



Appeal Decision

Site visit made on 11 March 2014

by Mr C J Tivey BSc (Hons) BPI MRTPI

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

Decision date: 25 March 2014

Appeal Ref: APP/J1535/A/13/2205296

Loughton Baptist Church, High Road, Loughton, Essex IG10 4QU

- 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 Rev Wayne Dulson against the decision of Epping Forest District Council.
 - The application Ref EPF/1042/13, dated 23 May 2013, was refused by notice dated 7 August 2013.
 - The development proposed is change of use of part of site from D1 to C3(a). Proposed two storey detached manse (Dwelling) and four car parking spaces to front of premises.
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Decision

1. The appeal is allowed and planning permission is granted for the change of use of part of the site from D1 to C3(a). Proposed two storey detached manse (Dwelling) and four car parking spaces to front of premises in accordance with the terms of the application EPF/1042/13, dated 23 May 2013, subject to the following conditions:
 1. The development hereby permitted shall begin not later than three years from the date of this decision.
 2. The development hereby permitted shall be carried out in accordance with the following approved plans: 13001_001, 13001_002 and 13001_003.
 3. No development shall take place until details of the materials to be used in the construction of the external surfaces of the building hereby permitted have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
 4. Prior to first occupation of the development hereby approved, the proposed first floor window opening in the north eastern flank elevation shall be fitted with obscure glass and shall be permanently retained as such.
 5. No development shall take place until full details of both hard and soft landscape works have been submitted to and approved in writing by the local planning authority and these works shall be carried out as approved. The hard landscape details shall include means of enclosure and hard surfacing materials. The soft landscape works shall include planting plans; written specifications (including cultivation and other operations associated with plant and grass establishment; schedules of plants, noting species, plant sizes and

proposed numbers/densities where appropriate; and an implementation programme. All hard and soft landscape works shall be carried out in accordance with the approved details. The works shall be carried out prior to the first occupation of the development or in accordance with the programme agreed with the local planning authority.

6. No development shall take place until a Tree Protection Plan, Arboricultural Method Statement and Site Monitoring Schedule in accordance with BS5837: 2012 (Trees in relation to design, demolition and construction – Recommendations) has been submitted to the Local Planning Authority and approved in writing. The development shall be carried out only in accordance with the approved documents unless the Local Planning Authority gives its written consent to any variation.

7. No development shall take place until additional details of levels have been submitted to and approved in writing by the Local Planning Authority showing cross sections and elevations of the levels of the site prior to development and the proposed level of the ground floor slab of the building, access ways and landscaped areas. The development shall be carried out in accordance with the approved details.

8. All construction/demolition works and ancillary operations, including vehicle movements on the site which are audible at the boundary of noise sensitive premises, shall only take place between the hours of 08:00 to 18:30 Monday to Friday and 08:00 to 13:00 hours on Saturday, and at no time during Sundays and Public/Bank Holidays unless otherwise agreed in writing by the Local Planning Authority.

9. No development shall take place until wheel washing or other cleaning facilities for vehicles leaving the site during the construction works have been installed in accordance with details which shall have been submitted to and approved in writing by the Local Planning Authority. The approved installed cleaning facilities shall be used to clean vehicles immediately before leaving the site on commencement of development.

Main Issues

2. The main issues in this appeal are the effect of the appeal proposal upon:

i) the character and appearance of the area; ii) the living conditions of occupants of neighbouring residential properties, with specific reference to outlook; and iii) the living conditions of future occupants of the proposed dwelling with regard to private garden provision.

Reasons

Character and Appearance

3. The appeal site is situated within the northern corner of the church grounds, it is set well back from High Road, partly behind the large church building which has mature trees situated along the north eastern boundary to its frontage. The proposed dwelling, designed in an unimposing architectural style, would have an almost square plan form and a pyramidal hipped roof. It would be situated close to the rear garden boundaries of 12 and 14 Ollards Grove to the north

east, and would be on lower ground than these neighbouring properties by a minimum of approximately 1.2 metres.

4. Views of the appeal site from the public realm are limited to casual glimpses from High Road and down from the cul-de-sac of Park Hill which is on much higher ground. As demonstrated within the sectional elevations submitted with the proposals, the new dwelling would make use of the existing contours of the surrounding land, so that it would not render it an imposing feature within the street scene or the wider area. I consider that the resultant height and bulk of the proposed dwelling, being quite modest in form, would not result in poor design, with the proposed roof form minimising its overall bulk.
5. Consequently, I consider that the proposal would not have a detrimental impact upon the character and appearance of the area. It complies with Epping Forest District Local Plan (adopted January 1998) (LP) Policy DBE1 which requires new buildings to respect their setting in terms of scale, proportion, siting, massing, height, orientation, roofline and detailing. The proposals also comply with Policy CP2 of the Epping Forest District Local Plan Alterations (adopted July 2006) (LPA) which seeks to safeguard and enhance the setting, character and townscape of the urban environment. In addition, and leading on to the next issue, I find that the proposal complies with one of the core planning principles of the National Planning Policy Framework (the 'Framework') which states that planning should always seek to secure high quality design and a good standard of amenity for all existing and future occupants of land and buildings.

Living Conditions – Occupants of Neighbouring Residential Properties

7. The Council's view is that the proposed development would have an adverse impact on the visual amenities and outlook of 12 Ollards Grove (not no.2 as cited in the decision notice), in addition to 14 and 16 Ollards Grove. I have concluded above that the proposed development would not have a detrimental impact upon the character and appearance of the area and consequently I find that the visual amenities currently enjoyed by the occupants of these neighbouring properties would not be materially harmed either.
8. In terms of outlook, I note that the proposed dwelling would be in relative close proximity to the boundary that is shared with no.s 12 and 14, with the latter property being most affected by the proposals. I have not been provided with evidence as to the extent of public consultation to which the Essex Design Guide has been subjected to, or as to whether it has been formally adopted by the Council, therefore I can only give it limited weight. However, I note that as a guide, and with regard to the separation between dwellings it states that where the backs of houses are at more than 30° to one another, a separation of 15m from the nearest corner can be acceptable. I have not been provided with the precise distance between the rear elevations of no.s 12, 14 and 16 to the flank elevation of the proposed dwelling, but the Council's committee report states that the rear gardens of these neighbouring properties are in excess of 22m.
9. Having regard to the lower site levels of the proposed dwelling in comparison to these neighbouring properties, the first floor of the proposed dwelling would be approximately level with the ground floor of 14 Ollards Grove. Furthermore, notwithstanding the depth of the proposed dwelling and the fact that the new

dwelling would be visible above the existing rear boundary fences, I consider that it would not be an unduly prominent feature within the rear garden scene. I therefore conclude, on balance, that the proposals would not have a material detrimental impact upon the outlook enjoyed by their occupants of the Ollards Grove properties. Taking into account that there is no right to a view within planning legislation, I find the proposal complies with LP Policy DBE2 which states that planning permission will not be granted for new buildings which have a detrimental effect upon existing neighbouring or surrounding properties in either amenity or functional terms.

10. In conclusion on this matter, I find that the proposed development would not have an adverse impact on the visual amenities and outlook of 12, 14 and 16 Ollards Grove.

Living Conditions – Future Occupants

11. There has been some confusion between the main parties as to the amount of private rear garden to be provided for the new dwelling. I note that LP Policy DBE8 states that new residential developments will be expected to provide private amenity space which will usually be at the rear of dwellings and, amongst other things, be of a size, shape and nature which enables reasonable use. The supporting text to this policy in LP paragraph 15.52 states that the sizes of private gardens are for the most part matters for the marketing judgement of developers, but that the District Council will expect rear gardens of new dwellings to have a minimum area of 20sqm for each habitable room.
12. In this case the Council states that to fully comply with this policy the proposal should have a minimum private amenity space of 140sqm. It appears from the subsequent correspondence between the main parties that the submitted proposed site plan from with the Council took its measurements, should have been scaled at 1:200 as opposed to 1:100. Consequently the garden would be at least double the 60sqm cited within the Council's statement.
13. Taking into account the fact that the 20sqm per habitable room (for all rooms where the floor area exceeds 13sqm) the appellant states that they would be providing a minimum of 128sqm of amenity space against the requirement of 120sqm, as they had discounted both the study and dining room as they are under 13sqm. Whilst the Council has not provided a direct response to these calculations, I am of the view that pursuant to the third criterion of LP Policy DBE8 that the proposed development would provide private amenity space which is of a size, shape and nature that would enable reasonable use. The proposal would therefore provide adequate private rear garden provision in compliance with this policy.

Other Matters

14. I note the concerns of local residents that mature trees that are situated behind the rear boundaries of no.s 12 and 14 will need to be removed as a result of the proposal. However, I note that these are not protected by a Tree Preservation Order and that the Council's Tree and Landscape Officer raise no objection to the proposal. Furthermore, whilst I acknowledge that the removal of any trees may render the rear gardens of the Ollards Grove properties as more exposed, by virtue of the building-to-building distances, not only between these properties and the proposed dwelling, but also those houses situated

within Park Hill, I consider that the proposal would respect its built context. As the site provides adequate private garden space, I am of the view that it would not result in overdevelopment of the site and further does not amount to 'garden grabbing'. Each case must be assessed on its own merits, granting planning permission in this instance does not set a precedent for other proposals in the future. In addition, by virtue of the siting of the proposed dwelling at 90° to its immediate neighbours, any views over their rear gardens would be oblique. However, as set out within the list of conditions above, it is necessary to ensure that the first floor window facing towards the rear garden of no. 14 is obscurely glazed.

15. I also note the concerns with regard to parking provision on the site, however, the Local Highway Authority (LHA) has not raised an objection to the proposal. The LHA state that the parking for the proposed house meets the Essex Parking Standards and that the proposed relocation of the four Church parking spaces within the site, is considered acceptable. I have no reason to disagree with this view. I acknowledge the comments made with regard to other options to accommodate the Church Minister, however, I can only determine the appeal before me on its own merits. Furthermore, what may or may not happen to the dwelling in the future is not a determining factor in this appeal, particularly as on its merits, I have found a new dwelling in the location proposed to be acceptable.
16. Issues raised with regard to the removal of earth from the site and the altering of levels are matters that can be controlled by way of planning condition, and further I have not been provided with any evidence that the site provides a habitat for any endangered wildlife species. Finally, I understand the concern of local residents that there could be unmarked graves within the extent of the appeal site, however, no conclusive evidence proving such existence has been provided and it is not a determining matter in the appeal.

Conclusion and Conditions

17. For the above reasons and having regard to all other matters raised I conclude that the appeal should succeed.
18. In addition to suggesting a condition that the development be completed strictly in accordance with the approved plans, the Council also suggest conditions requiring details of external finishes to the building, hard and soft landscape works, tree protection measures and details of site levels to be submitted. In the interests of the character and appearance of the area, I consider that conditions covering these areas to be necessary. Details of levels is also important to protect the living conditions of the occupants of neighbouring residential properties, along with a condition that requires the first floor window opening in the north east flank of the proposed dwelling to be obscurely glazed. The Council also suggest conditions controlling the hours within which construction works take place, in addition to ensuring wheel washing facilities for construction vehicles are provided. In the interests of protecting the living conditions of neighbouring residents and highway safety, I also consider these conditions to be necessary.
19. The Council has suggested that all material excavated from the below ground works be removed from the site in order to control any alteration to levels or

spreading material not indicated in the approved plans. However, I do not consider this necessary as the condition controlling finished ground and floor levels will ensure a satisfactory outcome for all interests of acknowledged importance. Finally, the Council suggest that the occupation of the dwelling should be limited to a Minister solely working in connection with the Baptist Church, as specific circumstances of the site make the dwelling unsuitable for a person not employed by the adjacent Church. I have not been made aware from the Council's representations of the necessity for this and taking into account my findings above, which centre upon the principle of a new dwelling in the location proposed, I do not consider such a condition to be reasonable.

C J Tivey

INSPECTOR



Costs Decision

Site visit made on 11 March 2014

by **Mr C J Tivey BSc (Hons) BPI MRTPI**

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

Decision date: 25 March 2014

Costs Application in Relation to Appeal Ref: APP/J1535/A/13/2205296 Loughton Baptist Church, High Road, Loughton, Essex IG10 4QU

- 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 appeal is made by Rev Wayne Dulson for a full award of costs against Epping Forest District Council.
 - The appeal was made against the refusal of planning permission for change of use of part of site from D1 to C3(a). Proposed two storey detached manse (Dwelling) and four car parking spaces to front of premises.
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Decision

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

Reasons

2. Since the application for costs was made, Circular 03/2009 has been deleted by the launch of the Planning Practice Guidance (PPG). The PPG states that where a party has behaved unreasonably, and this has directly caused another party to incur unnecessary and wasted expense in the appeal process, they may be subject to an award of costs.
3. 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, for example, by unreasonably refusing or failing to determine planning applications, or by unreasonably defending appeals. Examples of this include: Preventing or delaying developments which should clearly be permitted, having regard to its accordance with the Development Plan, National Policy and any other material considerations; failing to produce evidence to substantiate each reason for refusal on appeal; and vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis.
4. With regard to the first reason for refusal, whilst the applicant states that the proposal complies with the Essex Design Guide, as I set out within my appeal decision, it has not been demonstrated as to what form of public consultation process this has been subjected to, or its status as a Supplementary Planning Document or otherwise. Taking into account the fact that I could only give it limited weight, and that it does not form part of the Development Plan, it is just one of a number of material considerations to be taken into account within the determination process. Within their statement, the Council has evidenced why,

in its opinion, the proposal was unacceptable with regard to the impact that it would have upon the living conditions of the occupants of adjacent residential properties, and had regard to the Development Plan and other material considerations.

5. Concerning the second reason for refusal it appears that the confusion surrounding the amount of private garden space to be provided for the proposed dwelling was the result of an incorrect scale annotated on the submitted site plan. The applicant, in their appeal statement themselves, did not question the Council's assessment of garden area, it was only the result of subsequent correspondence between the applicant and the Council that the discrepancy between actual proposed provision and that interpreted by the Council came to light. However, the Council did produce evidence to substantiate this reason for refusal based upon the information that was before it.
6. With regard to the final reason for refusal, I am of the view that it does not repeat the first reason for refusal, as it deals with matters of character and appearance as opposed to living conditions. The impact of a proposal upon the character and appearance of an area does not have to be limited to views of the site from public vantage points, and whilst the Council's response in its statement is rather generalised, I cannot state that it is unsupported by **any** (my emphasis) objective analysis.
7. Therefore, notwithstanding my findings, in allowing the appeal, I conclude that the Council has not behaved unreasonably; and consequently has not directly caused the applicant to incur unnecessary or wasted expense in the appeal process.

C J Tivey

INSPECTOR



Appeal Decision

Site visit made on 11 March 2014

by Mr C J Tivey BSc (Hons) BPI MRTPI

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

Decision date: 18 March 2014

Appeal Ref: APP/J1535/D/14/2213251
2 Chigwell Park, Chigwell, Essex IG7 5BE

- 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 Sivanesan Subramanaim against the decision of Epping Forest District Council.
 - The application Ref PL/EPF/2225/13, dated 22 October 2013, was refused by notice dated 8 January 2014.
 - The development proposed is for a single storey rear extension.
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Decision

1. The appeal is allowed and planning permission is granted for a single storey rear extension at 2 Chigwell Park, Chigwell, Essex IG7 5BE in accordance with the terms of the application Ref PL/EPF/2225/13, dated 22 October 2013, subject to the following conditions:
 1. The development hereby permitted shall begin not later than three year years from the date of this decision.
 2. The materials to be used in the construction of the external surfaces of the development hereby permitted shall match those used in the existing building.
 3. The development hereby permitted shall be carried out in accordance with the following approved plans: chi/plan/13_1 and chi/plan/13_2.

Main Issue

2. The main issue in this case is the effect of the proposal on the living conditions of the occupants of neighbouring residential properties, with specific reference to outlook.

Reasons

3. The appeal property comprises a detached, two storey house set close to the junction of Chigwell Park with High Road. The front elevation of no.2 is broadly in line with that of 4 Chigwell Park adjacent and to the north west, but with a quite significant two storey projection beyond its rear elevation. It is agreed between both main parties that the main rear wall of no.2 is 4.5m beyond the rear of elevation of no.4. Ground levels also fall gently in a north westerly
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direction, from 197 High Road to the south east towards no.4. However, the boundary treatments to both sides of the rear garden of the appeal site comprise relatively high close boarded fencing, with sporadic trees and shrubs situated along them. The south eastern boundary fence shared with no. 197 also has timber trellis panels over it and a number of mature conifer trees are situated within the grounds of this neighbouring property.

4. Notwithstanding the projection of the rear elevation of the appeal building beyond the rear elevation of no.4, I find that by virtue of the flat roofed single storey nature of the proposed extension, its scale and mass would be limited. Whilst undoubtedly the top of the roof would be viewed over the fence, by virtue of the width of the rear garden of no.4, I consider that this would not have an excessively overbearing effect upon the occupants of this property, and consequently would not have a material impact upon its outlook.
5. With regard to the impact of the proposal upon no.197, whilst that dwelling is orientated approximately at a right angle to the appeal property, and its garden depth is relatively shallow, by virtue of the fact that it is situated on higher ground, whilst taking into account the existing boundary treatments, I consider that the proposals would not be overbearing or be materially detrimental to the outlook from this property either.
6. With regard to other matters raised, I note that reference has been made to a refused scheme at 10 Chigwell Park, however, I have not been provided with details of that proposal and in any case each proposal must be assessed on its own merits. References have also been made to the proposal not respecting a 45° rule, but whilst I am aware that a notional 'rule of thumb' test is often applied by local planning authorities, I have not been provided with a policy basis for such a test in this instance. By virtue of the single storey form of the extension, with a predominantly flat roof the impact upon sunlight and any resultant overshadowing would not be significant, particularly bearing in mind the orientation of the appeal property and its proposed extension in relation to its immediate neighbours. I acknowledge other concerns with regard to the potential for light pollution from the roof lanterns and a loss of mutual privacy through them, however, any potential light pollution would unlikely give rise to a significant impact upon the night sky, and by its very nature would not give rise to material overlooking; bearing their position above ceiling level.
7. I therefore find that the proposal would not give rise to material harm to the living conditions of the occupants of neighbouring residential properties, with their current levels of outlook being protected. The proposals comply with Policy DBE9 of the Epping Forest District Local Plan adopted January 1998 which requires that an extension does not result in an excessive loss of amenity for neighbouring properties. I also find that the proposal complies with one of the core planning principles of the National Planning Policy Framework which is to always seek to secure high quality design and a good standard of amenity for all existing and future occupants of land and buildings.

Conclusion and Conditions

8. For the reasons set out above and having regard to all other matters raised I conclude that the appeal should succeed. The Council has suggested a condition requiring the external materials to be used in the construction of the

extension to match those of the existing building and for the avoidance of doubt and in the interests of proper planning, I impose a condition requiring the development is carried out in accordance with the approved plans.

C J Tivey

INSPECTOR

Appeal Decision

Site visit made on 18 October 2013

by Terry G Phillimore MA MCD MRTPI

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

Decision date: 6 November 2013

Appeal Ref: APP/J1535/A/13/2192628

261 High Street, Epping CM16 4BP

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr G Di Piazza against the decision of Epping Forest District Council.
 - The application Ref EPF/1924/12, dated 28 August 2012, was refused by notice dated 23 January 2013.
 - The development proposed is conversion of office space (disused) into 3 self contained flats and alterations to existing bedsits into a single self contained flat.
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Decision

1. The appeal is allowed and planning permission is granted for conversion of office space (disused) into 3 self contained flats and alterations to existing bedsits into a single self contained flat at 261 High Street, Epping CM16 4BP in accordance with the terms of the application, Ref EPF/1924/12, dated 28 August 2012, and the plans submitted with it, subject to the following conditions:
 - 1) The development hereby permitted shall begin not later than three years from the date of this decision.
 - 2) The development hereby permitted shall be carried out in accordance with the following approved plans: 08003.SP, 08003.002 Rev:P1, 08003.003 Rev:P1, 08003.004 Rev:P1.

Main Issue

2. The main issue is the effect the proposal would have on highway conditions in the vicinity.

Reasons

3. The proposal relates to first floor accommodation which currently comprises 3 bedsits and vacant offices. The Council raises no objection to the principle of conversion to all residential use, with evidence submitted to show a lack of demand for the office space.
4. Policy ST6 of the Epping Forest District Local Plan 2006 expects all development proposals to provide of-site parking in accordance with its standards. The current relevant standards are set out in the Essex County Council Parking Standards Design and Good Practice 2009.

5. No off-street parking is associated with the proposal. According to the appellant's undisputed calculations, under the standards there would be a requirement for 5 spaces for the existing uses and 6 for the proposal. The parking standards document identifies that the standards can be reduced in town centre locations with good access to public transport.
6. The site is located within Epping Town centre. This is agreed to be a sustainable location with ready access to facilities. Notwithstanding that the existing uses are long-established, the parking demand generated by the proposal is unlikely to be significantly greater than that resulting from these uses. In this context the application of a relaxation from the normal standards would favour allowing the proposal, and there is no material conflict with the development plan in this respect.
7. In addition, the proposal would be a sustainable development which warrants support according to the National Planning Policy Framework. This advises that development should only be refused on transport grounds where the residual cumulative impacts are severe. There is no evidence to suggest that there would be such an impact in this case.
8. The Council refers to another appeal decision (ref APP/J1535/A/11/2160122) in support of the refusal, but that related to a proposal largely involving new build accommodation in a different town centre (Waltham Abbey), and therefore differed materially from the current scheme.
9. Listed building consent has been granted by the Council for the proposed works (ref EPF/1938/12) and the conversion would preserve the character and appearance of the Epping Conservation Area.
10. A condition specifying the approved plans is needed for the avoidance of doubt and in the interests of proper planning. The appellant suggests that provision for cycle parking within the site could be made. While this would be welcome, in the circumstances it is not necessary for the proposal to be acceptable, and therefore a planning condition requiring such provision is not warranted.
11. For the reasons given above I conclude that the appeal should be allowed.

T G Phillimore

INSPECTOR



Appeal Decision

Site visit made on 25 September 2013

by **D J Barnes MBA BSc(Hons) DipTP MRTPI**

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

Decision date: 21 October 2013

Appeal Ref: APP/J1535/A/13/2196751

20 St Peters Avenue, Ongar, Essex CM5 0BT

- 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 Craig Pope against the decision of Epping Forest District Council.
 - The application Ref EPF/2298/12, dated 30 November 2012, was refused by notice dated 20 February 2013.
 - The development proposed is a change of use to allow the premises to be used as a take-away (Class A5).
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Decision

1. The appeal is allowed and planning permission granted for a change of use to allow the premises to be used as a take-away (Class A5) at 20 St Peters Avenue, Ongar, Essex CM5 0BT in accordance with the terms of the application, Ref EPF/2298/12, dated 30 November 2012, subject to the following conditions:
 1. The development hereby permitted shall begin not later than three years from the date of this decision.
 2. The development hereby permitted shall be carried out in accordance with the following approved plans: Site Location Plan; 002/DRW01B; 002/DRW02B and 002/DRW03B.
 3. Before the use hereby permitted begins, equipment to control the emission of fumes and smell from the premises shall be installed in accordance with the quotation letter dated 12 November 2012 from C K Direct (Ref 4926/3) and as shown on the approved plans. All equipment installed as part of the approved scheme shall thereafter be operated and maintained in accordance with the manufactures recommendations and retained for so long as the use continues.
 4. The premises shall not be open for customers outside the following hours:- 11.00 to 21.00 , Mondays to Saturdays and at no time on Sundays and Bank Holidays.

Main Issue

2. It is considered that the main issue is the effect of the proposed development on the living conditions of the occupiers of neighbouring properties.
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Reasons

3. The appeal property is a ground floor retail unit which is at the end of a short parade of shops. The parade is situated within a predominantly residential area but the majority of the neighbouring dwellings are separated from the property by a garage block, an area of open space and St Peters Avenue. The dwellings on the opposite site of the road are separated from the property by a wide pavement, parking bay, carriageway, verge and another pavement. There are dwellings above the shop units but these already experience the comings and goings of customers to the other retail units.
4. The property is currently vacant and the proposed development is for a change of use to Class A5 to enable a take-away business to operate. I have noted that the Council has provided some information about changes of use at other properties within the surrounding area but, in the absence of their detailed planning circumstances, only limited weight has been given to these other schemes. I acknowledge the appellant's claim that a take-away use, of the type proposed, can often be situated within similar parades of shops located within predominately residential areas. Further, there would not be a proliferation of such uses which might otherwise lead to a cumulative impact on the living conditions of the occupiers of neighbouring properties.
5. A previous application for a similar use (Ref EPF/1560/12) was refused by the Council and this appeal scheme seeks to address the Council's objections. Details of the extraction equipment that would be erected have been provided and the Council's Environmental Health Officer has not objected to the equipment being proposed. An appropriate condition could secure the installation and maintenance of the ventilation equipment to ensure that the proposed use would not give rise to problems of excessive smell.
6. The Council's concerns are principally associated with the potential noise and disturbance associated with a take-away use, particularly because of the proximity of the residential properties. However, most neighbouring dwellings would be separated by other land uses from the proposed take-away use.
7. The appellant is proposing that the hours of operation are restricted to between 11.00 to 21.00 hours Monday to Saturday and not at all on Sundays and Bank Holidays. In my judgement, after 21.00 hours and on Sundays and Bank Holidays it would be reasonable to expect a quieter noise levels to exist within a residential area and the proposed hours of operation could be secured by condition. Whether the existing shops are subject to any similar restriction on their opening hours is unclear but I am mindful that evidence indicates that the convenience store is open until 23.00 hours and also opens on Sundays and Bank Holidays.
8. Although the parade includes residential use above the shops, when taken together with the current opening hours of the convenience store the proposed hours of opening would be reasonable and appropriate to avoid excessive noise and disturbance occurring from the appeal scheme, particularly during late evening/night-time period. In reaching this judgement account has been taken of the potential for customers to travel both on foot and in vehicles, including people getting into or out of their vehicles and the starting of engines.

