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# 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**

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## **Appeal Ref: APP/J1915/W/21/3288595**

### **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 P Newman and Ms C Pepperell against East Hertfordshire District Council.
  - The application Ref 3/21/1805/FUL, is dated 8 July 2021.
  - The development proposed is the demolition and removal of the existing house, and its replacement with a pair of semi-detached houses (1no three bedroom, and 1no four bedroom), with car parking and detached incidental home office at the rear for both houses, air source heat pumps enclosures, recycling and refuse bins enclosure, and secure cycle storage facilities.
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### **Decision**

1. The appeal is allowed and planning permission is granted for the demolition and removal of the existing house, and its replacement with a pair of semi-detached houses (1no three bedroom, and 1no four bedroom), with car parking and detached incidental home office at the rear for both houses, air source heat pumps enclosures, recycling and refuse bins enclosure, and secure cycle storage facilities at 1 Whempstead Road, Benington SG2 7BX in accordance with the terms of the application, Ref 3/21/1805/FUL, dated 8 July 2021, subject to the conditions in the attached Schedule.

### **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/21/3288588) 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**

### *Location and character*

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 (d) of this policy permits the replacement, extension or alteration of a building subject to appropriate scale, size, mass and form in relation to the prevailing character and appearance of the surroundings.
7. The proposal would involve the replacement of an existing dwelling with two new dwellings. There is nothing contained within Policy GBR2(d) to suggest that the number of dwellings proposed, or that the size of the replacement building, cannot exceed the existing. However, the policy indicates that the existing context, including character and appearance, is an important consideration.
8. In this regard, the appeal site is currently occupied by a single detached dwelling. It has a simple, understated design; its contribution to the area mainly derived from its uniform appearance and set-back from the street, in keeping with the generally linear arrangement of nearby houses along Whempstead Road. The dwelling is well screened from the street by a line of trees which run close to the front boundary of the property.
9. The proposed dwellings would reflect the style of the existing dwelling and be of comparable height. They would be positioned in the same general location as the existing dwelling and would retain the linear form of the street. Whilst there is no proposal to remove the trees along the frontage, they are not protected and even if they were removed, the additional footprint, width and overall scale of the built form in comparison with the existing would not appear significantly greater, nor incongruous, in the street. Moreover, the notable gap to the existing property to the south would largely be retained. Furthermore, the large rear garden/amenity spaces proposed would be in keeping with the spacious garden spaces of several plots nearby.
10. For these reasons, and despite the appeal site's location outside the settlement boundary, the proposal would not diminish the verdant character of the surrounding countryside. It would be an appropriate response to the local character and identity.
11. No detailed assessment of existing trees either within, or close to, the site has been provided in support of the appeal. However, there is no proposal to fell any trees. Whilst I appreciate that the proposed dwellings would potentially encroach into the root protection area of several trees located close to the side boundary of the appeal site, this area comprises a mix of vegetation, including coniferous trees. Collectively, it forms a verdant boundary which is partially visible from the street. None of the trees likely to be affected make a significant contribution individually, and the loss of trees along this boundary

could be tolerated without causing undue visual harm, subject to compensatory planting which could be secured by planning condition.

12. I realise that the Council's case is partly predicated on alleged conflict with Policy GBR2 criterion (e), which relates to infill and development on brownfield land. However, the proposal would be a type of development which I deem acceptable in accordance with Policy GBR2(d). Therefore, it is not necessary for me to consider the proposal against any of the other exceptions listed in the policy. I also find no conflict with Policies HOU2, DES3 and DES4 of the DP which require, amongst other matters, that development is of a high standard of design and layout to reflect and promote distinctiveness, and that landscaping features of amenity value, including mature trees, shrubs and hedgerows, are retained, protected and enhanced with provision made for new green infrastructure.

### *Accessibility*

13. Benington is identified as a *Group 2 village* in the DP<sup>1</sup>, indicative of a smaller village with access to some services and facilities. The appeal site lies beyond the settlement boundary. However, locations outside settlement boundaries may not necessarily be unsustainable, depending on the accessibility of services and facilities.
14. 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 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 distance, it offers limited provisions, including a primary school, churches and a village hall. The appellants also refer 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.
15. As a result, future residents of the dwellings 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 proposals<sup>2</sup>, but the bus services are limited in frequency<sup>3</sup>.
16. 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.

### *Conclusion on Main Issues*

17. The proposal would address the requirements of Policy GBR2 which states that replacement buildings will be permitted provided that, amongst other matters,

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

<sup>2</sup> Circa 200m according to SoCG

<sup>3</sup> See paragraph 2.6.1 of appellant appeal statement

the built form is appropriate to the character, appearance and setting of the area.

