the CA. Consequently, the proposed development would not harm the significance of these heritage assets. In doing so, it would satisfy the requirements of Sections 66(1) and 72(1) of the Act, and would not conflict with the relevant provisions of DP Policies HA1, HA4, HA7 and HA8 which, in summary and taken as a whole, seek to protect heritage assets. This is in a similar vein to the relevant provisions of the Framework, insofar as they seek to protect the historic environment.
35. In finding no harmful effects to the special interest and significance of the designated heritage assets, it is not incumbent on me to consider any public benefits that would flow from the proposal.

Other Matters

Amwell Grove and Amwell Pool

36. Amwell Grove and Amwell Pool⁴ is a Grade II Historic Park and Garden. It comprises a late 18th and early 19th century landscape associated with Amwell Grove house, which is itself located within the designated landscape, designed by Robert Mylne. The gardens and pleasure grounds include a prominent body

⁴ List Entry Number: 1000903

of water known as the 'Pool', with islands within, and various structures and memorials associated with the planned landscape. Mature trees dominate the landscape. Based on the evidence before me, the special interest and significance of the asset is largely derived from its historic and architectural interest. Important contributors in these regards are its association with the architect Robert Mylne, its impressive scale and picturesque appearance.

37. Pertinent to this appeal, the building's special interest and significance are also derived, in part, from its setting. Amwell Grove and Amwell Pool is surrounded by a backdrop of verdancy and scattered development, of which the appeal site forms a part. These surroundings form the asset's wider setting and positively contribute to its significance.
38. The position and nature of the proposed development, together with the limited intervisibility between the appeal site and this heritage asset, would mean that the visually and physically separate relationship between the sites would be maintained. The historic and architectural interests of the asset would remain unaffected. The retention of a reasonable separation distance and intervening landscaping features and roads, in particular, would reinforce this. Ultimately, the proposed development would not compromise the setting of Amwell Grove and Amwell Pool, and the contribution it makes to the asset's significance would be preserved.

Other considerations

39. A range of comments have been received from neighbours of the site and others. Objections raised relate to the impact of the proposed development on the green belt, heritage assets, highway safety and flood risk. I have dealt with matters of design and heritage above. There is no dispute between the Council and appellant in respect of the green belt, highway safety and flood risk. Based on the evidence before me, I have no reason to disagree with those findings.
40. In respect of the site's proximity to Amwell Quarry Site of Special Scientific Interest (SSSI), and the potential for the development to affect that designated site, Natural England (NE) were consulted during the course of the planning application. NE confirmed that in the event that the development proposed to connect to the mains sewer, it would have no further comments to make. In response, and notwithstanding that this was not clear within the original application form, the appellant has confirmed that a connection to the mains sewer is proposed. Accordingly, and subject to a condition ensuring that the development does connect to a mains sewer, I have no reason to come to any alternative conclusion on the main issues.

Conditions

41. The Council has provided a list of 21 conditions. I have assessed those with reference to the advice in the Framework and Planning Practice Guidance, and consider in that context that only 14 need to be applied. I have amended the wording of some, and combined provisions of others without altering their fundamental aims.
42. Conditions relating to time limits and approved plans are necessary for certainty. A condition is imposed relating to construction hours in the interests of public safety and the protection of the living conditions of neighbouring occupants. Conditions relating to external materials, details of windows/doors,

details of parking areas, landscaping and measures for the protection of trees (noting the appellant's comments on this condition) are imposed. These are necessary in the interests of character and appearance, to ensure the health of any retained trees on or adjacent to the site, and for certainty.

43. A condition is necessary to ensure adequate provision of bin storage. Conditions relating to the provision of an electric vehicle charging point and gas-fired boilers are necessary in the interests of air quality. A condition relating to details of foul sewage arrangements is required in the interests of sustainability.
44. A condition relating to the ecological assessment is necessary for certainty and to protect and enhance biodiversity. A condition relating to archaeology is imposed as the site is located within an Area of Archaeological Significance and in the interests of DP Policy HA3. This is a pre-commencement condition as it is necessary to ensure that any potential risks are known, and mitigation measures planned in, prior to the commencement of development.
45. Suggested conditions relating to the rooflight materials and boundary treatments have not been imposed as these matters are adequately covered by the provisions of the external materials and landscaping conditions. A suggested condition requesting site levels has not been imposed as this is covered under the provisions of the landscaping condition. Suggested conditions removing permitted development rights and requiring details of overheating/cooling have not been imposed as there is insufficient evidence before me to demonstrate why these measures are reasonably necessary in this particular case.
46. A suggested water efficiency standards condition has not been imposed as this matter would be dealt with under Building Regulations. A suggested condition relating to contamination has not been imposed as there is no evidence before me, including any correspondence from environmental health specialists, which justifies the need for this condition.

