



Appeal Decision

Site visit made on 21 February 2025

By Terrence Kemmann-Lane JP DipTP FRTPI MCMI

an Inspector appointed by the Secretary of State

Decision date: 13 March 2025

Appeal Ref: APP/J1915/W/24/3353414

15 Benningfield Road, Widford, Ware, SG12 8RD

- 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 Sam Bradford against the decision of East Hertfordshire District Council.
 - The application Ref is 3/24/0711/FUL.
 - The development proposed is the erection of 1 attached dwelling with Air Source Heat Pump and solar panels. Erection of front porch, part single storey part two storey rear extension to existing dwelling.
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Decision

1. The appeal is dismissed.

Main Issue

2. The main issue in this case is the effect of the siting of the proposed dwelling beyond the rear wall of No.14 Benningfield Road on the living conditions of the occupiers of that property.

Reasons

3. The site is occupied by a semi-detached, two-storey property which is set on a large plot with curtilage to the front, side and rear. The existing house sits on the northeast boundary of the plot, leaving a wide garden area on the southwest side. It is on this, southwest side, that No.14 is located. The land level of the site gradually slopes from the front to the rear. The proposed house would continue the building line of the existing house.
4. Number 14 is a bungalow, the rear elevation of which is located on the same line as the front elevation of No.15, so that the whole of the bungalow is set forward of the appeal dwelling. The majority of the bungalow is set about 3m from the boundary of the 2 properties. There is also a small side extension towards the rear of the bungalow that extends to within about 1m of the boundary. Its rear garden has a depth along the shared boundary of about 17m.
5. The element of the appeal proposal that resulted in the refusal would consist of a 2-storey dwelling, set off the boundary with the No.14 by 1m. It would have a continuation of the ridge of the gable roof of the host building. The proposed new house and the existing house would have 2-storey rear extensions under hipped roofs. The eaves of these would run through at the same height as the existing house, and the ridge of the hipped roofs would be set down from the main ridge by

- 0.8m. There would also be single storey extensions across the rear of the existing and proposed dwelling.
6. The impact on the bungalow would result from the 2-storey structure, 1m from the boundary running back some 9.3m from its rear elevation. In addition there would be the proposed single storey extension with a flat roof height of 3.7m extending a further 1.59m. The result would be that the majority of the rear garden of No.14 would be flanked with a 2-storey gabled and hipped dwelling, with a further short single-storey extension. Further, the fall in ground levels away from the highway means that the effective height of the structure would increase further into the plot in comparison with the level of the garden.
 7. In judging the effect of this substantial bulk and mass, it is necessary to take account of the fact that the hipped roof form would slope away from the neighbour and would be set down a little from the main ridge limiting the bulk and mass of the flank elevation to a small degree. I also need to take account of the orientation; with the proposed dwelling being sited to the northeast of No.14, the loss of light due to the sun's trajectory would be limited, but there is no evidence of the exact extent. There is a fence erected on the common boundary, but this is not sufficient to diminish the prominence and mass of what is proposed, nor would the existing shed in the garden of No.14 have any material effect in terms of masking the new building.
 8. I note that there was no objection to the application from the occupiers of No.14, but there may be a number of reasons for this. In any event, the issue is a material planning consideration and includes harm that would occur to the amenity of future occupiers of the dwelling.
 9. Taking account of the above matters, my conclusion at this stage is that the effect of the length and bulk of the proposed new house, close to the boundary, on the living conditions of the occupiers of No.14, would be unacceptable and would fail to accord with the requirements of Policy DES4(d) of the East Herts District Plan 2018.
 10. I now need to turn to a recent appeal decision (APP/J1915/W243340497), in which the Inspector found that the council cannot demonstrate a 5 year housing land supply. Thus paragraph 11(d) of the National Planning Policy Framework (NPPF)¹ comes into play. Paragraph 11(d) states: "*where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date⁸, granting permission unless:*
*ii any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole, having particular regard to key policies for directing development to sustainable locations, making effective use of land, securing well-designed places and providing affordable homes, individually or in combination⁹."*²
 11. Therefore planning permission should be granted for this housing development unless any adverse impacts of doing so would significantly and demonstrably

¹ This quote is from the latest version dated December 2024 which came into immediate effect. However, the additions to it from the previous version do not enlarge on the considerations raised in this appeal, since "sustainable locations, making effective use of land, securing well-designed places" are all existing considerations.

