



Appeal Decision

Site visit made on 28 February 2025

by **A. J. Boughton MA (IPSD) Dip.Arch. Dip.(Conservation) RIBA MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 13 March 2025

- **Appeal Reference: APP/J1915/W/24/3353844**
- **Church End Stocking Pelham Buntingford Herts SG9 0HT**
- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
- The appeal is made by Mrs Jenny Middleton against the decision of East Hertfordshire District Council.
- The application Ref is 3/24/0265/FUL.
- The development proposed is Erection of a detached dwelling, together with construction of a detached garage and creation of a new access.

Decision

1. The appeal is allowed and planning permission is granted for Erection of a detached dwelling, together with construction of a detached garage and creation of a new access at Church End Stocking Pelham Buntingford Herts SG9 0HT in accordance with the terms of the application, Ref 3/24/0265/FUL, and the plans submitted with it, subject to the 13 conditions listed on the schedule attached.

Preliminary Matter

2. The Council's decision notice differs from that used on the application form including elements of the proposal which are not mentioned in the appellant's description. In the interests of clarity and accuracy have therefore determined this appeal using the description used by the Council. The second reason for refusal expresses uncertainty as to delivery of Biodiversity Net Gain as a result of loss of existing trees. The provision of an Overall Biodiversity Gain Plan prior to commencement is a statutory requirement¹ such that the development may not lawfully proceed otherwise, however, as the application was made in February 2024, the proposal is exempt from the BNG requirement.

Main Issues

3. The Main Issues are:
 - whether the proposed dwelling would be suitably located having regard to the locational policies of the development plan, and
 - the effect of the proposal on existing trees and biodiversity.

¹ A deemed pre-commencement condition

Reasons

Development Strategy

4. The appellant intends to construct a detached four-bedroomed house on land associated with 'Church End' a traditional nineteenth-century dwelling that is grouped with a number of other buildings of agricultural origin but now used as stables or converted for residential use. The grade II listed Church of St Marys lies to the south of these and immediately to the south-west is a farmyard and business park listing several businesses. Together, these form an identifiable small settlement or hamlet which, although detached from the main part of Stocking Pelham, have a degree of social and employment significance within the wider community.
5. The East Herts District Plan 2018 (EHDP) development strategy set out in DPS2 intends 'limited development in villages'. Villages in the rural area 'beyond the green belt' are classified having regard to services and facilities available, accessibility and public transport. Policies VILL3 and GBR2 of the EHDP seek to restrict development in the 'Rural Area Beyond the Green Belt' to existing settlements but allow certain types of development including 'limited infilling or.... redevelopment of previously developed land ' with further qualifications as to sustainability of the location and character and appearance. It is not suggested that the proposal would amount to infilling as it is surrounded by open fields on three sides. The Council suggests the appeal site would not fall within the curtilage of Church End and is therefore not 'previously developed' ², however, the site is plainly not in any use other than residential, and from my observations, has the appearance of land tended for the comfortable enjoyment of 'Church End' as part of its garden.
6. Policy TRA1 of the EHDP requires development should '*Primarily be located in places which enable sustainable journeys to be made to key services and facilities to help aid carbon emission reduction*' and at (c) to '*provide occupiers of new development with a range of sustainable transport options*'; a language which concedes that not all development can be so located³. Whilst there are facilities such as the Church and local employment within a very short walking distance, other facilities are not close by. The appellant points to a timetabled bus service but the relevant bus stop is some 700m distant². The County's on-demand 'Lynx' community bus is, however, a sustainable travel mode which may reduce the need for the use of the private car to a small degree and will assist those who are unable to drive in rural areas such as the appeal site, but would be unlikely to be suitable for the purposes of travel to work.
7. Overall, other than the facilities previously mentioned, opportunities to make essential journeys by sustainable modes of travel from the appeal site are limited. Occupiers would likely rely significantly on the use of private cars and this guides towards a conflict with the policies which set out the spatial strategy for the adopted development plan in the way I have described.

² The Glossary to the Framework

³ 'Primarily'

Arboricultural Impacts and Biodiversity

8. As previously indicated the proposal is exempt from the provisions of The Biodiversity Gain (Town and Country Planning) (Modifications and Amendments) (England) Regulations 2024 (BNG Regulations). The appellant has submitted an arboricultural assessment of the trees on the site and addressed the comments of the Council's tree officer within a rebuttal. It is apparent that the proposal would result in the removal of several trees but retain those which are of importance in terms of wider visual amenity and value. I consider, notwithstanding their classification, those trees to be removed are not visually important when considered with the proposals as a whole. The veteran Oak (T12) and a group of smaller Silver Birch close to the frontage would be retained and soften the visual impact of development whilst there would be a scheme of planting proposals and biodiversity enhancement⁴ including tree replacement which could be required by condition as can protection of trees retained. This removes any conflict with Policies DES3 and NE3 of the EHDP, which seek to protect and enhance landscape features of value and enhance biodiversity.

Planning Balance and Conclusion.

