



Appeal Decision

Site visit made on 5 August 2024

by A Hickey MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 2nd September 2024

Appeal Ref: APP/X1925/W/23/3333947

11 Whernside Drive, Stevenage, Hertfordshire, SG1 6HW

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 (as amended) for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Mr Alex Richmond against the decision of North Herts Council.
 - The application Ref is 23/02026/S73.
 - The application sought planning permission for approval of details of 93 dwellings comprising a mixture of 1, 2, 3, 4 & 5 bedroom flats, terraces and detached houses, 53 garages, 102 parking spaces and ancillary works, in accordance with amended and additional plans received on 10th February 2006 without complying with a condition attached to planning permission Ref 05/01838/1, dated 17 February 2006.
 - The condition in dispute is No 3 which states that: Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 as amended, no development as set out in Classes A - E of Part 1 of Schedule 2 to the Order shall be carried out without first obtaining a specific planning permission from the Local Planning Authority.
 - The reason given for the condition is: Given the nature of this development, the Local Planning Authority considers that development which would normally be "permitted development" should be retained within planning control in the interests of the character and amenities of the area.
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Decision

1. The appeal is allowed and planning permission ref 05/01838/1 is granted for approval of details of 93 dwellings comprising a mixture of 1, 2, 3, 4 & 5 bedroom flats, terraces and detached houses, 53 garages, 102 parking spaces and ancillary works, in accordance with amended and additional plans received on 10th February 2006, at Area BP6B (Plots) 143-236), land at, Burleigh Park, Stevenage, SG1, is varied by deleting condition 3 and substituting it with a new condition. The decision is subject to the conditions detailed in the schedule to this decision below.

Preliminary Matters

2. Following the Council's decision, the National Planning Policy Framework (the Framework) was revised. Its content in respect of the main issues has not been materially altered. Therefore, in this instance, it has not been necessary to consult the parties regarding the revisions to the Framework.
3. As part of the appeal the appellant has provided a number of renders and drawings. The appeal process should not be used to evolve a scheme¹, it is important that what is considered during the appeal is essentially the same

¹ Planning Inspectorate Procedural Guide – Planning Appeals – England, August 2024

that was considered by the LPA and by interested parties. Moreover, the renders and drawings provided are illustrative only. I have, therefore, determined the appeal on the basis of the information considered by the Council.

Background and Main Issues

4. Planning permission was originally granted in February 2006 for the residential development of 93 dwellings. This included a condition (3) removing permitted development (PD) rights for Schedule 2, Part 1 Classes A-E of the Town and Country Planning (General Permitted Development) (England) Order 1995, now superseded by the Town and Country Planning (General Permitted Development) Order 2015, as amended (GPDO). These Classes relate to dwellinghouses and their enlargement, improvement or other alteration, additions to the roof, alterations to the roof, porches and buildings incidental to the enjoyment of a dwellinghouse.
5. The Council consider the condition to be necessary in the interests of the character and appearance of the surrounding area and the living conditions of the occupiers of neighbouring properties.
6. The appellant, however, objects to the condition for a number of reasons including the cost, resources and time involved in making minor changes to the property. The appellant also states there are no heritage assets of significance nearby and the appeal property is similar to others nearby that benefit from permitted development rights. The appellant states their intention is primarily for a garage conversion as it is underutilised space. However, as the appeal relates to Classes A-E I have proceeded on this basis.
7. Taking the above background into consideration, the main issues are whether the condition is reasonable or necessary in the interests of:
 - the character and appearance of the surrounding area; and
 - the living conditions of the occupiers of neighbouring properties.

Reasons

Character and Appearance

8. The appeal property forms part of a modern residential development which backs onto open space bounded by trees. The appeal dwelling consists of a narrow mid-terrace three-storey modern property with an integral garage and a single parking space to the front. The property also benefits from a rear garden that is narrow and enclosed at the rear by trees. The surrounding dwellings comprise of a mix of types, styles and designs, including two and three-storeys. The heights and relatively short separation distances between dwellings result in a close pattern and grain to the overall development.
9. Paragraph 54 of the Framework states that planning conditions should not be used to restrict national permitted development (PD) rights unless there is clear justification for doing so. Furthermore, the Planning Practice Guidance (PPG) states that conditions restricting the future use of permitted development rights may not pass the test of reasonableness or necessity.
10. Under Class A, the integral garage door could be removed, and the ground floor level converted. The introduction of ground-floor living accommodation

through the introduction of a window on the front elevation would disrupt the coherent pattern of garages and front doors on this short terrace row. The change would be visible from public vantage points on the street appearing harmfully at odds with the design of adjoining properties. Moreover, the loss of a parking space would mean that additional cars would have to resort to on-street parking to the detriment of the street scene.

