



Appeal Decision

Site visit made on 17 December 2025

by Timothy Parton BA(Hons) MPLAN MRTPI

an Inspector appointed by the Secretary of State

Decision date: 02 MARCH 2026

Appeal Ref: APP/J1915/W/25/3374708

Bythorne Cottage, Classified Road C10 north from B1038 to Mill Lane, Brent Pelham, Hertfordshire SG9 0AP

- 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 Featherstone against the decision of East Hertfordshire District Council.
 - The application Ref is 3/25/0447/FUL.
 - The development proposed is to demolish existing stables and attached outbuildings and erect a single dwelling house C3 in similar location utilising the existing and lawful access.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The Council's reasons for refusal referred to the need for further information relating to the loss of equestrian facilities associated with the proposed demolition of existing stables. The appellant submitted additional information with the appeal that has satisfied the Council's concerns. There is no reason for me to come to a different view. Accordingly, I do not need to consider this matter further.

Main Issues

3. The main issues are:
 - i. whether the proposed development would make adequate provision for biodiversity net gain; and
 - ii. whether the appeal site would be an appropriate location for the proposed development, having regard to the accessibility of services and facilities.

Reasons

Biodiversity Net Gain

4. Biodiversity Net Gain (BNG) is a mandatory requirement of Schedule 7A of the Town and Country Planning Act 1990 (as inserted by Schedule 14 of the Environment Act 2021). Under this statutory framework, subject to some exceptions, every grant of planning permission is deemed to have been granted subject to the condition that the biodiversity gain objective is met, referred to as 'the biodiversity gain condition'. This objective is for development to deliver at least a 10% increase in biodiversity value relative to the pre-development biodiversity value of the onsite habitat.

5. The planning application for the appeal proposal stated that the biodiversity gain objective would not apply due to the development being subject to the de minimis exemption. However, as the proposed development is positioned outside of the footprint of the existing stables, the proposal would impact an area of existing habitat over the de minimis threshold. The proposal would not therefore be exempt from the biodiversity gain objective as a result of the size of the proposed development.
6. The planning application for the appeal proposal stated that it would be a self-build or custom-build dwelling, a type of development which may be exempt from the biodiversity gain objective. However, planning permission for a self-build or custom-build dwelling must include a mechanism to ensure that the development would in fact be constructed as such, in order to meet the legal definition set out in the Self-build and Custom Housebuilding Act 2015 (as amended).
7. The Council suggested a condition to secure the proposal as a self-build or custom-build dwelling. However, the definition of self-build requires a specific individual to build (or design and instruct persons to build) and then live in the dwelling for which permission is granted. It would neither be reasonable or enforceable to impose a condition that would require the person who built the dwelling to occupy it.
8. I am therefore not satisfied that the suggested condition would be enforceable, and as such it would not meet the tests set out in paragraph 57 of the National Planning Policy Framework (the Framework). I have also noted that the Council themselves have indicated that they no longer use such a condition and now seek to secure self-build or custom-build proposals through a planning obligation under Section 106 of the Town and Country Planning Act 1990 (as amended).
9. The Planning Practice Guidance states that a positively worded condition requiring an appellant to enter into a planning obligation under section 106 of the Town and Country Planning Act 1990 is unlikely to satisfy the test of enforceability. The Guidance also states that a negatively worded condition requiring a planning obligation to be completed before development may commence may be appropriate only in exceptional circumstances. Given the nature of the site and the proposed development, there are no exceptional circumstances in this case and thus a condition of this nature would not be appropriate.
10. Accordingly, there is no mechanism before me to ensure that the proposal would be constructed as a self-build or custom-build dwelling and thus, I have not considered it as such. Therefore, the self-build and custom-build related exemption to the biodiversity gain objective would not apply.
11. I have not been provided with any site-specific biodiversity information, and the proposal does not include any details regarding biodiversity gains associated with the proposed development in accordance with the requirements of Schedule 7A of the Town and Country Planning Act. I have therefore been unable to establish that the proposed development could achieve at least a 10% increase in biodiversity value relative to the pre-development biodiversity value of the onsite habitat.
12. Accordingly, the biodiversity gain objective would not be met and the proposed development would not comply with Schedule 7A of the Town and Country Planning Act 1990. In turn, this results in conflict with Policy NE3 of the East Herts District Plan 2018 (the Plan), which states that development should always seek to

enhance biodiversity and to create opportunities for wildlife. It would also conflict with paragraph 187d) of the Framework, which seeks to ensure development provides biodiversity net gains.

Location

13. Policy DPS2 of the Plan sets out the Council's strategy for delivering sustainable development through a hierarchy of options. Development is directed firstly to sustainable brownfield sites (previously developed land), followed by sites in urban areas, urban extensions, and finally limited development in the villages.
14. In addition, the Plan classifies villages into three groups through a village hierarchy, with the purpose of directing housing development to the most sustainable locations. Villages are classified based on an assessment of their range of services and facilities, accessibility to higher order settlements, and provision of public transport services. The appeal site is located within the village of Brent Pelham, which is classified as a Group 3 village. The Plan considers these to be the least sustainable options for housing development due to the availability of services and facilities.
15. Policy VILL3 of the Plan applies to Group 3 villages and permits only limited infill development identified in an adopted neighbourhood plan. I am not aware of any adopted neighbourhood plan for the area. The proposed development is therefore not supported by Policy VILL3.
16. However, the appeal site is located within the Rural Area Beyond the Green Belt, where specified types of development are permitted as outlined within Policy GBR2 of the Plan. Provided proposals are compatible with the character and appearance of the area, Policy GBR2 permits the partial or complete redevelopment of previously developed sites in sustainable locations.
17. Being within the curtilage of developed land associated with the existing dwelling and equestrian stables, and not within a built-up area taking into account that the site is currently a residential garden, the appeal site is previously developed land. The development of previously developed land within the Rural Area Beyond the Green Belt is supported by Policies DPS2 and GBR2, subject to the proposal being compatible with the character and appearance of the area, delivering sustainable development, and being in a sustainable location.
18. The Council has confirmed that the proposed development would preserve the rural village character and has raised no objection regarding its effect on character and appearance. I see no reason to disagree. The consideration of compliance with Policies DPS2 and GBR2 therefore turns on whether the proposal would constitute sustainable development and whether it is in a sustainable location.
19. Based on the Council's reasons for refusal and reference to Policy TRA1, the consideration of whether the proposal constitutes sustainable development and is in a sustainable location relates solely to the accessibility of services and facilities. Policy TRA1 of the Plan requires, amongst other things, for development proposals to be primarily located in places which enable sustainable journeys to be made to services and facilities, and to provide future occupants with a range of sustainable transport options.