² Footnote 9 states that "*The policies referred to are those in paragraphs 66 and 84 of chapter 5; 91 of chapter 7; 110 and 115 of chapter 9; 129 of chapter 11; and 135 and 139 of chapter 12*".

outweigh the benefits when assessed against the matters quoted in paragraph 10 above.

12. The obvious benefits against which adverse impacts are weighed are the social benefit of one additional house and its contribution to the shortfall in supply, and the economic benefit which would come from employment during the construction phase, the purchase of building materials and the purchasing power of the new household that might benefit local businesses, in accord with NPPF paragraph 83. Paragraph 73 is also supportive, stating *“Small and medium sized sites can make an important contribution to meeting the housing requirement of an area, are essential for Small and Medium Enterprise housebuilders to deliver new homes, and are often built-out relatively quickly”*.
13. When assessing against the policies in the NPPF taken as a whole, particular regard must be given to the key policies that are specifically mentioned under paragraph 11. Footnote 9, provides a reference to the paragraphs where these matters can be found. Most of these are not relevant to the appeal proposal since they deal with such matters as affordable housing, isolated homes in the countryside, the sequential test for town centre uses, and sustainable transport.
14. The following paragraphs mentioned in footnote 9 are of relevance in this case. Paragraph 129 refers to making efficient use of land, which is clearly a consideration here. However, the paragraph makes the point that it is desirable to maintain an area’s prevailing character and setting (including residential gardens), and securing well-designed, attractive and healthy places. Paragraph 135 states (as relevant here) that planning policies and decisions should ensure that *“developments: a. will function well and add to the overall quality of the area, not just for the short term but over the lifetime of the development; b. are visually attractive as a result of good architecture, layout and appropriate and effective landscaping; f. create places that are safe, inclusive and accessible and which promote health and well-being, with a high standard of amenity for existing and future users”*. Paragraph 139 is clear that development that is not well designed should be refused.
15. I consider that paragraph 131 is also relevant, stating that *“The creation of high quality, beautiful and sustainable buildings and places is fundamental to what the planning and development process should achieve. Good design is a key aspect of sustainable development, creates better places in which to live and work and helps make development acceptable to communities”*.
16. It is often the case, in planning policy generally and also true of the NPPF, that policies can pull in different directions. The NPPF paragraphs that I mention in paragraph 12 above, clearly are supportive of the appeal proposal, but in my view, considering those NPPF paragraphs that footnote 9 highlights, with emphasis on good design, maintaining character and setting and in doing so, picking out residential gardens, providing a high standard of amenity for existing and future users etc, support to the view that, taken as a whole, the policies of the NPPF lead to the conclusion that the appeal proposal has an adverse impact that would significantly and demonstrably outweigh the benefits.
17. Furthermore, as NPPF paragraph 2 points out, planning law requires that applications for planning permission be determined in accordance with the development plan, unless material considerations indicate otherwise. The local plan

policy quoted in the refusal notice, Policy DES4 (part c)³ requires all new development to “*avoid significant detrimental impacts on the amenity of occupiers of neighbouring properties and land, and ensure that their environments are not harmed by noise and disturbance or by inadequate daylight, privacy or overshadowing*”.

18. In view of my conclusion on the important material consideration of the NPPF, I see no reason not to place full weight on this policy. That policy would be breached for the reasons that I have set out in paragraphs 5 to 9 above. The benefit of the development of a single house should not be at the expense of a third party neighbour in suffering a significant deterioration in the enjoyment of their private outdoor amenity area. For the reasons explained above, the appeal will be dismissed.

Terrence Kemmann-Lane

INSPECTOR

³ The council's appeal statement at paragraph 2.1 highlights that there is a typo in the refusal notice in referencing the policy relevant for the refusal reason, the most relevant part of the policy DES4 should be (c) instead of (d).