9. Claims have been made by local residents about previous anti social behaviour and the potential for such behaviour associated with the proposed use. However, the Planning Officer's report indicates that this claim is not supported by the Safer Communities Officer. Incidents of anti social behaviour have reduced and there have been no complaints relating to the shops, especially since the erection of the CCTV cameras. The absence of any specific evidence that the proposed use might lead to anti social behaviour is also acknowledged in the Council's appeal statement and reference is made to the experience at the near-by fish and chip shop to support this view. Accordingly, in the absence of other evidence to the contrary, there are no reasons to disagree with the Council's assessment and the proposed development would not conflict with paragraph 69 of the National Planning Policy Framework (the Framework) concerning the fear of crime.
10. Based upon my observations during the site visit there are no reasons to disagree with the Council assessment that adequate parking, albeit on-street, would be available for customers visiting the property in their vehicles. The turnover of vehicles using the lay-by in-front of the parade was observed to be frequent and on-street parking elsewhere along St Peter's Avenue neither obstructed traffic flows nor caused concerns about parked vehicles being a danger to other highway users, including pupils attending the near-by school.
11. Local residents have questioned the need for a take-away because of the other similar outlets within the local area. However, this is a commercial matter for the appellant and the use of the property as a take-away would not result in a proliferation of such use within this parade of shops. Potential health issues, including vermin and litter, have been raised by local residents but they are matters for other legislation. The issue of the affect on property values has been noted but does not alter the main issue identified in this case.
12. For the reasons given it is concluded that the proposed development would not cause unacceptable harm to the living conditions of the occupiers of neighbouring properties and, as such, it would not conflict with Policies DBE9 and RPA5A of the Epping Forest District Local Plan, including Alterations. These policies require development not to cause an excessive loss of amenity, including by reasons of noise, smell and other disturbance. Although the Local Plan is not up-to-date, these policies are consistent with the Framework's core principle of securing a good standard of amenity for all existing and future occupants of land and buildings.

Conditions

13. The Council has suggested conditions in the event that this appeal is allowed and they have been considered against the advice in Circular 11/95: *The Use of Conditions in Planning Permissions*. Subject to amendments for reasons of precision, for the reasons given and for reasons of proper planning the conditions are all considered necessary. Accordingly, and taking into account all other matters including the Framework's presumption in favour of sustainable development, it is concluded that this appeal should succeed.

D J Barnes

INSPECTOR



Appeal Decision

Site visit made on 18 September 2013

by **D J Barnes MBA BSc(Hons) DipTP MRTPI**

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

Decision date: 16 October 2013

Appeal Ref: APP/J1535/A/13/2199264

32 Piercing Hill, Theydon Bois, Epping, Essex CM16 7JW

- 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 Robert Webb against the decision of Epping Forest District Council.
 - The application Ref EPF/2451/12, dated 18 December 2012, was refused by notice dated 17 April 2013.
 - The development proposed is a replacement dwelling.
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Decision

1. The appeal is allowed and planning permission granted for a replacement dwelling at 32 Piercing Hill, Theydon Bois, Epping, Essex CM16 7JW in accordance with the terms of the application, Ref EPF/2451/12, dated 18 December 2012, subject to the conditions identified in the attached Schedule to this decision.

Main Issues

2. It is considered that the main issues are:
 - (a) Whether the proposal would be inappropriate development for the purposes of the National Planning Policy Framework (the Framework) and development plan policy;
 - (b) The effect of the development on the openness of the Green Belt and the purposes for including land within it; and
 - (c) The effect of the development on the visual amenity of the Green Belt and character and appearance of the area and property.

Reasons

Whether the proposal would be inappropriate development for the purposes of the Framework and development plan policy

3. The proposed development comprises the demolition and replacement of an existing dwelling. Paragraph 89 of the Framework refers to the replacement of a building in the Green Belt as not being inappropriate development provided it is in the same use and not materially larger than the one it replaces. Because of the retained residential use of the property and the scale of the replacement
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dwelling the Council's assessment is that the appeal scheme would not be inappropriate development in the Green Belt. Based upon the available evidence, there are no reasons to disagree with the Council's assessment. Accordingly, it is concluded that the appeal scheme is not inappropriate development in the Green Belt and, as such, it would accord with the Framework.

The effect of the development on the openness of the Green Belt and the purposes for including land within it

4. Paragraph 79 of the Framework states that one of the essential characteristics of Green Belts is their openness. The proposed dwelling would be sited in a similar location to the appeal property and would not result in built development encroaching materially into the surrounding garden or countryside. Therefore, it is concluded that the proposed development would not harm the purposes of including land within the Green Belt, particularly safeguarding the countryside from encroachment.
5. The comments concerning the proposed size of a chimney and different design of the replacement dwelling have been noted. Although its height would be slightly greater, the replacement dwelling would be narrower than and not as deep as the existing property. By reason of being a similar scale and bulk to the property, the appeal scheme would not materially harm the openness of the Green Belt. Accordingly, it is concluded that the appeal scheme would accord with the Framework by not unacceptably harming the openness of the Green Belt.

The effect of the development on the visual amenity of the Green Belt and character and appearance of the area

6. The property is a substantial detached house situated within a large verdant plot and this characteristic is shared by the other Victorian dwellings fronting this part of Piercing Hill. There are variations in the style and appearance of the properties which front the road whether the Victorian dwellings or the more recently erected buildings, including the apartments. The predominant choice of materials comprises brick and rendered walls with some stone dressing and either slate or tiled roofs. Chimneys are a feature of the older dwellings' roofs.
7. The proposed development comprises the replacement of the property by a dwelling of a similar scale erected on approximately same site. By reason of size and sting, the appeal scheme would not result in an overdevelopment of the plot but would maintain the appearance of a substantial detached dwelling situated on a large verdant plot. Accordingly, it is concluded that there would be no unacceptable harm caused to the visual amenity of the Green Belt and no conflict with the Framework would arise.
8. The Council is considering whether to include this part of Theydon Bois within a Conservation Area but this has not yet occurred. The *Heritage Asset Review* prepared by the Council's consultants attributes some group value to the Victorian dwellings fronting the road of which the property forms one element. However, although the Council considers the property to be of local significance it is not yet included on either the statutory or local list of local buildings of architectural or historic interest.

9. The property does share the characteristics of the neighbouring dwellings and the *Heritage Asset Review* usefully identifies the value of this group of properties. For these reasons I concur with the Council that, adopting paragraph 165 of the Framework, there is a need to consider the effect of the appeal scheme on a non-designated heritage asset and a balanced judgement is required having regard to the scale of any harm or loss and the significance of the heritage asset.
10. From an external inspection, the condition of the property requires some renewal and repair work. When viewed from the rear, the property has been unsympathetically altered and these works detract from its appearance. Further, some of the alterations can be seen from the road and, when compared to the other Victorian dwellings, the design and appearance of the front elevation of the property does not make a particularly strong contribution to the character of the streetscene.
11. The design of the proposed dwelling would, in my judgement, be of high quality which would harmonise with the character and appearance of the neighbouring properties. The proposed front elevation, including the front gable with bay window and the fenestration, would provide a positive contribution to the streetscene which would share some of the Victorian characteristics and proportions of other dwellings. Although I have noted local residents' comments, the chimney would harmonise with the scale and design of the proposed dwelling.
12. The appeal scheme would at least safeguard, if not positively contribute to, the appearance of this group of dwellings within the streetscene. The bulk of the proposed roof would not be particularly noticeable from the road. However, I agree with the Council that a slated rather than tiled roof would be more appropriate and the choice of materials could be secured by an appropriate condition.
13. It is judged the replacement dwelling's high quality design and respect for the local character and distinctiveness of the area demonstrably outweigh the loss of the non-designated heritage asset. Accordingly, the proposed development would not unacceptably harm the character and appearance of the surrounding area and, as such, it would not conflict with Policies, CP2, CP7 and DBE4 of the Epping Forest District Local Plan, including Alterations. These policies include specific requirements for development to respect, safeguard and enhance local character and to be of high quality design. Although they are not up-to-date these policies are consistent with the Framework's core principle of a good standard of design.

Other Matters

14. Neighbouring occupiers have expressed concern about the impact of the proposed development on their living conditions albeit the Council has not objected to the appeal scheme on these grounds. Because of the differences in ground level there are, and will continue to be, views from the appeal property towards a window erected within the flank wall of 31 Piercing Hill but this serves a staircase/landing rather than a habitable room. By reason of the type and size of the proposed openings facing towards No. 31 and the separation distance, I share the Council's assessment that no unacceptable harm would be

caused to the occupiers living conditions by reason of overlooking or loss of privacy. The bulk of the proposed dwelling would be similar to the existing property and would not materially alter the outlook from the neighbouring dwellings.

15. The Council has referred to the potential for an unwelcome precedent to be established if this appeal was allowed. However, the appeal scheme has been determined on its own merits, including the property's specific contribution to the group of Victorian dwellings.
16. The comments of local residents concerning the proposed development's potential effects on surface water drainage have been noted. However, it is unclear to me from the evidence that the existing situation is caused by the property or by other factors such as the clay soil noted in the officer's report. An appropriate surface water drainage condition could address this matter.

Conditions

17. The Council has suggested a number of conditions in the event this appeal is allowed which have been considered against the advice in Circular 11/95: *The Use of Conditions in Planning Permissions*. I agree that conditions requiring the development to be undertaken in accordance with the submitted plans and the approval by the Council of materials, ground and floor levels, landscaping details and means of enclosure are necessary. For the reasons already given, a surface water drainage condition is necessary. The suggested conditions have been amended for reasons of precision and to reflect the model conditions.
18. Because of the property's location, controls over the hours of operation and avoiding mud being deposited on the road are necessary. By reason of the excavation of the basement and avoiding stockpiling on the plot a condition to secure the removal of surplus material is appropriate. I also agree that, because of the existing use, the potential for contamination exists and a condition is appropriate to address this matter. The suggested conditions have been amended for reasons of precision and to reflect the model conditions.
19. No specific justification is provided concerning the replacement of retained trees and planted shrubs and hedges and the model condition concerning replacement trees has been adopted. However, incomplete information about the extent of tree protection measures has been indicated on Drawing No. MP/PH/01 and a condition requiring full details to be submitted is necessary. The exceptional circumstances required to justify the removal of permitted development rights for dwelling houses have not been provided and a condition is unnecessary.

Conclusion

20. Accordingly, and taking into account all other matters, it is concluded that this appeal should be allowed.

D J Barnes

INSPECTOR

Schedule of Conditions

1. The development hereby permitted shall begin not later than three years from the date of this decision.
2. The development hereby permitted shall be carried out in accordance with the following approved plans: 1267/01; 1267/03; 1267/05; 1267/06; 1267/07 and MP/PH/01.
3. No development shall take place until samples of the materials to be used in the construction of the external surfaces of the building hereby permitted have been submitted to and approved in writing by the local planning authority.
4. No development shall take place until details of the proposed ground levels and floor levels of the development hereby permitted have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
5. No development shall take place until details of the surface water drainage works, including a flood risk assessment and a management and maintenance plan, have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
6. No development, including any works of demolition, shall take place until a detailed Tree Protection Plan, Arboricultural Method Statement and site monitoring schedule have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
7. No development shall take place until full details of soft landscape works have been submitted to and approved in writing by the local planning authority. All soft landscape works shall be carried out in accordance with the approved details. The works shall be carried out prior to the occupation of the dwelling hereby permitted or in accordance with the programme agreed with the local planning authority.
8. If within a period of five years from the date of the planting of any tree that tree, or any tree planted in replacement for it, is removed, uprooted or destroyed or dies, or becomes, in the opinion of the local planning authority, seriously damaged or defective, another tree of the same species and size as that originally planted shall be planted at the same place, unless the local planning authority gives its written approval to any variation.
9. No development, including any works of demolition, shall take place until there has been submitted to and approved in writing by the local planning authority a plan indicating the positions, design, materials and type of boundary treatment to be erected. The boundary treatment shall be completed in accordance with a timetable agreed in writing with the local planning authority. Development shall be carried out in accordance with the approved details.
10. No development shall take place until details of wheel washing or other cleaning facilities for vehicles leaving the site during the demolition and construction works have been submitted to and approved in writing by the

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

- 11.No development, including any works of demolition, shall take place until a site investigation of the nature and extent of contamination has been carried out in accordance with a methodology which has previously been submitted to and approved in writing by the local planning authority. The results of the site investigation shall be made available to the local planning authority before any development begins. If any contamination is found during the site investigation, a report specifying the measures to be taken to remediate the site to render it suitable for the development hereby permitted shall be submitted to and approved in writing by the local planning authority. The site shall be remediated in accordance with the approved measures before development begins.

If, during the course of development, any contamination is found which has not been identified in the site investigation, additional measures for the remediation of this source of contamination shall be submitted to and approved in writing by the local planning authority. The remediation of the site shall incorporate the approved additional measures.

- 12.Demolition or construction works shall not take place outside 08.00 hours to 18.30 hours Mondays to Fridays and 08.00 hours to 13.00 hours on Saturdays nor at any time on Sundays or Bank Holidays.
- 13.All surplus materials excavated from below ground works shall be removed from the site prior to the occupation of the dwelling hereby permitted.



Appeal Decision

Site visit made on 16 October 2013

by **D J Barnes MBA BSc(Hons) DipTP MRTPI**

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

Decision date: 7 November 2013

Appeal Ref: **APP/J1535/A/13/2200767**

Land Adjacent to Horseshoes Farm, London Road, North Weald Basset, Harlow, Essex CM17 9LH

- 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 Ian Padfield against the decision of Epping Forest District Council.
 - The application Ref EPF/0528/13, dated 13 March 2013, was refused by notice dated 22 May 2013.
 - The development proposed additional grain storage facilities.
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Application for Costs

1. An application for costs was made by Mr Ian Padfield against Epping Forest District Council. This application is the subject of a separate decision.

Decision

2. The appeal is allowed and planning permission granted for additional grain storage facilities on at land adjacent to Horseshoes Farm, London Road, North Weald Basset, Harlow, Essex CM17 9LH in accordance with the terms of the application, Ref EPF/0528/13, dated 13 March 2013, subject to the conditions identified in the attached Schedule to this decision.

Main Issues

3. It is considered that the main issues are:
 - (a) Whether the proposal would be inappropriate development for the purposes of the National Planning Policy Framework (the Framework) and development plan policy;
 - (b) The effect of the development on the openness of the Green Belt and the purposes for including land within it; and
 - (c) The effect of the development on the visual amenity of the Green Belt and character and appearance of the area.

Reasons

Whether the proposal would be inappropriate development for the purposes of the Framework and development plan policy

4. The proposed development is an extension to an existing agricultural building situated within the Green Belt. The planning history of the building has been considered by my colleagues who determined previous similar appeals schemes (Refs APP/J1535/A/09/2116628 and APP/J1535/A/12/2177254). There are no reasons to disagree with my colleagues' assessment that the agricultural building is lawful.
5. The Framework notes that to the erection of buildings for agricultural purposes need not be inappropriate development within the Green Belt. The need for the proposed facilities and design of the appeal scheme are questioned by the occupiers of the neighbouring property, including by reason of the lack of ventilated flooring and static fan equipment. Although the availability of other storage facilities and the potential to erect the proposed facilities elsewhere within the agricultural holding have been raised, I am required to determine this appeal based upon the scheme before me to assess.
6. The appellant has provided justification concerning why there is an agricultural need for the proposed extension and similar evidence was accepted by my colleague when determining a previous appeal (Ref APP/J1535/A/12/2177254). Based upon the evidence provided, including the potential to use mobile driers, I have no reason to reach a different judgment. In reaching this judgement account has been taken of the alternative information concerning the yields which might be achieved for the various crops but this still indicates that there is a need for some additional storage facility.
7. Given the basis upon which the appeal scheme is being put forward by the appellant, a condition restricting its use to agricultural purposes would be appropriate. Accordingly, it is concluded that the proposed development would not be inappropriate development for the purposes of the Framework and development plan policy.

The effect of the development on the openness of the Green Belt and the purposes for including land within it

8. The size of the proposed extension has been substantially reduced by about two thirds when compared to the last appeal scheme. Although I have noted my colleague's assessment of the last scheme's impact on openness and the purposes of the Green Belt, because of the difference in the size of the extensions I have judged this proposed development on its own merits.
9. Paragraph 79 of the Framework states that one of the essential characteristics of Green Belts is their openness. Policy GB7A of the Epping Forest District Local Plan, including Alterations (LP), requires development not to be conspicuous from within or beyond the Green Belt which would have an excessive adverse impact upon the openness, rural character or visual amenities of the Green Belt.
10. Because the site of the proposed extension is currently undeveloped, the appeal scheme would be bound to have an impact on the openness of the Green Belt. However, the appeal scheme would be related to an existing agricultural building and associated concrete area which already has an impact on the openness of the Green Belt. Accordingly, and taking into account the existing built development, my judgement is that the scale of the proposed extension is such that it would neither cause excessive harm to nor a material

reduction in the openness of the Green Belt. Further, the proposed enlargement of the hardstanding would not materially affect the openness of the Green Belt.

11. Paragraph 80 of the Framework identifies the purposes of the Green Belt. There would be some encroachment of built development onto undeveloped open countryside. However, for the same reasons as already identified, the degree of encroachment of the proposed extension is not such that this purpose of the Green Belt would be materially prejudiced.
12. Accordingly, it is concluded that the proposed development would not cause unacceptable harm to the openness and purposes of the Green Belt and, as such, it would not conflict with this element of LP Policy GB7A and the Framework.

The effect of the development on the visual amenity of the Green Belt and character and appearance of the area

13. In addition to the matters identified in LP Policy GB7A, Policy GB11(ii) also refers to agricultural buildings not being detrimental to the character or appearance of the locality.
14. The surrounding area is characterised by open rolling countryside punctuated by individual buildings and groups of buildings. The existing building reflects these characteristics and is a typical agricultural building of modern design which is not an uncommon feature within the countryside. The appeal scheme would reflect the appearance of the building and would maintain the characteristics of the surrounding area.
15. Although set back from London Road, the existing building already has an affect upon the open and verdant character and appearance of the surrounding countryside. The proposed extension would increase the scale of the built development albeit not to the same extent as the previous larger appeal schemes. Because the scale of the proposed extension would be substantially smaller than the previous appeal schemes I have reached a different judgment to my colleagues.
16. I acknowledge the Council's view that there would be an increase in the length of the existing building. However, by reason of its size, design and siting, the bulk of the enlarged building would not be so conspicuous so as to either cause unacceptable harm to the character and appearance of the surrounding area or have an excessive adverse impact upon the visual amenity of the Green Belt. The design and siting of the appeal scheme would be well related to the appearance of the existing building.
17. Views of the enlarged building from the south would be limited by the adjoining complex of commercial buildings. From the north, including from the field accesses along London Road and the glimpsed views from the M11 motorway, the enlarged building would be viewed against the boundary vegetation and, to a lesser extent, the adjoining commercial buildings. The enlarged building would neither be an incongruous form of development nor cause an excessive adverse impact upon the character of the surrounding countryside.

18. Intervening vegetation would also provide some screening of the proposed development. However, although I am also mindful that additional landscaping is proposed but this would take a period of time to establish and I have given this matter only limited weight in the determination of this appeal. Accordingly, it is concluded that the proposed development would not cause unacceptable harm to the character and appearance of the area and the visual amenity of the Green Belt and, as such, it would not conflict with LP Policy GB7A and GB11(ii) and the Framework.

Other Matters

19. The appellant has referred to the Framework's support for a prosperous rural economy and the general support for economic growth. Although regard has been had to these policies they need to be balanced against those which apply to development within the Green Belt. However, in this case, I have found that the appeal scheme is not inappropriate development and there would be no material harm caused to the openness, purposes and visual amenity of the Green Belt. For these reasons, I am able to give significant weight to the economic policies of the Framework.
20. The concerns of the occupiers of the neighbouring property regarding the existing access to the building have been noted but some of these matters concern private rights of way which are not for me to determine as part of this appeal. Further, I note that the Highway Authority has not objected to the proposed development, whether by reasons of traffic generation or the adequacy of the current access. Based upon the site visit, there are no reasons to disagree with the Highway Authority on these matters. However, a condition to prevent the external storage of equipment which might otherwise restrict manoeuvring of vehicles or cause parking along the access would be appropriate, especially to ensure vehicles could enter and leave the site in forward gear.
21. There is a requirement that special regard is had to the desirability of preserving a Listed Building or its setting or any features of special architectural or historic interest which it possesses. The proposed development is situated a sufficient distance from the Listed Building so that there would be no adverse harm caused to its setting. Issues such as controlling vermin are for other legislation to address rather than being planning matters.
22. There is some speculation by others about whether there would be further applications to extend the building or it might be re-used for other purposes. However, this appeal has been determined on its own merits and it is a matter for others to consider any future planning applications for the building.

Conditions

23. The Council has suggested a number of conditions in the event that this appeal was allowed and they have been considered against the advice in Circular 11/95: *The Use of Conditions in Planning Permissions*. The conditions suggested by the Council for the use of matching materials, retaining the agricultural use of the building, the provision of a vehicle turning facility, the preclusion of external storage and the development being erected in accordance with the approved plans are all considered necessary. However, this is not a case where a temporary planning permission is being sought but

the proposed extension is intended to be permanent. By reason of the advice at paragraph 109 of the Circular, a condition requiring the removal of the building when the agricultural use ceases is unnecessary.

Conclusion

24. Accordingly, and taking into account all other matters, it is concluded that this appeal should succeed.

D J Barnes

INSPECTOR

Schedule of Conditions

1. The development hereby permitted shall begin not later than three years from the date of this decision.
2. The development hereby permitted shall be carried out in accordance with the following approved plans: 208239DWG0228 Rev A; 208239DWG025 Rev A and 208239DWG026 Rev A.
3. The materials to be used in the construction of the external surfaces of the development hereby permitted shall match those used in the existing building.
4. The development hereby permitted shall not be occupied until the hardstanding has been laid out within the site in accordance with Drawing No 208239DWG026 Rev A.
5. The hardstanding hereby permitted shall not be used for the external storage of materials and shall be maintained free from obstruction to enable vehicles to wait, load, unload and turn so that they may enter and leave the site in forward gear.
6. The development hereby permitted shall only be used for the storage of grain or other storage associated with agriculture and not for any other use.



Appeal Decision

Site visit made on 29 November 2013

by Kenneth Stone BSc(Hons) DipTP MRTPI

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

Decision date: 28 January 2014

Appeal Ref: APP/J1535/A/13/2202469

11 Bower Hill, Epping, Essex CM16 7AD

- 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 Brian Grove against the decision of Epping Forest District Council.
 - The application Ref EPF/0891/13, dated 29 April 2013, was refused by notice dated 19 June 2013.
 - The development proposed is the demolition of the existing bungalow and the erection of a new chalet bungalow.
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Decision

1. The appeal is allowed and planning permission is granted for the demolition of the existing bungalow and the erection of a new chalet bungalow and alterations to the existing crossover at 11 Bower Hill, Epping, Essex CM16 7AD in accordance with the terms of the application, Ref EPF/0891/13, dated 29 April 2013, subject to the conditions contained in the Annex to this decision.

Procedural matter

2. The description of development was amended by the Council at the time of the submission of the application to include reference to alterations to the vehicle crossover and this description has been repeated in the appeal forms. As this more accurately describes all the development proposed I have used the Council's description in my decision.

Main Issue

3. The main issue in this appeal is the effect of the proposed development on the appearance of the street scene and character of the area.

Reasons

4. The appeal site presently accommodates an unoccupied bungalow located in an area of buildings having significant variety of architectural forms and styles. There is no strong coherent typology or character to the area, with buildings reflective of varying ages including the two storey 1960's flat roofed blocks to the north, the two storey Victorian properties opposite and 1930's bungalow's to the south. The appeal site is however read most closely in the street with the run of bungalows which run down hill towards the south. In association with the bulk and height of these properties the relatively steep hill and soft

landscaping at the front create the dominant elements of the character of the immediate area and the appearance of this section of the street scene.

5. With this in mind the replacement of the existing bungalow with a building with a larger footprint but generally similar ridge height would have a limited impact in longer views particularly from the south. The building would be viewed against the backdrop of the rising ground and the more modern rectangular block form of the 1960s buildings which would sit above it. The main front façade would be along the same position as the existing building and the majority of landscaping to the front of the building would be retained. Whilst there would be the removal of some boundary landscaping along Essex Way a condition requiring details of the landscaping of the site would mitigate any negative impact and strengthen and support the integration of the scheme into the character of the area and the street scene. In this context the proposed development would not hold a particularly prominent or intrusive position.
6. The existing building already fills almost the full width of the plot albeit with a significantly smaller bulk and mass than now proposed. The additional consolidated built form with larger roof volume and additions would make the bulk and mass of the proposed building more evident in the street scene, particularly from closer views. However the chalet form of the bungalow with the hipped roof and various inserts would not be so substantially different from other examples of extended bungalows in the locality. The use of smaller dormer roof additions and gabled elements above the garage and front door would assist in breaking up the massing of the building and further support the integration of the proposed chalet bungalow with the properties in the locality and the wider street scene.
7. The rear of the proposed property, which would provide for a half hipped roof above an almost full two storey rear elevation, would be the most imposing elevation. However this would be seen in the context of the adjoining bungalow which has a first floor located in a gable end on its rear elevation. Moreover the nature of the roof form of the proposed property, with the long hipped sides, and the relationship with the adjoining bungalow to the south would help to break up this impact which would not be materially harmful to the character of the area and not particularly evident in the street scene.
8. The relationship of the built form to the plot width would be similar to those in other parts of the street or the existing bungalow. The proposed development would accommodate steps in the southern elevation which would provide for a degree of separation from that boundary similar to that presently existing and which would give a reasonable appearance of separation from the adjoining property. To the north the building would be set on the boundary, as is the present garage. Whilst this would be a longer elevation than present the nature of the landscaping to the front and rear and that in the immediate vicinity would soften the impact and ensure this would not be excessively intrusive.
9. The development would include alterations to the existing access arrangements to the proposed bungalow which would result in a widening of that access. The Council has concluded that this would not result in material harm to highway safety and I see no reason to differ from that conclusion. The landscaping of the frontage is an important element in the character of the area although this relatively minor increase in width would not materially alter the impact of the

front landscaped area. This would support my conclusion earlier regarding the appropriateness of a condition to require landscape details of this area.

10. For the reasons given above I conclude that the proposed development would not result in a materially adverse effect on the appearance of the street scene or character of the area. Consequently it would not conflict with Policy DBE1 of the Epping Forest District Local Plan adopted January 1998 or Policy CP7 of the Epping Forest District Local Plan Alterations Adopted July 2006 which together seek to achieve development that makes the fullest use of urban land, re-using urban sites compatible with the character of the area, respecting its siting and which is appropriate in the street scene. These policies are consistent with the National Planning Policy Framework and in particular the core planning principles at paragraph 17 and paragraphs 56 to 68 which require developments to be of good design, reinforcing local distinctiveness and responding to local character.

Other Matters

11. Concerns have been expressed by local residents about the impact on living conditions of occupiers of surrounding properties. However, given the domestic scale and separation of the proposed works from surrounding properties there would be no significant overbearing impact or loss of privacy. A requirement for obscure glazing and fixed windows of first floor dormer windows would further safeguard privacy. The loss of trees and soft landscaping around the site could be mitigated by landscaping that can be secured through the imposition of a suitable condition. Parking provision is made within the scheme and the Council have raised no objections and I see no reason to differ from their conclusions in this regard.
12. Concern is expressed at the lack of information around sustainable development and reducing energy consumption. The appellant has noted that this could be adequately addressed by the imposition of a condition and I agree such a condition could reasonably be imposed ensuring the development is constructed to a suitable standard.