Conclusion

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

A Price

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: 220417-PL-001 B; 220417-PL-002 B; 220417-PL-100 A; 220417-PL-101 B; 220417-PL-102 B; 220417-PL-301 A; 220417-PL-302 A; 220417-PL-303 A; 220417-PL-304 A; 220417-PL-305 A; 220417-PL-306 A; 220417-PL-307; 220417-PL-308 A.
- 3) Prior to the commencement of the development hereby permitted, details of the means of foul drainage shall be submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved details and thereafter maintained.
- 4) Prior to the commencement of any above ground works of the development hereby permitted, details of the materials to be used in the construction of the external surfaces of the development hereby permitted shall be submitted to and approved in writing by the Local Planning Authority. This shall include samples of the brickwork. The development shall be carried out in accordance with the approved details and samples.
- 5) Prior to the commencement of any above ground works of the development hereby permitted, detailed drawings of the windows and doors proposed, including a section of the glazing bars, frame moulding, reveals, arch and sills, shall be submitted to, and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved details.
- 6) Prior to the commencement of any above ground works of the development hereby permitted, the applicant, or their agents, or their successors in title, shall have secured the implementation of a programme of archaeological work in accordance with a written scheme of investigation which has been submitted to and approved in writing by the Local Planning Authority. The development shall thereafter be carried out in accordance with the approved scheme, and this condition will only be discharged when the required archaeological reports are submitted to and approved in writing by the Local Planning Authority.
- 7) Prior to any above ground works being commenced, details of both hard and soft landscape works shall be submitted to and approved in writing by the Local Planning Authority. These details shall include:
 - i) earthworks showing existing and proposed finished levels or contours;
 - ii) means of enclosure and retaining structures;
 - iii) boundary treatments;
 - iv) hard surfacing materials;
 - v) an implementation programme;
 - vi) Planting plans, schedules of plants, species, planting sizes, density of planting.

All hard and soft landscaping works shall be carried out in accordance with the approved details, prior to the first occupation of the

development. 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 a similar size and species.

- 8) Prior to the first occupation of the development hereby permitted, details of all on site vehicular parking and turning areas, and the means of disposing of associated surface water, shall be submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved details and thereafter maintained.
- 9) Prior to the first occupation of the development hereby permitted, 1 electrical car charging point shall be provided, installed and retained for the lifetime of the development. The electric vehicle charging points shall thereafter be maintained.
- 10) Prior to the first occupation of the development hereby permitted, details of the facilities for the storage and removal of refuse from the site shall be submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved details and the facilities provided prior to the occupation of the development.
- 11) Existing trees and hedges identified for retention as part of the development hereby permitted, or existing trees and hedges growing on an adjacent site, shall be protected from damage as a result of works on the site, in accordance with BS5837:2012, or any subsequent relevant British Standard.
- 12) The development hereby permitted shall be carried out in accordance with the details and mitigation measures set out within the Ecological Appraisal (ELMAW Consulting updated April 2022).
- 13) Any gas-fired boiler shall meet a minimum standard of less than 40 mgNO_x/kWh.
- 14) Demolition or construction works shall take place only between 0800 and 1800 on Monday to Friday and 0800 and 1300 Saturdays and shall not take place at any time on Sundays or on Bank or Public Holidays.



Appeal Decision

Site visit made on 7 December 2023

by Nick Bowden BA(Hons) Dip TP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 26 January 2024

Appeal Ref: APP/J1915/W/23/3319594

Land adjacent to The Acorns, Ginns Road, Stocking Pelham SG9 0JD

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant permission in principle.
 - The appeal is made by Premier Developments Hitchin Ltd against the decision of East Hertfordshire District Council.
 - The application Ref 3/22/1937/PIP, dated 12 September 2022, was refused by notice dated 8 November 2022.
 - The development proposed is the erection of a self-build dwelling.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The proposal is for permission in principle and this route has two stages. The first stage establishes whether a site is suitable in-principle, and the second (for technical details consent) stage is when the detailed development proposals are assessed. This appeal relates to the first of these two stages.
3. The scope of the considerations for permission in principle is limited to location, land use and the amount of development permitted. All other matters are considered as part of a subsequent technical details consent if permission in principle is granted. I have determined the appeal accordingly.
4. Plans showing the site layout, floor plans and elevations have been submitted, which, given this is for permission in principle only, I have treated as indicative.
5. The National Planning Policy Framework (the Framework) was revised in December 2023. As the changes do not materially affect the main issues in this case, the parties have not been invited to make further comments. Where reference is made to the Framework in this decision, the paragraph numbers are those that appear in the latest version.

Main Issue

6. The main issue is whether the site is suitable for residential development, having regard to its location, the proposed land use and the amount of development.

Reasons

7. Paragraph 84 of the Framework requires planning authorities to avoid the development of isolated homes in the countryside. The dwelling proposed here

would be set within an existing row of dwellings and within the general environs of Stocking Pelham. In this context it would not be an isolated dwelling and would be read in the village context.