11. Class D allows the construction of a porch outside of any external door. The introduction of a front porch would similarly disrupt the consistent front elevations found on this short terrace row.
12. The garage space may not be practical for car storage for the appellant's needs. Nonetheless, it could serve future occupiers' needs as it can accommodate a small car. While I have had regard to the Vehicle Parking at new development SPD, this does not lead me to a different conclusion that the garage is not sufficiently sized for a small car. Moreover, this document was developed after the original permission for the estate was approved.
13. Class A would also allow for the erection of a single-storey rear extension of up to 3 metres in length and maximum height of 4 metres. The existing rear garden is not particularly long and is narrow in width. Given the size and length of an extension that could be erected under PD, its overall bulk and massing it would likely dominate the rear of the properties on this short terrace row.
14. Turning to the removal of PD rights for Part 1 Class E, the front and rear garden and driveway allow for the provision of a sizable building on the appeal site. This is by virtue of the size of the appeal site and the ground covered by such buildings under Class E being able to cover up to 50% of the total area of the curtilage. Such an outbuilding could have a maximum eaves height of 2.5 metres and a maximum overall height of 4 metres with a dual-pitched roof, or 3 metres in any other case.
15. The introduction of an outbuilding of this size would appear as an incongruous addition within the surrounding area. It would be out of keeping with the prevailing undeveloped rear gardens that form this terraced row. Additionally, given its height and footprint, it would be highly visible from the rear of nearby properties. This would likely reduce the appreciation nearby occupiers have about the quality of the environment within which they live. Thereby harming the character and appearance of the area.
16. Class B, Part 1, Schedule 2 of the GPDO allows additions to the roof of the dwelling. There are a variety of roof dormers within the vicinity of the appeal property, albeit they are modest in size. A large dormer occupying much of the rear roof space could be erected under PD. However, given the setback of the terrace row and established woodland to the rear, it would not be highly visible from the public realm. As such, it would be unlikely to adversely affect the character or appearance of the surrounding area.
17. Under Schedule 2, Part 1 of the GPDO Class C allows alterations to the roof of a dwellinghouse. Development under Class C is limited in scale by the GPDO. Therefore, it would unlikely adversely affect the character or appearance of the surrounding area if it were undertaken as permitted development.

18. My attention has been drawn to other examples² of developments that have permitted rights or properties with extensions or alterations. I do not have the full details of these approvals. Nevertheless, one of the main issues in this case is the effect on the character and appearance of the area. I have considered the appeal proposal on its own merits in the context of the immediate area and found harm for the reasons set out.
19. In my judgement, removing the disputed condition and PD right restrictions in relation to Classes A, D and E would therefore have the potential to result in development that would be highly visible and harmfully detract from the character and appearance of this short terrace.
20. Based on the evidence before me, having regard to the tests set out in the Framework and PPG, condition 3 is therefore reasonable and necessary in relation to Classes A, D and E in the interests of protecting the character and appearance of the area. As such, the development without the disputed condition would have the potential to conflict with North Hertfordshire Local Plan (HLP) Policies D1 and D2. Amongst other things, these state that development should respond positively to local context being well related to adjoining properties. It would also conflict with the Framework which seeks development that is sympathetic to local character.

Living Conditions

21. There is an existing boundary fence between the appeal property and adjoining neighbours. These properties on either side benefit from a similarly sized narrow garden. It is likely that any rear extension would be a noticeable presence above the boundary fence and within areas of the garden.
22. The height, depth and close proximity of an extension would result in it becoming an imposing and dominating feature. In the absence of any evidence to the contrary, it would create an uninviting outlook and an increased sense of enclosure from within these properties and within the garden close to the shared boundary.
23. Class B allows for a variety of styles of dormers. Any dormer created would be recessed in from the eaves but could occupy a substantial area of the roof. At present, the first and second-floor rear elevation windows of the host dwelling overlook adjoining gardens, which is not unusual in urban areas. However, without any detailed drawings, I cannot be sure what room a dormer would serve. The host dwelling could be configured such that a dormer occupied a living room. It could also incorporate large glazing panels, which would be more intrusive than the existing relationship, increasing the perception of being overlooked in neighbouring gardens.
24. Moving to Class E, the scope of development allowed by the GPDO in relation to this Class is broad. No detailed plans to show the height and projection of a potential outbuilding above the existing boundary fences are presented. Without such details, I am unconvinced that an outbuilding would not be visually intrusive to neighbouring gardens, given their length and narrow width. Therefore, the presence of an outbuilding would likely detract from the amenity value of these garden spaces.

