
Appeal Decision

Site visit made on 25 September 2025

by **J Laver BA(Hons) MSc PGDL MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 20 November 2025

Appeal Ref: APP/J1915/W/25/3369221

Fellowsfield, Mill Lane, Dane End, Hertfordshire SG12 0JL

- 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 Mr D White against the decision of East Herts Council.
 - The application reference is 3/24/2103/FUL.
 - The development proposed is demolition of outbuildings and erection of a subterranean net-zero house incorporating landscape and biodiversity enhancements.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are whether the proposal:
 - would be in a suitable location for housing, having regard to the development strategy for the area and access to services and facilities;
 - would increase the likelihood of flooding elsewhere and/ or increase the risk of pollution to controlled waters;
 - would make adequate provision for waste storage and collection; and
 - would provide acceptable vehicular access and turning arrangements.

Reasons

Location

3. The appeal site is located within the rural area, on land behind an existing residential property known as Fellowsfield, which takes access off Mill Lane. The appeal site is not within the domestic grounds of Fellowsfield. The submitted evidence indicates that the site was used in the past for the purposes of keeping horses, while more recently it has been used as a builder's yard. During my site visit I saw piles of earth and rubble, several pieces of machinery and some low quality buildings and a static caravan on the land.
4. The whole site (including Fellowsfield) is surrounded by arable fields and is enclosed by hedgerows. It also slopes up steeply from Mill Lane to roughly the central point of the whole site and then slopes steeply down to the very rear to meet Dane End Tributary (the Tributary). The land immediately adjacent to the Tributary, which includes some of the appeal site, lies within flood zones 2 and 3.

Behind the Tributary is a small agricultural field, with Munden Road beyond and more agricultural fields beyond that.

5. Mill Lane and the nearby Munden Road are typical rural roads, being narrow, lined with high hedges, unlit, with passing bays at irregular intervals. Those roads are subject to the national speed limit (60 mph). The closest settlement is Dane End, approximately 1 km away, which contains a local post office/convenience shop, village hall, a church and a primary school. The nearest large settlement is Ware, approximately 10 km away.
6. Policy DPS2 of the East Herts District Plan (2018) (EHDP) outlines the settlement hierarchy and directs development to sustainable brownfield sites in the first instance followed by sites in urban areas, urban extensions and then infilling in villages. The site is not located in the latter three areas, nor is it included in the list of 'sustainable brownfield sites', which are detailed in Policy DPS3 (Housing Supply 2011 – 2023), although I appreciate that that list might not necessarily be exhaustive.
7. Instead, the appeal site falls within the 'Rural Area Beyond the Green Belt' where under Policy GBR2 of the EHDP the rural area is to be considered as a valued countryside resource. Policy GBR2 confirms the types of development that will be permitted and under criterion (e) limited infilling or the partial or complete redevelopment of previously developed sites in sustainable locations can be considered acceptable, provided it would be appropriate to the character, appearance and setting of the site and/or the surrounding area.
8. The Council considers that the site can be regarded as previously developed land, and it does not dispute that the replacement of an untidy working yard with a dwelling integrated into the slope of the land would be an improvement to the appearance of the area. In those respects, I see no reason to take a contrary view to the Council.
9. It therefore remains whether the site is in a 'sustainable location' as per the terms of Policy GBR2, although those words are not explicitly qualified in the policy's wording. However, the development strategy identified under Policy DPS2 of the EHDP makes clear that the focus for new development will be within settlements or settlement extensions. Policy TRA1 also advises that new development, among other things, should be located in places which enable sustainable journeys to be made to key services and facilities.
10. As already noted, the closest settlement is Dane End which is around 1km to the west of the appeal site. Dane End is accessed via Mill Lane and Munden Road, which are roads without footways that are unlit. I consider accessing Dane End by foot would not feel particularly safe or be convenient, particularly after dark or during inclement weather, with pedestrians needing to make use of the carriageway. In any event, Dane End has a very limited level of facilities and services.
11. There is, however, a bus service (the number 38) providing access to Hertford (via Ware) and Stevenage. The Home Farm bus stop on Munden Road is not far from the village shop/post office, and from the timetable displayed at that bus stop, I saw that buses stop five times a day (with irregular frequencies) Monday to Saturday. The timetabled journey times to High Street, Ware and Hertford bus station are respectively 23 and 38 minutes.