8. Nevertheless, the village of Stocking Pelham is a Group 3 village, as defined by policy VILL3 of the East Herts Local Plan 2018 (EHLP). The supporting text to this policy identifies that these are the smallest villages in the district and generally have a poor range of services. The village does indeed have very limited services which extend to no more than a cricket club and village hall. There are negligible bus services in the area. The nearest villages where higher tier services are located still remain relatively limited – in the form of small local convenience shops and primary schooling. Even then, these facilities are very minimal and add very little to the limited offering in Stocking Pelham. The roads serving the area are almost universally narrow with no footways and are unlit.
9. As such, I conclude that there would be a distinct reliance on the private motor vehicle for even the most basic of day-to-day requirements. On this basis proposed development would not provide a suitable location for housing considering the accessibility of services and facilities.
10. I have recognised the provisions of paragraph 83 insofar as new development may support the vitality of rural communities. However, in this instance, other than contributing to part of the local community, the addition of one dwelling would have little to offer, given the limited range of facilities that exist in this and surrounding villages.
11. I do accept that rural villages are not expected to have immediate and close access to the same level of facilities and services that larger settlements may have. Nevertheless, the distances, minimal infrastructure in the wider area and lack of any meaningful services in this or adjoining villages is a material factor here.
12. As such, I conclude the proposed development would conflict with policies DSP2, GBR2 and TRA1 of the EHLP and the provisions of the Framework. These policies promote development in accordance with a distinct hierarchy and in places which enable sustainable journeys to be made to key services and facilities.
13. Turning to the matter of whether one additional dwelling could be considered as 'limited infilling', as allowed by Policy GBR2(e) of the EHLP, and subject to other criteria, the village of Stocking Pelham is a small village predominantly featuring detached houses which address a small cluster of rural lanes. The appeal site is set within a short row of dwellings addressing Ginns Road. Policy GBR2(e) of the EHLP allows for limited infilling, subject to other criteria. 'Infilling' is not defined in either the Framework or the EHLP. The row of dwellings to either side of the appeal is short, consisting of no more than three or four existing dwellings and some current or former farm buildings. The appeal site is an obvious gap in a brief, but otherwise developed frontage. Its frontage and overall size are comparable to the properties to either side and a new building in this location would not be unexpected or jarring.
14. I note the centre of the village is some distance away however the settlement is clearly quite dispersed with numerous groups of buildings extending quite some way to the south, well beyond the appeal site and 'central' part of the

village. The row of dwellings here is clearly part of this dispersed village. I am satisfied that the use of the site for residential purposes is acceptable in this regard as a form of limited infilling.

15. The detailed design of any dwelling on this site can be the subject to the technical details consent. I therefore conclude, in this regard that the residential use of the site accords with policy GBR2(e) insofar as it constitutes limited infilling.

Other Matters

16. I have noted the previous housing land supply position of 5.8 years has been revised following questions about the deliverability of this being raised in a recent appeal decision at Whempstead Road¹. In this decision it was found that the District's land supply may have fallen below a five-year supply due to slow or non-delivery of a number of strategic sites. This position is accepted by the Council, and it observes the current housing supply position as being 4.41 years.
17. I am unaware as to whether this position has been formally adopted by the Council, however, if the land supply position has fallen below five years, the provisions of paragraph 11d(ii) of the Framework apply. In this case, the unsuitability of the site for residential development due to its location, being distant from services and facilities, would still significantly and demonstrably outweigh the benefits of providing a single dwelling.
18. A Unilateral Undertaking was submitted during the course of the appeal. This secures the dwelling as a self-build, restricts a change in ownership for a period of three years and mandates a Community Infrastructure Levy 2010 exemption. I have had regard to the benefits that the provision of a self-build home would have to the diversity of the dwelling stock and an increase in options for homeowners. I have also had regard to the intent to utilise sustainable construction methods.
19. The self-build nature of the scheme is of note and the Council has acknowledged an unmet demand in this regard. I have further noted the conclusion reached in relation to the Dunsfold Common² appeal however this decision differs insofar as the suitability of the site, with regard to access to local facilities and services, was not in question. To my mind, this is a material difference between these two schemes as the self-build aspects, undertaken in a sustainable manner, do not alter the conclusions I have reached above.
20. Reference has additionally been made to the Council's recent decision at Glencol Allens Meadow³. However, this decision by the Council was made with much weight placed upon a previous appeal decision from July 2018. I do not have sight of the decision, nor the Council's land supply position at that time. Further reference has been made to 3 Maple Side⁴ however this scheme also appeared to be a renewal of an older planning permission from 2017. In any case, each site must be considered on its merits which includes the individual sites history – particularly, in these instances, where developments arose from

¹ Refs: APP/J1915/W/22/3303408, APP/J1915/W/22/3303413 and APP/J1915/W/21/3288702

² Ref: APP/R3650/W/22/3300262

³ Ref: 3/22/1995/FUL

⁴ Ref: 3/19/0171/FUL

previously approved schemes with their own history and context. As such, I can attribute these little weight in my reasoning here.

