
Appeal Decision

Site visit made on 8 November 2017

by J Gilbert MA (Hons) MTP MRTPI

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

Decision date: 7th December 2017

Appeal Ref: APP/J1915/W/17/3179990

Dingley Dell, The Street, Furneux Pelham SG9 0LJ.

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr Michael Sortwell against the decision of East Hertfordshire District Council.
 - The application Ref 3/17/0632/FUL, dated 13 March 2017, was refused by notice dated 11 May 2017.
 - The development proposed is demolition of existing buildings, erection of a replacement dwelling and outbuilding, new entrance driveway.
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Decision

1. The appeal is allowed and planning permission is granted for demolition of existing buildings, erection of a replacement dwelling and outbuilding, new entrance driveway at Dingley Dell, The Street, Furneux Pelham SG9 0LJ in accordance with the terms of the application, Ref 3/17/0632/FUL, dated 13 March 2017, subject to the attached schedule of 5 conditions.

Procedural Matter

2. During the course of the appeal, the Council confirmed that the appeal site now lies within the designated Furneux Pelham Conservation Area and that the draft Furneux Pelham Conservation Area Appraisal has been adopted. I have considered the appeal accordingly.

Main Issues

3. The main issues in this appeal are:
 - whether the proposed development would preserve or enhance the character or appearance of the Furneux Pelham Conservation Area, within which the site lies, and whether the setting of nearby listed buildings at Lodge Farm Cottage and Blacksmith's Cottage would be preserved; and
 - the effect of the proposed development on protected species.

Reasons

Character and Appearance

4. The Furneux Pelham Conservation Area extends across the historic core of the village, which is scattered along The Causeway, The Street and Violets Lane. Though The Street is the main road through the village, it is narrow and

meandering, with most houses set back slightly from the road. The Street is bounded by tall hedges in a number of places, with trees within front gardens and along the road verges. Domestic properties on The Street are generally two-storey in height, with red tiled roofs, some front gables, and a mixture of weatherboarding, tile hanging, pargetting, brickwork and render. There are some long views along The Street looking towards the appeal site, the field beyond the appeal site, and the listed buildings at Lodge Farm Cottage and Blacksmith's Cottage¹. These attributes contribute to the character and appearance and the significance of the Conservation Area.

5. Grade II listed Lodge Farm Cottage and Blacksmith's Cottage form a pair of 19th century two-storey red brick cottages with decorative tile hanging to the upper storey and roof. Situated behind short front gardens on the northern side of The Street close to a bend in the road, the cottages have small dormers and a large first floor projecting gable. The listing description describes them as outstanding examples of Victorian country cottages of the period. This architectural interest contributes the significance of these listed buildings.
6. The existing single-storey residential dwelling at Dingley Dell is situated on the north-eastern side of The Street. The appeal site lies outside the boundary of the village itself and is situated adjacent to the listed Lodge Farm Cottage and Blacksmith's Cottage, beyond which there is a large modern detached house on The Street and further new build properties to the rear of the listed buildings.
7. The existing house at Dingley Dell is a simple detached timber-clad structure, with later porch and conservatory extensions, and a timber-clad garage situated to the side of the house. The Council describes the existing building as a neutral building within the Conservation Area. I concur with this view. The existing house sits within a garden laid mostly to lawn surrounded by coniferous hedging. A large grass verge with some trees separates the appeal site from the road. Beyond the garden, the appeal site is bounded by a large field, with buildings on Violets Lane visible across the field.
8. The proposed development would comprise a two-storey detached house with two front gables and two rear gables. There would be a mixture of building materials, including pargetting, weatherboarding, and a clay plain tiled roof. Adjacent to the main house, a single-storey cart barn and store would be sited in a similar position to the existing garage. The proposed development would include a new access driveway across the existing grass verge and the stopping-up of the current vehicular access shared with neighbouring Blacksmith's Cottage.
9. The Council is critical of the siting, design and proportions of the proposed development, claiming it would be significantly more distinctive and visible in long views along The Street from both directions along the road, resulting in harm to the Conservation Area. As the existing house at Dingley Dell is relatively small and unobtrusive and partially screened by a hedge from the road, I do not disagree that the proposed development would be more distinctive and visible than the house it would replace.
10. However, although the proposed development would be two-storey, it would be only 0.85m higher to the main ridge of the roof than the existing single-storey