12. Given the limitations of the walking route to and from Dane Hill and the limited frequency of bus services making stops in Dane End, I consider using buses to access facilities and services would be unattractive for the occupiers of the proposed dwelling.
13. I accept it would be possible to use bicycles to get to and from Dane End. However, given the narrow unlit road, and national speed limit along it, and with so few services and facilities available in Dane End, I consider bicycle use would not be a significant practical alternative to occupiers of the proposed dwelling driving to one of the towns or larger villages in the area to access services and facilities.
14. The National Planning Policy Framework (the Framework) is clear that sustainable transport solutions will vary between urban and rural areas and that this should be taken into account in decision making (paragraph 110). The Framework is also supportive of rural sites that are well related to existing settlements in certain circumstances (paragraph 89). However, for the reasons given above I consider that amongst the occupiers of the proposed dwelling there would be high reliance on private motor vehicle usage to meet their day to day needs, resulting in an increase in journeys from the site for daily necessities. In that regard. I am not persuaded that relying on the internet to access shopping; medical appointments; and education services, would significantly reduce the reliance on private motor vehicle usage I have previously referred to.
15. I conclude that this would be an unsuitable location for an additional dwelling and because of that there would be conflict with Policies DPS2, GBR2 and TRA1 of the EHDP.

Flooding and pollution risks

16. The proposed new dwelling and its access driveway would be situated within Flood Zone 1, however, as noted above the very rear part of the appeal site (in essence the bottom of the proposed garden), which would be adjacent to the Tributary, would lie within flood zones 2 and 3.
17. The submitted plans show a proposed foul water treatment plant sited adjacent to the Tributary with an annotation that the plant would drain by gravity into that watercourse. Surface water would be disposed of by a sustainable drainage system and the existing watercourse.
18. Policy WAT1 of the EHDP states that the functional floodplain will be protected from inappropriate development and that development proposals should neither increase the likelihood or intensity of any form of flooding, nor increase the risk to people, property, crops or livestock from such events, both on site and to neighbouring land or further downstream. Policy EQ1 of the EHDP further adds that the Council will require evidence, as part of any application, to show that unacceptable risks from contamination and land instability will be successfully addressed through remediation without undue environmental impact during and following the development. In particular, the developer shall carry out an adequate investigation to inform a risk assessment.
19. The Planning Practice Guidance¹ states that the Framework sets out strict tests to protect people and property from flooding. Where these tests are not met, new

¹ Planning Practice Guidance Paragraph: 003 Reference ID: 7-003-20220825

development should not be allowed. The main steps to be followed in addressing flood risk start with assessing and then avoiding flood risk. Measures to avoid, control, manage and mitigate flood risk should also not increase flood risk elsewhere. The Framework also sets out that decisions should prevent new development from contributing to unacceptable levels of water pollution and that development should wherever possible help to improve local environmental conditions such as water quality.

20. A flood risk assessment (FRA) was submitted with the application; it states that the private drainage on the site is unknown and that the existing surface water is assumed to discharge into the local ordinary watercourse opposite Mill Lane. The FRA also reports that there are no public sewers under Mill Lane and the nearest public sewer is the foul sewer on Church Lane, 875 metres from the site, with a connection to that sewer being considered unfeasible. A drainage strategy is included in the FRA, however that appears to show a rainwater tank and the foul sewage treatment plant in a different location to the details shown on the application plans. In addition, it aims to combine the foul effluent outfall with the surface water discharge into the ordinary watercourse without proper investigation of the implications of this.
21. The Environment Agency (EA) has objected to the proposed development on the basis that the FRA contains inadequate information to assess the flood risk associated with the treatment tank proposed to be built in the section of the site near the Tributary, and fails to assess the risk and potential management of pollution to controlled waters. To overcome its concerns, the EA requested further information at the application stage, which was not provided by the appellant. The representations made by the EA to the Council are the origin of the latter's third reason for refusal.
22. I have considered whether the EA's concerns could be overcome by way of pre-commencement planning conditions to allow for flexibility to secure the necessary technical details at a later stage; however, I am not content with such an approach. While it would be possible to impose a condition requiring any treatment plant to be located entirely within flood zone 1, and for its detailed design to be submitted either pre-commencement or pre-occupation of the dwelling, that would not address the absence of an up-front assessment on the risks to controlled waters.
23. Furthermore, whilst conditions can often be used to manage drainage matters, I note that a hydrogeological risk assessment was recommended by the EA. In the absence of that risk assessment, it is not possible for me to conclude that 1) other works beyond the confines of the appeal site would not be required; and 2) a condition covering such works could therefore reasonably be imposed.
24. Accordingly, I conclude it has not been demonstrated that the proposed development would avoid either flooding elsewhere or not increase the risk of pollution to controlled waters. I therefore find there would be conflict with Policies WAT1 and EQ1 of the EHDP, which require development to help avoid and alleviate both flood and pollution risks.