Conclusion

21. I conclude that the proposed dwelling would be located within an existing row of dwellings and is in the context of the wider dispersed village. It would therefore constitute limited infilling and its proximity to other dwellings would not render it as an isolated dwelling. Nevertheless, the substantial distance to any meaningful facilities and services, combined with the lack of public transport and unlit nature of nearby roads with no footway, leads me to conclude that the proposed development would have an excess reliance on private vehicle transport. It is therefore an unsuitable location for this form of residential development and conflicts with the provisions of the development plan, read as a whole, and the Framework. There are no other material considerations, which includes the benefit of adding a single dwelling to the housing stock, which outweigh the harms I have identified.

22. For these reasons I conclude that the appeal should be dismissed.

Nick Bowden

INSPECTOR



Appeal Decision

Site visit made on 19 December 2023

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

an Inspector appointed by the Secretary of State

Decision date: 31 January 2024

Appeal Ref: APP/J1915/W/23/3320046

**Land to the rear of Moat House, 228 Hertingfordbury Road,
Hertingfordbury, Hertford SG14 2LB**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr and Mrs Buckingham against the decision of East Hertfordshire District Council.
 - The application Ref 3/22/2445/FUL, dated 22 November 2022, was refused by notice dated 3 February 2023.
 - The development proposed is described as ground mounted solar PV panel array.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. I note the application form refers to the site address as No 226 Hertingfordbury Road, however, all other submissions by both parties refer to No 228. This leads me to believe that No 228 is the correct address. I have therefore referred to No 228 in my banner heading above to accurately reflect the address of the appeal site.
3. Since the determination of this application, the Government published a revised National Planning Policy Framework (the Framework) on 20 December 2023. A relevant part of the Framework has been amended, which I will take into account. As a result, I have gone back to the parties to seek any further submissions on the revised Framework.

Main Issues

4. The main issues are:
 - i) whether the proposed development would be inappropriate development in the Green Belt having regard to the Framework and any relevant development plan policies;
 - ii) the effect of the proposal on the openness of the Green Belt; and
 - iii) if the proposal would be inappropriate development, whether the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations, so as to amount to the very special circumstances necessary to justify it.

Reasons

Inappropriate Development

5. The appeal site is a relatively flat part of a large field, adjacent to the river Mimram. It is situated a significant distance away from Moat House and its garden. The wider field is undulating, rising up to the south with dwellings beyond and a wooded copse on land rising up to the west.
6. The proposed solar array would consist of 3 rows of 10 panels, providing a total of 30 panels, which would have a south facing aspect. The panels would measure approximately 10.5m in length by 5m wide and would be 1.5m at their highest point and would be mounted on black frames.
7. Policy GBR1 of the East Herts District Plan 2018 (District Plan) states that planning applications within the Green Belt will be considered in line with the provisions of the Framework. Paragraph 152 of the Framework states that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. The Framework further establishes at Paragraph 156 that elements of many renewable energy projects will comprise inappropriate development, and in such cases, developers will need to demonstrate very special circumstances if projects are to proceed.
8. The solar panels would not fall within any of the exceptions for development identified at paragraphs 154 and 155 of the Framework. The effect of the proposal would be to extend built development into land that is presently open. It would therefore result in encroachment of development into the countryside that would be contrary to the purposes of including land within the Green Belt, as set out in Paragraph 143 of the Framework.
9. Accordingly, the proposal would be inappropriate development in the Green Belt and fails to accord with Policy GBR1 of the District Plan and Section 13 of the Framework.

Openness

10. Openness is an essential characteristic of the Green Belt. There are spatial and visual aspects to the assessment of the openness of the Green Belt. The appeal site forms part of a larger field. It is devoid of any buildings or structures. Whilst the solar array may be a lightweight structure with no foundations or base, and could be conditioned to be a temporary structure only, in spatial terms, the solar panels would introduce built development into an area devoid of any development. Whilst modest and relatively low level the proposed development would nevertheless have an adverse impact on the openness of the Green Belt in spatial terms.
11. In visual terms, the proposed development is likely to be visible from the rear garden of properties along Hertingfordbury Road, to the south of the appeal site. However, given the long separation distance between these properties and the appeal site, coupled with the intervening topography and the relatively low height of the solar panels, the visual impact would be limited. To the north views would be limited from the public footpath, which runs along the north side of the river Mimram, due to the presence of mature vegetation either side of the river. As a result, the visual harm arising from the proposal would be localised.

12. I am not persuaded that a landscaping scheme, that could be secured by condition in any approval, would overcome the harm I have identified above. It therefore follows that even with additional landscaping, the proposed development, albeit to a limited extent, would undermine the approach to preserving the openness in the Green Belt as set out in the Framework.