¹ Blacksmith's Cottage also appears to have been known as The Gables. The listing description refers to The Gables only. I have used the current name in this decision.

house. The proposed development would also be of a lower height to its main ridgeline than the neighbouring listed buildings at Lodge Farm Cottage and Blacksmith's Cottage. It would be located in a similar position to the existing house set back from the road and would not infill the green gap provided by the existing garden. Given the limited additional site coverage, siting, and the height of the proposed development, long views towards the field and Violets Lane beyond would be retained when travelling towards the appeal site from the west, while views towards the listed buildings at Lodge Farm Cottage and Blacksmith's Cottage and the field beyond would be maintained when travelling from the south along The Street. Furthermore, while the domestic properties within this part of Furneux Pelham vary in their design, the proposed development reflects features present on nearby buildings, including the proposed gables and dormer window, and range of building materials. As such, the proposed development would display the core characteristics of the local domestic architecture.

11. The Council also contends that the grass verge outside the appeal site would be an urbanising feature which would harm the character of the Conservation Area. While the existing verge makes a pleasant contribution to the leafy and green character of this part of the Conservation Area, the appellant proposes to maintain the existing hedging, grass and trees on the verge and bounding the garden and to insert a driveway in granite setts to reflect the materials of the more extensive driveway serving Blacksmith's Cottage, the adjacent field, and the existing house on the appeal site. While it would divide the grass verge, I do not consider that it would fundamentally alter the appearance of the area to such an extent as to urbanise the rural context or to cause harm to the Conservation Area.
12. The grade II listed buildings at Lodge Farm Cottage and Blacksmith's Cottage lie close to the appeal site. Section 66 (1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires that, in considering whether to grant planning permission for development which affects a listed building, or its setting, special regard shall be had to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses. As discussed above, it appears to me that the views of these listed buildings when observing them from the south and west would be unaffected by the proposed development. While the proposed development and the listed buildings would be viewed together from public vantage points, the siting, scale, form and materials of the proposed development would be sufficiently compatible with the listed buildings such that their setting would not be harmed.
13. Policy GBC3 of the East Herts Local Plan Second Review (2007) (the Local Plan) sets out restrictions on development in the rural area beyond the Green Belt. This policy requires replacement dwellings to adhere to the requirements of policy HSG8 of the Local Plan. Policy HSG8 allows replacement dwellings where the original dwelling is of a poor appearance or construction not capable of retention, and is not contributing to the character of appearance of its surroundings in the rural area beyond the Green Belt subject to meeting 3 criteria. Although the Council has referred to policy GBR2 of the pre-submission East Herts District Plan, this plan has been submitted for examination and has not yet been adopted. I consequently give policy GBR2 very limited weight in this instance.