Conditions

13. The Council has suggested a number of conditions which I have considered in the light of circular 11/95 'The use of conditions in planning permissions'. I have amended some of them in the interests of precision and clarity. A condition requiring the development to be built in accordance with the approved plans is required in the interests of proper planning. A condition is required in respect of materials in the interests of the appearance of the development as is a condition in relation to obscure glazing for the first floor windows in the flank elevations to protect the privacy of the adjoining neighbours.
14. No details of the means of disposal of foul and surface water have been submitted and these are required to ensure the development is properly drained. I note there is a further suggested condition (number 9 in the Council's list) requesting details of the discharge of surface water onto the highway. However, to avoid duplication this would be better addressed in the details of surface water required under condition 5.

15. The Council has suggested a restriction on permitted development rights in respect of alterations and extensions and roof alterations. Advice in the circular is that such conditions should only be imposed in exceptional circumstances. The plot is reasonably large and well screened and I see no justification on restricting Class A extensions. I do however accept that further alterations and additions to the roof of the proposed chalet bungalow could result in a significant impact on the character and appearance of the property and the area or on neighbours' amenities and in this context I accept that a restriction on Class B extensions is reasonable and necessary. I have therefore imposed an amended condition 6 in this regard.
16. A restriction on the hours of construction work is reasonable and necessary to protect the amenities of the surrounding residents. Details of the levels of the site are also necessary and reasonable in the interests of the appearance of the development in the street scene and general area. I have commented in my reasoning above about the necessity for a landscaping scheme to be submitted to assist in the integration and softening of the scheme in the street scene. I therefore have imposed a new condition 9. This would include both hard and soft landscaping of the site and in that regard would also cover the details of the surface treatment of the front area; suggested condition 10 would therefore be unnecessary as the Council can consider the appropriateness of the material in the consideration of the landscaping details.
17. A condition on the restriction of any gates onto the highway is required in the interests of highway safety. In association with the aforementioned landscaping scheme and for similar reasons it is necessary and reasonable to require details of tree protection on the site. A requirement for the scheme to be constructed to Code for Sustainable Homes level 3 would ensure appropriate account was taken for the reasonable need to provide sustainable development.

Conclusion

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

Kenneth Stone

INSPECTOR

ANNEX

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: 786:01, 786:SK1A, Ground Floor Plan date stamped 4 Jul 2013, First Floor Plan dated stamped 4 JUL 2013, Location Plan and Elevation Plan entitled 'Streetscene Bower Hill'.
- 3) No development shall take place until details and samples of the materials to be used in the construction of the external surfaces of the building hereby permitted have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
- 4) Before the first occupation of the building hereby permitted the windows in the flank elevations at first floor level shall be fitted with obscured glass and have fixed frames fitted to a height of 1.7 metres above the floor of the room in which the window is installed and shall be permanently retained in that condition.
- 5) Notwithstanding condition 2 no development shall take place until details of the foul and surface water disposal have been submitted to and approved in writing by the local planning authority. The surface water drainage shall include details showing the means to prevent discharge onto the highway. The development shall not be occupied until the drainage works have been carried out in accordance with the approved details.
- 6) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 as amended (or any order revoking and re-enacting that Order with or without modification), no roof extensions /dormer windows permitted by virtue of Part 1 Class B, other than those expressly authorised by this permission, shall be constructed on the property hereby approved.
- 7) Demolition or construction works and ancillary operations, including vehicle movements on site, shall not take place outside 08:00 hours to 18:30 hours Mondays to Fridays and 08:00 hours to 13:00 hours on Saturdays nor at any time on Sundays or Bank Holidays.
- 8) Notwithstanding condition 2 no development shall take place until details of the levels have been submitted to and approved in writing by the local planning authority showing cross-sections and elevations of the levels of the site prior to the development and the proposed levels of all ground floor slabs of buildings roadways and accessways and landscaped areas. Development shall be carried out in accordance with the approved details.
- 9) No development shall take place until full details of both hard and soft landscape works have been submitted to and approved in writing by the local planning authority and these works shall be carried out as approved. These details shall include an implementation programme, proposed finished levels or contours; means of enclosure; car parking layouts; other vehicle and pedestrian access and circulation areas; and hard surfacing materials.

- 10) Any gates provided at the vehicular access shall be inward opening only and shall be set back a minimum of 6 metres from the back edge of the carriageway.
- 11) No development, including works of demolition or site clearance, shall take place until a Tree Protection Plan, Arboricultural Method Statement and Site Monitoring Schedule, in accordance with BS 5837:2012 (Trees in relation to design, demolition and construction – recommendations) have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved documents.
- 12) The dwelling shall achieve Level 3 of the Code for Sustainable Homes and shall not be occupied until a final Code Certificate has been issued for it certifying that Code Level 3 has been achieved.



Appeal Decision

Site visit made on 17 February 2014

by **Katie Peerless Dip Arch RIBA**

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

Decision date: 25 February 2014

Appeal Ref: APP/J1535/A/13/2206366

North Barn, New Farm Drive, Abridge, Romford RM4 1BU

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr & Mrs KG and HE Hart against the decision of Epping Forest District Council.
 - The application Ref EPF/1558/2009, dated 14 August 2009, was refused by notice dated 17 April 2013.
 - The development proposed is conversion of agricultural barn to a single dwelling with associated external alterations principally to create window and door openings.
-

Decision

1. The appeal is allowed and planning permission is granted for the conversion of an agricultural barn to a single dwelling with associated external alterations principally to create window and door openings at North Barn, New Farm Drive, Abridge, Romford RM4 1BU in accordance with the terms of the application, Ref: EPF/1558/2009, dated 14 August 2009 and the plans submitted with it, subject to the conditions attached at Annex A to this Decision.

Application for costs

2. An application for costs was made by the appellants against Epping Forest District Council. This application is the subject of a separate Decision.

Main Issue

3. I consider that the main issue in this case is the effect of the proposed development on the living conditions of future occupiers of the converted building, with particular reference to noise, disturbance and odour.

Site and surroundings

4. The appeal property is an agricultural barn, constructed following a grant of planning permission¹ in 1998 and which was substantially complete by July 1999. It is sited in Green Belt countryside on a site of some 0.25ha close to the settlement boundary of the village of Abridge. To the south of the barn, at the adjacent residential property at Oakfield House, there is a commercial boarding kennels and cattery known as Chalet Kennels. The proprietors of the kennels also own the agricultural field opposite the appeal site where they keep pigs. The pigs have access to pens sited close to the private track (owned by the appellant) that leads past the frontage of the appeal site.

¹ Ref: EPF/0789/98

Reasons

5. The application for planning permission that is the subject of this appeal has taken a considerable time to determine. A previous application had been refused because it was considered that the applicants had not demonstrated that the barn had genuinely been built for an agricultural use and not for subsequent conversion. Issues in respect of this reason for refusal were later withdrawn and the Council accepts that the barn has been in position for more than the 10 years needed to render it immune from a presumption against conversion.
6. However, the Council was also concerned about the possibility of the land on which the barn stands being contaminated. Following the submission of specialist reports commissioned by the appellants, the Council agreed that this matter could be dealt with by the imposition of conditions. It may well be that these surveys would be sufficient to discharge any contamination conditions, but these would need to be formally accepted by the Council if planning permission was granted. Nevertheless, despite the proposal initially being recommended for approval, concerns were then raised about the standard of residential amenity that would be available to future occupiers, in respect of noise from the boarding kennels and odour from the pigs.
7. The Environmental Health Officer (EHO) considers that, if controlled properly, odour should not be a problem and I see no reason why pigs kept in the open in healthy conditions should create odour that would significantly affect the living conditions of any occupiers of New Barn. However, the Council remains concerned that the management of odour from the adjacent business is beyond the scope of the application and it is keen to avoid the need for intervention by the Environmental Health team.
8. Nevertheless, the Council has not submitted reports of any existing complaints and, if the odour became a statutory nuisance such that health was likely to be affected, this is a matter that would also affect the occupiers of other residential properties close to the fields in which the pigs are kept and result in the involvement of the EHO in any event. I find no reason why the appeal should fail because of any impact caused by the number of pigs presently kept on the land.
9. The Council also states that the intensity at which livestock is kept could increase, with a potential increase in odour. However, the animals will have to be kept to the standards set by DEFRA, as the owners of the business acknowledge. The numbers of pigs that could be kept opposite the appeal site will be limited by the size of the field and, if the pigs were kept in conditions where the odours became overly offensive, it is likely that these standards would have been breached.
10. In respect of the kennels and cattery, I consider that the buildings in which they are housed are set at sufficient distance from the appeal site to prevent any offensive odours emanating from them causing a problem at the converted barn. This also appears to have been the view of the EHO who noted that, at the time he visited the site, there was very little odour detectable, either from the piggery or the boarding kennels. I reached the same conclusion at my site inspection.

11. However, the Council seems to be more concerned about the noise from the kennels, especially if the doors and skylights were left open in hot weather to provide ventilation at night, when undue noise could cause sleep loss in the neighbouring property. I note, however, that the owners of the kennels live on site and, if they find the noise level acceptable, it is possible that residents in the converted barn would also not be unduly disturbed by it.
12. It would also be possible to reduce the noise reaching the barn by erecting an acoustic barrier such as a close boarded fence and, although the Council considers that this might impact on the character of the Green Belt in which the site is situated, the design of this can be controlled through a condition. It is also the case that, at present, a fence or barrier up to 2m high could be built under permitted development rights without the need for an application for planning permission.
13. It would also be possible to install double glazing and acoustically treated trickle ventilators to the bedroom windows to reduce the possibility of night time disturbance for the occupants of the converted barn and, again, this could be the subject of a condition attached to any planning permission.
14. The Council has cited policy RP5A of the Epping Forest District Local Plan Alterations 2006 which states that planning permission will not be granted for residential development where it could be subject to excessive noise or adverse environmental conditions from adjoining land uses, except where it is possible to mitigate the adverse effects by the imposition of appropriate conditions. However, I consider that the impact of the noise from the kennels and any odour from the pigs would not be excessive, particularly if the conditions discussed in preceding paragraphs were imposed. Similarly, I consider that the development would not conflict with those policies of the National Planning Policy Framework (the Framework) which also seek to protect residential amenity.
15. The owners of the kennels and piggery are concerned that any future expansion of their businesses could be prevented because of possible impacts on the residents of the converted barn. However, this is conjecture and not a reason for refusing planning permission for an otherwise acceptable development.
16. As previously noted, the extent of the piggery will be limited by the size of the field and, if further buildings were required in the future to house an increased herd of pigs, these would normally require planning permission if proposed within 400m of residential properties. The existing property at North Lodge, to the south of Chalet Kennels, would also be likely to be within this range of any development that was proposed in the field opposite the appeal site, so the conversion of New Barn would not be the only building that was creating a need to apply for permission. Also, the appellant owns the land to the immediate west and north which would provide a buffer between the dwelling and any further development in these directions.
17. In any event, the Framework notes that businesses wanting to develop in continuance of their business should not have unreasonable restrictions put on them because of nearby land uses since they were established and this gives a degree of protection to the neighbouring business, should the apply for expansion.

18. Also, as noted previously, it seems to me likely that any planning application would also have to be considered against the residential amenities of other, existing occupiers and not only those of the converted barn. I therefore conclude that a grant of planning permission for the conversion would not cause the imposition of any unreasonable restrictions on the adjoining businesses.

Conditions

19. In addition to the conditions discussed above, relating to ground contamination and acoustic treatments, the Council has asked for a number of other conditions to be imposed, should planning permission be granted for the proposal.

20. In addition to the standard commencement condition, I shall impose a condition requiring any new external materials to match the existing to ensure a satisfactory appearance of the building. I shall also remove permitted development rights relating to the extension of a dwellinghouse and the erection of buildings within its curtilage, so that any future additions can be controlled. This is because the site is within the Green Belt where specific restrictions on development apply.

Conclusions

21. I have found that the residential amenities of future occupiers of the converted building would not be excessively or unacceptably adversely affected by the adjacent agricultural and business operations. Any lesser impacts could be satisfactorily mitigated through the imposition of conditions and the future prospects of the businesses would not be unreasonably restricted by the proposed development. Consequently, I conclude that, subject to conditions, planning permission should be granted for the proposal.

Katie Peerless

Inspector

Annex A

Conditions to be attached to planning permission EPF/1558/2009

- 1) The development hereby permitted must be begun not later than the expiration of three years beginning with the date of this decision.
- 2) Materials to be used for the external finishes of the proposed development shall match those of the existing building, unless otherwise agreed in writing by the Local Planning Authority.
- 3) Notwithstanding the provisions of the Town and Country Planning General Permitted Development Order 1995 as amended (or any other order revoking, further amending or re-enacting that order), no extensions of buildings generally permitted by virtue of Schedule 2, Part 1, Classes A, B or E shall be undertaken without the prior written permission of the Local Planning Authority.
- 4) No development shall take place until a Phase 1 Land Contamination investigation has been carried out. A protocol for the investigation shall be submitted to and approved in writing by the Local Planning Authority before commencement of the Phase 1 investigation. The completed Phase 1 report shall be submitted to and approved by the Local Planning Authority prior to the commencement of any necessary Phase 2 investigation. The report shall assess potential risks to present and proposed humans, property including buildings, crops, livestock, pets, woodland and service lines and pipes, adjoining land, groundwaters and surface waters, ecological systems, archaeological sites and ancient monuments and the investigation must be conducted in accordance with DEFRA and the Environment Agency's 'Model Procedures for the Management of Land Contamination, CLR 11', or any subsequent version or additional regulatory guidance.

This condition must be formally discharged by the Local Planning Authority before the submission of details pursuant to the Phase 2 site investigation condition that follows.

- 5) Should the Phase 1 Land Contamination preliminary risk assessment carried out under the above condition identify the presence of potentially unacceptable risks, no development shall take place until a Phase 2 site investigation has been carried out. A protocol for the investigation shall be submitted to and approved in writing by the Local Planning Authority before commencement of the Phase 2 investigation. The completed Phase 2 investigation report, together with any necessary outline remediation options, shall be submitted to and approved by the Local Planning Authority prior to any redevelopment or remediation works being carried out. The report shall assess potential risks to present and proposed humans, property including buildings, crops, livestock, pets, woodland and service lines and pipes, adjoining land, groundwaters and surface waters, ecological systems, archaeological sites and ancient monuments and the investigation must be conducted in accordance with DEFRA and the Environment Agency's 'Model Procedures for the Management of Land Contamination, CLR 11', or any subsequent version or additional regulatory guidance.

This condition must be formally discharged by the Local Planning Authority before the submission of details pursuant to the remediation scheme condition that follows.

- 6) Should Land Contamination Remediation Works be identified as necessary under the above condition, no development shall take place until a detailed remediation scheme to bring the site to a condition suitable for the intended use has been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved remediation scheme unless otherwise agreed in writing by the Local Planning Authority. The remediation scheme must include all works to be undertaken, proposed remediation objectives and remediation criteria, timetable of works and site management procedures and any necessary long term maintenance and monitoring programme. The scheme must ensure that the site will not qualify as contaminated land under Part 2A of the Environmental Protection Act 1990 or any subsequent version, in relation to the intended use of the land after remediation.

This condition must be formally discharged by the Local Planning Authority before the submission of details pursuant to the verification report condition that follows.

- 7) Following completion of measures identified in the approved remediation scheme and prior to the first use or occupation of the development, a verification report that demonstrates the effectiveness of the remediation carried out must be produced together with any necessary monitoring and maintenance programme and copies of any waste transfer notes relating to exported and imported soils shall be submitted to the Local Planning Authority for approval in writing. The approved monitoring and maintenance programme shall be implemented.
- 8) In the event that any evidence of potential contamination is found at any time when carrying out the approved development that was not previously identified in the approved Phase 2 report, it must be reported in writing immediately to the Local Planning Authority. An investigation and risk assessment must be undertaken in accordance with a methodology previously approved by the Local Planning Authority. Following completion of measures identified in the approved remediation scheme, a verification report must be prepared, which is subject to the approval in writing of the Local Planning Authority in accordance with the immediately above condition.
- 9) Prior to the first occupation of the converted barn as a dwelling, a suitable noise barrier shall be erected on the boundary between North Barn and Oakfield House, Chalet Kennels, in accordance with details previously approved in writing by the Local Planning Authority. The barrier should be permanently retained thereafter.
- 10) Prior to the first occupation of the converted barn as a dwelling, all windows to bedrooms within the dwelling shall be fitted with sufficient double glazing and acoustically treated trickle ventilators, or other means of ventilation that will provide adequate ventilation with the windows closed, to ensure that the occupiers are provided with reasonable resting/sleeping conditions with reference to British Standard BS8233:1999 — 'Sound Insulation and Noise Reduction for Buildings — Code of Practice'.

Details of the proposed double glazing and acoustically treated trickle ventilators, or other means of ventilation, shall be submitted to and approved in writing by the Local Planning Authority. The double glazing and ventilation shall then be maintained thereafter in accordance with the approved details.

Costs Decision

Site visit made on 17 February 2014

by Katie Peerless Dip Arch RIBA

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

Decision date: 25 February 2014

Costs application in relation to Appeal Ref: APP/J1535/A/13/2206366 North Barn, New Farm Drive, Abridge, Romford RM4 1BU

- 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 and Mrs KG and HE Hart for a full award of costs against Epping Forest District Council.
 - The appeal was against the refusal of planning permission for conversion of agricultural barn to a single dwelling with associated external alterations principally to create window and door openings.
-

Decision

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

Reasons

2. Circular 03/2009 advises that, irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.
3. Both parties have made their submissions in writing and I will not, therefore, reproduce them fully here. However, the main points made by the appellant are that the Council has behaved unreasonably by introducing a policy, which was not previously referred to in the Committee Report, in the reasons for the refusal of the application, by being inconsistent in its decision making and by making excessive requests for information in respect of the contamination issue.
4. In respect of the introduction of policy RP5A at a very late stage in the application process, I can understand the appellants' concern that they did not have an opportunity to address the reason for refusal that consequently resulted from the residential amenity issue. The application was first submitted in 2009 and was not determined until 2013. The length of time the process took was as a result of the information required on potential land contamination and the appellants supplied the requested information at considerable cost to themselves.
5. To have the application refused at the last minute, on an issue that had not previously been raised and without hearing any comments from the appellants on the matter seems to me to be discourteous and unreasonable behaviour on the part of the Council, particularly as it must have been aware of the amount of money already spent on the contamination reports that it had requested.

6. However, there are 2 strands that must both be satisfied if an award of costs is to succeed. If one party behaves unreasonably, this must also result in wasted or unnecessary expense in the appeal process. I have granted planning permission for the proposal but do not consider that the Council has behaved unreasonably during the conduct of the appeal. It defended its reason for refusal on residential amenity grounds with references to relevant policies from the Local Plan and the National Planning Policy Framework and, whilst I have disagreed with its conclusions, I do not find that it was unreasonable to hold these views.
7. It is also by no means certain that, had the appellants had a chance to discuss the matter of residential amenity with the Council prior to the Committee taking its decision, there would have been a different outcome or that the appeal could have been avoided. The Environmental Health Officer (EHO) and the Planning Officer might have considered that conditions could overcome the concerns and, indeed, conditions were mentioned in the EHO's report.
8. The Committee members therefore had this option put before them to consider but ultimately took a different view, which has been expanded on in the Council's appeal statement. In these circumstances, I consider that there is no basis for an award of cost on the grounds that it was unreasonable to consider the proposal against policy RP5A.
9. In respect of the submission that the Council has behave inconsistently in taking its decisions, the appellants refer to a planning permission that was granted after their application had been refused, for an agricultural building for livestock, closer to another residential property than to New Barn and without any consideration of odour and noise issues. However, I do not have full details of this application but it is clearly different from the appeal proposal and relates to a building in which livestock would be housed, not a new dwelling adjacent to livestock in open fields.
10. Each application must be dealt with on its own merits and only if there were obvious inconsistencies found between decisions on very similar applications, would an application for costs on this ground succeed. In any event, the application referred to was granted subsequent to the refusal of the appeal application, so the Committee could not have had regard to the it when considering the New Barn application; the only possible inconsistency would be that the second decision might be considered to have been taken without considering fully all the matters had been raised in respect of the proposals for New Barn.
11. The contaminated land issue was, as noted above, resolved prior to the Committee meeting that determined the application and this was subsequently not a reason for refusal, with the Council agreeing that the matter could be dealt with by conditions. Whilst this process may have been frustrating and expensive for the appellants, it relates to the progress of the application and not that of the appeal. It did not result in the appellants having to lodge an appeal or incur any unnecessary expense in that process. It would have been open to the appellant to decline to provide the additional information sought on the matter and bring an appeal against non-determination but they did not employ that option.

12. I have great sympathy for the appellants in this matter but any decision on an application for costs must follow the regime set out in Circular 03/2009 and, in respect of this appeal, unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Circular, has not been demonstrated. Any complaint that the appellants may have in respect of the Council's handling of their application prior to determination would now need to be pursued by a different route.

Katie Peerless

Inspector



Appeal Decision

Site visit made on 19 February 2014

by Nick Moys BA (Hons) MRTPI

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

Decision date: 27 March 2014

Appeal Ref: APP/J1535/H/13/2209965

Tesco Stores Ltd, 77 High Street, Epping, Essex CM16 4BA

- The appeal is made under Regulation 17 of the Town and Country Planning (Control of Advertisements) (England) Regulations 2007 against a refusal to grant express consent.
 - The appeal is made by Tesco Stores Ltd against the decision of Epping Forest District Council.
 - The application Ref EPF/1577/13 A, dated 24 July 2013, was part refused by notice dated 9 October 2013.
 - The advertisements proposed are described as 'a white backing panel with acrylic 'Tesco' branding illuminated with vinyl blip applied to backing panel, a vinyl applied to window 'Store Entrance This Way' sign and aluminium panel with vinyl graphics applied to elevation along High Street x 3'.
-

Decision

1. The appeal is allowed and express consent is granted for a non-illuminated 'blip' sign and white backing panel on the gable of the Crows Road elevation, a vinyl 'Store Entrance This Way' sign on store entrance elevation, and 3 vinyl graphic panels applied to the wall on the High Street elevation as applied for. The consent is for five years from the date of this decision and is subject to the five standard conditions set out in the Regulations.

Preliminary Matters

2. The Council issued a split decision in which express consent was granted for a variety of signs, but refused for others. This appeal is concerned only with the signs listed in the last bullet point of the heading above. Consent was also refused for a branding sign on the gable of the store entrance elevation, but the appellant does not wish to appeal the decision insofar as it relates to this sign.
3. The signs that are the subject of this appeal have all been erected. However, two of the signs do not correspond with the details shown in the submitted application. The appellant has requested that the appeal be determined on the basis of the amended descriptions set out in the submitted grounds of appeal.
4. The 'blip' sign on the Crows Road elevation is smaller than that shown on the application and is not illuminated. The sign is positioned immediately below an existing illuminated 'Tesco' sign, which has been retained rather than replaced as originally proposed. Notwithstanding these differences, when viewed together the two signs have essentially the same appearance as the larger sign for which consent was originally sought. The amended proposal is therefore not materially different in substance from the original scheme. Accordingly, I

have determined the appeal on the basis of the amended description provided, and this is reflected in my formal decision above.

5. The 'Store entrance this way' sign is noticeably larger than that proposed in the application. It extends across the full width of the side elevation of the glazed porch to which it is attached, and has been applied so that it overlaps the structure of the building, rather than being contained within the framework of two of the existing windows. The amended proposal is therefore quite different to that considered by the local planning authority. There is no evidence before me to indicate that any further consultation has been undertaken on the amended proposal. In these circumstances, and having regard to the principles established by the 'Wheatcroft' judgement¹, I do not consider it appropriate to determine the appeal on the basis of the sign as installed. Consequently, my decision in respect of this sign is based on the application proposal, as shown on drawing no 8850 (20) 01.

Main Issue

6. The main issue is the effect of the advertisements on the character and appearance of the surrounding area.

Reasons

7. The signs which are the subject of this appeal are located on a Tesco foodstore situated towards the western end of Epping High Street. The surrounding area is predominantly commercial in character, and there are parades of shops on either side of and opposite the appeal site. The foodstore is located outside but adjacent to the Epping Conservation Area.
8. The National Planning Policy Framework (the Framework) notes that poorly placed advertisements can have a negative impact on the appearance of the built and natural environment. The Framework goes on to state that only advertisements which will clearly have an appreciable impact on their surroundings should be subject to the local planning authority's detailed assessment and should be subject to control only in interests of amenity and public safety.
9. The 'blip' sign on the Crows Road elevation sits immediately below the original 'Tesco' sign and extends the existing white panel downwards to create a larger sign. The new sign relates well to the existing one and to the appearance of the building generally, being positioned centrally within a projecting gable, just below the eaves of the building and in line with the nearby high level windows. Because of the size of the building and the fact that this elevation is generally free from advertising, the 'blip' sign does not appear unduly large or create a cluttered appearance.
10. Approaching from the town centre, and from within the Conservation Area, the sign is largely screened by existing roadside trees. This screening is also effective during the winter months when the trees are not in leaf, as I was able to verify on my site visit. Although the sign is clearly visible in the immediate vicinity of the site, including in views from within the Conservation Area, in the context of the existing large foodstore and surrounding commercial uses, the sign does not appear as an unduly dominant or incongruous feature in this town centre location. Due to the distance and angle of view, the sign would

¹ Bernard Wheatcroft Ltd v SSE [JPL, 1982, P37].

not be a noticeable feature from the residential part of Crows Road which lies further to the north-west.

11. The proposed 'Store entrance this way' sign would be set back from the front of the glazed entrance porch to which it would be attached, and would sit neatly within the existing framework of glazing. The appellant has indicated that a similar sign was in place here previously. The sign would not be visible from within the Conservation Area, and when approaching from the south-west, would be partly obscured by the nearby gantry sign. Whilst the sign would be clearly visible to passers by in the immediate vicinity of the site entrance, it would not be so large or dominant as to appear out of place.
12. The three vinyl signs erected on the High Street elevation sit within recessed panels of brickwork. The Council has confirmed that these panels were incorporated into the design of the building in order to add visual interest to the elevation. The three vinyl signs further enliven the appearance of this part of the building, adding colour to an elevation that would otherwise be dominated by large expanses of brickwork. Although large, the signs are not unduly dominant in the street scene, and the overall visual effect is not unlike a series of large shop windows.
13. Taking these considerations into account, I conclude that the proposed signs do not result in harm to the character and appearance of the area, and are acceptable on amenity grounds. The Council has drawn my attention to Policy DBE13 of the adopted Epping Forest District Local Plan and Alterations, and I have taken this into account as a material consideration. However, the powers under the Regulations to control advertisements may be exercised only in the interests of amenity and public safety. Consequently, in my determination of this appeal, the Council's policies have not by themselves been decisive.
14. The Government's Planning Practice Guidance was published on 6 March 2014. I have considered the content of this guidance, but in the light of the facts of this case, the document does not alter my conclusions.
15. For the reasons set out above, and having regard to all other matters raised, I conclude that the appeal should succeed.

