



Appeal Decision

Site visit made on 18 July 2023

by K Allen MEng (Hons) MArch PGCert ARB

an Inspector appointed by the Secretary of State

Decision date: 8 September 2023

Appeal Ref: APP/J1915/W/22/3309807

Land to the Front of Kemps Close, B1368 from its Junction with Hare Street Road to start of Dassels Hill, Hare Street SG9 0DZ

- 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 Mulberry Tree Developments Ltd against East Hertfordshire District Council.
 - The application Ref 3/21/0701/FUL, is dated 26 March 2021.
 - The development proposed is the erection of 5 no. new dwellings (5 no. 3-bed terraced dwellings) with access, parking, and pedestrian pathway and associated works.
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Decision

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

Applications for costs

2. An application for costs was made by Mulberry Tree Developments Ltd against East Hertfordshire District Council. This application is the subject of a separate Decision.

Procedural Matter and Main Issues

3. This appeal was made on the basis of the Council's failure to determine the planning application within the statutory timescale. The Council has provided a statement explaining the reasons why it would have refused planning permission had it been able to do so. Although the Council have provided two suggested reasons for refusal, they encompass four areas of concern which are reflected in the following main issues:
 - the effect of the proposal on the character and appearance of the area, having particular regard to whether it would preserve the setting of the adjacent grade II listed buildings, Thatch Cottage and Kemps Cottage and the milestone opposite the post office;
 - the effect of the proposal on the living conditions of neighbouring occupiers, with particular regard to outlook;
 - whether the proposal would provide satisfactory living conditions for its future occupants, with particular regard to outlook; and
 - the effect of the proposal on biodiversity and protected species.

Reasons

Character and appearance

4. Hare Street is a rural linear settlement, comprising road fronting properties, typically set in deep east to west plots. The surrounding dwellings are varied, with a mix of architectural styles, materials, and distances from the highway. Typically, properties either directly face the highway or are set back significantly within large verdant plots. Whilst it is common for vehicular access to be provided to the rear, each dwelling has an active frontage with front door.
5. The appeal site comprises a large area of open land with various trees and hedges next to open fields to the west and neighbouring properties in the north and south. A vacant bungalow at the rear of the site is accessed via a shared drive and a footpath which dissects the mature hedge adjacent to the highway.
6. The appeal site forms part of the setting of the adjacent grade II listed buildings Kemps Cottage and Thatched Cottage as well as the Milestone opposite the post office. Insofar as is relevant to this appeal, all three derive significance from their connection to the historical growth and development of the village, with the cottages deriving further significance from their architectural character.
7. The proposal would retain the majority of the mature hedge which fronts the appeal site. Whilst the proposed terrace would be visible within the street scene it would be set back from the existing building line. The proposal would be a compatible height within the surrounding context and would utilise local materials. Consequently, the proposal would preserve the setting and significance of the adjacent listed cottages and milestone.
8. The proposal would continue the linear pattern of development seen along the B1368. However, the proposed properties would not have front doors be and would turn their back on the highway. Whilst the entrance and access to the dwellings from the rear has several benefits, including the provision of step-free access, the lack of functional relationship with the highway would appear incongruous within the street scene.
9. I note that the overall number of dwellings proposed has been reduced from the previous application¹, however the number of dwellings on the east of the site has been increased. Whilst the proposed style of property would be in keeping with other terraces in the area, the appeal site would be more densely spaced with a large area of hardstanding, dominated by cars. In other words, the proposal would have a tighter grain than its surroundings and consequently, would appear cramped when viewed in relation to the adjacent low-density properties.
10. Although the proposal would preserve the setting and significance of the adjacent grade II listed buildings and milestone, I conclude that the proposal would harm the character and appearance of the area. The proposal would therefore conflict with Policies GBR2, VILL2 and DES4 of the East Herts District Plan (October 2018) (EHDP). Amongst other things these policies require that development is well-designed and appropriate to the character, appearance and setting of an area, whilst considering layout, siting, and density.