Waste storage and collection

25. The appellant's 'Vehicular & Refuse/ Recycle Plan' shows an on-site bin storage area in close proximity to the proposed dwelling and a turning area for larger vehicles. However, the Council contends that refuse bins would need to be taken

by residents to the kerbside for collection and that the 'pull distance' to the kerbside is further than the recommended 25 metre distance and would therefore be contrary to Policy DES4(e) of the EHDP.

26. Policy DES4 relates to the design of the development and states that all development proposals must be of a high standard of design and layout to reflect and promote local distinctiveness. Under criterion (e) of that policy, provision is to be made for the storage of bins, but bin pull distances are not specified.
27. The Council in its appeal statement has explained that the 25 metre pull distance has been derived from the Building Regulations, and is intended to avoid residents having to pull bins too far. The pull distance in this case would be around 120 metres² and, given the gradient of the site, I consider it would be unduly arduous for any future occupiers of the dwelling to pull bins back and forth over that distance. I therefore share the Council's concerns about an excessive pull distance for refuse bins.
28. Given that the site frontage (except for the 5 metre wide access) forms part of Fellowsfield and not the appeal site, there would be no opportunity to site the bin store close to the kerbside. I therefore consider that the proposal would make insufficient provision for the storage and collection of bins.
29. The appellant has submitted that bins could be collected by a private waste company, who would drive on and off the site, and that a planning condition could be imposed to require that. However, I am not persuaded that imposing such a condition would be an appropriate mechanism for securing the collection of waste, a service ordinarily provided by the Council. Moreover, a planning condition, however drafted, would not provide the necessary degree of certainty that private waste collections would be available in perpetuity. In the absence of a legal agreement securing private waste collections in perpetuity, I consider it has not been demonstrated that adequate provision for waste storage and collection would be available.
30. I therefore conclude that the proposed development would make inadequate provision for waste storage and collection and would therefore be in conflict with Policy DES4(e) of the EHDP.

Vehicular access and turning arrangements

31. The appeal site benefits from an existing access off Mill Lane, which was approved in January 2018 in association with Fellowsfield. The access is flanked by brick walls with front piers, however those walls are splayed and setback a little from the highway verge. Whilst Mill Lane is a narrow country road subject to the national speed limit for this type of road, the existing access on to Mill Lane is located on a relatively straight part of the road, affording good visibility for users of the access and the highway. The access is gated but those gates are setback some distance from the highway, enabling vehicles (including wagons) to wait safely off the highway while the gates open/close.
32. Policy TRA2 of the EHDP states that development proposals should ensure that safe and suitable access can be achieved for all users. There appears to be no dispute that the existing access adequately serves Fellowsfield, and a photograph

² Distance referred to by the highway authority in its written comments for the Council

has been provided in the appellant's appeal statement which shows a gas tanker exiting the access on to Mill Lane. That photograph demonstrates that the existing access is wide enough to accommodate larger vehicles.

33. During my site visit, I also parked on the site and exited it in my own vehicle and observed good visibility in both directions along Mill Lane. I therefore consider that visibility for drivers either emerging from the access or driving along Mill Lane would be sufficient. Therefore, based on what I saw of the area in the immediate vicinity of the site, which included the lightly trafficked nature of Mill Lane, I am content that the proposed increased use of both the access and Mill Lane would not be harmful to highway safety.
34. With regard to internal site tracking plans, I am content that the submitted 'Vehicular & Refuse/ Recycle Plan' demonstrates that there would be adequate space on the site for larger vehicles serving the proposed dwelling to enter/exit the access in a forward direction.
35. With respect to access for firefighting purposes and the provision of hydrants, I note the advice submitted by the Hertfordshire Fire and Rescue Service (HFRS) to the Council prior to the latter's refusal of planning permission. The HFRS' advice does not state that fire appliance access or hydrant provision would not be possible but rather draws attention to the need to comply with the relevant of the Building Regulations as part of the process of seeking approval under those regulations. The acceptability or otherwise of the arrangements for firefighting purposes would be for consideration under the provisions of 'other legislation' and I consider I need not comment on this matter further.
36. Overall, I conclude that the proposed development would provide acceptable vehicular access and turning arrangements and that there would be no harm to highway safety. Accordingly, as there would be safe and suitable highway access arrangements I consider there would be no conflict with Policy TRA2 of the EHDP.

