



Appeal Decisions

Hearing held on 14 and 15 December 2022

Site visit made on 15 December 2022

by M Woodward BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27 January 2023

Appeal Ref: APP/J1915/W/21/3288588

1 Whempstead Road, Benington SG2 7BX

- 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 Phillip Newman against East Hertfordshire District Council.
 - The application Ref 3/21/1811/FUL, is dated 8 July 2021.
 - The development proposed is the proposed redevelopment of land at Brandsmead, 1 Whempstead Road, Hebing End, Benington, Herts, SG2 7BX which includes the demolition and removal of the existing exotic bird aviary, and its replacement with a single modern carbon neutral 4no bedroom dwelling house together with the conversion of an existing garage block to the rear to become an incidental outbuilding used in connection with the new dwelling house including car parking spaces, air source heat pump, a home office, refuse and recycling bins storage facilities and with a new green sedum roof and vertical timber cladding, as well as the provision of secure cycle storage facilities, the provision of a rear garden, and with the continued use of the existing vehicular access off Whempstead Road.
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Decision

1. The appeal is dismissed and planning permission is refused.

Preliminary Matters

2. This decision relates to a single appeal which was dealt with at a joint Hearing involving a total of five appeals. The remaining four appeals (Refs: APP/J1915/W/22/3303408, APP/J1915/W/22/3303413, APP/J1915/W/21/3288702, and APP/J1915/W/21/3288595) occupy adjacent lying sites and are dealt with in separate decisions.
3. The appeal results from the Council's failure to determine the planning application within the prescribed period. There is no formal decision on the application, as jurisdiction over that was taken away when the appeal was lodged. However, the Council's statement of case includes the reasons why the planning application would have been refused had it been empowered to do so.
4. Prior to the Hearing a Statement of Common Ground (SoCG) was submitted setting out the areas of agreement and disagreement in relation to this appeal. I have taken this into account along with the evidence before me in order to determine the main issues in this appeal.

Main Issues

5. As a result of the above, the main issues in this case are:
 - Whether or not the proposal would be in an appropriate location for housing, having particular regard to the character and appearance of the area, and the accessibility of services and facilities.

Reasons

6. According to the East Herts District Plan 2018 (DP) the appeal site is located within the Rural Area Beyond the Green Belt. Policy GBR2 of the DP lists the types of development that will normally be permitted in these areas. Criterion (e) of this policy permits limited infilling or the redevelopment of previously developed sites in sustainable locations, where appropriate to the character, appearance and setting of the area.
7. There is no definition of 'limited infilling' in the DP. However, the word 'limited' preceding the word 'infilling' indicates to me that only a restricted form of infilling would be acceptable. In the absence of strict criteria, I have not only considered the quantum of development, but also the characteristics of the proposal in relation to its surroundings.
8. The appeal site is occupied by an aviary which is set behind a brick wall, along with a large garage, which all form part of the residential use associated with No 1 Whempstead Road, the host dwelling lying on the opposite side of the access to the south. Whilst the aviary has a substantial footprint and sits in line with the host dwelling, it is a slender, single-storey, timber framed structure with wire mesh panels. It does not exhibit the same degree of permanence as the dwelling proposed in its place. Therefore, the proposal would not constitute a replacement building under criterion (d) of Policy GBR2.
9. Moreover, the host dwelling bookends a ribbon of housing which is set back from Whempstead Road. As a result, and despite there being a property on the opposite side of Whempstead Road, there is a distinct lack of housing or other buildings immediately to the north of the appeal site. Whilst the existing garage lies to the rear of the aviary, to my mind this is an incidental building in connection with the existing residential use. It does not establish the appeal site as an infill plot. Therefore, the dwelling proposed in this location would not infill a gap in between housing, rather, it would extend housing further away from the settlement of Benington. As a result, I do not consider that this proposal would be a form of infill development.
10. There is no dispute between the main parties that the appeal site constitutes previously developed land. However, Policy GBR2(e) also requires that such sites are in sustainable locations. In this regard, Benington is identified as a *Group 2 village* in the DP¹, indicative of a smaller village with access to some services and facilities. Policy VILL2 of the DP relates to proposals within group 2 village boundaries, but whilst the appeal site lies close to Benington, it lies outside of it. Nevertheless, I accept that locations outside settlement boundaries may not necessarily be unsustainable, depending on the accessibility of services and facilities.
11. The southern area of Benington is the closest part of the settlement to the appeal site, lying within suitable walking distance. However, the range of

¹ Benington comprises two separate boundaries as depicted by document HD4 (annexe A of this decision)

facilities in this part of Benington is limited, and includes an agricultural business with an associated retail area, and a public house. The northern part of Benington lies further away and although still within theoretical walking distance², it offers limited provisions, including a primary school, churches and a village hall. The appellant also refers to a branch doctors' surgery within Benington, although no details concerning the extent of health services available have been provided. In any event, these facilities together would not be sufficient to meet the day to day needs of future occupiers of the proposals.

12. As a result, residents of the new build would have to travel further afield to food stores, shops, larger places of employment, and secondary or higher educational establishments, all of which are located outside Benington and out of range so that walking or cycling would not be a practical or realistic option. I appreciate that bus stops are located along Whempstead Road within comfortable walking distance of the proposals³, but the bus services are limited in frequency⁴.
13. Given the location of the proposal away from services and facilities required to meet day-to-day needs, and the fundamental lack of daily bus services, it is likely that future occupiers traveling to access shops, facilities and places of employment would do so by private car, which is the least sustainable travel option.
14. The proposed dwelling would have a contemporary style, and I note that the Council raises no objection to its design. Moreover, given the previously developed nature of the site and the characteristics of it, I am satisfied that the proposal would not be harmful to the character and appearance of the area, in accordance with Policies HOU2, DES3 and DES4 of the DP.