Nick Moys

INSPECTOR

Appeal Decision

Site visit made on 7 November 2013

by Nick Moys BA (Hons) MRTPI

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

Decision date: 13 December 2013

Appeal Ref: APP/J1535/A/13/2200055

1 Banes Down, Nazeing, Waltham Abbey, Essex EN9 2NU

- 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 Dean Barratt against the decision of Epping Forest District Council.
 - The application Ref EPF/0363/13, dated 4 February 2013, was refused by notice dated 8 May 2013.
 - The development proposed is described as a 'new 2 bedroom bungalow dwelling'.
-

Decision

1. The appeal is allowed and planning permission is granted for the erection of a two bedroom bungalow at 1 Banes Down, Nazeing, Waltham Abbey, Essex EN9 2NU in accordance with the terms of application, Ref EPF/0363/13, dated 4 February 2013, subject to the conditions set out in the schedule attached to this decision.

Procedural Matters

2. It is clear from the application form and associated documentation, that the development proposed is the erection of a two bedroom bungalow. For the sake of clarity, I have used this description in my decision, rather than that given on the application form, which includes some unnecessary wording.
3. The Council has advised that its decision notice includes a number of incorrect references to development plan policy. It has confirmed that Policy DBE1 of the Epping Forest District Local Plan (1998) (the Local Plan) and Policy CP2 of Epping Forest District Local Plan Alterations (2006) (the Local Plan Alterations) are relevant to its first reason for refusal rather than Policy DBE9. In addition, Policies DBE2 and DBE9 of the Local Plan are relevant to the second reason for refusal rather than Policy DBE10. I have dealt with the appeal on this basis.
4. Both the Local Plan and Local Plan Alteration predate the National Planning Policy Framework (the Framework). However, the objectives of Policies DBE1, DBE9 and CP2 are broadly consistent with the aims of the Framework to promote well-designed development that responds to local character, and to ensure a good standard of living conditions. These policies can therefore be afforded considerable weight.

Main Issues

5. The main issues in this case concern the effect of the proposal on: i) the character and appearance of the surrounding area, and ii) the living conditions of the occupants of 36 Maplecroft Lane in terms of outlook, loss of light and overlooking.

Reasons

Character and appearance

6. 1 Banes Down is a semi-detached bungalow situated within a residential estate in the large village of Nazeing. The proposed dwelling would be located between the existing bungalow and the neighbouring house to the north, 36 Maplecroft Lane. A flat-roofed extension and garage to the side of the existing bungalow would be demolished to make way for the proposed development.
7. Development in the locality consists mainly of detached and semi-detached dwellings. Two storey houses predominate to the north of the appeal site on Maplecroft Lane, whilst to the south, development on Banes Down comprises single storey dwellings only. Most nearby dwellings are set in relatively generous plots, with long rear gardens, but are not generally widely spaced. Banes Down has a more open character than Maplecroft Lane, but this is derived mainly from the open plan layout of the estate, the width of the road with its wide grass verges and footways on either side, and the predominance of bungalows with relatively low roof lines. Many of the spaces between individual dwellings on Banes Down are occupied by flat-roofed garages that extend development up to or close to their boundaries.
8. The appeal site is not prominently located in the street scene. It is partly developed, being occupied by part of the existing dwelling, including its garage, which extends across around half of the width of the proposed plot. The remaining gap is bounded by fencing and the neighbouring house, No 36, which is positioned hard up against the site boundary, creating a strong sense of visual enclosure. As a result, the appeal site makes only a limited contribution to the open character of Banes Down, although it does provide a degree of visual separation between the properties on either side.
9. The proposed bungalow would occupy a large part of the site frontage, leaving only narrow gaps on either side between it and the adjacent buildings. The area to the front of the property would be paved to provide space for parking. Whilst this would inevitably give this part of the street scene a more built up appearance, the proposal would not appear out of place in the context of surrounding development, particularly the adjacent housing to the north which is closely spaced and, in several cases, includes large areas of hardstanding to the front of properties. The narrow gable fronted design of the proposed bungalow would also help to maintain a sense of visual separation with properties on either side, and would avoid a 'terracing' effect with No 36, despite its close proximity.
10. The proposed development would incorporate many of the characteristic features of existing development on Banes Down, including the gable fronted design of nearby bungalows. The overall scale and proportions of the proposed dwelling, and its external materials, would be very similar to those of

neighbouring bungalows, and the existing building line and open plan layout would be maintained. These elements of the proposal would provide a strong visual link to the existing development on Banes Down, and would help to integrate the scheme into its surroundings.

11. The flat roofed element proposed to the rear of the dwelling would introduce a more contemporary design feature, but given the prevalence of flat roof buildings in the locality, it would not appear out of place. It would in any case have only a very limited impact on the street scene, being largely screened by the remainder of the building.
12. Taking all of these factors into account, I conclude that the proposed development would not appear unduly cramped in comparison with surrounding development and would not cause material harm to the appearance of the street scene or the character of the area generally. Accordingly, I find that the proposal would not conflict with Policy DBE1 of the Local Plan or Policy CP2 of the Local Plan Alterations which require new development to respect its setting and safeguard local character.
13. The proposal would also be consistent with the guidance set out in paragraph 58 of the Framework that development proposals should respond to local character, reflect the identity of their surroundings, and optimise the potential of sites to accommodate development. Although garden land does not fall within the definition of previously developed land, the Framework does not preclude its development, and, in this case, Policies DBE1 and CP2 of the Local Plan and Local Plan Alterations permit such development provided that the character and appearance of the area is respected.

Living conditions

14. Concerns have been raised that the proposed development would have an overbearing effect when viewed from 36 Maplecroft Lane and would result in overshadowing of this property. The proposed dwelling would extend approximately 4 metres beyond the rear wall of No 36. This part of the proposed dwelling would be positioned about 2 metres from the boundary and would take the form of a flat-roofed wing with a height of about 3 metres. A small area of raised decking would extend outwards from the rear of the proposed bungalow.
15. Although No 36 is positioned very close to the boundary with the appeal site, its flank elevation does not contain any windows. The main outlook from the back of house is westwards into the rear garden and, in common with other properties nearby, No 36 benefits from extensive views and an open aspect due to its elevated position. The Council has indicated that the ground floor windows closest to the appeal site serve a utility room.
16. Oblique views of the proposed development would be available from the rear of No 36. However, given the relatively small scale of the proposed building, its distance from the boundary and the partial screening provided boundary fencing, it would not intrude significantly into the outlook from this property or appear visually overbearing. Some overshadowing of the south-west corner of No 36 would be caused, but this would not directly affect any habitable rooms. Being limited to a single storey the proposal should not give rise to any significant level of overlooking, although I agree with the Council that

screening should be provided to the raised decking proposed in order to minimise overlooking of the garden of No 36.

17. I have noted the concerns raised about potential overshadowing of the bungalow opposite the appeal site and the effect of this on the operation of its solar panels. However, given the distance between the properties and the relatively low roof line of the proposal, I am satisfied that no significant loss of light would result.
18. Accordingly, I find that the proposal would not result in an excessive loss of amenity for neighbouring properties, and would therefore not conflict with Policy DBE9 of the Local Plan. The proposal would also be consistent with the objective of the Framework to ensure that new development achieves a good standard of amenity for all existing and future occupants of land and building.

Conditions

19. I have considered the conditions suggested by the Council in the light of the guidance set out in Circular 11/95, and amended them where necessary. In addition to the standard time limit, I agree that a condition is needed identifying the approved plans in order to define the permission. A condition relating to external materials is needed to ensure the satisfactory appearance of the development. However, I have amended this to require external finishes to be agreed with the Council, as the scheme includes some materials not present on the existing dwelling. Conditions requiring screening to the boundary with 1 Banes Down and to the raised decking area, and to prevent construction work at unsocial hours are all required to protect the amenities of neighbours. A condition requiring details of the surfacing of the driveway is justified in order to ensure the provision of satisfactory access and parking, including its drainage.
20. However, a condition restricting permitted development rights is not necessary in this instance. Such rights are intended to provide a level of freedom from detailed control that will be acceptable in the great majority of cases. Accordingly, Circular 11/95 advises that conditions limiting permitted development rights should only be imposed in exceptional circumstances. No evidence has been presented to suggest that such circumstances exist in this case, or that the exercise of permitted development rights would be likely to cause serious adverse effects on local amenity or the environment generally.

Conclusion

21. For the reasons set above, and having regard to all other matters raised, I conclude that the appeal should succeed.

Nick Moys

INSPECTOR

Schedule of conditions

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: Drawing Nos BRD/12/058/001, 002A and 003.
- 3) No development shall take place until samples of the materials to be used in the construction of the external surfaces of the building hereby permitted have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
- 4) Details of a solid screen of at least 1.7 metres in height to be erected on the northern side of the decking area hereby approved shall be submitted to and approved in writing by the local planning authority. The approved screen shall be erected prior to the first use of the decking area and thereafter retained.
- 5) Details of the proposed fence between the property and No 1 Banes Down shall be submitted to and approved in writing by the local planning authority. The agreed fencing shall be erected prior to the first occupation of the dwelling and permanently retained thereafter.
- 6) No development shall take place until details of the proposed surface materials for the driveway area have been submitted to and approved in writing by the local planning authority. The agreed surfacing shall be made of porous materials or provision shall be made to direct run-off water from the hard surface to a permeable or porous area within the curtilage of the property. The agreed surface treatment shall be completed prior to the first occupation of the dwelling, or within 1 year of the substantial completion of the development whichever occurs first, and shall thereafter be retained.
- 7) Demolition or construction works shall not take place outside 0800 hours to 1830 hours Mondays to Fridays and 0800 hours to 1300 hours on Saturdays nor at any time on Sundays or Bank Holidays.



Appeal Decision

Site visit made on 1 October 2013

by **Michael Evans BA MA MPhil DipTP MRTPI**

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

Decision date: 3 October 2013

Appeal Ref: APP/J1535/D/13/2202476

5 Roding View, BUCKHURST HILL, IG9 6AF

- 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 Dean Taylor against the decision of Epping Forest District Council.
 - The application Ref PL/EPF/2214/12 was refused by notice dated 26 June 2013.
 - The development proposed is a two storey and single storey side extension.
-

Decision

1. The appeal is allowed and planning permission is granted for a two storey and single storey side extension, at 5 Roding View, BUCKHURST HILL, IG9 6AF, in accordance with the terms of the application, Ref PL/EPF/2214/12, subject to the following conditions:
 - 1) The development hereby permitted shall begin no later than three years from the date of this decision.
 - 2) The development hereby permitted shall be carried out in accordance with the following approved plans: T.5.A, T.5.B and the unnumbered streetscene, location and block plans.
 - 3) The materials to be used in the construction of the external surfaces of the extension hereby permitted shall match those used in the existing building.

Main issue

2. The main issue in the consideration of this appeal is the effect on the living conditions of the occupiers of the adjacent dwelling at 3 Roding View, having regard to outlook, light and privacy.

Reasons

Living conditions

3. The appeal concerns a two storey semi-detached dwelling. The adjacent dwelling at 3 Roding View has its rear elevation facing towards the side elevation and back garden at no. 5. There are windows in this elevation at no. 3 which serve a kitchen/dining room and a bedroom, as well as a glazed door, while there is also a narrow garden next to the boundary. During my site visit I carefully assessed the effect of the proposal from these positions.
4. The first floor of the extension would be about 2m and the ground floor part approximately a metre from the side boundary, while the adjacent dwelling is

also set back. The extension would be set back from the front wall of the host dwelling for its full height and from the rear wall at first floor level, with the ground floor part being flush. The upper part would also have a lower ridge height than the existing dwelling. In consequence, although projecting nearer the boundary, the extension would be set against the backdrop of the existing side elevation of the host property.

5. As a result of these factors there would be no unacceptable reduction in the existing relatively open views over the rear garden of no. 5 and consequent light levels in relation to the kitchen and bedroom windows, as well as the garden, at no. 3. Moreover, the removal of the detached garage to accommodate the development would, in itself, increase the sense of openness and light at the adjacent property. This would occur because it projects beyond the rear wall of no. 5 close to the boundary and has a pitched roof that results in some enclosure and restricted light.
6. The overall kitchen/dining room is also served by a fairly large window facing the street, which is a particularly good source of light and an open outlook. The fairly modest degree of projection beyond this elevation towards the street and the set back of the extension from the boundary would prevent any adverse effects in relation to this opening. Given the other two openings in this room the effect in relation to the glazed door is not a significant consideration.
7. Due to these considerations there would be no unacceptable reduction in levels of light or outlook, despite the dwelling at no 3 being at a lower level. The absence of any windows in the side of the extension would ensure no loss of privacy from overlooking. In consequence, the living conditions of the occupiers of the adjacent dwelling would not be harmed. The proposal would comply with the aim of saved Policy DBE9 of the *Epping Forest District Local Plan*, originally adopted in January 1998, to prevent such adverse effects. The proposal would also secure a good standard of amenity for existing occupants in compliance with this core principle of the National Planning Policy Framework.

Other consideration

8. Because of the lower roof line and set back of the extension at the front, the original symmetry of the pair of semi-detached dwellings would remain apparent and the streetscene would not be detrimentally affected.

Conclusion

9. Taking account of all other matters raised, there are no considerations sufficient to justify rejecting the proposal and the appeal succeeds. In reaching this decision the views of the adjacent occupiers and Buckhurst Hill Parish Council have been considered.

Conditions

10. It is necessary that the development shall be carried out in accordance with the approved plans for the avoidance of doubt and in the interests of proper planning. The facing materials of the extension should match those of the host dwelling to protect the appearance of the locality.

M Evans

INSPECTOR

Appeal Decisions

Site visit made on 18 October 2013

by **Terry G Phillimore MA MCD MRTPI**

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

Decision date: 11 November 2013

Appeal Ref: APP/J1535/A/13/2195614 (Appeal A)
Newhouse Farm, Little Laver Road, Moreton, Ongar, Essex CM5 0JE

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
 - The appeal is made by Mr Jim Collins against Epping Forest District Council.
 - The application Ref EPF/2404/12 is dated 7 December 2012.
 - The development proposed is change of use of units 2A, 3A and 7C1 to Class B2 use and alterations to previously approved lean-to extensions (ref EPF/0359/08) to facilitate the change of use.
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Appeal Ref: APP/J1535/A/13/2195618 (Appeal B)
Newhouse Farm, Little Laver Road, Moreton, Ongar, Essex CM5 0JE

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
 - The appeal is made by Mr Jim Collins against Epping Forest District Council.
 - The application Ref EPF/2405/12 is dated 7 December 2012.
 - The development proposed is change of use of units 3B, 3C, 6, 7A and 7C2 to Class B8 use and alterations to lean-to extensions (ref EPF/0359/08) and cattle yard building (ref EPF/0024/05) to facilitate the change of use.
-

Appeal Ref: APP/J1535/A/13/2195619 (Appeal C)
Newhouse Farm, Little Laver Road, Moreton, Ongar, Essex CM5 0JE

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
 - The appeal is made by Mr Jim Collins against Epping Forest District Council.
 - The application Ref EPF/2406/12 is dated 7 December 2012.
 - The development proposed is a grain storage building.
-

Decisions

Appeal A

1. The appeal is allowed and planning permission is granted for change of use of units 2A, 3A and 7C1 to Class B2 use and alterations to previously approved lean-to extensions (ref EPF/0359/08) to facilitate the change of use at Newhouse Farm, Little Laver Road, Moreton, Ongar, Essex CM5 0JE in accordance with the terms of the application, Ref EPF/2404/12, dated 7

December 2012, and the plans 1198/2 Rev(1) & 1198/1B Rev(1), subject to the conditions set out in the attached Schedule.

Appeal B

2. The appeal is allowed and planning permission is granted for change of use of units 3B, 3C, 6, 7A and 7C2 to Class B8 use and alterations to lean-to extensions (ref EPF/0359/08) and cattle yard building (ref EPF/0024/05) to facilitate the change of use at Newhouse Farm, Little Laver Road, Moreton, Ongar, Essex CM5 0JE in accordance with the terms of the application, Ref EPF/2405/12, dated 7 December 2012, and the plans 1198/2 Rev(1) & 1198/1A Rev(1), subject to the conditions set out in the attached Schedule.

Appeal C

3. The appeal is allowed and planning permission is granted for a grain storage building at Newhouse Farm, Little Laver Road, Moreton, Ongar, Essex CM5 0JE in accordance with the terms of the application, Ref EPF/2406/12, dated 7 December 2012, subject to the conditions set out in the attached Schedule.

Procedural Matters

4. The proposals the subject of Appeals A and B have already taken place and retrospective permissions are sought.
5. I deal with Appeals A and B on the basis of revised plans which correct a minor discrepancy in the application plans relating to numbering of the units, as agreed by the appellant and the Council.
6. The appeals are on grounds of non-determination. The Council has resolved that it would have granted permission for the Appeal A proposal but would have refused permission for the Appeal B and Appeal C proposals.

Main Issue

7. The main issue involves the acceptability of the proposals in terms of national and development plan policy on the Green Belt including impact on local character and amenity.

Reasons

8. The Farm is in a rural location within the Metropolitan Green Belt. Near to the road are a number of large buildings within a farmyard setting. The Farmhouse is a Grade II listed building. There are some residential properties in the vicinity, including opposite across the road.

Appeals A and B

9. The National Planning Policy Framework identifies certain forms of development that are not inappropriate in Green Belt provided they preserve the openness of the Green Belt and do not conflict with the purposes of including land in it. Among these is the re-use of buildings provided that the buildings are of permanent and substantial construction.
10. Policy GB8A of the Epping Forest District Local Plan and Alterations (2008) deals with change of use or adaptation of buildings in the Green Belt. It states that permission will be granted provided that all of a number of criteria are met. These are: (i) the building is of permanent and substantial construction,

capable of conversion without major or complete reconstruction, and is in keeping with its surroundings in terms of form, bulk and general design; (ii) the use would not have a materially greater impact than the present use on the Green Belt and the purpose of including land in it; (iii) the use and associated traffic generation would not have a significant detrimental impact on the character or amenities of the countryside; (iv) the Council is satisfied that works within the last ten years were not completed with a view to securing a use other than that for which they were ostensibly carried out; (v) the use will not have a significant adverse impact upon the vitality and viability of a town centre, district centre, local centre or village shop. In seeking to promote a living and working countryside, the policy gives preference to employment generating uses such as recreation, tourism, small workshops and storage.

11. The buildings and uses involved in Appeals A and B are as follows.
12. Appeal A (B2 uses). Unit 2A is an older style agricultural building in use as a brewery. Unit 3A is similar, used as a joinery. Unit 7C1, used for car restoration, was approved in 2008 as a lean-to off a grain store for housing cattle and farm machinery, which has been infilled at the sides.
13. Appeal B (B8 uses). Units 3B and 3C are older style agricultural buildings, in use for private storage. Units 7A and 7C2, also approved in 2008 as lean-to extensions for housing of cattle, are used for furniture storage and general storage respectively. Unit 6 is used for paper and material storage. It was approved as a cattle yard in 2002, which it appears was not built in accordance with the plans, having a lower eaves height and not in the approved position. The structure was originally open sided but is now enclosed.
14. The general context for the proposals, as explained by the appellant, is a change in the nature of the farm over a period to September 2011 from organic production including livestock to conventional farming with no livestock. The evidence reasonably establishes that the above buildings were constructed for genuine agricultural purposes in connection with the earlier form of farming, and were used as such despite in some cases this being for relatively short periods. They are utilitarian structures of various types. While there are strong elements of industrial or warehouse appearance, especially with the degree of enclosure of the more recent structures, they are not markedly out of place in a modern, large farmyard setting. They appear to have been of permanent and substantial construction when erected, and the infilling has not amounted to major or complete reconstruction nor materially reduced openness of the Green Belt. Criteria (i) and (iv) of policy GB8A are therefore met.
15. In drawing a distinction between Appeals A and B, the Council considers the former acceptable and the latter not so by reference to the potential of warehouse type uses to generate the movement of bulky goods involving large vehicles. Similarly, expert highway evidence for third parties identifies scope for a considerable trip generation of this nature from the uses. However, this assessment is based on comparison with sites from the national TRICS database of significantly different character and locations. The appellant in contrast has submitted traffic counts and surveys of the existing businesses occupying the premises which indicate very low levels of generation by the B2 and B8 uses and with minimal HGV traffic. This information also shows that

agricultural use of the farm generates much higher levels of movements, with many involving large vehicles despite the seasonal element in these.

16. The appellant's traffic evidence is firmly preferred to that of the third parties by the Highway Authority, which raises no objection to the proposal and highlights the nature of the B2/B8 uses as small individual units occupied by low key operations. While local references are made to damage by vehicles to rural roads in the vicinity, which are typically narrow and lined by vegetation, there is no firm evidence that this arises specifically as a result of the proposal. This includes with respect to third party photographic evidence, which taking into account the appellant's notes on individual vehicles does not make a compelling case that the proposals generate significant volumes of heavy goods vehicle traffic. Suggestions are made of danger arising from the proposals, but there is no record of accidents in the vicinity. The alleged traffic impact and harm to the character of the countryside arising from this impact is therefore not established, including with respect to cumulative effects.
17. Concern has been raised about the effect of noise and fumes from the use of unit 3A on the amenity of neighbouring properties. Conditions on noise and to require a replacement extraction system would deal with this point. On the above basis, and having regard to the support for employment uses given by the Framework and policy GB8A, criteria (ii) and (iii) of the policy are also met, with no suggestion of a breach of criterion (v). The proposals in Appeals A and B are therefore not inappropriate development in the Green Belt.

Appeal C

18. According to the Framework, buildings for agriculture are among the limited exceptions to the construction of new buildings in Green Belt being inappropriate development. Policy GB2A of the Plan takes a similar approach. Policy GB11 on agricultural buildings includes a requirement for these to be demonstrably necessary for the purposes of agriculture within the unit.
19. The proposed grain store would be located at the edge of the existing cluster of buildings. There is no dispute that it would be used for the intended purpose. The appellant cites a need for substantial additional grain storage arising from the change to more productive conventional farming, with the existing storage provided by building 7B insufficient in this respect. The Council argues that unit 6 has scope to be converted to use as a store. However, its own expert identifies shortcomings in terms of this building's height and size, especially in accommodating tipping machinery and underfloor drying. While it is found that conversion of the building cannot be entirely discounted as a low cost but less flexible option particularly for short term storage, these are referred to as potentially serious limitations, corroborating the appellant's expert evidence in this respect. Building 5 does not appear at all suitable for conversion, and is in other farm use, and the option of off-site grain storage has practical and economic shortcomings as clearly explained by the appellant. I consider that there amounts to a reasonably demonstrated case for the proposal, satisfying policy GB11 on need. It is therefore not inappropriate development. While there would be a resultant effect on openness and visual character of this part of the site, this would arise from any agricultural building in the Green Belt. This does not amount to a breach of the criterion of policy GB11 that deals with character, appearance and amenities to warrant the proposal being resisted.

In addition, no material harm is established to highway safety, water or nature conservation interests which are also cited in the policy.

Conditions

Appeal A

20. Hours of operation and deliveries should be restricted to safeguard amenity. Requirements on noise and fume control are also needed for this reason. There should be no outside storage or working to protect the Green Belt. The Green Belt location also provides the necessary justification for the removal of permitted development rights for extensions and alterations.
21. Any further conversion of existing buildings would need to be considered within the framework of normal planning control, and a condition on this is not warranted. There is also insufficient justification for limiting the normal flexibility allowed for uses within Class B2.

Appeal B

22. Hours, external activities and extensions and alterations should be restricted for the same reasons as above. A limitation to uses within Class B8 or for agriculture is also justified on this basis, but any further conversion of other units would again be a matter for normal control.

Appeal C

23. A condition specifying the approved plan and for the materials to be used to be in accordance with this is needed for the avoidance of doubt and in the interests of proper planning and to safeguard visual amenity.
24. A requirement for a flood risk assessment should be dealt with at application stage. There is no dispute that the site lies within Flood Zone 1 (low probability). It appears that the Council's concern in this respect relates to drainage, and an appropriate condition is needed to ensure that this is satisfactorily provided for.
25. Given the particular justification for the building in the Green Belt, the use of this should be restricted to agriculture. A stipulation on future removal in the event of this use ceasing is also justified for this reason, but for this to be reasonable it should follow the model of permitted development for agricultural buildings rather than being an indefinite requirement.

Other Matters and Conclusions

26. Other appeal decisions have been referred to, but the current cases turn on the particular circumstances of the site and the detailed proposals.
27. Having regard to the objectives of re-using existing buildings and encouraging rural enterprise, the proposals are reasonably sustainable.
28. For the reasons given above I conclude that the appeals should be allowed.

T G Phillimore

INSPECTOR

Schedule of Conditions

Appeal A

- 1) No machinery shall be operated, no process shall be carried out and no deliveries taken at or despatched from the site outside the following times: 0900 to 1700 Monday to Friday, 0900 to 1300 Saturday nor at any time on Sundays, Bank or Public Holidays.
- 2) No external storage or working outside the buildings shall take place at any time in connection with the uses hereby permitted.
- 3) The level of noise emitted from the site shall not exceed the existing background level by more than 5dB during the permitted hours of operation. The noise levels shall be determined at the nearest residential premises and measurements shall be taken in accordance with BS4142:1997.
- 4) Unless within 4 months of the date of this decision a scheme for the suppression of and dispersal of fumes and odours emitting from unit 3A is submitted in writing to the local planning authority for approval, and unless the approved scheme is implemented within 3 months of the local planning authority's approval, the use of unit 3A shall cease until such time as a scheme is approved and implemented; and if no scheme in accordance with the above is approved within 6 months of the date of this decision, the use of unit 3A shall cease until such time as a scheme approved by the local planning authority is implemented. All equipment installed as part of the scheme shall thereafter be operated and maintained in accordance with the manufacturer's instructions.
- 5) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any order revoking, re-enacting or modifying that Order), no development falling within Schedule 2 Part 8 Class A of the Order shall be undertaken other than that expressly authorised by this permission.

Appeal B

- 1) No machinery shall be operated, no process shall be carried out and no deliveries taken at or despatched from the site outside the following times: 0900 to 1700 Monday to Friday, 0900 to 1300 Saturday nor at any time on Sundays, Bank or Public Holidays.
- 2) No external storage or working outside the buildings shall take place at any time in connection with the uses hereby permitted.
- 3) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any order revoking, re-enacting or modifying that Order) the premises shall be used only for purposes within Class B8 of the Schedule to the Town and Country Planning (Use Classes) Order 1987 (or in any provision equivalent to that Class in any statutory instrument revoking and re-enacting that Order with or without modification) or for purposes ancillary to the farming business operating from the site and for no other purpose.
- 4) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any order revoking, re-enacting or modifying that Order), no development falling within Schedule 2

Part 8 Class A of the Order shall be undertaken other than that expressly authorised by this permission.

