



Appeal Decision

Site visit made on 2 December 2019

by Jonathan Edwards BSc(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13 December 2019

Appeal Ref: APP/J1915/W/19/3235824

Paynter's House, 2 Bury Lane, Datchworth SG3 6ST

- 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 Charles Houston against the decision of East Herts Council.
 - The application Ref 3/19/0808/FUL, dated 29 March 2019, was refused by notice dated 14 June 2019.
 - The development proposed is the erection of one, two storey, four bedroom dwelling, with attached double garage, on land adjacent to 2 Bury Lane, Datchworth.
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Decision

1. The appeal is allowed and planning permission is granted for the erection of one, two storey, four bedroom dwelling, with attached double garage on land adjacent to Paynter's House, 2 Bury Lane, Datchworth SG3 6ST in accordance with the terms of the application, Ref 3/19/0808/FUL, dated 29 March 2019, subject to the conditions set out in the Schedule at the end of this decision.

Main Issues

2. The appeal site is located within the Green Belt and so the main issues are:
 - whether the proposal represents inappropriate development in the Green Belt having regard to the National Planning Policy Framework (the 'Framework') and development plan policy; and
 - the effect on the character and appearance of the area; and
 - the effect on the living conditions of the occupiers of 8 Bury Lane (No 8) by reason of noise.

Reasons

Whether inappropriate development in the Green Belt

3. Policy GBR1 of the East Herts District Plan 2018 (DP) states that planning applications in the Green Belt will be considered in line with the Framework. The construction of new buildings is inappropriate development in the Green Belt, although the list of exceptions at paragraph 145 (e) of the Framework includes limited infilling in villages.
4. The proposal for a single dwelling would be limited development. As well as 2 Bury Lane (No 2) the site adjoins No 8 and 10 Bury Lane (No 10). It also lies within Datchworth's settlement boundary where under DP policy VILL2, limited infill development would be acceptable subject to criteria. The appeal site forms

part of a residential property and is separated by a hedge from the field to the rear. For these reasons, I consider the proposed house would lie in, rather than beyond the extent of, the village.

5. The term 'infilling' is not defined in the Framework or the DP. Whilst the proposed house would lie behind No 8, I have been referred to no policy that would preclude backland development from constituting infill.
6. Furthermore, whilst properties elsewhere along Bury Lane tend to directly face the highway, the layout of housing by the appeal site is less regimented with No 2, No 10 and 14 Bury Lane (No 14) forming an arc of development around Paynter's Green. The proposed house would be in the space between No 2's and No 10's side elevations and would fill a space in the arc of development. Given this context and the lack of any policy that suggests otherwise, I find the proposal would represent infill development.
7. The concerns in respect of the loss of openness are noted. However, there is no requirement to consider the effect upon openness when assessing a proposal against paragraph 145 (e) of the Framework.
8. For the reasons set out above, I conclude the proposal would represent limited infilling in a village. Consequently, it would not be inappropriate development in the Green Belt and would therefore accord with DP policy GBR1 and the Framework. These aim, amongst other things, to resist inappropriate development in the Green Belt unless very special circumstances exist.

Character and appearance

9. The appeal site is part of No 2's garden to the rear of No 8. It is mainly lawn with mature trees and bushes along the boundaries. The proposed house would be set centrally in the site and would be part single and part 2 storey.
10. Whilst an attractive landscaped garden, the site is positioned away from the road and hidden from public view by No 8 and boundary vegetation. As such, it is not a significant open space that makes an important contribution to the form or setting of the village. Also, the proposal would retain a significant area of garden and most of the existing planting. By virtue of its unobtrusive position and the retention of vegetation, the proposed dwelling would not block important views or have a marked visual impact on the road, on the public footpath through the fields or on the general area.
11. As a house in a large plot, the proposal would be harmonious to the general character of development in the locality and would not appear cramped. As it would lie between properties, the dwelling would not extend a line of ribbon development and would be in keeping with the layout of houses around Paynter's Green. Its modern design and materials would be at odds with some of the more traditional housing in the area, but there is a variety of property styles nearby. The proposed house would have 2 storeys in keeping with most other dwellings in the area. Given its context and limited visual impact, the proposal would not be harmful to the character and appearance of the area by reason of its modern style. Also, the proposed hardstanding would not be widely visible and therefore would cause no visual harm.
12. For these reasons, I conclude that the proposed development would not be harmful to the character and appearance of the area. Consequently, and in this regard, it would accord with DP policies VILL2 and DES4, as well as the

Framework which aim, amongst other things, to protect or enhance the character and appearance of an area and to provide attractive environments.