Other Considerations

13. Paragraph 164 of the Framework states that significant weight should be given to support energy efficiency and low carbon heating improvements to existing buildings, including solar panels. The policy support for renewable energy recognises that the wider environmental benefits associated with increased production of energy from renewable sources may constitute very special circumstances.
14. The evidence before me sets out the benefits of the proposed 10Kw solar array, including that it would supplement the energy needs of the appellants property. I note the appellants assertion of measures already implemented to increase the dwellings energy efficiency and that further options may be limited due to the host property's status as a listed building. Whilst I have no evidence to substantiate this, I have no reason to disagree.
15. The provision of renewable and low carbon energy is central to the economic and environmental dimensions of sustainable development set out in the Framework. There is a strong local and national policy support for the development of renewable energy sources, including solar power, to ensure the country has a secure energy supply, and to reduce greenhouse gas emissions. Although the scheme is modest in size, the Framework confirms that even small-scale projects provide a valuable contribution to cutting greenhouse gas emissions.
16. Whilst the amount of renewable energy generated overall would be modest nevertheless, the renewable energy benefits of the proposal must be afforded significant weight.

Other Matters

17. I have had special regard to the desirability of preserving the setting of the listed buildings in the area. In particular Moat House, a Grade II listed building. This property derives its significance from its historical association built as the Miller's House to Hertingfordbury Corn Mill. The appeal site currently has a neutral effect on the setting of the listed building. Being sited approximately 140m away from the property with intervening built form and landscaping coupled with the low height of the solar panels I am satisfied that the proposed development would preserve the setting, and thereby the significance of the listed building. This reflects the Council's similar conclusion.
18. Mayflower Place Memorial Hall, a Grade II listed building, is set in an elevated position to the south of the appeal site. Its significance derives from its architectural detail and historical association. The appeal site currently has a neutral effect on the setting of this listed building. Whilst there may be views across the landscape, given the location of the proposed solar panels would be approximately ¼ mile away, the intervening topography, landscaping and the relatively low height of the proposal, I am satisfied that the significance of the designated heritage asset would be preserved.

19. The site lies outside, but adjacent to the Hertingfordbury Conservation Area (CA). The CA derives its significance from a collection of historic buildings and association with the 18th century water mill. The appeal site sits beyond existing properties that lie within the CA and, in my view, has a neutral impact on the significance of the CA. The proposed development would have a greater visual impact on the CA than the existing situation. However, the height and scale of the proposal are limited. Having regard to the plans before me, and as observed at my site visit, I do not consider the proposal would have an adverse impact upon the setting of the CA. I note this reflects the Council's similar conclusion.
20. I note the appellants assertion that the level of movement within the field associated with the proposed use would not change or intensify. I have no evidence to substantiate this. Nevertheless, this issue is not determinative to the appeal.
21. Due to its proposed location, a significant distance, from existing residential properties I am satisfied that the proposed development would not harm the living conditions of nearby properties. I note this is a view shared by the Council. Furthermore, the fact that there were no objections raised to the proposal by consultees or members of the public is of neutral consequence in the overall planning balance.
22. My attention has been drawn to a number of appeal decisions, including a decision¹ for a large solar farm on Green Belt land. From the limited information before me whilst the proposal was found to result in moderate harm the proposal would provide energy for over 16,000 homes. I have also been referred to planning permission² for a solar farm providing energy for up to 5,300 homes. In both circumstances, given the scale of development I do not consider either scheme to be comparable to the appeal before me. Reference has also been drawn to a planning application³ whereby the heritage merits of the case constituted very special circumstances and the generation of renewable energy weighed positively in the planning balance of the consideration of that planning permission. I have limited information before me and so cannot be certain that the scheme is comparable. Reference has been made to a further case⁴, whereby the array is located within a hollow and the presence of existing landscaping. Accordingly, based on the information before me I do not consider the locational context of this scheme to be comparable. In any event, I have determined the appeal on its own merits.

Green Belt Balance and Conclusion

23. The proposed development would be inappropriate development in the Green Belt, which, by definition, is harmful. In addition, there would be moderate harm arising from the loss of openness. As such, the Framework establishes that substantial weight should be given to any harm in the Green Belt. Very special circumstances will not exist unless the harm to the Green Belt and any other harm are clearly outweighed by other considerations.
24. Whilst significant weight is given to the environmental benefits of the proposal, overall, the other considerations referred to by the appellant do not clearly

¹ APP/W1525/W/22/3300222

² 22/01816/FUL

³ 3/22/1799 at Warrengate Farm

⁴ APP/C1950/W/19/3225810

outweigh the totality of harm to the Green Belt. Therefore, the very special circumstances necessary to justify the development do not exist. Accordingly, the proposed development conflicts with Policy GBR1 of the District Plan and the Framework which seek, amongst other things, to protect the Green Belt from inappropriate development.