² Ref: 04/01839/1, 03/001111/1, 05/01838/1 and 01/01156/1

25. There is limited scope for development allowed under Schedule 2, Part 1 Classes C and D. Based on this and my observations on site any permitted development under these classes would not harm the living conditions of neighbouring occupiers. Additionally, the conversion of the garage under Class A would not give rise to any harmful effects on the living conditions of nearby occupiers.
26. For the reasons above, condition 3 is therefore reasonable and necessary in relation to Classes A, B and E in the interests of protecting the living conditions of neighbouring properties. As such, the development without the disputed condition would have the potential to conflict with HLP Policy D3, which seeks to avoid unacceptable harm to living conditions. It would also conflict with the Framework, which seeks a high standard of amenity for existing users.

Other Matters

27. Representations were made to the effect that the appellant's human rights under Article 1 of the First Protocol, as set out in the Human Rights Act 1998, would be violated if the appeal is dismissed. This relates to the entitlement to the peaceful enjoyment of one's possessions. However, those are qualified rights and interference is justified in this instance being in accordance with the law and in the public interest of upholding the Development Plan, national planning policy and the rights of the nearby occupiers to enjoy their properties.
28. Moreover, the removal of the PD rights for Classes A, B, D and E would also not preclude the appellant from applying for planning permission for them in the future, which the Council would need to consider on its own merits. This may involve additional time, expense and inconvenience. However, I find that the imposition of the disputed condition in relation to Classes A, B, D and E is clearly justified in the interest of the character and appearance of the area and living conditions of the occupiers of neighbouring properties.
29. The appellant has referred to the accessibility of nearby green spaces. However, access to such areas does not overcome the identified harms. The appellant also asserts that alternative garage/storage space options are available. Nonetheless, no details have been provided to demonstrate this.
30. Matters related to development associated with the wooded area to the rear of the appeal site do not form part of this appeal.

Conditions

31. PPG makes clear that decision notices for the grant of planning permission under section 73 should also restate the conditions imposed on earlier permissions that continue to have effect. As I have limited information before me about the status of the other conditions imposed on the planning permission, I shall impose all those that I consider remain relevant. Albeit, I have undertaken some minor amendments for conciseness. In the event that some have in fact been discharged, that is a matter which can be addressed by the parties.
32. I have varied condition 3, allowing for PD rights under Class C for the appeal property³. I have also attached conditions in relation to landscaping and public

³ 11 Whernside Drive, Stevenage, Hertfordshire, SG1 6HW (Plot 213 as shown on the Transfer Plan 162-221.235-240)

open space in the interest of the character and appearance of the area and outdoor space provision.

Conclusion

33. For the reasons given above, I conclude that the appeal should be allowed insofar as Class C of Part 1, Schedule 2, of the GPDO. However, the appeal should be dismissed insofar as Classes A, B, D and E of Part 1, Schedule 2 of the GPDO.
34. Therefore, I vary the planning permission by deleting disputed condition 3 and substituting it with another condition. I have also re-imposed all conditions that I consider remain relevant.

A Hickey

INSPECTOR

Schedule of Conditions

1. The approved details of landscaping shall be carried out before the end of the first planting season following either the first occupation of any of the buildings or the completion of the development, whichever is sooner; and any trees or plants which within a period of 5 years from the completion of the development, die, are removed or become seriously damaged or diseased, shall be replaced during the next planting season with others of a similar size and species.
2. The landscaping details and tree protection measures hereby approved shall be carried out and completed entirely in accordance with the tree report, landscape and tree pit details, schedules and specifications and play area layout drawings that accompanied application ref 05/01838/1.
3. With the exception of plot 213 as indicated on Transfer Plan 162-221.235-240 and notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that Order with or without modification), no development permitted by virtue of Classes A, B C, D or E of Part 1 of Schedule 2 to the Order shall be undertaken. In regard to plot 213 only and notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that Order with or without modification), no development permitted by virtue of Classes A, B, D or E of Part 1 of Schedule 2 to the Order shall be undertaken.
4. The Public Open Space area in the north-western corner of the site, included as part of the details hereby approved under application ref 05/01838/1, shall be laid out and completed for use in accordance with the details shown on drawing no BP06-03-102A within 6 months of the completion and occupation of the flats and houses on plots 183-199 and 208.

End