Other Matters

37. The appellant contends that paragraph 84(e) of the Framework provides support for the proposed development. Paragraph 84 of the Framework discourages the development of isolated homes in the countryside unless "*e) the design is of exceptional quality, in that it:*
 - i. is truly outstanding, reflecting the highest standards in architecture, and would help to raise standards of design more generally in rural areas; and*
 - ii. would significantly enhance its immediate setting, and be sensitive to the defining characteristics of the local area."*
38. I recognise that the design of the dwelling has sought to reduce its visual impact and incorporates measures to reduce its energy use and carbon footprint. However, I have not seen anything in the evidence demonstrating the home's design would be truly outstanding.
39. Although the proposed development would be of a good design and would enhance the site's setting by replacing an untidy working yard with a dwelling, for the reasons given above I consider the proposed dwelling would be an isolated home in the countryside and that its design would not be of an "exceptional quality". I therefore consider it has not been demonstrated that permission should be granted

when regard is paid to provisions of paragraph 84 of the Framework, most particularly criterion (e).

40. The appellant in submitting the appeal has also drawn attention to the Council having approved another dwelling in Mill Lane, contending that the Council has been inconsistent in its decision making. The first of those decisions concerned a determination made under the prior approval procedure applicable to Class Q of Part 3 of Schedule 2 of the Town and Country Planning (General Permitted Development) Order 2015 (GPDO) for a change of use of an agricultural building to a dwellinghouse with external alterations. The second decision was for an express planning permission for the redevelopment of the agricultural building to a new dwelling.
41. Under the prior approval procedure applying to Class Q of the GPDO, local planning authorities can only assess matters such as flood risk, noise and contamination, and are unable to apply all the policy tests applicable to applications seeking express planning permission.
42. The Mill Lane prior approval can therefore be distinguished from the appealed application, as the prior approval procedure under Class Q of the GPDO does not allow for an assessment on whether the development would be acceptable in principle when regard is paid to either development plan or national planning policies.
43. The Council's second decision, the granting of express planning permission, can again be distinguished from the decision subject to this appeal because it followed the determination of the prior approval application. The deemed permission arising from the determination of the application for prior approval represented a fallback position, which the Council was entitled to take account of. I therefore consider that there has been no inconsistency in the way the Council determined the appealed application and the applications concerning the site elsewhere in Mill Lane.

Planning Balance and Conclusion

44. The Framework does not change the statutory status of the development plan as the starting point for decision making. I have found this proposal would not accord with policies DPS2, GBR2, TRA1, DES4, WAT1 and EQ1 of the EHDP. However, the Council accepts that it cannot demonstrate a five-year housing land supply. In that regard, paragraph 11 (d) of the Framework advises that where the development plan policies most important to the determination of the application are out-of-date, planning permission should be granted unless:
 - i. *the application of policies in this Framework that protect areas or assets of particular importance⁷ provides a strong reason for refusing the development proposed; or*
 - ii. *any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the 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.*

45. The Council contends that the presumption in favour of granting permission under paragraph 11(d) of the Framework should not be applied in this instance because the proposed foul water treatment plant may be located in flood zones 2 or 3, which are protected areas for the purposes of paragraph 11(d)(i) and footnote 7 of the Framework. If there was absolute certainty of that situation arising, I would have to agree with the Council, but I have already noted that it is unclear which flood zone the treatment plant would sit within.
46. In that regard I consider it reasonable to undertake the 'tilted balance' exercise under paragraph 11 (d)(ii) of the Framework. In this case, I consider that benefits weighing in favour of the proposed development would arise from the provision of an additional dwelling, the improvement in the site's appearance, and the delivery of some net gain for biodiversity.
47. Nevertheless, I find that the adverse impacts of the proposed development, particularly relating to its unsuitable location, as well as the flooding and pollution risks, and the inadequate provision for waste storage and collection, would significantly and demonstrably outweigh the benefits associated with providing one dwelling, when assessed against the policies in the Framework taken as a whole.
48. In conclusion, for the reasons given above, the proposal would not accord with the development plan as a whole and there are no other considerations of sufficient weight, including the provisions of the Framework, indicating that a decision should be taken other than in accordance with the development plan. I therefore conclude that the proposal would not be a sustainable form of development and that the appeal should be dismissed.

J Laver

INSPECTOR