25. For the reasons given above I therefore conclude that the appeal should be dismissed.

R. Gee

INSPECTOR



Appeal Decision

Site visit made on 19 December 2023

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

an Inspector appointed by the Secretary of State

Decision date: 22 January 2024

Appeal Ref: APP/J1915/W/23/3325533

**Bourne Farm (North of Bourne Villa), Bakers End, Wareside, Ware
SG12 7SH**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr John Bashforth against the decision of East Hertfordshire District Council.
 - The application Ref 3/23/0119/FUL, dated 23 January 2023, was refused by notice dated 17 April 2023.
 - The development proposed is described as proposed part change of use of existing barn to holiday let, including the installation of doorway, windows and two rooflights and existing stable to be used in conjunction with the holiday let.
-

Decision

1. The appeal is dismissed.

Preliminary Matters

2. In my banner heading I have used the revised description agreed between the parties when the planning application was validated as this more accurately describes the proposal.
3. Since the determination of this application, the Government published a revised National Planning Policy Framework (the Framework) on 20 December 2023. Those parts of the Framework most relevant to this appeal have not been amended. As a result, I consider that there is no requirement for me to seek further submissions on the revised Framework, and I am satisfied that no party's interests have been prejudiced by taking this approach.

Main Issues

4. The main issues are:
 - i) the effect of the proposal upon the character and appearance of the area; and
 - ii) whether the site would be an appropriate location for the proposed use having regard to local planning policies.

Reasons

Character and appearance

5. The proposal includes the part change of use of an existing barn for holiday-let purposes. The building is constructed of breeze block with an external finish of timber weatherboarding under a tiled roof. There is an existing door to the

single storey element of the building and a roller shutter door to the west elevation. The appeal site comprises an irregular shaped parcel of land, which also contains a stable and store, set back from the highway behind mature landscaping to its eastern boundary. To the north of the existing barn is a paddock. To the south of the appeal site are residential properties. The surrounding land to the west and east is characterised by fields interspersed with tree lines and field boundaries.

6. The conversion would introduce new window and door openings that would change the external appearance of the building. Whilst the domestication of the building would introduce a large area of glazing, this elevation of the building would be largely screened from wider views due to its orientation away from the highway and by existing vegetation. The two small rooflights proposed would have only a limited impact on the visual appearance of the barn.
7. The proposed patio area would be relatively small, and any furniture would be moveable and would not result in material harm to the character and appearance of the surrounding countryside.
8. For the reasons stated above, the proposal would not harm the character and appearance of the area. I therefore find no conflict with Policies DES4 and GBR2 of the East Herts District Plan 2018 (District Plan). Collectively these policies seek a high standard of design where the size, scale, mass, siting, design and materials of construction are appropriate to the character, appearance and setting of the site and surrounding areas. Nor do I find conflict with the Framework which seeks to secure high-quality design.

Appropriate Location

9. The proposal is for holiday accommodation and would result in a building with the facilities required for day-to-day private existence. In planning terms, this would be a new dwelling. However, occupancy could be controlled by a condition to ensure that it was used for holiday accommodation as intended. It is therefore appropriate to have regard to District Plan policies that relate to tourism enterprises.
10. The appeal site lies within the Rural Area Beyond the Green Belt. Amongst others, Policy GBR2 of the District Plan is supportive of new employment generating uses where they are sustainably located, in accordance with Policy ED2. Policy ED2 of the District Plan allows for proposals that create new employment generating uses or support the sustainable growth, expansion of existing businesses in the rural area. Proposals will be supported, in principle, where they are appropriately and sustainably located and do not conflict with other policies within the Plan. Policy ED5 of the District Plan states that new tourism enterprises, and extensions to existing tourism enterprises will be supported in principle where the facility meets identified needs which are not met by existing facilities, is appropriately located and does not conflict with other policies within the Plan. Furthermore, Policy TRA1 of the District Plan states that developments should primarily be located in places which enable sustainable journeys to be made to key services to reduce carbon emissions.
11. The District Plan sets out a village hierarchy listed 1-3, reflecting their relative sustainability, with 1 being the most sustainable. Bakers End is defined as a Group 3 Village, which is the least sustainable. Whilst the settlement boundary

at Bakers End is not defined in the District Plan the appeal site lies beyond the existing cluster of properties.

12. The site is not well served by public transport. I saw that local roads are narrow lanes with no footway or lighting. Anyone working at or visiting the site, or accessing services and facilities from the site, would be highly reliant on the private motor vehicle as there are no facilities within a reasonable walking distance. The appellant indicates that they would be willing to accept a planning condition limiting the management and servicing of the unit to the occupiers of Bourne Villa. However, having regard to the Planning Practice Guidance, I do not consider that this would be reasonable. In any event, such a condition would not overcome the accessibility concerns relating to the future occupiers of the holiday-let. In my view the site is not in a sustainable location having regard to the village hierarchy.
13. I am mindful that the Framework supports the re-use of brownfield sites and a prosperous rural economy. I note the appellants submission that the proposal would provide for accommodation specifically related to an equestrian use which would be operated and managed by the occupier of the residential property opposite the appeal site. However, there is no evidence of a specific need for such accommodation, and, in any event, no mechanism has been put forward to limit the occupation of the holiday-let to those taking part in equestrian activities. I therefore afford this limited weight.
14. For the reasons stated above, I conclude that the proposed use would not be in an appropriate location having regard to local planning policies. Accordingly, I find conflict with Policies GBR2, ED2, ED5 and TRA1 of the District Plan. Collectively these policies require development proposals to be sustainably and appropriately located and to meet an identified need.