18. Unlike the other appeal schemes considered at the same Hearing on nearby sites<sup>4</sup>, this proposal would be a form of development supported by Policy GBR2 of the DP, meaning it would be an appropriate type of rural development. With this in mind, I have also taken into account paragraphs 79 and 85 of the National Planning Policy Framework (the Framework) which recognise that proposals that meet local business and community needs and 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
19. Therefore, despite the locational shortcomings of this site, the net addition of one dwelling would not undermine the spatial strategy for the District given the DPs support for replacement buildings in rural areas. With this context in mind, and having regard to the Framework, I attribute limited weight to the conflict with Policies TRA1 and DPS2 of the DP in this case.

### **Other Matters**

20. The Council refer to the *Gosmore Paddock* appeal in their evidence<sup>5</sup>. However, the case was different to this appeal for several reasons, not least as it did not involve a replacement building, thus the planning policy context was different. Moreover, the DP had not been adopted at the time of that decision. Therefore, the conclusions drawn in that case were not sufficiently similar to the appeal before me to warrant me departing from the decision I have taken in this case.

### **Planning Balance**

21. The proposal would be in accordance with Policy GBR2 of the DP, which specifically supports the type of development proposed. There would be limited conflict with Policy TRA1 and DPS2 of the DP. No conflict with other policies in the DP has been identified.
22. Moreover, the Council are unable to demonstrate a 5-year supply of deliverable housing sites<sup>6</sup>. The adverse impacts arising from the development would be limited, and whilst the benefits of one net additional dwelling would also be limited, the harm would not clearly and demonstrably outweigh the benefits associated with the provision of housing. The proposal would constitute sustainable development which leads me to conclude that the appeal should be allowed.

### **Conditions**

23. The Council and the appellants have agreed a range of conditions that are considered necessary in the event that planning permission is granted. I have largely attached these in the overall form suggested, but have altered the wording as necessary to improve their precision and otherwise ensure accordance with the relevant tests contained within paragraph 56 of the

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<sup>4</sup> Appeal refs: APP/J1915/W/22/3303408, APP/J1915/W/22/3303413, APP/J1915/W/21/3288702, and APP/J1915/W/21/3288588

<sup>5</sup> Appeal Ref: APP/J1915/W/17/3184877 – up to 13 dwellings

<sup>6</sup> As per appeal refs: APP/J1915/W/22/3303408, APP/J1915/W/22/3303413, APP/J1915/W/21/3288702

Framework. I have also amalgamated suggested conditions where appropriate.

24. I have applied the standard '3 year' time limit condition, and conditions detailing the approved plans, for certainty. Conditions relating to materials, boundary treatments and landscaping are necessary to ensure the character and appearance of the area would not be harmed.
25. Conditions requiring vehicle electric charging points and restrictions on the emissions from installed boilers are necessary to meet a supplementary planning document and Policy EQ4 of the DP. The submission of a construction management plan is necessary to protect nearby occupiers from harmful impacts on their living conditions, and to mitigate highway safety impacts by measures including reducing the likelihood of mud and other debris from being deposited on the highway.
26. The submission of a biodiversity mitigation and enhancement scheme is required in accordance with the Framework. Measures to protect existing trees are required in the interests of the character and appearance of the area, as is a condition requiring the submission of landscaping details. Details of surface water drainage are required as limited information was submitted with the appeal, and in the interests of preventing an increase in flood risk. However, I have altered the condition suggested by the Council to make it more concise. Contaminated land conditions are necessary given the previously developed nature of the site, in the interests of the local environment.
27. It is necessary to ensure car parking is laid out before the dwellings are occupied, in the interests of highway safety, and a condition is imposed to reflect this.
28. I have not imposed a condition relating to cycle parking as the submitted plans show that cycle storage would be provided within the approved incidental office space. Moreover, whilst the Council suggests conditions which would involve the removal of permitted development rights relating to householder extensions, paragraph 54 of the Framework states that permitted development rights should not be removed unless there is clear justification to do so. Contrary to the Council's stated justification for these conditions, the site does not lie in the Green Belt, and given its existing use mainly for residential purposes, I do not see any clear reason for these restrictions to be imposed.
29. Finally, the conditions imposed relating to drainage, construction management and contamination are pre-commencement as it is necessary to agree details relating to those matters before any works take place on the site.

## **Conclusion**

30. For the reasons set out above, the appeal is allowed, and planning permission is granted subject to the following conditions.