¹ Application Reference 3/20/0663/FUL

Living conditions – neighbouring occupiers

11. I acknowledge that the existing bungalow to the rear of the site is in a state of disrepair and has not been occupied for a long period of time. Nonetheless, the proposal would retain the bungalow for residential occupation. The bungalow currently benefits from an open, verdant outlook in all directions over areas of tall grass.
12. The proposed access and parking areas would extend fully along the east and south elevations of the existing bungalow with minimal separation distance. Consequently, the outlook from the property would be harmfully reduced and dominated by large areas of hardstanding and cars, the majority of which would not be associated with the property in question.
13. Therefore, I conclude that the proposal would harm the living conditions of neighbouring occupiers, with particular regard to outlook, in conflict with Policies VILL2 and DES4 of the EHDP. Where collectively they require development to avoid detrimental impacts on the amenity of occupiers of neighbouring properties

Living conditions – future occupiers

14. The proposed dwellings would provide sufficient internal and external space, in line with national space standards. However, the terrace would be positioned extremely close to the existing/proposed hedge. Although the hedge would ensure privacy for the future occupiers and provide a green view. Due to the hedge's proximity and scale, the east facing rooms would have a limited, obscured outlook.
15. Overall, I conclude that the proposal would not provide satisfactory living conditions for its future occupants, with particular regard to outlook. The proposal would conflict with Policies VILL2 and DES4 of the EHDP where they seek to ensure development is well designed and considers amenity.

Biodiversity and protected species

16. The appeal site comprises an open area of rough grass land with several trees and hedges, adjacent to open fields. Further, several piles of rubble and garden waste are present on site.
17. The appellant asserts that ecological assessments were submitted with the application to the local planning authority and that the proposed site layout diminishes the need for ecological surveys. I acknowledge that the appeal site has reduced in size compared to the previous scheme and no longer includes works to the existing bungalow². However, I have not been provided with any ecological surveys in relation to the proposal before me and having visited site, in the absence of substantive evidence to the contrary, I am satisfied that it could be of ecological value and capable of supporting protected species locally.
18. Consequently, due to lack of information I am unable to determine the effect of the proposal on biodiversity or protected species. As such, I must take a precautionary approach and find the proposal would conflict with Policy NE3 of the EHDP which requires development to demonstrate how biodiversity value will be improved and species of principle importance protected.

² Application Reference 3/20/0663/FUL

Other Matters

19. My attention has been drawn to other recent applications within Hare Street. However, there are fundamental differences to the appeal proposal, including the proposed layouts, access arrangements and site density, as such they are not comparable. I also acknowledge the comment with regard to the Council's handling of the proposals. However, I confirm I have determined the appeal on its planning merits.

Planning Balance

20. The parties agree that the Council cannot demonstrate a five-year housing land supply as set out in the Framework. I have not been provided with any information as to the scale of the shortfall. Regardless, Framework paragraph 11d is engaged.
21. The Framework requires that developments add to the overall quality of the area, and are sympathetic to local character, whilst maintaining a strong sense of place. I have concluded that the proposal would appear cramped and incongruous within the street scene, harming the character and appearance of the area.
22. Further, the proposal would harm the living conditions of the occupiers of the existing bungalow and would not provide satisfactory living conditions for its future occupants with regard to outlook. This would conflict with the Framework where it requires development to create places with a high standard of amenity for existing and future users.
23. Insufficient information has been provided to determine the effect of the proposal on biodiversity or protected species. Consequently, the proposal would be in conflict with the Framework where it requires that development protects and enhances biodiversity and protects and recovers priority species. Therefore, the conflict between the proposal and Policies GBR2, VILL2, DES4 and NE3 of the EHDP should be given significant weight.
24. Nevertheless, the Framework seeks to boost the housing supply, whilst supporting development which makes efficient use of land. The proposal would make an efficient use of previously developed land, providing five additional dwellings within an accessible site and contribute towards the boroughs housing supply. However, five additional dwellings, would make little difference to the overall supply of housing, even if any shortfall in supply were significant. These benefits would be of moderate weight.
25. Short term employment would be provided during the construction and in the long term the future occupiers would benefit the local economy and community by helping to sustain the vitality and viability of the existing settlement. Residents would be encouraged to engage in outdoor activities creating healthy communities. However, the social and economic benefits of five additional dwellings would be modest and would attract limited weight.
26. The proposal would utilise energy efficient design and technologies and reduce water consumption. Whilst this is commendable and would accord with the Framework where it supports the reduction of greenhouse gas emissions and water consumption, details have not been provided of the proposed design strategies or technologies which would be used. Therefore, these benefits attract limited weight.

27. Consequently, when assessed against the policies in the Framework taken as a whole, the adverse impacts of the proposal would significantly and demonstrably outweigh the benefits. Therefore, the presumption in favour of sustainable development does not apply.

Conclusion

28. Overall, for the reasons given above, I conclude on balance that the proposal would conflict with the development plan as a whole, and there are no material considerations, including the provisions in the Framework and the benefits of the proposal, which indicate that the development should be determined other than in accordance with it. Therefore, the appeal is dismissed and planning permission is refused.

K Allen

INSPECTOR