Conclusion on main issue

15. The proposal would not be in an appropriate location for housing, having particular regard to local and national policies and the accessibility of services and facilities. It would conflict with Policy GBR2, which requires, amongst other matters, that proposals in rural areas beyond the Green Belt are permitted provided they comprise limited infilling, or the partial redevelopment of previously developed sites in sustainable locations. The proposal would also conflict with Policies DPS2 and TRA1 of the DP which require, in summary, that development is located in places which enable sustainable journeys to be made to key services and facilities, and that sustainable brownfield sites are prioritised.
16. The Framework⁵ recognises that proposals that enhance or maintain the vitality of rural communities, including supporting services in villages nearby, may be acceptable even in locations that are not well served by public transport. I acknowledge that one additional dwelling would generate a relatively limited number of additional car journeys. However, the proposal would lie outside a settlement boundary and would not be a type of development supported by Policy GBR2 of the DP. Therefore, it would undermine the DP's objectives of focusing growth within settlement boundaries and other suitable rural

² Approximately 1.6km away from the appeal site

³ Circa 200m according to SoCG

⁴ See paragraph 2.6.1 of appellants appeal statement

⁵ Paragraphs 79, 85 and 105 of the Framework

locations. As a result, these Framework considerations carry limited weight in this case.

Other Matters

17. As referred to in 'preliminary matters', appeals have been determined on adjacent lying sites. One of these appeals relates to the host dwelling at No 1, and has been allowed. However, the circumstances of that case are materially different to the appeal before me. In that case it was concluded that the scheme was a replacement building in accordance with Policy GBR2 of the DP, unlike this proposal which would be a different type of development in conflict with Policy GBR2, for the reasons set out. Therefore, this proposal would not be an appropriate form of development in this rural area.
18. The appellant refers to the *Gosmore Paddock* appeal in their evidence⁶. However, the case was also different to this appeal for several reasons, not least because the DP had not been adopted at the time of that decision, thus the planning policy context was different. Therefore, the conclusions drawn in that case are not sufficiently similar to this appeal to warrant me departing from the decision I have taken in this case.
19. Other appeals have also been referred to by the appellant⁷. However, the policy context in both appeals was different given the sites lie within a different local authority area. Moreover, one of the schemes was found to be reasonably well situated in respect of services and facilities, unlike the proposal before me. The other proposal was considered to be sufficiently enclosed by adjoining developments. Again, that is not the case here. Therefore, the conclusions drawn in these cases are not sufficiently similar to the appeals before me, so I am not bound to reach the same overall conclusions.

Planning Balance

20. For the reasons set out in appeal decisions on adjacent sites, the Council are unable to demonstrate a 5-year supply of deliverable housing sites⁸. In such circumstances, paragraph 11d)(ii) of the Framework indicates that permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.
21. There would be conflict with relevant DP policies which seek to focus growth within defined settlements, or in appropriate sustainable locations in the countryside. The conflict between the proposal and Policies GBR2, DPS2 and TRA1 of the DP should therefore be given significant weight in this appeal.
22. Set against the harm identified there would be limited social and economic benefits associated with the proposal. The development would provide a single additional house which would generate employment opportunities during construction, and through direct and indirect spending on local services and facilities. However, an additional house would make little difference to the overall supply of housing and the support one extra household would provide to the local economy would also be limited.

⁶ Appeal ref: APP/J1915/W/17/3184877 – up to 13 dwellings

⁷ Appeal refs: APP/L3245/W/20/3260022 and APP/B1930/W/20/3249093

⁸ Appeal refs: APP/J1915/W/22/3303408, APP/J1915/W/22/3303413, APP/J1915/W/21/3288702

23. It is proposed that the dwelling would be carbon neutral. However, environmental benefits due to sustainable construction techniques, measures to reduce energy demands for future occupiers such as electric car charging points and on-site biodiversity mitigation and enhancements should also be given limited weight given the small scale of the development proposed.
24. Consequently, I find that the harm would be overriding, and would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole. The proposal would not constitute sustainable development having regard to paragraph 11 d ii) of the Framework. As a result, the presumption in favour of sustainable development does not apply.
25. The proposal would conflict with the development plan as a whole and there are no other material considerations which outweigh this finding. Therefore, for the reasons given, I conclude that the appeal should be dismissed.

M Woodward

INSPECTOR

Annexe A:

Hearing Documents

HD1 – Appellant document ‘East Herts Five Year Land Supply notes’

HD2 – Appeal decision ref: APP/J1915/W/22/3301655

HD3 – Delegated Officer Report for Application Number: 3/19/1569/ARPN (East Herts)

HD4 – East Herts District Plan 2018 extract showing settlement boundaries of Benington

HD5 – Council and appellant agreed list of ‘approved plans’

HD6 – Council recommended conditions ‘self-build’

Annexe B: APPEARANCES

FOR THE APPELLANT:

David Lane	DLA Town Planning Ltd.
Simon Andrews	DLA Town Planning Ltd.
Chris Watts	Agent
Mr Newman	Appellant
Ms Pepperell	Appellant

FOR THE LOCAL PLANNING AUTHORITY:

David Lamb BA (Hons) Dip TP MRTPI	Principal Planning Officer (Development Management)
George Pavey Bsc (Hons) Msc	Principal Planning Officer (Planning Policy)
Ellen Neumann	Assistant Planning Officer (Development Management)