9. I have determined that there would be no conflict with the development plan with regard to the second main issue. The development would be located in conflict with Policies GBR2 & TRA1 of the EHDP which seek to place development in the most sustainable locations where journeys for work or other essential requirements might use modes of travel other than the private car. Whilst planning permission for development proposals which conflict with an up-to-date development plan should not usually be granted, the Council have conceded that they are unable to demonstrate a Framework-compliant housing land supply. In such circumstances the presumption in favour of sustainable development is engaged as set out in paragraph 11(d)(ii) of the Framework which requires permission should be granted *'unless adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole'*, a balancing exercise which is often described as the 'tilted balance'⁵. The Framework adds that there should be *'particular regard to key policies for directing development to sustainable locations...(etc)'* and Paragraph 84 of the Framework makes clear that the development of isolated homes in the countryside should be avoided.
10. The appeal site, although not within the settlement of Stocking Pelham, would nevertheless be part of (adjoin) an identifiable small settlement which has facilities that benefit a wider area; it would not be 'isolated'. Secondly, and notwithstanding the importance of the strategic policies for development in rural areas which seek that it is placed in sustainable locations, paragraph 83 of the Framework indicates the importance of supporting local services in rural areas and that development in one location may support facilities in another. Whilst a Church and employment opportunities may not of themselves significantly diminish the likelihood of private car journeys by future occupiers of the proposed dwelling, I consider the planning harm arising from the proposed

⁴ Set out within the response by A.R.Arbon dated 14 December 2024

⁵in that it differs from the 'ordinary planning balance' derived from Section 38(6) of the 2004 Planning Act – also noting what is stated in the Council's fourth paragraph on page 6 of their appeal statement.

development would be limited because the proposal would, in so far as the circumstances of the application are relevant, align with the objectives of the Framework in regard to rural areas in supporting the retention of facilities.

11. I therefore conclude, having regard to the policies in the Framework, that the harms arising from the conflict with the locational policies of the development plan are, in this instance, insufficient to significantly and demonstrably outweigh the benefit of providing even one dwelling in the circumstances of a housing land supply shortfall. Consequently, taking all matters raised into account, the appeal succeeds, subject to the usual timing and plans conditions. Further conditions are necessary to ensure the development accords with the basis of my decision and the Council have suggested a number of these which I have considered and adjusted to accord with the tests set out in the Framework.

Andrew Boughton

INSPECTOR

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 approved shall be carried out in accordance with the approved plan ref: 100B.
- 3) Prior to the commencement of the development hereby approved, a scheme of tree protection, which has been previously submitted to, and approved in writing by, the local planning authority, shall be implemented and retained until the building is first occupied.
- 4) Prior to any above ground construction works being commenced, the external materials of construction for 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.
- 5) The first-floor side window in the south-eastern flank elevation of the new dwelling shall be fitted with obscured glazing to a minimum degree of obscurity level 3. This new window shall be permanently retained in that condition.
- 6) Prior to the commencement of any above-ground construction works, a detailed landscaping scheme incorporating, but not limited to, the proposals appearing on drawing ref: CJH 1 within the report by A.R.Arbon dated 14 December 2024 shall be submitted to and approved in writing by the Local Planning Authority. Details shall include: hard & soft landscape proposals, hard surfacing materials, means of enclosure, planting plans, schedules of plants, species, planting sizes, density of planting and an implementation timetable. Thereafter, the development shall be implemented in full accordance with the approved details and implementation timetable.

- 7) All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding seasons following the occupation of the buildings or the completion of the development, whichever is the 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 in the next planting season with others of similar size and species.
- 8) Prior to the first occupation of the development hereby approved, the access and parking arrangements, including visibility splays, as shown on approved drawing number: 100B, shall be provided in full. Thereafter, the visibility splays shall be retained at all times free from any obstruction between 600 millimetres and 2 metres above the level of the adjacent highway carriageway.
- 9) Prior to the first occupation of the development hereby approved, details of the design and siting of bin stores shall be submitted to and approved in writing by the Local Planning Authority. Thereafter, the approved bin stores shall be provided in full, prior to the first occupation of the dwelling.
- 10) Prior to the first occupation of the development hereby approved, an electric vehicle charging point shall be installed for the new dwelling and thereafter the charging point shall be retained for the lifetime of the development.
- 11) Prior to the first occupation of the development hereby approved, details of the siting and design of cycle parking facilities shall be submitted to and approved in writing by the Local Planning Authority. Thereafter, the cycle parking facilities shall be installed in accordance with the approved details, prior to first occupation of the development, and shall be retained for the lifetime of the development.
- 12) Prior to the first occupation of the development hereby approved, details of the siting and model of air source heat pump shall be submitted to and approved in writing by the Local Planning Authority. Thereafter, the air source heat pump shall be installed in accordance with the approved details, prior to first occupation of the new dwelling.
- 13) Prior to the first occupation of the development hereby approved, details of the siting and design of wildlife enhancements provided on the site, including bird boxes, bat boxes, bumblebee nest box and hedgehog nesting box, shall be submitted to and approved in writing by the Local Planning Authority. Thereafter, these wildlife enhancements shall be retained for the lifetime of the development.