Appeal C

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plan including with respect to the external materials and finishes: 11116/1.
- 3) The building hereby permitted shall not be brought into use until surface water drainage works have been implemented in accordance with details that shall be submitted to and approved in writing by the local planning authority. Before these details are submitted an assessment shall be carried out of the potential for disposing of surface water by means of a sustainable drainage system, and the results of the assessment provided to the local planning authority. Where a sustainable drainage scheme is to be provided, the submitted details shall:
 - i) provide information about the design storm period and intensity, the method employed to delay and control the surface water discharged from the site and the measures taken to prevent pollution of the receiving groundwater and/or surface waters;
 - ii) include a timetable for its implementation; and provide a management and maintenance plan for the lifetime of the development which shall include the arrangements for adoption by any public authority or statutory undertaker and any other arrangements to secure the operation of the scheme throughout its lifetime.
- 4) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any order revoking and re-enacting that Order with or without modification), the premises shall be used only for agricultural grain storage or other agricultural purposes and for no other purpose.
- 5) If (a) the use of the building for the purposes of agriculture within the unit permanently ceases within ten years from the date on which the development was substantially completed; and (b) planning permission has not been granted on an application or has not been deemed to be granted under Part III of the Act for development for purposes other than agriculture within three years from the date on which the use of the building for the purposes of agriculture within the unit permanently ceased, then, unless the local planning authority have otherwise agreed in writing, the building shall be removed from the land and the land shall, so far as is practicable, be restored to its condition before the development took place, or to such condition as may have been agreed in writing by the local planning authority. Where an appeal has been made, under the Act, in relation to an application for development for purposes other than agriculture within the three year period that period shall be extended until the appeal is finally determined or withdrawn.



Appeal Decision

Hearing held on 23 October 2013

Site visit made on 23 October 2013

by **William Fieldhouse BA (Hons) MA MRTPI**

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

Decision date: 14 November 2013

Appeal Ref: **APP/J1535/A/13/2201035**

Blunts Farm, Coopersale Lane, Theydon Bois, Epping CM16 7NT

- 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 Mark Swan against the decision of Epping Forest District Council.
 - The application Ref EPF/2468/12, dated 21 December 2012, was refused by notice dated 19 June 2013.
 - The development proposed is described as "the demolition of existing buildings comprising a dwellinghouse and agricultural / commercial buildings, the partial demolition of agricultural / commercial buildings, removal of areas of hardstanding, and the erection of four dwellinghouses, access works, associated landscaping, drainage, infrastructure and ancillary developments".
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. There is a considerable amount of planning history, including previous appeals, relating to the site and other land nearby. The current scheme was designed with the intention of addressing the reasons for refusal of a proposal that was the subject of an unsuccessful planning application in 2012. Whilst officers considered the latest scheme to be acceptable, the formal decision of the Council was to refuse planning permission. In so far as they are relevant to the proposal before me, I have taken account of those earlier decisions, the views of Council officers, and the findings of the previous Inspectors.
 3. A number of amended plans were submitted during the course of the planning application and formed the basis of the Council's decision. In addition, some additional plans were submitted at the appeal stage, and as these do not substantially alter the proposal in any way, or prejudice the interests of third parties, I have taken account of these, as well as those considered by the Council, in reaching my decision.
 4. The description of development set out in the header above is taken from the planning application form. However, whilst some of the buildings to be replaced
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are “commercial” in appearance, I am advised that the lawful use of the site is agricultural.

Main Issues

5. There is no dispute that the site is in the Metropolitan Green Belt. Whilst, the proposed replacement dwelling would not necessarily represent inappropriate development for the purposes of national and development plan policy relating to Green Belts, the proposal also involves the erection of three new dwellings and associated development. Overall, therefore, the proposal would represent inappropriate development in the Green Belt. Accordingly, the main issues are:
- the effect on the openness of the Green Belt;
 - the effect on the character and appearance of the area;
 - the effect on national and local policy objectives relating to sustainable development;
 - whether the planning obligation is reasonable and necessary; and
 - whether the harm by reason of inappropriateness, and any other harm, would be clearly outweighed by other considerations so as to amount to the very special circumstances necessary to justify the proposal.

Reasons

6. The appeal site comprises a partially constructed house, various former agricultural buildings, extensive areas of concrete and stone chippings, some adjoining overgrown scrubland, and the former garden of the existing house. The buildings are set over 100 metres from Coopersale Lane, a narrow rural road, and situated near the top of one side of a valley to the north of the site. The M25 and M11 motorways are some distance to the north and east respectively, and the village of Theydon Bois is around one kilometre to the west. Adjoining to the east are various rural buildings and two detached houses.
7. The proposal would involve the demolition of all of the existing buildings and the removal of the areas of hardstanding on land in the control of the appellant, and the erection of four large, detached, two-storey houses and associated garages. One house would be on the site of the existing dwelling, whereas the other three would be lower down the slope arranged around a courtyard on land currently occupied by the former agricultural buildings and areas of hardstanding. Native hedgerow and tree planting, along with other landscaping, would be carried out within the site to create domestic gardens and create a pond, and on adjoining land to the north in the control of the appellant. A footpath link would also be provided on this adjoining land to connect to the existing public right of way network and thereby provide potential pedestrian access to the village. Alterations would be made to the existing junction of the access drive with Coopersale Lane to improve visibility.

Openness of the Green Belt

8. The proposal would reduce the footprint of buildings on the site by around 40%, and the volume by around 50%. Whilst the proposed houses would be greater in height than most of the existing buildings, they would be sited to form part of

a larger group rather than scattered more widely. The proposal would also reduce the amount of hardstanding by over 68%, and this could result in a reduction in the number of vehicles and other items being stored outside on the site.

9. I therefore conclude on this issue that the proposal would lead to a material increase in the openness of the area and thereby enhance one of the essential characteristics of Green Belts¹.

Character and Appearance of the Area

10. The appeal site is prominently located within an extensive area of sloping, essentially open, land between Theydon Bois and the M25 and M11 motorways. This land forms part of the wider Theydon Garnon Landscape Character Area². Noise from the motorways, and the presence of the London Underground railway line that runs to the east of the village, affect the character of the area, and some of the land has been despoiled by various engineering and other activities in the past. However, there are few, if any, buildings other than a scattering close to Abridge Road and Coopersale Lane, much of the land appears to be in agricultural use, and there are groups of mature trees and lines of hedgerows. Therefore, despite the complex range of influences, and the lack of any specific landscape designations, the area that the appeal site forms an integral part of is clearly rural in nature, and of some intrinsic value.
11. The existing buildings on the site are clearly visible, not least due to their light-coloured external surfaces, from various vantage points, including on permissive and definitive public footpaths. These are mainly within the "Zone of Visual Significance" covering the central parts of both sides of the valley³, but also from further to the north west on open land at Little Gregories. It is also likely that the site is glimpsed in the distance by people travelling along the railway line and the M25 motorway.
12. The existing former agricultural buildings range in height, but are all essentially single-storey. They are certainly not traditional, but rather utilitarian in design, and constructed of modern, functional materials including concrete blocks, profiled roofing sheets, and roller shutter doors. However, viewed from the various vantage points to the north, they appear low key and as part of a complex of buildings the use of which appears to relate to the surrounding land, rather than seeming out of place in the rural landscape. Thus, whilst not visually attractive when viewed from close quarters, they do not significantly detract from the character or appearance of the wider area.
13. The partially-built house is visible from Coopersale Lane as well as from the countryside to the north. It is in a poor condition, and detracts from the quality of its surroundings. However, I am advised that the planning permission for its construction can still be implemented, the effect of which would no doubt be to improve its appearance as well as that of its curtilage. This could take place irrespective of the outcome of this appeal. I have, in any case, dealt with the

¹ National Planning Policy Framework (2012) paragraph 79.

² Epping Forest District Council Landscape Character Assessment (January 2010).

³ The area identified in Mr Paul Gibbs' Hearing Statement that is based on from where the development would be likely to draw the eye of a casual observer.

proposal before me as a whole, and it has not been suggested that I should consider the replacement dwelling on plot 1 as a discrete development.

14. The proposed houses would be of good quality and appropriate design, and the grouping of plots 2 to 4 around a courtyard, set back from the northern edge of the site and close to existing buildings would reduce their visual impact. From the north they would be seen largely against the background of existing mature trees, and the nature and colour of their external materials would help to further reduce their prominence. The proposed landscaping around the gardens would, over time, provide some screening and provide a soft edge.
15. However, as a whole, the group of two-storey houses, gardens, car parking areas, and associated domestic paraphernalia, would represent an obvious encroachment of a significant amount of residential development into the countryside in a prominent location. The nature of the development means that it would appear out of keeping with, and intrusive in, the rural landscape. During the hours of darkness domestic lighting of the houses and curtilages, even if well designed in accordance with local, informal guidelines⁴, would add significantly to the limited amount of artificial light that is currently likely to be generated in the area immediately around the site. For these reasons, the proposal would materially harm the character and appearance of the surrounding rural landscape, and this would clearly outweigh the benefits that would arise from the removal of the areas of hardstanding, which have a limited visual impact on the wider area, and the existing buildings, and the overall reduction in the amount of built development on the site. Furthermore, the proposed landscaping, including that in the valley, and around the junction of the access drive with Coopersale Lane, would fail to adequately mitigate against the harm that would be caused.
16. I conclude on this issue that the proposal, by introducing a significant amount of residential development into the countryside, would materially harm the character and appearance of the rural area contrary to the objectives of national policy⁵, and local plan⁶ policies GB7A, CP2 and LL2 which collectively recognise the intrinsic character and beauty of the countryside, seek to enhance the rural landscape and visual amenity of the Green Belt, and prevent development conspicuous from within the Green Belt which would have an excessive impact on rural character.

Sustainable Development

17. Theydon Bois has a good range of shops, services and other facilities, and a station on the London Underground that provides frequent services to central London. Local bus services can be accessed on Abridge Road not far from the junction with Coopersale Lane. The appeal site is located only a kilometre or so from the station and many of the other local facilities, a distance that is not dissimilar to that to some other properties within the village. However, Coopersale Lane is narrow, unlit and without footways meaning that it, and the busy and sloping Abridge Road, is unlikely to be an attractive route for

⁴ Dark Skies Policy in the Village Design Statement published by the Theydon Bois Action Group in 2011, and not adopted by the Council as planning policy or guidance.

⁵ National Planning Policy Framework (2012) paragraph 17, 5th bullet point; paragraph 81; and paragraph 109.

⁶ Epping Forest District Local Plan adopted 1998 with Alterations adopted in 2006.

pedestrians. Some people may choose to use this route to cycle to the village, although this is unlikely to be the case for a significant number of trips.

18. The proposed footpath link between the proposed houses and the nearby public right of way network would provide the opportunity for future residents to make recreational trips on foot to the nearby countryside. However, the length of the walk, together with the nature of the unsurfaced terrain, means that it is unlikely that this option would be used on anything other than a very occasional basis to access the village.
19. Overall, therefore, whilst the limited scale of the development means that it would not generate a large number of trips, and the proximity of the railway station and the local services in the village means that many of these would be relatively short, it is probable that the vast majority of journeys would at least start with the use of a private car.
20. The proposal includes various features that would contribute positively towards sustainable development objectives, including certain elements of the design; improvements to surface water drainage, landscaping, and biodiversity, including the planting of native species and the installation of bird and bat boxes; making use of a redundant site; and helping to meet housing needs. I will return to some of these matters later.
21. However, national policy is clear that to achieve sustainable development, economic, social and environmental gains ought to be sought jointly and simultaneously⁷. The positive features of the scheme, whilst welcome, do not therefore mean that additional houses in an inappropriate location are a sustainable form of development.
22. I conclude on this issue that, as future residents of the proposed dwellings would be heavily dependent on the use of private cars, there would be some conflict with the objectives of national policy⁸ and local plan policies CP1, CP3, ST1, and ST2 which collectively seek to achieve sustainable development in rural areas, avoid isolated new dwellings, and ensure that development is accessible by sustainable means of transport and provides safe, pleasant and convenient access for pedestrians and cyclists including through practical links with public rights of way.

Planning Obligation

23. The proposal includes a planning obligation that makes arrangements for the provision of the proposed private footpath link between the site and the public right of way network, and for a financial contribution to be used to help provide off-site affordable housing.
24. As I have found that the footpath link would be unlikely to be used on any regular basis to access the services and facilities in the village, I am not convinced that it is necessary to make the development acceptable in planning terms.
25. Local plan policy H7A states that 50% of the total of new dwellings on greenfield sites in settlements with a population of less than 3,000 should be affordable.

⁷ National Planning Policy Framework (2012) paragraph 8.

⁸ National Planning Policy Framework (2012) paragraphs 29, 35, and 55.

The Council advises that in this case it would not be appropriate to seek on-site provision, and that, instead, a financial contribution of £100,000 should be made based on the estimated cost of the subsidy that would be required if one of the net additional dwellings on the site were to be provided as affordable housing. However, neither in writing nor at the Hearing have I been provided with any substantive evidence to support this approach, or any clear indication as to the location or timing of an affordable housing scheme that the contribution would help to deliver. Consequently, it is not clear that the contribution would be used in a way that would directly relate to the development in terms of meeting affordable housing needs in a relevant geographical area and in a reasonable period of time, or that it would be fairly and reasonably related in scale and kind to the development.

26. Therefore, it has not been demonstrated that the planning obligation is reasonable and necessary and it therefore fails to meet the tests set out in the Community Infrastructure Regulations 2010 and the requirements of national planning policy⁹. Accordingly, I am unable to attach weight to the planning obligation in determining this appeal¹⁰.

Other Considerations

27. Whilst the site cannot be classified as previously developed land¹¹, much of it is covered with disused buildings and areas of hardstanding. It has not been used for agriculture for a number of years, and it seems clear that the appellant has no intention of using his land for that purpose. Furthermore, the planning history demonstrates that the site is unlikely to be suitable for most commercial uses. In this context, the proposal would represent an economically viable and effective re-use of land that at present serves no beneficial purpose. However, the weight that I attach to this benefit is limited due to the lack of any substantive evidence put forward to demonstrate that the site and adjoining land could not be sold or let for agriculture, forestry, horticulture or some other use appropriate to a rural area. Indeed there is some evidence that there is a demand in the local area to establish such businesses, and to erect new buildings to serve them¹².
28. The need for additional housing in the district is currently under review, as are potential ways of meeting this in the years ahead. It seems that additional land to that currently allocated and available within towns and villages will be required. This is essentially a matter that needs to be sorted out through the development plan process. However, this is at an early stage, whereas national policy identifies the need to significantly boost the supply of housing now, and for a wide choice of high quality homes, including for families with children, and affordable housing. The proposal would provide four, good quality family homes on the site, a benefit that, whilst modest in scale compared to overall needs, is nonetheless material and I attach weight to this accordingly.
29. I have already found that the scheme would also deliver a number of other benefits; these are summarised in paragraph 20 above. Whilst some of these

⁹ National Planning Policy Framework (2012) paragraph 204.

¹⁰ Community Infrastructure Regulations (2010) regulation 122.

¹¹ National Planning Policy Framework (2012) Annex 2.

¹² I was advised at the Hearing that planning permission had recently been granted for a new agricultural building on land adjoining the appeal site to support a Christmas tree growing business that has recently been established and which was evident during my site visit.

are of a type that would normally be expected when planning permission is granted, I recognise that, cumulatively, they may be greater than those associated with many housing developments of this scale.

30. Whilst third parties have raised a number of other concerns, the Council is satisfied that, subject to conditions, these could be appropriately addressed, and there is no substantive evidence to lead me to a different conclusion. However, this, and the lack of any insurmountable physical or environmental barriers to development, and of any objections from statutory consultees, are neutral factors in the overall balancing exercise that I need to carry out.

Balancing Exercise and Overall Conclusion

31. The proposal overall would represent inappropriate development for the purposes of national and development plan policy which, by definition, would be harmful to the Green Belt and should not be approved except in very special circumstances¹³. It would represent an encroachment of residential development into the countryside and materially harm the character and appearance of the rural area. Furthermore, there would be some conflict with policy objectives relating to sustainable development. For these reasons the proposal would cause substantial harm.
32. On the other hand, I have identified a number of benefits that the proposal would bring including increased openness, the provision of four good quality new homes of sustainable design on a currently redundant site, and improvements to surface water drainage, landscaping, and biodiversity. Whilst, cumulatively, these benefits are of some significance, they would not clearly outweigh the substantial harm that I have identified, and therefore very special circumstances needed to justify the proposal do not exist¹⁴. Furthermore, whilst I recognise the appellant's willingness to make provision to help to meet affordable housing needs, even if I had been able to take account of the planning obligation, the additional benefits would not have been sufficient to change my overall conclusion.
33. For the reasons given above, I conclude, on balance, that the appeal should be dismissed.

William Fieldhouse

INSPECTOR

¹³ National Planning Policy Framework 2012 paragraph 87.

¹⁴ National Planning Policy Framework paragraph 88.

Appearances at the Hearing

For the Appellant

Mr Thomas Hill	QC
Mr Kevin Coleman	Phase 2 Planning and Development Ltd
Mr Paul Gibbs	David Jarvis Associates

For the Local Planning Authority

Mr Graham Courtney	Senior Planning Officer
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Interested Persons

Councillor John Philip	Epping Forest District Council
Dr J Warren	Local resident
Mrs Susan Warren	Local resident
Elizabeth Burn	Local resident
Mr Newton	Theydon Bois and District Rural Preservation Society
Mr Jim Watts	Theydon Bois and District Rural Preservation Society
Mrs Diane Gillespie	Local resident
Mr D Brockway	Local resident

Documents Submitted at the Hearing

Land Registry Title Document and Plan and associated correspondence and documents relating to land known as "Plot 21, Phase Two, Abridge Road, Theydon Bois, Epping" (submitted by Dr J Warren).

Planning Obligation by Way of Unilateral Undertaking under section 106 of the Town and Country Planning Act 1990 relating to land at Blunts Farm, Coopersale Lane, Theydon Bois, Epping signed and dated 18 October 2013 (submitted on behalf of the appellant).

Email from Katie Smith, Senior Planning Officer, Epping Forest District Council, dated 19 June 2012 regarding a financial contribution towards the provision of off-site affordable housing relating to the proposed residential development of land at Blunts Farm (submitted on behalf of the appellant).



Appeal Decision

Site visit made on 17 February 2014

by **J Flack BA Solicitor**

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

Decision date: 21 February 2014

Appeal Ref: APP/J1535/A/13/2205863

44 Kenilworth Gardens, Loughton, Essex IG10 3AF

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Miss Mine Remzi against the decision of Epping Forest District Council.
 - The application Ref EPF/0233/13, dated 31 January 2013, was refused by notice dated 12 June 2013.
 - The development proposed is replacement of redundant former garages with one single storey, one bedroom bungalow.
-

Decision

1. The appeal is dismissed.

Main Issue

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

Reasons

3. The appeal site is located in a pleasant suburban area, on the length of Kenilworth Gardens which links Southern Drive and Avondale Drive. Development on the two latter streets follows a relatively intense pattern, consisting of short terraces of two storey houses with narrow gaps between them, some of which give access to small garages and outbuildings. The houses are provided with small front gardens, many of which are used for parking vehicles, and long rear gardens.
4. The length of Kenilworth Gardens in which the appeal site is located contrasts strongly with Southern Drive and Avondale Drive. There are no dwellings fronting it. The appeal site, which appears to have originally formed part of the rear garden of 47 Avondale Drive, consists of two blocks of three garages, whose doors face each other across a central courtyard. Opposite the appeal site is a brick garage with a pitched roof, but the street frontage otherwise consists of close boarded fences forming the side boundaries of houses in Southern Drive and Avondale Drive. These fences are high, but allow the long rear gardens of surrounding houses to be appreciated. The street frontage of the appeal site consists of the brick side walls of the garage blocks and, between them, close boarded fences and gates giving access to the central

yard area. These walls, fences and gates, together with the boundary fences on either side, are all of roughly the same height.

5. The overall impression given by this length of Kenilworth Gardens is that it was designed to be, and remains, secondary to the streets which it connects, with a lesser public face and a much less intensive pattern of development. Although the appeal site does not form part of the curtilage of any dwelling, the garages nevertheless read, as do the garage opposite and the various outbuildings in surrounding gardens, as development whose role is essentially ancillary and subordinate to the houses around them. This adds to the secondary character of the street.
6. The general features of Kenilworth Gardens which I have identified are also found in the length of The Meadway which runs between Southern Drive and Avondale Drive a little way from the appeal site, where the only frontage development consists of garages at the end of rear gardens. These features, and the resulting contrast with Southern Drive and Avondale Drive, make a distinctive and important contribution to the character of the area.
7. The appellant describes the site's appearance as run-down and semi-derelict. I disagree. The garage walls are in good condition, and although the central fence and gates are weathered, the site does not appear to be in any significant disrepair. Whilst the appellant has provided some evidence that there has been fly-tipping on the site in the past, and states that the site attracts vandals and fly-tippers because it is under-used, I saw no signs of either activity on my site visit, the central yard between the garages having a covering of gravel and containing a large number of plants in pots. Whilst the garages are too small to be suitable for their original use, the appellant states that if permission is refused for the appeal proposal the site will most likely be used for storage, and I do not see that this would be likely to make the site any more vulnerable to vandalism, fly-tipping or deterioration than it is at present. I consider that the current appearance of the site is not harmful to the area, serving instead to complement the area's character, and that this would be likely to continue.
8. The appeal proposal would consist of a small bungalow fronting the street behind a narrow landscaped border and low boundary railings. It would occupy almost the full depth of the site, with a small courtyard and parking space to the side, adjacent to the rear garden of 47 Avondale Drive. The street boundary of the courtyard and parking space would comprise a close boarded fence and sliding gate. These would complement the adjoining rear garden fence of No 47, being similar in height. Moreover, considered in isolation, the proposed bungalow would be of neat and balanced appearance.
9. However, the proposal must be considered in its context. The bungalow would be prominent in the street scene, its isolation, single storey construction and small plot at odds with the dwellings in surrounding streets. But more fundamental is that the provision of any dwellinghouse at this location would be in significant conflict with the established pattern of development in the area, conflicting with and diluting the distinctive role and features of the street which I have identified and its contrast with Avondale Drive and Southern Drive within the planned design of the area.
10. I therefore conclude that the proposal would cause unacceptable harm to the character and appearance of the area. It would be contrary to Policy CP7 of the

Local Plan Alterations¹, which while having the general objective of making fullest use of existing urban areas, also states that development which results in unsympathetic change will not be permitted, and it would be contrary to the requirements of Policy DBE1 of the Local Plan² that development respect its setting in terms of specified matters including siting and scale. The proposal would also be contrary to the advice on design provided by the National Planning Policy Framework (the Framework), which states at paragraph 56 that good design is a key aspect of sustainable development, and at paragraph 58 that developments should, amongst other things, respond to local character and reflect the identity of local surroundings.

11. In reaching these conclusions I have noted the statements of the parties to precedent. However, the permission at Rayfield Road to which appellant draws attention relates to a development in a backland setting dissimilar to the present appeal site, and whilst the Council asserts that the proposal would encourage similar unsuitable proposals, the evidence before me does not suggest that there are sites in the locality which share all of the characteristics and circumstances of the appeal site. In any case, every proposed development must be assessed on its own merits.

Other matters

12. Whilst the Council does not suggest that the proposal would have any unacceptable effect on living conditions, neighbouring residents assert that it would do so. On my site visit I viewed the appeal site from the garden of 47 Avondale Drive, noting that the rear boundary of that property's rear garden is formed by the side wall of one of the existing garage blocks. The eaves height of the proposed bungalow would be approximately the same of the height of the existing garages, and the proposed pitched roof is hipped. I consider that although the proposal would be more prominent than the garages in the context of neighbouring dwellings, it would not have any significant effect on outlook, and although there would be some additional overshadowing to some garden areas, there would not be any significant loss of sunlight or daylight. Moreover, although the bungalow and its courtyard would be likely to generate some noise and disturbance, this would be limited given the small scale of the proposal, and I do not consider that it would be unacceptably greater than that which might be expected to arise from the current garages. I consider therefore that the proposal would not have any unacceptable effect on the living conditions of neighbouring residents.
13. The site is located partly in Environment Agency Flood Zone 3 and partly in Flood Zone 2. The Environment Agency has advised that the Sequential Test should be applied to the proposal, and I consider this apt given the advice at paragraphs 103 and 104 of the Framework and that the proposal is not exempted from the application of the Sequential Test, given the definition of minor development given at the footnote to paragraph 10 of the Technical Guidance to the Framework. The evidence before me does not demonstrate how the Sequential Test has been addressed by the parties, but I do not consider this significant given the Agency's removal of its initial objection and the undisputed conclusions of the Flood Risk Assessment provided by the applicant, in particular that a freeboard above the 1000 year flood level could

¹ The Epping Forest District Local Plan Alterations, adopted July 2006

² The Epping Forest District Local Plan, adopted January 1998

be achieved by the proposal. I therefore consider that the proposal would not be unacceptable in terms of flood risk.

Conclusion

14. I acknowledge that the proposal would provide a modest contribution to the housing stock of the District on previously developed land in an urban location which has good access to facilities and services. I have also concluded that the proposal would not have an unacceptable effect on the living conditions of neighbouring residents, and that it would not be unacceptable in terms of flood risk. However, none of these matters, nor any other matter raised, mitigates or outweighs my conclusion that the proposal would cause unacceptable harm to the character and appearance of the area. The appeal is therefore dismissed.

J Flack

INSPECTOR



Appeal Decision

Site visit made on 26 November 2013

by Kenneth Stone BSc(Hons) DipTP MRTPI

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

Decision date: 22 January 2014

Appeal Ref: APP/J1535/A/13/2204889
146 High Road, Loughton, Essex IG10 4BH

- 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 Kapadia against the decision of Epping Forest District Council.
 - The application Ref EPF/0740/13, dated 10 April 2013, was refused by notice dated 12 June 2013.
 - The development proposed is a two storey rear extension to provide three self contained flats.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues in this appeal are whether the development would provide firstly adequate living conditions for future occupiers of the flats, with particular reference to light, outlook and smells; and secondly an appropriate sustainable building, with particular reference to energy efficiency, lighting and ventilation.