Other Matters

15. The proposal would be accessed via an established vehicular access point and would have a limited impact on the number of vehicles accessing the site. Furthermore, the site is of sufficient size to accommodate the parking of vehicles associated with the proposed use. Consequently, there are no highway safety concerns. The distance between the proposal and nearby residential properties is significant, with intervening boundary treatments and roads. As such it is unlikely that any unacceptable harm to the living conditions of neighbouring occupiers would arise.
16. The development would give rise to some economic and social benefits including contributions to local employment, visitor accommodation, supplier chain spend, the use of local contractors and the contributions to the local economy and through spending in local shops and services. Visitors may benefit from personal well-being given the countryside location with access to footpaths, bridleways and other tourist destinations in Hertfordshire. Whilst these elements weigh in favour of the scheme, given the small scale of the development proposed, they attract limited weight.
17. The appellant suggests that the site is in residential use. It is not for me, under a section 78 appeal, to determine whether or not that use is lawful. It is open to the appellant to apply to the Council for a separate determination under sections 191/192 of the Act, regardless of the outcome of the appeal.

Conclusion

18. Although I find no harm to character and appearance, I have identified that the proposal would not be in an appropriate location having regard to local planning policies. My overall assessment is that the proposal would conflict with the development plan as a whole. There are no other considerations, including the Framework, that outweigh this conflict.
19. For the reasons given above, I therefore conclude that the appeal should be dismissed.

R. Gee

INSPECTOR



Appeal Decision

Site visit made on 19 December 2023

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

an Inspector appointed by the Secretary of State

Decision date: 24 January 2024

Appeal Ref: APP/J1915/W/23/3324315

Bircherley Green Shopping Centre, Hertford SG14 1BN

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant consent, agreement or approval to details required by a condition of a planning permission.
- The appeal is made by Mr A Ward against the decision of East Hertfordshire District Council.
- The application Ref X/22/0515/CND, dated 1 December 2022, sought approval of details pursuant to condition No 19 of a planning permission Ref 3/22/0712/VAR, granted on 19 August 2022.
- The application was refused by notice dated 5 May 2023.
- The development proposed is discharge of conditions 19 (A3/A4 - Sound Insulation) 41 (Lighting - Block A and B) 49 (Health Facility) 52(F) (Proposed and existing functional services above and below ground) 65 (Odour) of planning approval 3/22/0712/VAR.

The details for which approval is sought are:

Before any of the A3/ A4 uses have been brought into use, a scheme of sound attenuation works shall be submitted to and approved in writing by the Local Planning Authority. Once these details are agreed they shall be installed and retained in the approved form thereafter. The scheme of works shall be capable of restricting noise breakout from the A4 use to the flat above to levels complying with the following:

- o Bedrooms. Noise Rating Curve NR20 (2300 to 0700 hrs)
- o Living Rooms. Noise Rating Curve NR25 (0700 to 2300 hrs)

The Noise Rating Curve shall be measured as a 15-minute linear Leq at the octave band centre frequencies 31.5 Hz to 8 kHz.

- The reason given for the condition is:
In order to ensure an adequate level of amenity for nearby residents in accordance with policy EQ2 of the East Herts District Plan 2018.
-

Decision

1. The appeal is dismissed.

Applications for costs

2. An application for costs was made by Mr A Ward against East Hertfordshire District Council. This application is the subject of a separate Decision.

Preliminary Matters

3. I have taken the address from the Council's Decision Notice as this more accurately describes the location.

4. Since the determination of this application, the Government published a revised National Planning Policy Framework (the Framework) on 20 December 2023. Those parts of the Framework most relevant to this appeal have not been amended. As a result, I consider that there is no requirement for me to seek further submissions on the revised Framework, and I am satisfied that no party's interests have been prejudiced by taking this approach.
5. At the time of my visit, I observed the development to be at an advanced stage of construction.

Main Issue

6. The main issue is whether the details submitted to discharge Condition 19 would protect the living conditions of nearby residents in relation to noise and disturbance.