Living conditions of occupiers of No 8

13. The proposal includes the alteration and extension of the existing driveway to No 2 to provide vehicular access to the proposed house. The driveway would run close to the proposed boundary to No 8, which would be slightly nearer to the neighbouring house than the existing boundary. No 8's conservatory would be the closest part of the house to the drive.
14. The proposed driveway would be in a similar position to the existing that serves No 2. At its closest point to the conservatory, the driveway would only serve the proposed house. The increase in traffic generated by a single additional dwelling would be modest and there is no evidence to demonstrate that vehicles using the proposed drive would be significantly more disruptive to the occupiers of No 8 compared to the existing situation. Furthermore, the proximity of No 8 to the drive would be typical of a residential area and so would be unlikely to cause unacceptable noise effects.
15. For these reasons, I conclude that the proposed development would not be harmful by reason of noise to the living conditions of the occupiers of No 8. Consequently, and in this regard, it would accord with DP policies VILL2 and DES4, as well as the Framework which aim, amongst other things, to create attractive places with a high standard of amenity for occupiers of property.

Other Matters

16. I have had regard to all the representations made on the proposal. Concern is raised that the proposed works to the driveway would threaten the well-being of trees on the boundary with No 8. However, the appellant's arboricultural consultants advise such harm could be avoided through careful construction methods and protective fencing. Such measures would also address concerns over the removal of trees shown to be retained and could be secured through the imposition of planning conditions.
17. By reason of its position away from the site boundaries and significant vegetation screening, the proposal would not cause unacceptable over-shadowing, visual intrusion or overlooking onto No 2, No 8 or No 10. It is unlikely that any new planting would cause unacceptable loss of light to, or outlook from, neighbouring properties in addition to the existing vegetation.
18. Concern is raised that the proposed dwelling would not meet the needs of local families and would be unaffordable. However, I have seen no policy that requires the house to be provided as an affordable unit for local people.
19. No 14 is a grade II Listed Building, significant due to its age and retention of interesting architectural features. No 10 would lie between the proposed dwelling and No 14 and so there would be no significant inter-visibility between the proposal and the Listed Building. Therefore, the proposal would cause no harm to the setting or significance of No 14.
20. A comment has been made that the proposed development would encroach onto land outside the appellant's ownership. However, this is a private matter between the parties involved and does not affect my assessment of the appeal.

21. In the absence of any substantive evidence to dismiss the appeal on any of the above grounds or complaints, the concerns raised do not override or affect my conclusions on the main issues.

Conditions

22. I have considered the planning conditions put forward by the Council having regard to the tests set out in the Framework. Where appropriate, I have amended the wording of the suggested conditions for reasons of precision and to avoid unnecessary pre-commencement requirements.
23. A condition detailing the plans is necessary to ensure the development is carried out in accordance with the approved plans and for the avoidance of doubt. Conditions relating to the materials, landscaping and waste storage are necessary to ensure the satisfactory appearance of the development. A condition relating to the provision and retention of an access and parking area, is required in the interests of highway safety and to avoid indiscriminate parking on the road. For the same reason, a condition is required in respect of on-site construction workers' parking and storage of materials.
24. A condition is required to control the hours of construction works so as to protect the living conditions of occupiers of neighbouring properties. Also, in order to protect existing vegetation, conditions are imposed relating to protective fencing and the approval of excavation works insofar as they may affect trees and hedgerows. In light of the Hertfordshire County Council Historic Environment Advisor's comment, it is necessary to impose a condition requiring archaeological works to be carried out to ensure the protection and recording of assets of historic interest.
25. Conditions have been suggested that would remove permitted development rights relating to alterations of the proposed dwelling, construction of buildings within its curtilage and the formation of new accesses. However, paragraph 53 of the Framework states that such conditions should not be used unless there is clear justification. The Council's reasons fail to clearly justify the removal of permitted development rights on amenity or highway safety grounds or to retain control over future development. Therefore, I have not imposed such conditions.
26. Furthermore, a condition restricting the use of the garage would be unnecessary. The proposal is for a dwelling with no reference to any commercial usage and as a hardstanding area is proposed the development would not be reliant on the garage to provide sufficient parking space.