Reasons

Living Conditions

3. The appeal site is located in the key frontage of Loughton town centre and comprises a two storey terraced unit accommodating a shop on the ground floor with a flat above. To the rear of the shop there is a single storey storage building.
4. The provision of three one bedroom flats within a two storey extension to the rear of the building would result in a form of development that would be particularly constrained. Each of the flats would have an open plan living and kitchen area provided with a single aspect. The remainder of the accommodation in each of the units would have no access to outlook or direct sun or daylight.
5. Drawing No 3010/03B shows that towards the rear of each of the flats and the centre of the building the bedrooms would be provided with a light source (in the form of a glass wall with obscure glazing to 1.7m above the internal floor area for the first floor flats and a door into a courtyard for the ground floor flat) facing into an area described as a 'lightwell'. The 'lightwell' would be enclosed on each side by the proposed and neighbouring buildings and the Drawing

shows that a ridged roof would run the full length of the extension with no cut-out for the 'lightwell'. In this respect therefore there would be no natural light available within this area.

6. Flat 2 facing onto High Road would have a window and French doors that would afford a reasonable degree of light and outlook to its lounge/kitchen area. Whilst the lack of lighting for the bedroom would result in compromised accommodation this would not be such as to be so poor as to, on its own, warrant refusal of planning permission.
7. Flat 3, the first floor flat that would face Smarts Lane Mews, would have a single window serving its living/kitchen area which is marked on the proposed rear elevation drawing number 3010/05A as obscure glass. The obscure glazing would be required to protect the amenities of the neighbouring properties to the rear of the site and in this respect it would also be necessary to restrict the opening of this window. In effect this flat would therefore be provided with limited outlook from the property and poor levels of light. Such living conditions would to my mind be unacceptable for future residents.
8. Flat 1, the rear ground floor flat, would have its main source of light and outlook from a single window to the rear. The immediate environment outside the window has been identified as the location for the bin store. To this end this would create a source of nuisance for the future residents directly outside their only source of outlook, light and natural ventilation. The activity and noise associated with the other residents disposing of their refuse and the potential for smells in summer months would make this an un-neighbourly location. Given the constrained nature of the site and the rear door there appears to me to be no room for an alternative location for the bin store and none has been identified. I therefore conclude that the living conditions for the future residents of this flat would also be unacceptable.
9. The National Planning Policy Framework (The Framework) at paragraph 17 notes that developments should always seek to secure high quality design and a good standard of amenity for future occupiers. Paragraph 50 refers to the need to deliver high quality homes and paragraph 56 notes the importance to be attached to good design. The failings I have noted above both individually and cumulatively demonstrate that the proposed development would not achieve quality design in this context.
10. For the reasons given above I conclude on this main issue that the proposed development would not provide adequate living conditions for the future residents of the flats. In consequence it would conflict with policy RP5A of the Epping Forest District Local Plan Alterations (adopted July 2006) (LP Alterations) which seeks, amongst other things, to ensure that housing development is not subject to adverse environmental impacts. The proposals would also conflict with the Core Principles of The Framework and paragraphs 50 and 56 which seek to ensure high quality development with good standards of amenity for future occupiers.

Sustainable building

11. Policy CP4 notes developments should incorporate principles of energy conservation as well as incorporating measures to utilise renewable energy resources and technologies. In combination with Policy CP5, which notes development may be refused if insufficient energy conservation has been

incorporated within the development, the Council sets out its proposals to produce sustainable buildings. This approach is consistent with the approach and golden thread in The Framework which seeks to achieve sustainable development. In particular in seeking to address the challenge of climate change The Framework gives guidance, in particular paragraphs 95 and 96, concerning building sustainability and local requirements.

12. The form and layout of the proposed flats with limited access to natural light and ventilation would require future occupants to rely heavily on mechanical and artificial means that would increase the energy load of the property. There are no energy reduction measures identified within the proposals before me and no renewable energy measures that might otherwise mitigate this situation. Whilst these proposals may only represent small scale development no justification or viability evidence has been put before me for the lack of measures provided. The proposed development would not therefore take on board the legitimate concerns related to sustainable building design.
13. For the reasons given above I conclude on this main issue that the proposed development would not provide an appropriately sustainable building, with particular reference to energy efficiency, lighting and ventilation. Consequently the proposal is contrary to Policies CP4 and CP5 of the LP Alterations and policies in The Framework which seek to ensure that sustainable buildings are provided to meet the challenge of climate change.

Other matters

14. The scheme would bring benefits in the context of additional homes at a sustainable location. However these are not sufficient to outweigh the harm that I have identified above.

Conclusion

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

Kenneth Stone

INSPECTOR

Appeal Decision

Site visit made on 10 December 2013

by **Diane Fleming BA (Hons) MRTPI**

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

Decision date: 27 January 2014

Appeal Ref: APP/J1535/A/13/2205633

Rear of 71 & 71a Stonards Hill, Loughton IG10 3EH

- 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 Clive Jacobs against the decision of Epping Forest District Council.
 - The application Ref EPF/0856/13, dated 26 April 2013, was refused by notice dated 10 July 2013.
 - The development proposed is a two bedroom detached house.
-

Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are the effect of the proposed development on:
 - the character and appearance of the surrounding area; and
 - the living conditions of neighbouring residents, and whether future occupiers of the proposed dwelling would enjoy satisfactory living conditions.

Reasons

Character and appearance

3. The appeal site is located to the rear of Nos 71 and 71a Stonards Hill but has a frontage onto Alderton Way. The site originally formed part of the rear garden of No 71 but is now fenced off and is in separate ownership. Stonards Hill and Alderton Way are attractive residential streets made up predominantly of traditional two-storey, semi-detached dwellings with long rear gardens, often found in such suburban locations. Although there is a subtle variety in the design of the houses, they display a degree of consistency with similar rooflines and the use of bay windows. This creates an attractive symmetry to the street scene.
4. There are a number of trees along the site frontage situated behind the boundary fence and others within the site bordering the gardens of Nos 71 and 71a. The site is level and currently laid to grass. Two Leyland Cypress trees are covered by a Tree Preservation Order (TPO). They are situated at the southern end of the site adjacent to the boundary with No 8 Alderton Way.

Overall this verdant space adds to the character of the area and provides a welcome visual gap between buildings in Stonards Hill and Alderton Way.

5. The proposed dwelling would be a similar width to neighbouring properties with a two-storey bay window element on the front elevation. However the ridge of the roof would be perpendicular to the road whereas most other dwellings have a ridge line parallel to the road. This consistent roofline is part of the character of the area. The exception to this is the paired dwellings at Nos 2-8 Alderton Way. These have a roof gable hipped on the front and rear with catslide roofs on the sides. Nevertheless the proposed detached dwelling would appear discordant here and its roof design would detract from the established character and appearance of the area.
6. In addition, the size of the plot would be smaller than others in the area. The proposed dwelling would therefore appear cramped due to the limited size of the site and its proximity to adjacent boundaries at the rear of Nos 69, 71 and 71a. Dwellings in the locality not only have front gardens but private rear gardens as well. The absence of a rear garden within the proposed development would result in a built form that would be out of character with the area. In view of the above, I consider that the dwelling would be harmful to the character of the surrounding area.
7. The trees and planting within the site and at No 71a enhance the character of the area, being particularly prominent on the descent from Stonards Hill to the junction with Alderton Way and Oakwood Hill. Limited information has been submitted in relation to the trees on the site. I saw at my visit that the position of the driveway would appear to require the removal of one, if not both, of the Leyland Cypress trees that are covered by the TPO. These trees are extremely prominent in the street scene due to their height, and make a significant contribution to the visual amenity of the area. Consequently any removal would have a detrimental impact on the character and appearance of the area.
8. Furthermore the remaining Leyland Cypress (should only one be removed to facilitate the point of access) would overshadow the small garden and patio doors of the proposed dwelling. This would have an impact on the living conditions of any future residents and would be likely to lead to increased pressure for the tree to be removed.
9. For similar reasons I also consider it likely that a number of the smaller trees along the site frontage and the boundary with Nos 71 and 71a would be removed during the course of development. The Design and Access Statement (DAS), states that a survey of the trees would be undertaken, with good trees to be retained. However the position of the trees and their crown spread is not marked accurately on the block plan submitted with the application, and the proposed plan shows only a sparse covering adjacent to the gardens of Nos 71 and 71a. The trees are a significant component of the greenery on site and in the absence of any further information on them I find that their removal would be detrimental to the character and appearance of the area.
10. I have noted reference to a dangerous tree within the DAS and on the block plan submitted with the application. However neither document specifies which tree is considered dangerous and, in the absence of a professional assessment of the condition of the tree, I am only able to attach very limited weight to these comments.

11. For the reasons set out above, I conclude that the proposed dwelling would materially harm the character and appearance of the surrounding area. As such, the development would not accord with Policies DBE1 and LL10 of the Local Plan (LP)¹ which require new buildings to respect their setting and rooflines and that permission be refused for development which makes inadequate provision for tree retention. It would also conflict with Policy CP2 of the LP Alterations² which requires that the built environment be safeguarded by enhancing its character and townscape. The development would also be contrary to the principles of good design set out in section 7 of the National Planning Policy Framework (the Framework).

Living conditions

12. The dwelling would be sited in close proximity to the boundaries of Nos 69, 71 and 71a. These dwellings are situated at a higher level than the appeal site. As a result the proposed dwelling would have a limited impact on the outlook from rear facing windows within these dwellings.
13. The north facing flank wall would adjoin the rear gardens of Nos 71 and 71a. At such close proximity, the height and mass of the wall and hipped roof would dominate the outlook from these rear gardens. It would have an overbearing impact and would create an undue sense of enclosure. The orientation of the dwelling, due south of Nos 71 and 71a, would also result in overshadowing of the adjacent gardens. The impact on No 69 would be different as the rear garden only partly flanks the appeal site. The outlook from the patio adjacent to the house would not be affected. However, towards the southern end of the garden the outlook would be severely affected as the proposed dwelling would be in close proximity and extremely overbearing.
14. There would be two bedroom windows at first floor level on the front elevation. The distance between these and the dwellings on the opposite side of Alderton Way would be sufficient to prevent any significant loss of privacy or outlook. Views into the rear garden of No 69 would be possible from the window to bedroom 2 and to a lesser extent from the kitchen window. The latter could be screened by boundary fencing. However the overlooking from bedroom 2 would not be acceptable and it would be inappropriate to require that the window be obscure glazed as this would result in poor living conditions for those using the room. Consequently, the proposal would lead to a significant loss of privacy for the residents of No 69. The occupiers of No 71a refer to a loss of privacy; however there would be no windows within the flank elevation that would overlook their house or garden.
15. There would only be a small side garden provided as an amenity area due to the size and position of the proposed dwelling and the limited space within the site. This would not be ideal as a private garden area in terms of siting and size, and would be insufficient to serve the needs of future occupiers.
16. I therefore conclude that the proposal would have a detrimental impact upon the living conditions of the residents of neighbouring properties and would fail to provide satisfactory living conditions for future occupiers of the proposed dwelling. This would be contrary to Policies DBE8 and DBE9 of the LP which

¹ Epping Forest District Local Plan (1998)

² Epping Forest District Local Plan Alterations (2006)

address residential amenity, and the requirements of paragraph 17 of the Framework.

Other Matters

17. The appellant refers to The London Plan (TLP) and the need for accommodation for elderly people. However the site lies outside the area covered by TLP and therefore the policies are not applicable, whilst the Framework makes it clear that meeting such needs, should they exist, should not be at the expense of good design.
18. The appellant has also referred to the potential for an alternative development on the site involving the erection of garages, and suggests that such a scheme could be erected under permitted development rights. Whether or not planning permission is required is not a matter for me to determine in the context of an appeal made under Section 78 of the Act. In any event, no details of any such proposals are before me. Consequently I have determined this appeal on the merits of the development proposed.
19. I also note the concerns raised by the appellant regarding the use of the site by rats and foxes. However my decision does not restrict the ability to maintain the site in the future and these concerns do not outweigh my conclusions on the main issues identified above.

Conclusion

20. For the above reasons, and having regard to all other matters raised, I conclude that the appeal should be dismissed.

Diane Fleming

Inspector



Appeal Decision

Site visit made on 14 March 2014

by **David Fitzsimon MRTPI**

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

Decision date: 21 March 2014

Appeal Ref: APP/J1535/D/14/2213385
95 High Road, Loughton, Essex IG10 4JD

- 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 Lakhan against the decision of Epping Forest District Council.
 - The application Ref PL/EPF/1500/13, dated 18 July 2013, was refused by notice dated 8 January 2014.
 - The development proposed is a double storey rear extension and loft conversion.
-

Procedural Matter

1. In reaching my decision I have taken into account the Planning Practice Guidance which came into force on 6 March 2014.

Decision

2. The appeal is dismissed.

Main Issue

3. The main issue in this case is the effect of the proposal on the character and appearance of the street scene.

Reasons

Character and appearance

4. The appeal relates to a large semi-detached period property. With the exception of the attached dwelling which sits on the corner of High Road and Algers Road, the appeal property sits within a group of detached dwellings which are set comfortably apart, at least at first floor level. This is a notable feature of the group and it makes a positive contribution to the spacious character of this particular part of the High Road street scene.
 5. The proposed two storey rear extension would be wider than the main front section of the host dwelling. When viewed from the rear, however, it would be seen in the context of the existing substantial gable features of the properties either side and it would project about the same distance. Notwithstanding this, the proposed two storey extension would bring the appeal dwelling noticeably closer to No. 93 High Road at first floor level.
-

6. The extension would be recessed from the main front elevation of the appeal property by over 5 metres, which means that the reduced space between the two dwellings would not be noticeable when viewed from High Road at an angle. Nevertheless, when viewed face on, the significantly reduced gap at first floor level would be clearly evident. The visual effect would be harmful and it would be particularly noticeable at the junction of Nafferton Rise, from where the dwelling can be seen in its wider context.
7. For this reason, and irrespective of the fact the Case Officer recommended to the Council's Planning Committee that permission be granted, I conclude that the reduced gap at first floor level arising from the proposed extension would unacceptably harm the character and appearance of the street scene. In such terms, it conflicts with saved policy DBE10 of the adopted Epping Forest District Local Plan (1998) and saved policy CP2 of the Local Plan Alterations (2006).

Other considerations

8. The proposal has generated additional concerns from nearby residents, including tree loss, parking provision and effect on living conditions, amongst others. The Council has explained that none of the trees within the appeal site are formally protected and I am satisfied that the extension itself would not result in the loss of any significant species. It has been suggested that the development would lead to greater demand for car parking, but several car parking spaces are available within the forecourt of the property, which enjoys a sustainable location. On this basis, withholding planning permission on grounds of inadequate parking provision would not be reasonable.
9. The fitting of a privacy screen to the proposed 'ground floor' balcony would prevent undue overlooking of the rear garden of No. 97 High Road and this could be secured by a planning condition. A generous distance would separate the rear elevation of the proposed extension and the rear of the dwellings of Algiers Mead. I am therefore satisfied that any additional overlooking of these properties would be within acceptable parameters, particularly given that the extension would protrude a comparable distance to the dwellings either side.
10. The extension would sit behind the rooflights positioned on the side roof profile of No. 93 High Road, and it would not significantly reduce the amount of natural light available to the rooms which they serve. The extension would, however, be very close to the first floor window on the flank elevation of this property which I understand to be the sole window serving a bedroom. The extension would be unduly oppressive when viewed from this room, which counts further against the proposal.
11. In reaching my decision, I appreciate the extension would improve the standard of accommodation for the appellant and his family and it would contribute to the local economy during the construction phase. Nevertheless, these positive aspects of the scheme, along with all others outlined by the appellant, neither alter nor outweigh the harm I have identified.
12. In light of the above factors, and having considered all other matters raised, the appeal does not succeed.

David Fitzsimon INSPECTOR



Department for
Communities and
Local Government

Matthew Green
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Upton Magna Business Park
Upton Magna
Shrewsbury
SY4 4TT

Our Ref: APP/J1535/A/12/2177311 &
APP/J1535/C/12/2181659

Your Ref: 10_397_OCON3

16 January 2014

Dear Sir,

**TOWN AND COUNTRY PLANNING ACT 1990 – SECTIONS 78 AND 174
APPEALS BY MR MILES O’CONNOR
SUNNYSIDE, CARTHAGENA ESTATE, NAZEING, ESSEX,
APPLICATION REF: PL/EPF/0529/12 & COUNCIL REF: ENF/0022/11 PL/10530**

1. I am directed by the Secretary of State to say that consideration has been given to the report of the Inspector, Paul Dignan MSc PhD, who held a public local inquiry on 23 April 2013, 16-19 July 2013 and 27 August 2013 into your client's appeals as follows:

Appeal A - APP/J1535/A/12/2177311 under s78 of the Town and Country Planning Act 1990 against the refusal by Epping Forest District Council (“the Council”) to grant planning permission for the use of land for the stationing of caravans for residential purposes for 2 no. gypsy pitches together with the formation of additional hard standing (application ref: PL/EPF/0529/12, dated 15 March 2012) at Sunnyside, Cathagena Estate, Nazeing, Essex;

Appeal B - APP/1535/C/12/2181659 under s174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against an enforcement notice issued on 1 August 2012, requiring: cease of use of the land for permanent residential purposes; removal of all caravans/mobile homes, sheds, associated equipment and storage facilities; removal of hard surfaced area; removal of all resultant debris and waste materials from the land within 6 months after the notice takes effect. The appeal has proceeded on the grounds set out in s174 (2) (a) and (g), and the application for planning permission is deemed to have been made under section 177(5) of the 1990 Act as amended.

Department for Communities and Local Government
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2. On 1 October 2013 the appeals were recovered for the Secretary of State's determination, in pursuance of section 79 of, and paragraph 3 of Schedule 6 to, the Town and Country Planning Act 1990, because the appeals involve proposals for a significant development in the Green Belt (GB).

Inspector's recommendation and summary of the decision

3. The Inspector recommended that Appeals A and B be allowed in part; that the enforcement notice be quashed; and planning permission granted on the deemed planning application for a temporary period of 4½ years. For the reasons given below, the Secretary of State disagrees with the Inspector's conclusions and recommendations. He dismisses both Appeals A and B, but varies the terms of the Enforcement Notice to extend the period for compliance to 12 months from the date of this decision letter (ie to 15 January 2015). A copy of the Inspector's report (IR) is enclosed. All references to paragraph numbers, unless otherwise stated, are to that report. X

Procedural Matters

4. The application for costs made by your clients at the Inquiry (IR3 and IR7) is the subject of a decision letter being issued separately by the Secretary of State.

Policy considerations

5. In deciding these appeals, the Secretary of State has had regard to section 38(6) of the Planning and Compulsory Purchase Act 2004 which requires that proposals be determined in accordance with the development plan unless material considerations indicate otherwise.
6. In this case, the development plan comprises the saved policies of the Epping Forest District Local Plan and Local Plan Alterations (LP) adopted in 2006. The Secretary of State considers that the development plan policies most relevant to the appeal are those set out by the Inspector at IR8.
7. Other material considerations which the Secretary of State has taken into account include the National Planning Policy Framework (the Framework) and the Technical Guidance to the National Planning Policy Framework ("the Technical Guidance"); Planning Policy for Traveller Sites (PPTS); and Circular 11/95: Use of Conditions in Planning Permission. The Secretary of State has had regard to the fact that on 28 August 2013 Government opened a new national planning practice guidance web-based resource. However, given that the guidance has not yet been finalised, he has attributed it limited weight.

Main issues

Appeal A and Appeal B on ground (a)

8. The Secretary of State considers that the main issues in relation to Appeal A and Appeal B on ground (a) are those identified by the Inspector at IR11.

S29/12.
22/11

Openness and purposes of including land in the GB

9. The Secretary of State agrees with the Inspector (IR12) that the fact that the appeal site is now hard standing and surrounded by close-boarded fencing, with the inevitable paraphernalia associated with residential use, has resulted in a significant adverse impact on Green Belt openness. He also agrees (IR13) that the stark and discordant contrast with the land on either side could not be completely mitigated; and that the harm caused by the encroachment of built development into the countryside (IR14) conflicts with one of the purposes of including land in the Green Belt, thus undermining local and national Green Belt protection policies.

Character and appearance of the countryside

10. For the reasons set out by the Inspector at IR15-16, the Secretary of State agrees with him that the harm due to the intrusion of the appeal scheme into a short stretch of natural undeveloped countryside diminishes the considerable public amenity which that would otherwise provide; and that this would be contrary to LP Policy CP2.

Lee Valley Regional Park

11. The Secretary of State has taken account of the comments made by the Inspector in relation to the Lee Valley Regional Park (IR17-18) and agrees with his conclusion that the appeal proposal would invariably prejudice, to some extent, any long term plans or proposals for the area that are based on the acquisition and consolidation of former plot land proposals. He therefore also agrees that the proposal conflicts with LP Policy RST9 in that respect.

Flood risk

12. The Secretary of State notes that the Inspector correctly says at IR19 that all development proposals in Flood Zones 2 and 3a should be accompanied by a Flood Risk Assessment (FRA), and that highly vulnerable uses of land including caravans and mobile homes intended for permanent residential use should not be permitted in Flood Zone 3a. The Inspector then goes on at IR21 to identify important differences between the 2011 scheme for the appeal site and the scheme currently before the Secretary of State, including the fact that the 2011 scheme was smaller and restricted to Flood Zone 2 whereas the current scheme encroaches onto part of the site zoned as Flood Zone 3a. The Secretary of State is therefore concerned that, notwithstanding these differences, the Inspector concludes at IR22-23 that there is a good probability that the development would be safe for its lifetime and that the up-dated site-specific FRA undertaken by the appellant's consultants satisfies the requirements of LP Policy U2A.
13. The Secretary of State has seen no properly justified basis for departing from the Framework, which requires all development proposals in flood risk areas to first pass a Sequential Test and then, if appropriate, an Exception Test, as set out in the Technical Guidance. The Technical Guidance expects any highly vulnerable proposals in flood risk areas that pass the Sequential Test to also pass an Exception Test, but makes clear that such proposals are not appropriate in Flood

Zone 3a. However, the Inspector makes no reference in the IR to any Sequential Test having been undertaken as the first stage of this approach. Nor did he question the fact that the appellants had not sought updated advice from the Environment Agency (EA). Hence, in the absence of any proper justification for the Inspector's conclusion, corroborated by the EA, the Secretary of State does not consider that it has been satisfactorily demonstrated that the proposal is appropriate or necessary and safe in its location, in accordance with the Framework and concludes that it would not be appropriate for him to grant planning consent for this proposal, and that it would not be in the best interests of the site occupants for them to remain there indefinitely.

Need for and provision of gypsy sites in the area and availability of alternative sites

14. Like the Inspector (IR25), the Secretary of State accepts that there is an unmet need for additional gypsy and traveller provision, both regionally and nationally and, for the reasons given at IR25-29, he also agrees with the Inspector's conclusion that substantial weight should be attached to the combination of general unmet need within the district and the significant wider need. He also agrees that, for the reasons given at IR30-31, there are no lawful alternative sites currently available in the district while the occupiers of the appeal site have a longstanding need for a lawful site.

The personal needs and circumstances of the site occupants

15. The Secretary of State has carefully considered the personal needs and circumstances of the site occupants as set out by the Inspector at IR32-37, and has given significant weight to the best interests of the children as a primary consideration. He agrees with the Inspector's conclusion at IR36 that dismissing the planning appeal and upholding the enforcement notice would mean that the two families would have to leave the appeal site but, while he gives substantial weight to the impact of that in their family life, he also gives counter-balancing weight to the flood risk associated with them remaining on the site as considered in paragraph 13 above.

Balancing exercise

16. For the reasons given at IR38, the Secretary of State agrees with the Inspector that the harm to the GB by reason of the inappropriate nature of the development is a factor to which substantial weight must be given, as must the harm in terms of openness and conflict with the purposes of the GB. Like the Inspector, the Secretary of State also gives some weight to the harm to the character of the locality and to proposals for the enhancement of the Lee Valley Park. Additionally, the Secretary of State gives substantial weight to the potential harm to the site occupiers from the flood risk. Overall, therefore, the Secretary of State agrees with the Inspector that the factors in favour of the appeal scheme summarised at IR39, whether considered individually or cumulatively, are not sufficient to clearly outweigh the overall harm identified and the conflict with local and national policies so that the very special circumstances necessary to justify the granting of permanent planning permission do not exist.
17. The Secretary of State has gone on to consider the Inspector's arguments in favour of granting temporary planning permission for a period of 4½ years, made personal to the present occupiers, as set out at IR40-42. However, he considers

that 4½ years represents a considerable length of time, and he disagrees with the Inspector's conclusion that the overall harm caused by granting a temporary consent for such a prolonged period of time would be clearly outweighed by the other considerations advanced in favour of the development. In particular, he considers that the harm to the GB would be considerable and he adds to that the exposure of the site occupants, including the 10 children, to flooding risk. The Secretary of State has taken account of the consequences of the decision to refuse planning permission and uphold the enforcement notice, as set out at IR36-37, but he does not consider that this tips the balance in favour of permission.

Conditions

18. The Secretary of State has considered the proposed conditions set out by the Inspector at Annex A to the IR. He is satisfied that they are reasonable and necessary and would meet the tests of Circular 11/95 and paragraph 206 of the Framework. However, the Secretary of State does not consider that they overcome his reasons for dismissing this planning appeal.

Appeal B ground (g)

19. The Secretary of State agrees with the Inspector at IR46 that a compliance period of 1 year would be more appropriate than the 6 months specified in the enforcement notice to allow time for the occupiers to look for alternative accommodation. The Secretary of State does not, however, agree with the Inspector's argument in the remainder of IR46 with regard to the potential exercise by the Council of its power under section 173A(1)(b) of the Town and Country Planning Act 1990 to extend the compliance period without prejudicing its right to take further action. Not only would this extend the period during which the occupants would be exposed to flooding risk, but the Secretary of State takes the view that the local planning authority's discretion would not be a reliable element of the decision, would potentially be contrary to the principle of certainty and effectiveness in European law, and would be a weak foundation for undertaking the balance required under Article 8 of the European Convention on Human Rights.

Overall Conclusions

20. The Secretary of State concludes in relation to Appeals A and B that insufficient very special circumstances have been demonstrated to outweigh the combination of the flooding risk and the harm to the GB so as to justify granting permanent planning permission or a temporary consent for the 4½ years which it is anticipated will be required for the provision of a permanent site. Nevertheless, he concludes that, given that they would be aware of the risk they would be taking in prolonging their stay on the site, it would be reasonable to allow the occupiers a longer period than 6 months to comply with the enforcement notice; and he considers that one year would be reasonable to allow time for to look for alternative accommodation.

Formal Decision

21. Accordingly, for the reasons given above, the Secretary of State disagrees with the Inspector's recommendation. He hereby dismisses Appeals A and B, and varies the "Time for Compliance" in the enforcement notice to read "Twelve months after this notice takes effect (ie 15 January 2015)."

Right to challenge the decision

22. A separate note is attached setting out the circumstances in which the validity of the Secretary of State's decision may be challenged.