Reasons

7. The appeal site comprises a mixed-use development including commercial units at ground floor level and residential flats on the upper floors.
8. Condition 19 requires that a scheme of sound attenuation works capable of restricting noise breakout from the A4 use to the residential flat above be submitted to and approved in writing by the Local Planning Authority.
9. The appellant acknowledges that in order to provide a high standard of amenity for the future occupiers of the flats it is necessary for noise mitigation measures to be provided. The Cass Allen report ref: RP03-20631-R0 demonstrates that, assuming that noise generated by A3 and A4 uses are approximately 85dBA and the proposed flooring system is installed, residents within the development will be sufficiently protected. The report goes on to state that *"Should noisier commercial uses ultimately want to use the space (e.g. a busy bar with loud music), they will be required to increase the sound insulation performance of the floor as part of the fit out of the commercial units. This is achievable by adding acoustic ceilings to the commercial units..."* and *"...The inclusion of these treatments, if required, will be controlled via the imposition of a suitable acoustics-related clause on the lease agreements for the commercial units. The following clause (or similar approved) will be imposed..."*.
10. Leaving any enhanced sound mitigation to agreement between the landlord and a future occupier would result in the Council not having the ability to approve the specification of the enhanced measures. Furthermore, if the requirement for the enhanced measures were part of the lease agreement between the landlord and tenant it would be unenforceable by the Council.
11. A scheme has been proposed which satisfies part of the planning condition in that it would protect future occupants against a noise level of 85dBA arising from the commercial units. However, higher noise levels may be generated within the commercial units depending on the nature of the occupier. The further measures set out in the Cass Allen report are not sufficient to allow the discharge of the condition. The details submitted would be unenforceable and so cannot meet the tests for conditions in the Framework.
12. I have carefully considered the representations of the appellant. Mindful of relevant advice in the Framework and the expectation of a good standard of

amenity for future occupiers of the flat, I am not satisfied that the requirements of condition 19 have been met or that the living conditions of the future occupiers of the residential accommodation would be adequately protected.

13. For the above reasons, I am not satisfied that the details submitted to discharge Condition 19 would protect the living conditions of nearby residents in relation to noise and disturbance. I therefore find conflict with Policy EQ2 of the East Herts District Plan 2018. Amongst other matters, this states that development should be designed and operated in a way that minimises the direct and cumulative impact of noise on the surrounding environment with particular consideration given to the proximity of noise sensitive uses, and in particular, the potential impact of development on human health. In reaching this conclusion I have also had regard to the Framework which seeks to ensure a good standard of amenity for all future occupants of buildings and that new development is integrated effectively with businesses.

Other Matters

14. The appeal relates to the discharge of a planning condition. Whether or not the condition is unreasonable is not before me.

Conclusion

15. For the reasons stated above, the appeal is dismissed.

R. Gee

INSPECTOR



Costs Decision

Site visit made on 19 December 2023

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

an Inspector appointed by the Secretary of State

Decision date: 24 January 2024

Costs application in relation to Appeal Ref: APP/J1915/W/23/3324315 Bircherley Green Shopping Centre, Hertford, Hertfordshire SG14 1BN

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Mr A Ward for a full award of costs against East Hertfordshire District Council.
 - The appeal was against the refusal of the Council to discharge condition 19 of planning permission X/22/0515/CND relating to sound attenuation works on a planning permission for commercial development.
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Decision

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

Reasons

2. The parties in planning appeals normally meet their own expenses. However, the Planning Practice Guidance (PPG) advises that costs may be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.
3. The applicant considers that the Council has exhibited unreasonable behaviour in relation to procedural matters and to the substance of the appeal.
4. The appeal relates to the discharge of a planning condition. Whether or not the condition is unreasonable is not before me.
5. The applicant cites a lack of co-operation from the Council. The National Planning Policy Framework (the Framework) requires Councils to approach decisions in a positive and creative way. The appellant states that discussions were had with the Council prior to submission. Informal advice given before an application is made is given without prejudice and cannot pre-determine the outcome of a subsequent application, which must take account of all the relevant factors. Due to the absence of the Environmental Health Officer the Council cannot respond to the appellant's complaint regarding cancelled meetings. Nevertheless, from the evidence before me, the Council did engage in dialogue with the applicant during consideration of the application, including telephone calls and emails. There were some negotiations throughout the application process, with the Council accepting the submission of a revised report. This report was subsequently reviewed and confirmed as addressing part of the Council's concern. In this regard I have seen no evidence of unreasonable behaviour on the part of the Council in respect of lack of co-operation during the process.

6. In respect of the complaint regarding the failure to have proper regard to documentation submitted, the officer's report provides an analysis of the proposal giving clear reasoning. The Council considered the examples provided by the applicant.
7. I do not consider that the Council failed to properly evaluate the application. The Council was not persuaded that the report submitted satisfies the requirements of Condition 19.
8. My decision, which accompanies this costs decision, agreed with the Council's assessment and dismissed the appeal on similar grounds. It follows that I am satisfied that the Council has not incorrectly interpreted condition 19.
9. Accordingly, I do not consider that the Council failed to properly evaluate the application or consider the merits of the scheme and therefore the appeal could not have been avoided. I have found that the Council had reasonable concerns which justified its decision.
10. I conclude that unreasonable behaviour resulting in unnecessary or wasted expense at appeal, as described in the PPG, has not been demonstrated and the application for an award of costs must fail.

R Gee

INSPECTOR