Conclusion

27. For these reasons, I allow the appeal as set out in the formal decision above.

Jonathan Edwards

INSPECTOR

Schedule of Planning Conditions

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: 1803-01 rev 00, 1803-02 revision 02, 1803-03 revision 00, 1803-04, 1803-05, 1803-06 revision 01, 1803-07 revision 01, 1803-08, 1803-09, 1803-10, 1803-11.
- 3) Prior to any above ground construction works being commenced, details of the external materials of construction for the building hereby permitted shall be submitted to and approved in writing by the local planning authority. The development shall thereafter be implemented in accordance with the approved materials.
- 4) Prior to the first occupation of the development hereby permitted, details of both hard and soft landscape shall be submitted to and approved in writing by the local planning authority. These details shall include:
 - i) earthworks showing existing and proposed finished levels or contours;
 - ii) boundary treatments;
 - iii) hard surfacing materials;
 - iv) retained landscape features;
 - v) planting plans, schedules of plants, details of species, planting sizes and density of planting.

The landscaping works shall be carried out in accordance with the approved details before the development is first occupied. Any trees or plants that, within a period of five years after planting, are removed, die or become seriously damaged or defective shall be replaced as soon as reasonably practicable with other species, size and number as approved.

- 5) Prior to the first occupation of the development hereby approved, details of facilities for the storage and removal of refuse from the site shall be submitted to and approved in writing by the local planning authority. Facilities in accordance with the approved details shall be provided prior to the first occupation of the development hereby approved and shall thereafter be maintained.
- 6) Prior to the first occupation of the development hereby approved, construction details of the access and vehicular parking area to serve the development, including details of surfacing and drainage, shall be submitted to and approved in writing by the local planning authority. An access and parking area in accordance with the approved details shall be provided prior to the first occupation of the development hereby approved and shall thereafter be maintained.
- 7) Before the commencement of any construction works on the development hereby approved, plans indicating the provision of space within the site to provide for the parking of construction workers' vehicles and for the delivery and storage of materials shall be submitted to and approved in writing by the local planning authority. Such space shall be maintained for the duration of construction works in accordance with the approved plans.

- 8) Construction works shall take place only between 0730 and 1830 on Mondays to Fridays, only between 0730 and 1300 on Saturdays and shall not take place at any time on Sundays or on Bank or Public Holidays.
- 9) Before the commencement of any construction works on the development hereby approved, position and elevation details of a metal fence to be provided to protect trees and hedges to be retained on the site during construction works shall be submitted to and approved in writing by the local planning authority. Fencing in accordance with the approved details shall be provided prior to the commencement of any construction works on site and shall be maintained during the course of construction works. No placement of goods, fuels or chemicals, soil or other materials shall take place inside the fenced area.
- 10) Before the commencement of any construction works on the development hereby approved, details of the design of the approved building foundations and the layout, with positions, dimensions and levels of (a) services trenches (b) ditches (c) drainage and (d) other excavations on the site insofar as they may affect trees and hedges shall be submitted to and approved in writing by the local planning authority. The development hereby approved shall be carried out in accordance with the approved details.
- 11) Before the commencement of any construction works on the development hereby approved, a written scheme of archaeological investigation shall be submitted to, and approved in writing by, the local planning authority. The approved scheme of archaeological investigation shall be carried out and an archaeological report of all the required archaeological works shall be submitted to the local planning authority before the commencement of any construction works on the development hereby permitted.

END OF DECISION