23. A copy of this letter has been sent to Epping Forest District Council. A notification letter has been sent to all other parties who asked to be informed of the decision.

Yours faithfully

Jean Nowak

Authorised by Secretary of State to sign in that behalf

RIGHT TO CHALLENGE THE DECISION IN THE HIGH COURT

These notes are provided for guidance only and apply only to challenges under the legislation specified. If you require further advice on making any High Court challenge, or making an application for Judicial Review, you should consult a solicitor or other advisor or contact the Crown Office at the Royal Courts of Justice, Queens Bench Division, Strand, London, WC2 2LL (0207 947 6000).

The attached decision is final unless it is successfully challenged in the Courts. The Secretary of State cannot amend or interpret the decision. It may be redetermined by the Secretary of State only if the decision is quashed by the Courts. However, if it is redetermined, it does not necessarily follow that the original decision will be reversed.

SECTION 1: PLANNING APPEALS AND CALLED-IN PLANNING APPLICATIONS;

The decision may be challenged by making an application to the High Court under Section 288 of the Town and Country Planning Act 1990 (the TCP Act).

Challenges under Section 288 of the TCP Act

Decisions on called-in applications under section 77 of the TCP Act (planning), appeals under section 78 (planning) may be challenged under this section. Any person aggrieved by the decision may question the validity of the decision on the grounds that it is not within the powers of the Act or that any of the relevant requirements have not been complied with in relation to the decision. An application under this section must be made within six weeks from the date of the decision.

SECTION 2: ENFORCEMENT APPEALS

Challenges under Section 289 of the TCP Act

Decisions on recovered enforcement appeals under all grounds can be challenged under section 289 of the TCP Act. To challenge the enforcement decision, permission must first be obtained from the Court. If the Court does not consider that there is an arguable case, it may refuse permission. Application for permission to make a challenge must be received by the Administrative Court within 28 days of the decision, unless the Court extends this period.

SECTION 3: AWARDS OF COSTS

There is no statutory provision for challenging the decision on an application for an award of costs. The procedure is to make an application for Judicial Review.

SECTION 4: INSPECTION OF DOCUMENTS

Where an inquiry or hearing has been held any person who is entitled to be notified of the decision has a statutory right to view the documents, photographs and plans listed in the appendix to the report of the Inspector's report of the inquiry or hearing within 6 weeks of the date of the decision. If you are such a person and you wish to view the documents you should get in touch with the office at the address from which the decision was issued, as shown on the letterhead on the decision letter, quoting the reference number and stating the day and time you wish to visit. At least 3 days notice should be given, if possible.



The Planning Inspectorate

Report to the Secretary of State for Communities and Local Government

by Paul Dignan MSc PhD

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

Date: 30 October 2013

Town and Country Planning Act 1990

Appeal by Mr Miles O'Connor

Epping Forest District Council

Inquiry held on 23 April 2013, 16-19 July 2013 and 27 August 2013

Sunnyside, Carthage Estate, Nazeing, Essex.

File Refs: APP/J1535/A/12/2177311 and APP/J1535/C/12/2181659

**Appeal A: APP/J1535/A/12/2177311
Sunnyside, Carthagena Estate, Nazeing, Essex.**

- 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 Miles O'Connor against the decision of Epping Forest District Council.
 - The application Ref. PL/EPF/0529/12, dated 15 March 2012, was refused by notice dated 23 May 2012.
 - The development proposed is the use of land for the stationing of caravans for residential purposes for 2 no. gypsy pitches together with the formation of additional hard standing.
-

**Appeal B: APP/J1535/C/12/2181659
Sunnyside, Carthagena Estate, Nazeing, Essex.**

- 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 Miles O'Connor against an enforcement notice issued by Epping Forest District Council.
 - The Council's reference is ENF/0022/11 PL/10530.
 - The notice was issued on 1 August 2012.
 - The breach of planning control as alleged in the notice is, without planning permission, the use of the land for the stationing of caravans for residential purposes for two gypsy pitches together with the formation of hard standing, laying of paving slabs, and the erection of sheds.
 - The requirements of the notice are:
 - (i) Cease the use of the Land for permanent residential purposes.
 - (ii) Remove all caravans/mobile homes, sheds and associated equipment from the Land
 - (iii) Remove all hard surfaced area.
 - (iv) Remove all resulting debris and waste materials from the Land.
 - The period for compliance with the requirements is 6 months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a) and (g) of the Town and Country Planning Act 1990 as amended. The application for planning permission deemed to have been made under section 177(5) of the Act as amended also falls to be considered.
-

Recommendations

1. **Appeal A:** That the appeal be allowed in part and planning permission granted for a temporary period for the use of land for the stationing of caravans for residential purposes for 2 no. gypsy pitches together with the formation of additional hard standing at Sunnyside, Carthagena Estate, Nazeing, Essex, in accordance with the application Ref. PL/EPF/0529/12, dated 15 March 2012, subject to the conditions set out in Annex A attached to this Report.
2. **Appeal B:** That the appeal be allowed in part, that the enforcement notice be quashed and planning permission granted on the application deemed to have been made under section 177(5) of the Act as amended for the development already carried out, namely use of the land for the stationing of caravans for residential purposes for two gypsy pitches together with the formation of hard standing, laying of paving slabs, and the erection of sheds, as shown on the plan attached to the notice, for a temporary period, subject to the conditions set out in Annex A attached to this Report.

Application for costs

3. At the Inquiry an application for costs was made by the appellant against Epping Forest District Council. This application is the subject of a separate Report.

Background and preliminary matters

4. The appeal site is a former recreational chalet plot within the Carthagena Holiday Estate, located within the Metropolitan Green Belt and the Lee Valley Regional Park (LVRP). Many of the other plots in the Estate have been procured by the Lee Valley Regional Park Authority (LVRPA). Of the remaining chalet plots in the vicinity of the appeal site, 3 are in permanent residential use and 3 are in use as temporary gypsy and traveller sites. One of these, Auburnville, was granted a 5-year permission at appeal¹ in September 2011. The other 2 sites, Haslingfield and Devoncot, were subsequently granted temporary planning permissions expiring in early 2017.
5. The occupiers bought the plot in late 2010 and commenced clearing, fencing and the laying of hardstanding in January 2011. An enforcement notice was issued against the use in late January 2011 and appealed. This notice related to the land being developed at the time, which included some of the adjoining plot. The notice was subsequently withdrawn following the Auburnville appeal decision and another in the District², and the occupiers invited to apply for temporary planning permission. Similar invitations were made to the occupiers of Haslingfield and Devoncot, sites which were unauthorised at the time, leading to the temporary permissions noted above.
6. The planning application the subject of this appeal, which was for a permanent permission, went to Committee with a recommendation for a grant of temporary permission for a period of 2 years, on the basis that the recently published National Planning Policy Framework (NPPF) would bring forward the adoption of a new Local Plan, and hence gypsy and traveller site allocation would occur sooner than anticipated when the Haslingfield and Devoncot applications were determined. The application was refused on the basis of Green belt harm, location in a flood zone and harm to the character and use of the Lee Valley Regional Park, which it considered was not clearly outweighed by the other circumstances put forward, noting that there was no information put forward with regard to the applicant's personal circumstances. Enforcement action was subsequently authorised and the Enforcement Notice issued.
7. The appeals were to be dealt with by a Public Inquiry which opened and adjourned on 11 December 2012. Timetabling problems and the subsequent retirement of the appointed Inspector meant that that Inquiry could not be completed. This Inquiry opened on 23 April 2013. It was adjourned without hearing evidence to 16 July 2013. Sitting days were 23 April, 16-19 July and 27 August 2013. The costs application was made at the Inquiry, but the full claim and responses were exchanged in writing after the Inquiry closed, by agreement. I held an accompanied site visit on 23 April 2013.
8. The development plan includes the saved policies of the Epping Forest District Local Plan and Local Plan Alterations (LP), adopted in 2006. Relevant policies include Policies CP1, CP2 and CP3, which seek to ensure that development is

¹ Appeal Ref. APP/J1535/C/11/2148946

² Appeal Ref. APP/J1535/A/10/2132314

sustainable and protects the rural and built environment. Green Belt Policies GB1, GB2A, GB5 and GB7A identify the Green Belt as an area of restraint and set out the approach to various types of development. Policy 10A relates specifically to gypsy caravan sites in the Green Belt. In addition to requiring a demonstration of very special circumstances, it sets some additional locational criteria. Although framed in PPG2 terms, the Local Plan Green Belt approach is consistent with the NPPF so far as the appeal development is concerned. Policies RST9 and RST24 relate to the Carthage Estate and LVRP, supporting the RVRPA's proposals for the area and seeking to ensure that development in the Park has regard to its importance for leisure, recreation and nature conservation. Policies U2A and U2B relate to flood risk and take the approach now set out in the Technical Guidance to the NPPF, including a requirement for certain development proposals, which would include the appeal development, to be accompanied by a Flood Risk Assessment (FRA).

9. In a Ministerial Statement on 1 July 2013 it was announced that the Secretary of State wished to give particular scrutiny to traveller site appeals in the Green Belt, so that he can consider the extent to which *Planning Policy for Traveller Sites* (PPTS) is meeting this Government's clear policy intentions. To this end he revised the appeals recovery criteria issued on 30 June 2008 and stated that he will consider for recovery appeals involving traveller sites in the Green Belt. This appeal was recovered under the revised criteria on 1 October 2013.
10. The development the subject of both appeals is the same, and, aside from the ground (g) in Appeal B, I have not distinguished between them.

Appeal A and Appeal B ground (a) - Main Issues

11. The appeal site is located in the open countryside within the Metropolitan Green Belt. Policy E of PPTS states that traveller sites, whether temporary or permanent, are inappropriate development in the Green Belt. The NPPF provides that inappropriate development in the Green Belt should not be permitted, except in very special circumstances. In view of this, and the evidence provided, I consider that the main issues are:
 - the impact of the development on the openness and visual amenity of the Green Belt and the purposes of including land within it;
 - the impact on the character and appearance of the countryside;
 - the impact of the development on the Lee Valley Regional Park;
 - the flood risk implications of the development; and
 - whether the harm to the Green Belt 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 a grant of planning permission, either permanent or temporary.

Reasons

Green Belt harm

12. The appeal site was formerly a leisure plot, but, as I understand it, when the appeal development commenced all that remained in terms of built development was the chimney of the original chalet, a small amount of hard standing and an underground septic tank. Otherwise the plot was scrubby

semi-natural woodland-type vegetation. In all likelihood it would have been indistinguishable from the land on either side which is currently woodland/scrub. In essence, it had been subsumed into the landscape. Most of the plot is now in hard standing, and is surrounded by close-boarded fencing. Along with the stationing of two sheds and two mobile homes, plus the inevitable domestic paraphernalia associated with residential use, there has been a significant adverse impact on Green Belt openness.

13. In terms of visual amenity, the development provides a stark and discordant contrast with the land on either side. It is prominently sited between public roadways and thus harmful to the visual amenity of the Green Belt. There is scope for additional planting, alternative boundary treatment and a reduction in the extent of hardstanding, all of which could be made the subject of conditions and would go some way to softening the impact over time. It would not be possible, however, to completely mitigate the visual harm.
14. In terms of the Green Belt, the encroachment of built development into the countryside also amounts to harm since it conflicts with one of the purposes of including land in the Green Belt³, thus undermining local and national Green Belt protection policies.

Character and appearance of the countryside

15. The surrounding area is described by the Council as open countryside, interspersed with a small number of chalets and a relatively small number of gypsy caravan sites. This is a fair assessment in my view, although I would add that urban influences are frequently evident. As the appellant points out, caravan sites are part of the character of the area, both as individual residential plots and holiday developments. Nonetheless, the appeal site is in a location well used by the public where the other plotland development, which is all located to the south of the appeal site, has just petered out and a natural and undeveloped character is beginning to prevail. Further north the character starts to become more influenced by the presence of more urban forms of development, making the area in the vicinity of the appeal site all the more valuable in terms of public enjoyment and appreciation of the natural environment.
16. The appeal proposal as it stands is stridently contrary to the undeveloped character that would prevail in the immediate locality in its absence. No landscaping scheme has been specified, but there is scope for landscaping around the site perimeter, so that in time the site could be better integrated into its surroundings. However, the harm due to the intrusion of development into a short stretch of natural undeveloped countryside, which I consider diminishes the considerable public amenity that it would otherwise provide, would remain. This would be contrary to LP Policy CP2 which aims to maintain, conserve and enhance the quality of the rural environment, particularly in the Green Belt and the urban fringe.

Lee Valley Regional Park

17. The Lee Valley Regional Park (LVRP) comprises some 10,000 acres, extending along the River Lee from the Thames in East London to Hertfordshire. Its purpose is the provision of opportunities for recreation, sport, entertainment

³ National Planning Policy Framework paragraph 80

and the enjoyment of leisure, and the LVRP Authority has the statutory duty of developing, improving, preserving and managing the area for those purposes. Its Park Plan 2000 is the adopted plan for the purposes of development management. The main applicable policy of the Park Plan 2000 is Policy 2.2 which states that "At Carthagera, the Authority will continue to purchase land and buildings to assemble an integrated recreational open space." The Authority has commissioned a draft Environmental Strategy for Carthagera, which sets out a long term Masterplan for environmental enhancement of the area. This strategy integrates the existing private plots with permanent residential status, but not those with temporary permissions, which are shown as recreational open space.

18. The detailed approach of the Masterplan carries little weight at this stage, and it would probably require the purchase of the relevant plots by the Authority, which it may find difficult. Nonetheless, it is consistent with Policy 2.2 of the Park Plan 2000 and with the overall remit of the Authority. Whatever the outcome of the Masterplan consultation, it seems to me that the appeal proposal would inevitably prejudice, to some extent, any long term plans or proposals for the area that are based on the acquisition and consolidation of former plot land, central to Policy 2.2 of the Park Plan 2000. It would therefore conflict with LP Policy RST9 which provides that the Council will not grant planning permission for any development at Carthagera where this would prejudice the Authority's proposals for the area.

Flood risk

19. The majority of the appeal site is within Flood Zone 2, but part is within Flood Zone 3a. All development proposals in Flood Zones 2 or 3a should be accompanied by a Flood Risk Assessment (FRA). Highly vulnerable uses of land, including caravans and mobile homes intended for permanent residential use, should not be permitted in Flood Zone 3a⁴.
20. A FRA was submitted to the Council in respect of the development the subject of the 2011 Enforcement Notice. This was considered to be acceptable by the Environment Agency, who stated that they would not object to the development subject to certain criteria. Amongst these was a requirement that all development should be at least 8 metres from the top of bank of the River Lee Navigation and that the site boundary and area of development should be restricted to the area of land outside Flood Zone 3a.
21. There are important differences between the 2011 development and the current appeal development. The 2011 site included some LVRP land to the north of the current site and did not extend as far to the east as it now does. The entire 2011 land the subject of the FRA was within Flood Zone 2, and it appears that considerable levelling works were carried out on the site before the topographic survey used in the FRA was undertaken. The levelling works themselves also involved the net importation of material onto the site, inevitably resulting in some land-raising. The 2011 scheme for which the FRA was prepared also involved only 2 touring caravans, whereas the appeal proposals include 2 touring caravans, 2 mobile homes and 2 utility sheds, with one of the mobile homes currently encroaching on part of the site zoned as Flood Zone 3a.

⁴ Technical Guidance to the National Planning Policy Framework

22. Acknowledging that the development had not been implemented as envisaged in the 2011 FRA, the appellant's flood risk consultant submitted an update for the purposes of this appeal in November 2012, and provided further evidence orally at the Inquiry. The modelled flood data provided showed that if the flood defences were operating as designed, the site and escape routes would be safe in the event of a 1:100 year flood event. The levelling of the site has had the practical effect of placing the part of the development in Flood Zone 3a at no greater risk of flooding than that in Flood Zone 2. Further, there is no evidence that overall land raising exceeded 0.5m, which would have a very small effect in terms of increasing flood levels in the relevant flood cell, estimated as a maximum of 5mm. Overall, the evidence demonstrates that, subject to additional precautionary measures such as caravan tethering, floor level restrictions and implementation of a formal flood warning and evacuation plan, there is a good probability that the development would be safe for its lifetime.
23. It is not possible to be unequivocal about this in the absence of details of undefended flood levels. However, the Environment Agency's acceptance of the earlier scheme must have been made by reference to the undefended flood level data. Since the principal area of concern in this case, the part of the site in Flood Zone 3a, is topographically no lower than the Flood Zone 2 land, for whatever reason, I am prepared to conclude that the up-dated site-specific flood risk assessment satisfies the requirements of LP Policy U2A and this aspect of the Exception Test requirement set out in the NPPF. The Exception Test also requires the development to demonstrate that it provides wider sustainability benefits. I return to this point in the balancing exercise below.

Other matters raised

24. The sustainability of the location was not amongst the Council's reasons for refusal or for issuing the enforcement notice. It was, however, raised in Mr Hughes proof of evidence for the Council, where he put forward the view that the appeal site was a poor location for establishing a new Gypsy and Traveller site or any form of new housing. In evidence he resiled from his conclusion⁵ that the site was not situated in a location that could be described as sustainable and that it would thus be contrary to Local Plan policy and the NPPF in this respect. I see no reason to come to a different conclusion, and I note that it was not included in the summary of harm that he identified.

Other considerations

The need for and provision of gypsy sites in the area

25. It is not disputed that there is an unmet need for additional gypsy and traveller site provision, both regionally and nationally. What is in dispute is the extent of that need, particularly within the district. The most recent relevant quantitative assessment of need is the Essex Gypsy and Traveller Needs Assessment (GTAA). Published in November 2009, but using a base date of November 2008, and according to the Council using caravan count data from January 2008, estimated a need for Epping Forest for the period 2008-2013 of 32 pitches with a further requirement for 11 pitches between 2013-2021. Before the publication of the GTAA, the Single Issue Review (SIR) of the East of England Plan, published in July 2009, directed that a further 34 pitches be provided in the district in the period to the end of 2010.

⁵ Hughes Proof of Evidence paragraph 6.59

26. Since the beginning of 2008, 44⁶ additional pitches have been granted permanent planning permission in the district, and it is agreed that the SIR allocation of 34 pitches has been met. The Council considers that the GTAA requirements to 2013 have also been met, and in fact had been met by 2011. The appellant's view on this is that only 34 pitches have been granted permission in the relevant period. The disparity depends on when you count from, but on either view the GTAA identified need has now been met.
27. In a 2011 appeal in the district, which I will refer to as The Meadows appeal⁷, Mr Green, the appellant's planning witness, asserted that the GTAA figures were a serious underestimate, and provided a recalculation. The Inspector, in her report to the Secretary of State, acknowledged that there were probably some deficiencies with some of the GTAA data inputs, but considered that a number of the adjustments put forward were not justified. The Secretary of State agreed with her conclusion that it was evident that there was an existing unmet need within the district and a significant unmet need across the wider area.
28. In this appeal Mr Green has revised his figure in the light of the Inspector's findings in the Meadows appeal. This results in a lower, but still substantial estimate of existing need, both immediate and in terms of a five-year supply. However, the Inspector in The Meadows appeal did not disregard Mr Green's calculations, but made the point that the GTAA is only one piece of evidence which contributes to establishing a picture within the district, pointing to the more recent, and actual data, regarding the number of unauthorised sites and further information about the numbers of appeals and applications within the district. The Secretary of State took the same view, as do I, particularly as the GTAA is very dated at this stage, and post-hoc recalculations are as likely to compound any errors as correct them. I note in this respect that a new GTAA is currently under way, and it would be premature to come to any numerical conclusion on need at this point in time.
29. According to the appellant, there are at least 4 pitches in the district with temporary consent, and up to 10 that are unauthorised, including the appeal site. There is anecdotal evidence of doubling up on authorised pitches, and a lack of availability on existing sites. These are all of the same order as pertained when the Secretary of State agreed with the Inspector in The Meadows appeal that substantial weight should be attached to the combination of the general unmet need within the district and the significant wider need. I can see no reason to come to a different conclusion.

The availability of alternative sites

30. The Council acknowledged that there are no lawful alternative sites currently available in the district. Further, it accepts that it cannot demonstrate a five-year supply of land to meet the need for further pitches. At present there is no land allocated for pitches, and the extent of Green Belt in the area means that there is difficulty in identifying suitable land. This also affects the likelihood of sufficient suitable private sites coming forward through the planning application process.

⁶ Including 3 since the exchange of proofs, other figures adjusted accordingly.

⁷ Ref. App/J1535/A/10/2132314

31. The occupiers of the appeal site have a longstanding need for a lawful site, having lived predominantly in the area for a number of years. Prior to moving onto the appeal site the families lived on relatives' sites when they were away, and at other times doubled up on friend's or relatives' lawful sites. They have not stayed on public sites and would be reluctant to do so in the future. They have been looking to buy a suitable site for a number of years, and bought this site in the belief that it would be lawful to site caravans there. They wish to stay in the area and if they have to leave the appeal site they would probably have to return to a pattern of doubling up and staying on others sites when the owners are away.

The personal needs and circumstances of the site occupants

32. The site has been laid out as two pitches. Mr O'Connor, the appellant, and his family have one pitch and Mr Cash and his family have the other. They own the site jointly.
33. Mrs O'Connor has a debilitating health condition which requires frequent and regular treatment and monitoring, involving regular check-ups at a Broxbourne GP surgery and treatment at the District General Hospital in Harlow. The requirement for hospital treatment is unpredictable; she can be stable for 6-7 months and then require treatment 3 or 4 times the next month.
34. There are 6 children in the family. The oldest is 13 and the youngest less than 1 year old. The eldest stays at home to help her mother, receiving some home schooling, and 3 attend Nazeing Primary School nearby. Mr O'Connor usually travels for work and can be away for up to 4 weeks at a time. Before moving onto the site the family all lived in a large touring caravan, so when Mr O'Connor was travelling the children would miss a lot of school. With a settled base, he travels in a small caravan and the rest of the family stay behind, apart from the occasional trips to fairs. As a result the children's attendance at school is very good, as demonstrated by certificates awarded to 2 of the children for 100% attendance in recent school terms. The eldest child's schooling was very interrupted by the travelling due to the lack of a settled site.
35. Mr Cash, his wife and 4 children, ranging in age from 2 to 11, live on the other pitch. The 3 older children also attend Nazeing Primary School, have excellent attendance and are evidently doing very well at school. Mr Cash's work pattern is similar to that of Mr O'Connor, and having a settled site means that he can travel for work without disrupting the children's schooling. Mrs Cash is Mr O'Connor's sister. She has some health problems of her own, but provides support to Mrs O'Connor, amongst other things looking after the children when she is in hospital. Generally the two families provide mutual support. These living arrangements, whereby related families live together for mutual support, is characteristic of the gypsy way of life, and the proposal would therefore be consistent with the Government's aim of facilitating the traditional and nomadic way of life of travellers.
36. Dismissing the planning appeal and upholding the enforcement notice would mean that the two families would have to leave the appeal site. Both families wish to continue living in the area, to ensure, amongst other things, that Mrs O'Connor continues to have access to good health care and to ensure that the children continue to have a stable education at Nazeing Primary School. In the absence of available suitable alternative accommodation, they would probably have to return to their previous pattern of doubling up or staying temporarily

on pitches belonging to others. Doubling up would be likely to cause overcrowding on pitches, with attendant health and safety problems. The lack of a settled site would also create anxiety and uncertainty, which could adversely affect the health of both Mrs O'Connor and Mrs Cash, while the children's school attendance and attainment would be difficult to maintain. The mobile homes would have to be sold, so that the women and children might have to travel with the men when they are travelling for work, which would make it harder to access health care and education.

37. It is also possible that they would have to resort to roadside camping, which can have adverse environmental impacts and is known to create disharmony between the travelling and settled community. There are also general health problems associated with roadside living, which are well documented, and the education prospects of the children would be seriously compromised, with very negative implications for their life prospects.

Green Belt balancing

38. The harm to the Green Belt by reason of the inappropriate nature of the development is a factor to which substantial weight must be given. To this must be added the further Green Belt harm, in terms of loss of openness and conflict with the purposes of the Green Belt, to which I also attribute substantial weight. The harm to the character of the locality and its impact on the LVRPAs proposals for the area, which seek to enhance the function and enjoyment of the Park for its users, must also be accorded some weight. In terms of flood risk, the need for, and lack of, gypsy and traveller sites satisfies the first part of the Exception Test, and hence, following my earlier conclusions, I consider that the development is not unacceptable from a flood risk perspective, subject to appropriate controls. The harm to the Green Belt and the additional harm which I have identified could not be satisfactorily overcome by planning conditions.
39. There is an unmet need for additional gypsy and traveller sites in the district, as well as regionally and nationally, and there is no other site presently available and suitable for occupation by the two families living on the site locally or in the wider area. The appeal site would provide a settled base from which to access health care facilities, and enable the children to continue to have a settled education, and I acknowledge that the best interests of the children in particular would clearly be served by a grant of permanent planning permission. At present the families have nowhere else to go, and any arrangement that they found that would enable them to stay in the area would almost certainly be unauthorised and unsustainable. These are factors that provide substantial weight in support of the appellant's case. However, the harm to the Green Belt in particular, whose protection is accorded great importance in local and national policy, weighs very heavily against the proposal. In this case I consider that the considerations in favour of the appeal, considered either individually or cumulatively, are not sufficient to clearly outweigh the overall harm identified and the conflict with local and national policies. The very special circumstances necessary to justify the grant of a full planning permission do not therefore exist.
40. However, the Council has expressed confidence that alternative gypsy and traveller pitches to meet the objectively assessed local needs are likely to come forward in the next 4 to 4 ½ years. The Council has decided to include gypsy

and traveller site provision as part of their overall housing provision for the District and it is intended to make provision to meet need in the context of the preparation of the new Local Plan. This will include a site allocation Development Plan Document for all housing sites, including gypsy and traveller sites, now scheduled for adoption in June 2016, with the recently commissioned GTAA available as the evidence base.

41. There is recognised need, partly addressed at present by a backlog of temporary permissions which are, in effect, parked, awaiting the outcome of the Local Plan preparation process. However, the Council is specifically addressing this issue and seeking a way forward through the development plan process. The approach of site allocation based on up-to-date evidence is one that is promoted by the NPPF, and in these circumstances I consider that there is a good prospect of new sites coming forward in the future to meet the needs of the occupiers. Further, PPTS Policy B.9.a sets out a requirement for local authorities, in producing their Local Plans, to identify and update annually a supply of specific deliverable sites sufficient to provide 5 years worth of sites against their locally set targets.
42. In view of this, and considering the lesser harm to the Green Belt and the LVRP that would result from a time limited permission, I consider that the overall harm caused by a 4 ½ year permission would be clearly outweighed by the other considerations advanced in favour of the development, including the personal circumstances. Having heard the personal evidence given at the Inquiry, this is also the conclusion reached by the Council. A temporary planning permission of this duration would not involve permanent harm to the Green Belt and would be reasonable and proportionate in the circumstances, having regard to the appellant's rights under Article 8 of the European Convention of Human Rights and to the Public Sector Equality Duty. It would enable the children on the site to continue their current schooling for the time being, which would be in their best interests. I conclude therefore that very special circumstances exist to justify a grant of temporary planning permission for a period of 4 ½ years, made personal to the present occupiers.