14. Taking the issues of poor appearance and construction first, I observed on my site visit that both the house and garage appeared to be well-maintained and there was no external evidence that they were of poor construction. While I note the appellant's submissions regarding the house's pre-fabricated construction, the previous attempts made to insulate it, and the poor and restricted layout of the building which would lead to difficulties in extending it sympathetically, it is not possible to conclude definitively that the house is not capable of retention. While no structural or building survey of the existing house has been provided, policy HSG8 does not explicitly require such a survey.
15. The Council has confirmed that criterion (a) of policy HSG8 is met. I concur with this view. Criterion (b) of the policy requires the volume of the proposed dwelling to not be materially larger than the existing dwelling, plus any unexpended permitted development rights. Barring the addition of a porch and a small conservatory, the existing house has not been subject to considerable extensions. From the plan provided within the appellant's statement, it appears that the existing dwelling could be considerably enlarged to at least double its current size with extensions to the side and rear using permitted development rights. The proposed development would be larger than the existing house in both its footprint and height and would be greater than twice the current volume according to the Council's figures. It would appear to me that the footprint and volume of the existing house could be significantly increased under permitted development, and that the proposed development would not be so much larger than the existing house plus unexpended permitted development rights so as to contravene criterion (b) of policy HSG8.
16. Criterion (c) of policy HSG8 requires any new dwelling to be no more visually intrusive than the dwelling to be replaced. I have already discussed the effect of the proposed development on the character and appearance of the Conservation Area and on the setting of listed Lodge Farm Cottage and Blacksmith's Cottage. While I consider the proposed development to be more visible from the road than the building it would replace, I do not consider that it would be visually intrusive for the reasons set out above.
17. As such, while I consider that the proposed development would not conflict with criteria a – c of policy HSG8 of the Local Plan, there remains some limited conflict with the first paragraph of policy HSG8 insofar as the existing dwelling is potentially capable of retention. However, the site-specific circumstances indicate that the proposed development would preserve the character and appearance of the Conservation Area and the setting of the aforementioned listed buildings.
18. I note that the appellant has provided 2 appeal decisions² in Furneux Pelham and Thundridge, which make reference to policies HSG8 and GBC3 respectively. While I have had regard to these appeal decisions, the site-specific circumstances of both appeal sites appear to differ as they are both considerably more secluded and screened by vegetation than the appeal site in this case. They do not alter my findings in respect of this appeal.
19. Concluding on this main issue, I conclude that the proposed development would preserve the character and appearance of the Furneux Pelham

² APP/J1915/W/16/3151833, decision issued 28 September 2016, and APP/J1915/D/16/3150936, decision issued 28 July 2016.

Conservation Area and the setting of listed Lodge Farm Cottage and Blacksmith's Cottage, and find no conflict with policies ENV1 and BH6 of the Local Plan. Policy ENV1 seeks, amongst other things, development that is well-sited and compatible with its surroundings with a high standard of design to reflect local distinctiveness. Policy BH6 deals with new development in conservation areas, and requires, amongst other things, the maintenance of key views, open spaces and sympathetic development which observes the general character and appearance of the area. There is, however, some limited conflict with part of policy HSG8 and therefore policy GBC3. The proposed development would also comply with the aims of the National Planning Policy Framework (the Framework) to sustain the significance of designated heritage assets.

Protected Species

20. A report submitted with the planning application confirmed that the existing house contained evidence of the presence of brown long-eared bats. Paragraph 118 of the Framework states that if significant harm to priority habitats and species resulting from a development cannot be avoided, adequately mitigated, or as a last resort, compensated for, then planning permission should be refused. Policy ENV16 of the Local Plan only allows development which may have an adverse effect on protected species where harm to those species can be avoided. This policy confirms that conditions may be used to facilitate the survival of existing populations of protected species as well as encouraging the provision of new habitats; reducing disturbance to a minimum; and providing adequate alternative habitats to sustain at least the current levels of populations.
21. Developments that would result in a breach of the protection afforded to European Protected Species require a derogation licence, to avoid an offence under the Conservation of Species and Habitats Regulations 2010 (the Regulations). There is no requirement for a derogation licence to be provided prior to grant of planning permission, but the decision maker must be assured that there would be a reasonable prospect of the licence being granted by Natural England (NE), having regard to the requirements of the Habitats Directive³. NE was consulted by the Council in respect of the planning application for the proposed development. NE did not respond. Given that the proposed development would involve the demolition of the existing buildings on the site, it is necessary for me to assess whether there is a reasonable prospect of a licence being granted, having regard to the three tests.
22. The first derogation test states that a licence can be granted for the purposes of "preserving public health or public safety or other imperative reasons of overriding public interest including those of a social or economic nature and beneficial consequences of primary importance for the environment."
23. The existing house offers limited opportunities for further improvements to its energy efficiency due to its pre-fabricated mode of construction. Furthermore, as the existing house has a neutral effect on the Conservation Area within which it lies, the provision of the proposed development offers the potential to preserve the character and appearance of the Conservation Area. The proposed development would also make a small contribution to an improvement in the

³ Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora.

quality of the housing stock in the village. It seems entirely plausible that this first test is capable of being met.