20. Within a short walking distance from the appeal site there are services and facilities within the village, including a bus stop, public house, church, and village hall. Walking or cycling routes would be on a road, however this is not uncommon in the context of a rural village. The roads are mostly straight allowing for good visibility, and the amount and speed of traffic on these village roads allows for sufficiently safe walking and cycling routes.
21. Sustainable transport options within the village comprise a regular bus service to surrounding larger settlements with a good provision of services and facilities, and the Lynx Bus Service which offers a virtual bus stop near the site. While the frequency of buses serving the village is limited, the existence of this service does provide an alternative to the car which can enable sustainable journeys to be made to services and facilities.
22. Paragraph 110 of the Framework states that opportunities to maximise sustainable transport solutions will vary between urban and rural areas. While sustainable transport options are limited in this rural village location, future occupants of the proposed development would nonetheless have access to a range of sustainable transport choices, enabling sustainable journeys to services and facilities. Therefore, the proposed development does not conflict with Policy TRA1 of the Plan.
23. I have been directed to a number of decisions where proposals have been approved or allowed in surrounding Group 2 and 3 villages, where it is suggested that accessibility to services and facilities are similar to the appeal site. There are differences in the specific circumstances of the examples provided, including the locations and types of development. These differences have resulted in varying conclusions being made regarding the sustainability of new development in relation to access to services and facilities, which do not allow for direct comparisons to be made with the appeal site. Each scheme must be considered and determined on its own individual merits. Broadly however, the examples provided do demonstrate that the consideration of sustainable development relating to access to services and facilities is context specific and dependent on a range of factors.
24. In conclusion, as I have found no conflict with Policy TRA1 of the Plan, the proposed development would constitute sustainable development in a sustainable location. The appeal site would therefore be an appropriate location for the proposed development, having regard to the accessibility of services and facilities.
25. Although the proposal is not supported by Policy VILL3, the location of the proposed development still accords with the spatial strategy in the Plan and supports the aims of the Framework to promote sustainable development. Consequently, I find no conflict with Policies DPS2 and GBR2 of the Plan, the requirements of which are set out above.

Other Matters

26. The appeal site is located northwest of Bythorne Cottage, and is one of a number of 16th and 17th century Grade II listed buildings in this area of the village. The appeal site is also located within the Brent Pelham Conservation Area. Accordingly, I have had special regard to the desirability of preserving the listed

building or its setting or any features of special architectural or historic interest which it may possess, as required under section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the Act). I have also paid special attention to the desirability of preserving or enhancing the character or appearance of the conservation area under section 72(1) of the Act.

27. The proposed development would be a modest dwelling which would reflect a traditional cottage in its form, design and materials. The design of the proposal would preserve the rural village character of the site and the Conservation Area. Where the ridge height of the proposed dwelling would be below that of Bythorne Cottage, despite its position on higher ground, it would appear subservient to the listed building. The proposed dwelling would therefore not detract from the significance of Bythorne Cottage.
28. Other surrounding listed buildings are a sufficient distance away, with intervening landscape, that there would be no impact on their significance. While minor design amendments were proposed by the Council's Conservation Officer, there was no objection raised regarding the impact of the proposed development on the Brent Pelham Conservation Area and the heritage significance of Bythorne Cottage and surrounding listed buildings. I have no reason to disagree with these findings.

Planning Balance and Conclusion

29. A decision on whether to grant permission must be made in accordance with the relevant policies in the development plan, unless material considerations indicate otherwise.
30. The Council cannot demonstrate a five-year supply of deliverable housing sites and therefore paragraph 11d) of the Framework is engaged. This means that planning permission should be granted, unless 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.
31. The proposal would create an additional dwelling that would help reduce the Council's housing deficit and would accord with one of the Framework's aims of boosting housing supply. The proposal would also provide some associated socio-economic benefits that would arise from the construction of the dwelling and from future occupants using and supporting local services. However, given that this development is for a single dwelling, each of these benefits have moderate weight.
32. Notwithstanding the above considerations, the development would conflict with the aims of the Framework which require net gains for biodiversity. Where the proposal does not demonstrate any improvement in the biodiversity value of the site and the surrounding environment, it is also contrary to Policy NE3 of the Plan.
33. By failing to meet the biodiversity gain objective, the proposed development would not comply with Schedule 7A of the Town and Country Planning Act 1990. Taken together, the adverse impacts of these biodiversity-related conflicts attract substantial weight, which would significantly and demonstrably outweigh the benefits of the proposal.
34. The proposal would therefore fail to meet the necessary statutory requirements and would conflict with the development plan as a whole. There are no material

considerations, including the Framework, which would indicate the decision should be made other than in accordance with the development plan.

35. For the reasons given above, the appeal should be dismissed.

Timothy Parton

INSPECTOR