Conditions

43. Should the Secretary of State be minded to grant planning permission in the terms set out above, it will be necessary to impose a condition limiting occupation of the site to the proposed occupiers for the relevant period. In the interests of the character and amenity of the area, it will also be necessary to ensure removal of the caravans and other items and secure the restoration of the site at the end of the period. Further, and notwithstanding the layout plans already submitted, a condition requiring the submission of a site development scheme, covering the internal layout of the site, including the position of the caravans, the extent of hardstanding, parking and amenity areas, external lighting, foul water drainage, landscaping and boundary treatment, along and a scheme detailing how the flood risk will be minimised, should be imposed in the interests of the character and appearance of the site and surrounding area and to safeguard residential safety and visual amenity.
44. For the same reasons conditions should be imposed to limit the number of caravans using the site, preclude commercial activity and the parking of larger commercial vehicles, and remove certain permitted development rights. In view of the location of the site in an area at risk of flooding, the internal floor

levels of the static caravans should be set at a minimum of 0.6 m above ground level.

45. I set out conditions consistent with my recommendation in Annex A attached to this Report. If the Secretary of State considers that permanent planning permission should be granted, conditions 1 and 2 should be varied to reflect that.

Appeal B ground (g)

46. The enforcement notice specifies a compliance period of 6 months. The appellant suggests that a period of 2 years would be more appropriate. The Council now considers that a temporary planning permission, for 4 ½ years, should be granted, but that if it is not then a compliance period of that length would not be appropriate since that would be tantamount to an unrestricted temporary planning permission. I agree. If the Secretary of State decides not to grant any planning permission, a compliance period of 1 year would be more appropriate, to allow time for the occupiers to look for alternative accommodation. If the occupiers have been unable to find a suitable alternative site in that time, the Council has the power under section 173A(1)(b) of the 1990 Act to extend the compliance period without prejudicing its right to take further action. This would enable the Council to fully consider the Human Rights Act and Public Sector Equality Duty implications at that time.

Overall Conclusions and Recommendation

47. Having considered all other matters raised, I consider that, insofar as they relate to the grant of permanent planning permission the appeals should be dismissed, but that planning permission should be granted for a temporary period of 4 ½ years, and the Enforcement Notice quashed. This is also the position of the Council, having heard the evidence presented at the Inquiry.

Paul Dignan

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Michael Rudd	of Counsel, instructed by Green Planning Solutions
He called	
Emma Jeffery	Ambiental Technical Solutions Ltd.
Miles O'Connor	Appellant
William Cash	Occupier and co-owner
Matthew Green	Green Planning Solutions

FOR THE LOCAL PLANNING AUTHORITY:

Mark Beard	of Counsel, instructed by the Solicitor to Epping Forest District Council
He called	
John de Wilton Preston	Epping Forest District Council
Philip Hughes	PHD Chartered Town Planners

INTERESTED PERSONS:

Stephen Wilkinson	Lee Valley Regional Park Authority
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DOCUMENTS SUBMITTED AT THE INQUIRY

- 1 Document prepared by Ambiental regarding possible land raising and loss of flood storage, submitted by the appellant.
- 2 Email exchange between The Council and the Environment Agency in respect of the FRA submitted with the application, and photographs taken before and during the site works, submitted by the Council.
- 3 Appeal Decision Refs. APP/C3620/A/12/2169062 and related appeals (River Lane).
- 4 Appeal Decision Ref. APP/Q3630/A/12/2169543 (Walnut Tree Farm).
- 5 Signed witness statement: Miles O'Connor.
- 6 Signed witness statement: William Cash.
- 7 Report to Council Cabinet regarding the adoption of the revised Local Development Scheme, setting out the timetable for the adoption of the Epping Forest Local Plan.
- 8 Report to Council Cabinet regarding the compliance of Local Plan policies with the NPPF.
- 9 GTAA Project Initiation Document, version 2, dated 24 June 2013.
- 10 GTAA Study Brief (version dated 25 February 2013).
- 11 Bundle of school attendance reports and achievement certificates.
- 12 Signed Statement of Common Ground.
- 13 List of conditions.
- 14 Council's closing submissions.
- 15 Appellants closing submissions.
- 16 Bundle of documents referred to in appellant's closing submissions.

SUBMISSIONS AFTER THE INQUIRY

- 1 Appellant's full costs application.
- 2 Council's response to the appellant's costs application.
- 3 Appellant's comments on the Council's response to the costs application.

Annex A. Recommended Conditions

- 1) The use hereby permitted shall be carried on only by Mr and Mrs Miles and Margaret O'Connor and their children and Mr and Mrs William and Ann Cash and their children, and shall be for a limited period being the period of 4 years and 6 months from the date of this permission, or the period during which the premises are occupied by them, whichever is the shorter.
- 2) When the land ceases to be occupied by Mr and Mrs Miles and Margaret O'Connor and their children and Mr and Mrs William and Ann Cash and their children, or at the end of the specified 4 years and 6 months, whichever shall first occur, the use hereby permitted shall cease, all materials and equipment brought on to the premises in connection with the use shall be removed and the land restored to its former condition.
- 3) No more than 4 caravans, as defined in the Caravan Sites and Control of Development Act 1960 and the Caravan Sites Act 1968 (of which no more than 2 shall be a static caravan) shall be stationed on the site at any time.
- 4) No more than one commercial vehicle per pitch shall be kept on the land for use by the occupiers of the caravans hereby permitted, and it shall not exceed 3.5 tonnes in weight.
- 5) No commercial activities shall take place on the land, including the storage of materials.
- 6) The use hereby permitted shall cease and all caravans, structures, equipment and materials brought onto the land for the purposes of such use shall be removed within 28 days of the date of failure to meet any one the requirements set out in (i) to (iv) below:
 - i) within 3 months of the date of this decision a scheme, hereafter referred to as the site development scheme, including details of: proposed and existing external lighting on the boundary of and within the site; the internal layout of the site, including the siting of caravans; the means of foul and surface water drainage of the site; areas of hardstanding; fencing and other means of enclosure, along with details of existing fencing, means of enclosure and hardstanding to be removed; tree, hedge and shrub planting, including details of species, plant sizes and proposed numbers and densities; and the restoration of the site shall have been submitted for the written approval of the local planning authority and the said scheme shall include a timetable for its implementation.
 - ii) within 9 months of the date of this decision the site development scheme shall have been approved by the local planning authority or, if the local planning authority refuse to approve the scheme, or fail to give a decision within the prescribed period, an appeal shall have

- been made to, and accepted as validly made by, the Secretary of State.
- iii) if an appeal is made in pursuance of (ii) above, that appeal shall have been finally determined and the submitted site development scheme shall have been approved by the Secretary of State.
 - iv) the approved scheme shall have been carried out and completed in accordance with the approved timetable, and works comprised in the scheme shall be thereafter retained for the duration of the development.
- 7) The use hereby permitted shall cease and all caravans, structures, equipment and materials brought onto the land for the purposes of such use shall be removed within 28 days of the date of failure to meet any one the requirements set out in (a) to (d) below:
- a) within 3 months of the date of this decision a scheme, hereafter referred to as the flood risk management scheme, setting out details of how the flood risk will be managed, to include details of structure tethering, subscription to a flood warning service and a flood evacuation plan, shall have been submitted for the written approval of the local planning authority and the said scheme shall include a timetable for its implementation.
 - b) within 9 months of the date of this decision the flood risk management scheme shall have been approved by the local planning authority or, if the local planning authority refuse to approve the scheme, or fail to give a decision within the prescribed period, an appeal shall have been made to, and accepted as validly made by, the Secretary of State.
 - c) if an appeal is made in pursuance of (b) above, that appeal shall have been finally determined and the submitted flood risk management scheme shall have been approved by the Secretary of State.
 - d) the approved scheme shall have been carried out and completed in accordance with the approved timetable.
- 8) The internal floor levels of the static mobile homes on the site shall be at least 0.6m above ground level.
- 9) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any order revoking and re-enacting that Order with or without modification), no fences, gates or walls or other means of enclosure shall be erected, and no areas of hardstanding installed, other than those approved under condition 6 above.



Appeal Decision

Site visit made on 29 November 2013

by **Kenneth Stone BSc(Hons) DipTP MRTPI**

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

Decision date: 22 January 2014

Appeal Ref: APP/J1535/A/13/2204307

Land to the rear of 9 & 10 Vicarage Lane East, North Weald, Essex CM16 6ET

- 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 Peter Hughes & Mr Robert Shaw against the decision of Epping Forest District Council.
 - The application Ref EPF/0741/13, dated 11 April 2013, was refused by notice dated 19 June 2013.
 - The development proposed is the erection of a detached house with garage.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues in this appeal are the effect of the proposed development on firstly the character and appearance of the area and secondly the living conditions of the occupiers of the adjoining property, 2 Bluemans, with particular reference to light and outlook.

Reasons

Character and appearance

3. The plot for the proposed house would have a frontage onto Bluemans but would be created from parts of the rear gardens of two bungalows that front onto Vicarage Lane East. The properties in Bluemans are for the most part two storey houses arranged in semi detached pairs with a regular spacing and front gardens creating a rhythm to the street scene and a relatively open and spacious character. On the east side of the road directly to the north of the appeal site the properties are set back behind a wide grassed verge incorporating trees which further adds to the spacious character of the area.
4. The return frontage of the back garden of 10 Vicarage Lane East is the first element in the street scene in Bluemans and adds to its open and spacious character. The proposed development would thereby hold a particularly prominent and sensitive position. In effect, it would be the first property to be seen after turning into Bluemans from its junction with Vicarage Lane East. The foreshortening of the rear gardens of the bungalows and the projection in front of the main building façade of the adjoining properties would result in a

building that would appear out of keeping and intrusive in relation to the adjoining properties. When seen from the north, looking towards the junction with Vicarage Lane East, the forward projection of the proposed development would be mitigated by the existing street trees. However, this mitigation would be predominantly when trees are in leaf.

5. The introduction of a pyramidal roof form and prominent gable fronted projecting feature would be at odds with the simple gabled ended ridged roofs and shallow bay features on the majority of other properties in the street and would draw attention to the prominence of the proposed house. Where the extension to No 2 projects forward of the main façade, this is consistent with the depth of the bays and has been moderated by the hipped roof. The intrusive nature of the proposed development would be emphasised by its proximity to No 2. The resulting relationship would be cramped in comparison to the overall rhythm in the street.
6. The appellant has drawn my attention to an infill house, 15 Bluemans, as an example of a similar form of development within the street. However, there are significant differences in their position in the street scene and their relationships with the layout and design of adjacent properties.
7. For the reasons given above I conclude that the proposed development would result in material harm to the character and appearance of the area. Consequently it would conflict with Policy DBE1 of the Epping Forest District Local Plan (adopted January 1998) and Policy CP7 of the Epping Forest District Local Plan Alterations (adopted July 2006). Together these seek to achieve development that makes the fullest use of urban land, whilst being compatible with an area's character, respecting its siting and being appropriate in the street scene. These policies are consistent with the National Planning Policy Framework and in particular the core planning principles at paragraph 17 and paragraphs 56 to 68 which require developments to be of good design, reinforcing local distinctiveness and responding to local character.

Living conditions

8. The adjoining neighbour, 2 Bluemans, has a number of windows in the flank elevation of the property. Those at first floor are obscure glazed while on the ground floor there are windows or openings serving a garage and a study. The most significant window in the context of the living conditions of the occupiers of No 2 is that serving the study. This, however, is located in an extension which has been erected close to the side boundary. The appeal site sits at a slightly higher ground level, there is a substantial fence and there is shrub and tree planting running along this boundary. Whilst the study window is located in a south facing elevation the benefits attributable to this window in terms of outlook and light are already significantly compromised.
9. The proposed development would result in a built form that would rise significantly above the height of the fencing and would be visible from within the study. However, given the existing position the further reduction in outlook would, in my view, not be significant. The loss of light is of greater concern given the relationship of the proposed property to the window and from what I could see from the plans, the distances between the pairs of semi-detached properties in the street is significantly greater than would occur here. However, whilst I accept that there would be some loss of light, on balance

given the facts of the case, this would not be sufficient to warrant the dismissal of the appeal.

10. For the reasons given above I conclude that the proposed development would not result in material harm to the living conditions of the occupiers of the adjoining property, 2 Bluemans, with particular reference to light and outlook. Consequently it would not conflict with policy DBE9 of the Epping Forest District Local Plan (adopted January 1998) which seek to ensure development does not result in excessive loss of amenity for neighbouring properties. This policy is consistent with the National Planning Policy Framework and in particular the core planning principles at paragraph 17 which amongst other things seeks to secure a good standard of amenity for all existing and future occupiers of land and buildings.

Conclusions

11. Whilst the proposed new house would add to housing choice and make effective and efficient use of land by optimising housing densities this does not outweigh the harm that I have identified. For the reasons given above therefore I conclude that the appeal should be dismissed.

Kenneth Stone

INSPECTOR



Appeal Decision

Site visit made on 10 February 2014

by **C A Newmarch BA(Hons) MRICS MRTPI**

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

Decision date: 14 February 2014

Appeal Ref: APP/J1535/A/13/2209296

7 Patmore Road, Waltham Abbey, Essex EN9 3BN

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mrs Amanda Wright against the decision of Epping Forest District Council.
 - The application Ref PL/EPF/1425/13, dated 10 July 2013, was refused by notice dated 25 September 2013.
 - The development proposed is the extension of the existing dwelling to create an assisted living facility.
-

Decision

1. The appeal is dismissed.

Procedural matter

2. The proposed facility would incorporate 4 en-suite bedrooms for assisted living, together with an en-suite carer's bedroom, and other shared facilities. There is some dispute concerning the existing use of the building, and whether the proposal would amount to an institutional use or a dwelling house. The Council has explained, and I have no reason to disagree, that, as the proposed facilities would not exceed provision for more than 6 people living together as a single household and receiving care, the proposed assisted living facility would not involve a change of use, and would remain a dwelling house. I have, therefore, considered the appeal on the basis of the description of development given on the planning application form.

Main Issues

3. The main issues are the effect on the:
 - character and appearance of the street scene; and
 - pedestrian and vehicular highway safety.

Reasons

Character and appearance

4. The existing dwelling is a detached bungalow. It is the only bungalow in Patmore Road, which is characterised by semi-detached and terraced 2 storey houses. There is no prevailing architectural style within Patmore Road.

5. The height of the proposed first floor extension would not be materially out of keeping with the houses in Patmore Road and along Honey Lane, to the north of the site. The host property has a width of around 8.5m, which is notably wider than the frontage widths of some 4.5m – 5.5m of the surrounding houses, but none of the houses in Patmore Road is detached. The mass of the front elevations of the pairs of semi-detached houses at Nos 5-6 and 8-9 Patmore Road is not, therefore, markedly different from the proposed appearance of the front of the appeal premises.
6. Nonetheless, at the time of my visit, I saw that the depth of the proposed two storey element would be apparent from the public domain since the flank wall and roof over the rear projection would be visible across the rear amenity areas of No 78A, 78B, and 78 Honey Lane. While the mass and bulk of the extension would exceed the glimpses of the side elevations of the houses in Patmore Road, they would not be materially different from the flank elevation of No 76 Honey Lane, which is a clearly visible feature within the street scene.
7. On balance, therefore, while the proposal would not be typical of the street scene, it would not have a significantly harmful effect on its character or appearance. It would not, therefore, conflict with policies CP2 or DBE10 of the Epping Forest District Local Plan Alterations (LP), 2006, which, among other things, require residential extensions to complement the street scene, and protect the quality of the built environment.

Highway safety

8. There is no provision for off-street parking for the premises in Patmore Road. There are a garage and a car port at the rear of the site. Vehicular access to these is along an unmade track, which runs from Honey Lane to Ruskin Avenue, between the rear boundaries of the homes in Patmore Road and Tennyson Avenue. Pedestrian access is available through the rear garden of the appeal premises. Although it is not included in the description of development, the submitted drawings include the conversion of the garage into a carer's office. The scheme would, therefore, provide a single off-street parking space.
9. No detailed justification has been provided to support the conversion of the garage, but the appellant contends that the future residents would be unlikely to own cars. However, while the use of the proposed office could be linked to the occupancy of the dwelling by a condition, there would be no control over future residents' ownership or use of vehicles. Moreover, as the building would remain a dwellinghouse, there would be no control over its future occupation.
10. The LP policy ST6 expects all development proposals to provide on-site parking in accordance with the Essex County Council Vehicle Parking Standards (VPS), 2001. The Council contends that the relevant standard would be 2 parking spaces for residents and 1 for visitors. The LP, however, indicates that the VPS provides maximum rather than minimum requirements. Nonetheless, given that the proposal would result in the loss of the garage space, and that parking stress already occurs in Patmore Road and the immediate area, I am not persuaded that a reduced parking standard would be appropriate in this instance. The proposal would materially increase parking stress to the material detriment of pedestrian and vehicular safety. As such, it would conflict with LP policies ST4 and ST6, which seek to ensure that any new development does not

lead to an excessive degree of traffic congestion or detriment to highway safety and complies with the adopted parking standards.

Other matters

11. I have considered the appellant's submissions concerning the need for suitable accommodation to facilitate independent living for disabled people, including elderly disabled people. While no substantive evidence has been submitted relating to such a need, the matter has not been disputed by the Council. The appellant refers to Articles 19 and 23 of the United Nations Convention on the Rights of Persons with Disabilities, and other strategies which aim to transform adult social care. However, there is no objection to the principle of providing an assisted living facility, but to its impact on highway safety.
12. The appellant refers to the Council's handling of the application, but that is not a matter for me in determining the appeal. I note that the application was recommended for approval by Council officers, but the authority is entitled to reach a different finding.

Conclusion

13. I have had regard to all other matters raised, but they do not outweigh the conflict with the development plan, or the harm identified.

CA Newmarch

INSPECTOR

Appeal Decision

Site visit made on 10 December 2013

by Graham Dudley BA (Hons) Arch Dip Cons AA RIBA FRICS

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

Decision date: 13 January 2014

Appeal Ref: APP/J1535/A/13/2196018

Coppice Farm, Coppice Row, Theydon Bois, Epping CM16 7DS

- 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 Sear against the decision of Epping Forest District Council.
 - The application Ref EPF/0457/12, dated 1 March 2012, was refused by notice dated 30 January 2013.
 - The development proposed is demolition of the existing outbuildings and erection of a single dwelling, including change of use of part of the site to residential.
-

Decision

1. The appeal is dismissed.

Main Issues

2. As it is common ground that the proposal would be inappropriate development in the Green Belt, the main issues are:
 - The effect of development on openness and the purposes of the Green Belt
 - The effect of the development on the character and appearance of the surrounding area.
 - 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 the development in the Green Belt.

Reasons

Purpose of the Green Belt and Openness

3. The National Planning Policy Framework (The Framework) indicates that the Government attaches great importance to Green Belts. The fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open; the essential characteristics of Green Belts are their openness and their permanence. A purpose of the Green Belt is to assist in safeguarding the countryside from encroachment.
4. The development plan includes the Epping Forest District Council Local Plan Alterations [LA]. LA Policy GB2A relates to development in the Green Belt. It resists new development in the Green Belt unless it is appropriate, identifying various development that would be appropriate. A new dwelling is not listed. However, also relevant is the National Planning Policy Framework (The

Framework), which notes that development in the Green Belt may be acceptable if there are very special circumstances to outweigh harm to the Green Belt by reason of inappropriateness, and any other harm.

5. In addition, The Framework will permit some development in the countryside in special circumstances, such as that of exceptional quality or innovative nature of the design. Such design should be truly outstanding or innovative, helping to raise standards of design more generally in rural areas, reflect the highest standards in architecture, significantly enhance its immediate setting and be sensitive to the defining characteristics of the local area. While this is a material consideration, this relaxation relates to development in the countryside. At this appeal site there are not only the normal countryside considerations to be taken into account, but also that the land is designated Green Belt.
6. There are a considerable number of agricultural/forestry type buildings on the appeal site and adjacent land in the appellant's ownership. While many of them are in very poor condition, some in a severe state of disrepair and others partially collapsed, they together form considerable bulk which has an impact on openness. While there are floor area calculations, there are no calculations provided in relation to the bulk of the buildings on site that would be removed, compared with that of the proposed building. My own assessment is that the proposed building would be likely to have considerably less bulk than the agricultural buildings. Agricultural buildings are appropriate in the Green Belt so their impact on openness is normally accepted as part of the use of the land in the Green Belt. Nevertheless, I accept there is some benefit to openness and I attach some weight in favour of the proposal in terms of openness.
7. While I note that the building itself would be well disguised in its location, being mainly underground, the use of the building would still be evident, with residential based activity and comings and goings. Even with an underground building, the character of the use of the land is substantially changed from that of an agricultural basis to residential. The proposal would conflict with the aims of designating Green Belt land to assist in safeguarding the countryside, effectively extending the village into the Green Belt and countryside. While I note the benefit in terms of bulk of building in relation to openness, overall on this issue I attach substantial weight against the proposal because of the harm caused to the purpose of the Green Belt and conclude that it would not accord with the aims and objectives of LA Policy GB2A.

Character and Appearance

8. There is some use of the term replacement dwelling. However, while some buildings would be removed, they are not dwellings, so what is proposed is not a replacement dwelling, and nor is it proposed to re-use any of the buildings currently on site in the proposal. Reference has been made to Birch Hall, but other evidence indicates that was a replacement dwelling, but in any case each proposal needs to be looked at in relation to its surroundings.
9. The development plan includes the Epping Forest District Adopted Local Plan [LP]. LP Policy LL2 and LL3 relate to landscape. LP Policy LL2 indicates that the council will not grant development in the countryside unless it is satisfied that the proposal will respect the character of the landscape and/or enhance the appearance of the landscape. LP Policy LL3 requires proposals for development

on the edges of settlements to show a sensitive appreciation of their effect on the landscape.

10. The building would be divided into a number of roughly oval shaped structures with various spaces within, all linked by a central area and dining space. Much of the space would be underground, with individual roofs to each pod that would appear as separate, but closely linked, grass domes. The proposal would not be a dominant feature in the landscape and would result in a carbon neutral building and would be highly sustainable. I acknowledge that great care has been taken over the design, which is of a good quality.
11. I have taken account of the existing buildings that would be removed in terms of the impact on openness of the Green Belt above. In terms of visual impact the existing buildings are not inappropriate in the countryside or Green Belt and when seen from various vantage points are not visually intrusive or incongruous in the Green Belt or countryside. In my view, in terms of the landscape and character and appearance of the area their removal would carry little weight. The proposed house would be moulded into the land, which undulates considerably where the building would be located, with only some small sections of wall visible below the roofs. In my view, when seen from the main public vantage point of the road, looking across the field, it would have little visual impact. However, as the existing buildings are appropriate in their context and not visually intrusive, I attach little 'positive' weight to the fact that the proposed building would have little visual impact.
12. I acknowledge that the proposal has shown a sensitive appreciation of its effect on the landscape in visual terms, in accordance with the aims and objectives of LP Policy LL3. However, the main impact of the proposal will come from the change of use of the land from an agricultural basis to a residential basis. The fact that little of the use or buildings would be visible would not overcome the harm resulting to the character of the land from the use change. Effectively the habitation area of the village would increase considerably into the countryside and Green Belt. The proposal would not enhance the landscape, but would harm its character in conflict with LP Policy LL2. I conclude that the proposal would cause substantial harm to the character of the area.

Very Special Circumstances

13. The Framework indicates that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. Substantial weight is given to any harm to the Green Belt. The Framework indicates that very special circumstances will not exist unless the potential harm to the Green Belt, by reason of inappropriateness and any other harm, is clearly outweighed by other considerations.
14. The appellant argues that the site is no longer viable or suitable for intensive agricultural use, particularly for its last gainful agricultural use as a pig farm, and that there would be potential benefits to neighbours in its removal in terms of matters including noise and disturbance. I do not accept that the current use and agricultural use of the land would be inappropriate here. It is not uncommon for agricultural land to abut housing at the edge of towns and villages. The appellant also notes that intensive uses may not be viable, but I consider that it is likely that some suitable use, such as grazing, could occur on the land. Even if pig farming were to resume, it would be a reasonable use for agricultural land. I attach little weight to this matter.

15. As discussed above, I attach some weight to the improvement in openness.
16. The proposal is to produce a 'low or no carbon' house that would achieve Code for Sustainable Homes Level 6. The proposal would not only accord with the aims and objectives of LP Policies CP1, CP4 and CP5, but would exceed the requirements. This is to be applauded but, while unusual, is not exceptional or innovative. So while I attach some weight to the benefits provided by the sustainability of the proposal, I do not find it exceptional or innovative design in terms of sustainability or in terms of general design, as noted above.
17. In general design terms, having a house partially underground does not, to my mind, make it of exceptional quality. Underground buildings are not exceptional in themselves and hiding much of the building underground is not itself an indicator of exceptional design. While the roofs would have a pleasant appearance, the arrangement is not exceptional.
18. I acknowledge that the appellant has produced a good quality design, utilising technology to minimise carbon impact. However, even if considerable weight were to be attached to design and innovation, this has to be balanced against the harm. The Framework notes that where such development is proposed it should significantly enhance its immediate setting and be sensitive to the defining characteristics of the local area. As identified above, I do not consider that the proposal would enhance its environment, but would cause harm to the character of the area.
19. The appeal site is in a good, sustainable location, being close to the village and a variety of facilities. While this is to be welcomed, it is not something I would attach 'positive' weight to in terms of very special circumstances associated with the Green Belt.
20. I acknowledge that The Framework encourages decision taking in a positive way and that there would be some economic benefit from the proposal to the area. However, The Framework also places considerable weight on protecting the Green Belt and agricultural use at the appeal site could have some economic benefits.
21. I have also taken into consideration that some minor unauthorised storage would be removed, but attach little weight to this, as if it is unauthorised action could be taken in relation to it.
22. Overall, I conclude, taking into account all the above factors, the balance is substantially against the proposal; the benefits together with the design and techniques used do not justify the harm that would occur to the character of the land or purpose of the Green Belt. I therefore conclude that the benefits and other considerations of the scheme do not, either individually or cumulatively, amount to the very special circumstances necessary to clearly outweigh the harm caused by inappropriateness in the Green Belt and other harm identified.
23. I note that there was an officer recommendation for approval, but having considered all the matters above, I have disagreed with that recommendation.

Graham Dudley

Inspector

