

Appeal Decision

Site visit made on 20 June 2023

by P Eggleton BSc(Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 1st August 2023

Appeal Ref: APP/J1915/W/22/3311566

Highfield Nursery, Wellpond Green, Standon, Hertfordshire SG11 1NL

- 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 Barry Pestell against East Herts Council.
 - The application Ref 3/22/1433/FUL is dated 23 June 2022.
 - The development proposed is the demolition of agricultural building and erection of one four bedroom single storey detached dwelling.
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Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by Mr Barry Pestell against East Herts Council. This application is the subject of a separate Decision.

Procedural matters and main issues

3. The appeal is lodged against non-determination of the application. The council's delegated report recommends refusal for two reasons. The first relates to the impact on the character and appearance of the rural area. The second relates to the sustainability of the location with regard to access to facilities and services.
 4. The existing building has permission under Class Q of the Town and Country Planning (General Development Order) (England) 2015 to be converted from an agricultural use to a residential use. This proposal would replicate that permission in terms of replacing the building with a new one of the same size and design. The main difference would be the size of the garden area which would be larger under the appeal proposal than is allowed by the Class Q permission. The building works associated with the Class Q consent are currently underway and nearing completion.
 5. The main issues are therefore the effect on the character and appearance of the area; and whether the proposal would be located in a sustainable location with regard to access to facilities and services.
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Reasons

6. A recent appeal decision APP/J1915/W/22/3302750, dated 7 March 2023, related to a proposal to replace existing buildings on this site, including this building, with new build dwellings. The designs of the replacement dwellings differed from the original Class Q permissions and as such, the appeal considerations were different. However, the Inspector's findings with regard to the location of the site are directly relevant.
7. The East Herts District Plan 2018 (DP) policy DPS2 sets out a sustainable settlement hierarchy which directs new development to larger settlements. Outside of these, development should be proportionate to local needs. The policy is supported by policy TRA1 which aims to encourage development in locations which would allow access to services by a genuine choice of transport modes. The policies are consistent with the *National Planning Policy Framework*. The appeal site is not on a bus route, local roads are unlit and do not have the benefit of pedestrian footways. New residential development in this location would therefore conflict with both the development plan and the *Framework* with regard to the accessibility of this location.
8. There is however a fallback position which would result in the creation of a new dwelling, by conversion, which would be identical in many respects. There is now no doubt about the likelihood of this fallback position being implemented as the works are nearing completion. I agree with the conclusions of my colleague that whilst there is conflict with DP policies DPS2 and TRA1, the fallback position is a material consideration and it is sufficient to indicate that an alternative conclusion should be reached in this regard.
9. The remaining issue relates to the effect on the character and appearance of the area. The previous appeal included buildings of differing design and as such, although much of the assessment is comparable, the findings are not directly relevant to this proposal.
10. Wellpond Green is a rural settlement set in open countryside. The settlement pattern largely comprises of short stretches of detached residential properties fronting roads with occasional large properties set away from roads in extensive gardens. The introduction of new housing beyond the back gardens of the roadside properties and in an open area with a former nursery use, would consolidate development within this open area and be at odds with the existing rural character. Policy DES3 requires new development to respect the character of its surrounding area which this would not. This policy is supported by policy GBR2 which seeks to protect the rural areas beyond the Green Belt from development. This would introduce new residential development beyond the settlement into this backland area which would erode its rural character and that of the wider area. The proposal would clearly conflict with the development plan policies.
11. The fallback position to convert this former agricultural building is however a material consideration. In terms of the building works, the impact on the character and appearance of the area would be the same as the permitted development as the building structure would be new but the external appearance would be the same. In this respect, it cannot be concluded that the

proposed building works, when compared to the fallback position, would harm the character or appearance of the area.

12. The only significant difference between the Class Q conversion and this proposal relates to the curtilage of the respective dwellings. The Class Q plans show a tightly drawn curtilage with a total area of 316m². This would provide only a very narrow strip of garden to each side of the converted building for domestic use. The current proposal illustrates a much larger area to all sides and is annotated as being in excess of 700m².
13. The limited extension of the curtilage to the north and west would be towards an existing building and adjacent to the heavily landscaped rear garden boundary of the residential property, The Old House. This small area would be closely related to the new dwelling and would be of a small size and irregular shape. Its contribution towards the openness of this area is limited. To the east there is an existing glasshouse. The evidence before me is that a change of use of that building, or its surrounds, has not been accepted and it therefore retains its lawful agricultural use. The proposed minor change in alignment of this boundary would result in only a narrow additional strip of residential curtilage beyond the Class Q approval which would allow for the necessary parking and turning of vehicles. Given this limited change and close proximity of this area to the dwelling, although extending the residential character further, it would not result in a significant change to the original consent or increase its wider impact.
14. The land to the south is now predominantly grassed but was originally the site of large areas of glasshouses. The original nursery house, Sandwood, now sits in isolation to the southeast and does not appear to have a defined residential curtilage. The appellant suggests that the substantial area between these two buildings and around that house, already resembles a residential garden rather than an agricultural holding. However, there is nothing before me to suggest that any of the open land has a lawful use other than agriculture. Although currently mown grass, it does not have the characteristics of a garden closely associated with a dwelling and the current management regime may not persist into the future.
15. The scale of the extension of the curtilage to the south would be significant. Although a boundary fence has been erected and may not require consent, the change of use would change the character of this area of land from open grassland to domestic garden. The council are concerned that this would allow for the erection of domestic buildings which would further change the open character of this area. This could be brought under control by a condition removing permitted development rights. However, general paraphernalia associated with gardens and changes with regard to planting, boundary treatments and maintenance regimes would inevitably change its character in any event. Once established as a garden with a domestic character, it would be more difficult to justify any restrictions on garden buildings. Whilst I acknowledge that this area of land is not publicly visible, it is evident from its surrounds, albeit in private views. The use of such a large area as garden would however change the character of this open land and it would make other similar changes more difficult to resist.

16. The scale of the proposed curtilage, particularly its extension to the south, would result in harm to the character and appearance of this area. It would therefore conflict with DP policies VILL3(iii), GBR2 and HOU12(a&b) as it would extend the domestic area of this group of isolated buildings to the detriment of the surrounding rural character and appearance of the area.
17. In conclusion, a new dwelling in this location would conflict with the development plan. However, this conflict would be outweighed by the weight attributed to the fallback position, which is currently being implemented. The extension of the curtilage beyond that accepted by the fallback position would domesticate more of this open land within the countryside and it would individually and cumulatively erode the rural character and appearance of the area.
18. I have had regard to the appeal decisions submitted and the High Court judgement referred to and these support the above general approach to the fallback position. The appeal decision APP/H0502/W/17/3170904 supports the approach with regard to the extended curtilage.
19. The benefits of this scheme compared to that of the fallback position are put forward as including the improved construction of the dwelling which may offer improved energy efficiency. There is no overall energy/carbon comparison between these schemes but I do not underestimate the benefits of improved energy efficiency during the lifetime of the property. The improved curtilage would offer some private benefits to future occupants. Overall, whilst there would be some benefits to this proposal compared to the Class Q development, there are no matters that are sufficient to outweigh my concerns with regard to the large extended garden. I therefore dismiss the appeal.

Peter Eggleton

INSPECTOR