24. The second derogation text states that the appropriate authority shall not grant a licence unless they are satisfied "that there is no satisfactory alternative." The main alternative to the appeal scheme which appears to have been considered is to do nothing or renovate the existing house further. It is unclear whether any other options have been considered. If the existing house were to remain, with its existing issues with energy efficiency, it is possible that further refurbishment and extension could take place over time, and this could adversely affect any existing roosts in the process.
25. Despite the lack of information available regarding other alternatives, I am not persuaded that this would lead to the withholding of a licence and it may simply be the case that further information needs to be submitted. In coming to this view, I have had regard to the advice that NE applies the tests on a proportionate basis and also in considering the feasibility of alternative solutions⁴, namely that the justification required increases with the severity of the impact on the species or population concerned. In this particular case, the development proposed would displace a summer/transitional roost for a single species of bat and the Council's Ecology Adviser was satisfied with the mitigation measures proposed, including the installation of a replacement roost. As adequate mitigation is proposed, on the available evidence, I am not persuaded it is unlikely that NE would grant a licence.
26. Finally, the third derogation test requires the appropriate authority to be satisfied "that the action authorised will not be detrimental to the maintenance of the population of the species concerned at a favourable conservation status in their natural range." The Council's Ecology Adviser has confirmed that the appellant's report sets out suitable mitigation measures to deal with the potential presence of roosting bats, minimise any potential impacts on bats, and ensure that the local population would be maintained. Mitigation and compensatory measures are proposed, and thus subject to an appropriate condition, the evidence before me suggests that the favourable status of the species would be maintained. This condition is a pre-commencement condition to ensure that protected species are safeguarded. I have not included reference to the need for a licence as this matter is addressed under separate Regulations.
27. Taking all of the above into account, I conclude that there is a reasonable prospect of NE granting a licence. I therefore conclude that the proposal would not have an adverse effect on protected species, and would accord with Policy ENV16 of the Local Plan, the Framework, the Regulations and the Habitats Directive. The requirements of Policy ENV16 and paragraph 118 of the Framework, the Regulations and the Habitats Directive are set out above.

Conclusion

28. Despite some limited conflict with Policy HSG8 of the Local Plan, the proposed development accords with the overall development plan. Therefore, for the reasons given above, and having had regard to all matters raised, I conclude that the appeal should be allowed.

⁴ Paragraph 27, Natural England Guidance Note: European Protected Species and the Planning Process – Natural England's application of the 'Three Tests' to Licence Applications WML-G24(01/11)

Conditions

29. I have found that the proposed development is acceptable, subject to certain conditions, having regard to the Framework. In addition to the ecology condition referred to above, it is necessary to specify conditions confirming the approved plans to ensure certainty; to control materials and landscaping for the proposed development in the interests of visual amenity; and to require information on the access arrangements in the interests of highway safety. I have not attached the Council's suggested wheel washing condition as the scale of development does not necessitate this condition. I have also merged the Council's proposed conditions 6, 7 and 9 as it is sensible to have one condition relating to the vehicular access to the site.

J Gilbert

INSPECTOR

Schedule of 5 Conditions:

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the approved plans 365.01, 365.02, 365.03, 365.04, and Location Plan.
- 3) The external surfaces of the development hereby permitted shall be constructed in the materials shown on plans 365.02 and 365.04.
- 4) Prior to the commencement of development, including any demolition, 3 dusk emergence/dawn re-entry surveys should be undertaken during May-August (inclusive), to determine whether bats are roosting and will be affected by the proposals; and should this be the case, the outline mitigation measures should be modified as appropriate based on the results and then be submitted to and approved in writing by the local planning authority. Thereafter the development shall be carried out in accordance with these approved details.
- 5) Prior to the occupation of the development hereby permitted, details of landscaping, parking and access arrangements shall be submitted to and approved in writing by the local planning authority. These details shall include:
 - i) the access arrangements, including visibility splays;
 - ii) hard surfacing materials for driveways and car parking areas; and
 - iii) closure of the existing vehicular access; and
 - iv) boundary treatments.

The landscaping, parking and access arrangements shall be carried out in accordance with the approved details before any part of the development is first occupied and shall be maintained thereafter.