



Appeal Decision

Site visit made on 15 March 2021

by M Chalk BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 29 March 2021

Appeal Ref: APP/J1915/W/20/3263477
142 London Road, Ware SG12 9NH

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a grant of planning permission subject to conditions.
 - The appeal is made by Gail Stretch against the decision of East Hertfordshire District Council.
 - The application Ref 3/20/1553/FUL, dated 13 August 2020, was approved on 16 November 2020 and planning permission was granted subject to conditions.
 - The development permitted is described as "Proposed covered area to part of the existing side elevation of the Great Amwell Scout Hut. Proposed Dutch Barn".
 - The condition in dispute is No 4 which states that: There shall be no use or occupation of any of the buildings / structures located on the site between the hours of 22:00 and 08:00 the following day.
 - The reason given for the condition is: In order to ensure an adequate level of amenity for nearby residents in accordance with policy EQ2 of the adopted East Herts District Plan 2018.
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Decision

1. The appeal is allowed and the planning permission Ref 3/20/1553/FUL for a covered area to part of the existing side elevation of the Great Amwell Scout Hut and Dutch barn at 142 London Road, Ware, SG12 9NH granted on 16 November 2020 by East Hertfordshire District Council, is varied by deleting condition 4.

Background and Main Issue

2. The development involves the erection of two structures. The proposed covered area to the side of the scout hut has attracted no objections from residents, consultees or the Council. I see no reason to disagree with this as it would be a small area immediately adjacent to the scout hut and its use is unlikely to result in any significant additional disturbance to local residents.
3. The Dutch barn would be a freestanding open-sided structure set away from the scout hut. Its possible future use for private functions has attracted concern from local residents and the Environmental Health consultee regarding the potential for increased noise disturbance at night.
4. The main issue is therefore whether the condition in dispute is reasonable and necessary having regard to the living conditions of neighbouring residents.

Reasons

Original condition

5. The condition in dispute would prevent any use or occupation of any of the buildings or structures located on the site between the specified hours. As this would include the existing scout hut and the other existing building on site the scope of the condition goes beyond what is reasonably necessary and relevant to the development permitted, having regard to the living conditions of neighbouring residents. It therefore fails to meet the tests for planning conditions set out in the National Planning Policy Framework (the Framework).

Alternative condition

6. The Council have suggested an alternative condition limiting the use of the Dutch barn only from 2300 to 0700. I have considered whether this would meet the tests identified in the Framework, having regard to the living conditions of neighbouring residents.
7. There are already functions occurring at the site, and from the evidence before me there are no restrictions on the use of any other structure or part of the site that would apply to such functions. It is not clear that the introduction of the Dutch barn, an open-sided structure, would result in a materially increased likelihood of disturbance over and above what may already occur. In reaching this conclusion I have considered the requirements of Policy EQ2 of the East Herts District Plan 2018, which include that development should be designed and operated in a way that minimises the direct and cumulative impact of noise on the surrounding environment. However, while conditions can be used proactively to prevent harm, where a use already exists and a development would not result in a material change in that use conditions should not be used to retroactively control that use.
8. In addition, as an open-sided structure, there is no apparent way to prevent access to the Dutch barn during any functions that may occur.
9. The alternative condition is therefore not necessary, relevant to the development to be permitted or enforceable, and consequently it fails the tests set out in the Framework.

Conclusion

10. Neither the original condition nor the alternative suggested condition would meet the tests for planning conditions set out in the Framework.
11. Therefore, for the reasons set out above, the appeal succeeds.

M Chalk

INSPECTOR