*M Woodward*

INSPECTOR

**Annex 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’

**Annex 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)

## **Annex C: Schedule of 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: 20\_12-201 Rev A, 20\_12-62, 20\_12-61, 20\_12-60-2, 20\_12-60-1, 20\_12-14, 20\_12-25 Rev A, 20\_12-81 Rev A, Location Plan.
- 3) Prior to any above ground construction works being commenced, the external materials to be used in the construction of the development hereby permitted shall be submitted to and approved in writing by the Local Planning Authority, and thereafter the development shall be implemented in accordance with the approved details.
- 4) Development shall not commence, excluding works of demolition, until full details of surface water drainage systems to serve the development have been submitted to and approved in writing by the Local Planning Authority. The surface water drainage scheme shall be implemented in accordance with the approved details and completed prior to the occupation of the development.
- 5) Development shall not commence until a Construction Environmental Management Plan (CEMP) has been submitted to and approved in writing by the Local Planning Authority. The CEMP shall, where applicable, provide for:
  - i) Measures to ensure that vehicles exiting the site do not deposit mud or other detritus on the public highway;
  - ii) the parking of vehicles of site operatives and visitors;
  - iii) storage of plant and materials used in constructing the development;
  - iv) the location of temporary buildings and facilities to be used by site operatives during construction;
  - v) the hours that delivery vehicles will be permitted to arrive and depart and arrangements for their loading and unloading;
  - vi) hours of operation, clearance, and construction works.

The measures set out in the CEMP shall be carried out and complied with in full during the construction of development.
- 6) Prior to any construction works, a landscaping scheme shall be submitted to and approved in writing by the Local Planning Authority. The scheme shall include full details of both hard and soft landscape proposals, finished levels or contours, hard surfacing materials, retained landscape features, planting plans, schedules of plants, species, planting sizes, density of planting and an implementation timetable. The scheme shall also include details of measures to protect trees within and immediately adjoining the site during the construction period. The development shall be implemented in accordance with the approved details and timetable.
- 7) All hard and soft landscape works shall be carried out in accordance with the approved details. Any trees or plants that, within a period of five years after planting, are removed, die or become, in the opinion of the Local Planning Authority, seriously damaged or defective, shall be

replaced as soon as is reasonably practicable with species, size and number as those originally approved.

- 8) No development above slab level shall take place until a Biodiversity Mitigation and Enhancement Strategy has been submitted to and approved in writing by the Local Planning Authority. The Strategy shall include details of any new habitat to be created along with management and maintenance details. The Strategy shall include a timetable for implementation. The development shall be carried out in accordance with the approved details.
- 9) Development shall not commence until a scheme to deal with contamination of land/ground gas/controlled waters has been submitted to and approved in writing by the Local Planning Authority. The scheme shall include details of, and a timetable for the submission of, the following reports and information:

(i) A Phase I site investigation report carried out by a competent person to include a desk study, site walkover, the production of a site conceptual model and a human health and environmental risk assessment, undertaken in accordance with BS 10175: 2011 Investigation of Potentially Contaminated Sites - Code of Practice.

(ii) A Phase II intrusive investigation report detailing all investigative works and sampling on site, together with the results of the analysis, undertaken in accordance with BS 10175:2011 Investigation of Potentially Contaminated Sites - Code of Practice. The report shall include a detailed quantitative human health and environmental risk assessment.

(iii) A remediation scheme detailing how the remediation will be undertaken, what methods will be used and what is to be achieved. A clear end point of the remediation shall be stated, and how this will be validated. Any ongoing monitoring shall also be determined.

(vi) If during the works contamination is encountered which has not previously been identified, then the additional contamination shall be fully assessed in an appropriate remediation scheme which shall be submitted to and approved in writing by the Local Planning Authority.

(v) A validation report detailing the proposed remediation works and quality assurance certificates to show that the works have been carried out in full accordance with the approved methodology shall be submitted prior to first occupation of the development. Details of any post-remedial sampling and analysis to demonstrate that the site has achieved the required clean-up criteria shall be included, together with the necessary documentation detailing what waste materials have been removed from the site.

Development shall be carried out in accordance with the approved details and timetable.

- 10) Prior to the first occupation of the development hereby approved, details of all boundary walls, fences or other means of enclosure to be erected shall be submitted to and approved in writing by the Local Planning

Authority. The development shall be implemented in accordance with the approved details prior to first occupation.

- 11) Prior to first occupation of the development, a single electric vehicle charging point per dwelling shall be provided, the specification of which shall be submitted to and agreed in writing with the Local Planning Authority prior to occupation.
- 12) Any gas-fired boiler(s) installed shall meet a minimum standard of <40 mgNO<sub>x</sub>/kWh.
- 13) Prior to first occupation of the development, all on site vehicular parking and turning areas shall be provided and surfaced as indicated on the drawing (20\_12-201 Rev A). Arrangements shall be made for surface water from the site to be intercepted and disposed of separately so that it does not discharge onto the highway.

*End of Schedule*