



Appeal Decision

Site visit made on 18 July 2023

by C Billings BA (Hons), DipTP, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 6 September 2023

Appeal Ref: APP/X1925/W/23/3316241

Red Brick Cottage, The Street, Kelshall, Hertfordshire, SG8 9SQ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr and Mrs Cordell against the decision of North Hertfordshire District Council.
 - The application Ref 22/01229/FP, dated 5 May 2022, was refused by notice dated 20 December 2022.
 - The development proposed is the erection of detached dwelling and garage with access, parking, and landscaping.
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Decision

1. The appeal is allowed and planning permission is granted for the erection of detached dwelling and garage with access, parking and landscaping at Red Brick Cottage, The Street, Kelshall, Hertfordshire, SG8 9SQ in accordance with the terms of the application, Ref 22/01229/FP, dated 5 May 2022, subject to conditions set out in the schedule below.

Preliminary Matters

2. The site address and description of development has been taken from the application form. It is however noted that the appeal site is on land that is adjacent to, rather than at Red Brick Cottage. The description of development is appropriate to describe the proposal.
3. The Council has not submitted a statement of case, although I have had regard to the Council Officer's committee report, the minutes of the Council meeting, and the written comments made by Councillors in respect of the reasons for refusal in making my decision.

Main Issues

4. The main issues in the appeal are:
 - whether the proposed dwelling would be in an appropriate location having regard to development plan policy, including whether it would constitute infill development, and
 - the effect of the proposed development on the character and appearance of the village settlement of Kelshall.

Reasons

Infill development

5. Kelshall is a category B village as defined in Policy SP2 of the North Hertfordshire Local Plan (2011-2031) (NHLP). This policy sets out that such villages will contribute to the delivery of the district's housing needs by

allowing infill development which does not extend the built core of the village. Policy CGB1 of the NHLP further sets out that in rural areas beyond the Green Belt, planning permission will be granted for infilling development which does not extend the built core of category B villages.

6. The appeal site is large and therefore spacious, comprising approximately half of an existing paddock with further open agricultural land beyond to the rear. However, the NHLP policies provided do not state that the size or spaciousness of a site is a determining factor of whether a proposal represents infill.
7. The proposal would be situated on land set between built form within the village, with residential dwellings continuing along The Street in both directions. Whilst there is an intervening piece of land with trees to the immediate boundary on one side of the site and an intervening piece of grazing land and a Public Right of Way (PRoW) to the opposite side, buildings and dwellings continue further beyond in both directions. Thereby, the proposed development would infill an area of land that is an existing gap within the village.
8. Furthermore, the proposal would not extend the built core of the village, as it does not lie at the edges of the village. Additionally, there are existing residential properties opposite the appeal site, so the proposed dwelling would be seen in the context of other dwellings nearby.
9. Having regard to the above, the proposal would be infill development set within the village core and in respect of this issue would not conflict with policies SP2 and CGB1 of the NHLP.

Character and appearance

10. The proposed dwelling would be set back from the road by approximately 17 metres. Whilst the nearest neighbouring dwellings to either side of the site are set closer to the road, there are examples opposite the site and in other parts of the village where dwellings are set further back from the road. The set back proposed, furthermore would add to the sporadic nature of development in the village, maintaining the characteristic variety of the street scene.
11. Due to the size of the site and that the proposed dwelling and garage would be set away from the side boundaries, significant gaps would remain between the proposal and other existing dwellings and buildings. This would therefore retain a sense of spaciousness and would not be at odds with the sporadic pattern of development of the village.
12. The design and scale of the proposed dwelling would be sympathetic to that of other dwellings found in the village. The dwelling would be of traditional design including pitched tiled roofs, pitched dormers, lower eaves level, and use featheredge boarding to the main external walls. All such design features are found within the village. The proposed design of the dwelling would not therefore appear at odds in this local setting.
13. Whilst some of the hedgerow to the site frontage would be removed to accommodate the vehicular access, most of the frontage hedgerow would be retained. In addition, the existing field access gap would be planted with hedgerow and, an extensive length of new hedgerow would be planted along

the boundary with the PRow. This would maintain and enhance the character and appearance of the village.

14. In view of the above, the proposal would not be harmful to the character and appearance of the village settlement of Kelshall. As such, in respect of this issue, it would accord with Policies SP2, D1 and CGB1 of the NHP which together, amongst other things, set out that infilling development should not extend the built core of the village, and that development proposals should respond positively to the site's local context. The proposal would also be in accordance with section 12 of the National Planning Policy Framework (the Framework) which relates to achieving well-designed places.

Other Matters

15. Concerns have been raised about the potential impact on the PRow. However, this lies outside the appeal site and the proposals would not require the stopping up or diversion of the PRow.
16. Concerns have been raised about the impact on existing wildlife and loss of habitat, due to proximity to a pond, loss of hedgerow and meadow and disturbance during construction. Also, I note the concerns raised regarding missing information within the submission about wildlife. However, the Preliminary Ecological Assessment (PEA) concludes that there are no protected species on the site. In the absence of any substantive evidence to the contrary, I can only accept such findings. Therefore, subject to the precautionary measures of the PEA being secured by condition, the proposal would not be harmful in regard to ecology.
17. In respect of concerns raised about loss of potential ancient hedgerow, I have referred to the Hedgerow Regulations 1997. The hedge to the site frontage has potential to be regarded as an important hedge. However, no substantive evidence has been provided that unacceptable harm would be caused by the removal of part of the hedge to create the vehicular access. Subject to conditions, requiring only part removal, additional planting to fill the gap where the existing field access is located and other landscape planting within the site, I consider there would be no undue harm caused.
18. In respect of archaeological concerns raised, the Hertfordshire Historic Environment Advisor considers the development would unlikely have significant impact on heritage assets of archaeological interest. As I have no substantive evidence to the contrary, I consider the proposals would not cause unacceptable harm to any heritage asset.
19. Highway safety concerns have been raised in relation to the road being a narrow country lane, with limited turning, no footpaths, being opposite an existing vehicular access and unsuitable for large vehicles and delivery vehicles. Also, there are concerns raised that the traffic report was misleading and/or inaccurate. However, without substantive evidence on these matters and having regard to the advice of the local highway authority, I consider that, subject to conditions, there would be no unacceptable impact caused to highway safety. The proposals would not therefore conflict with the Framework in this regard.
20. In respect of concerns raised about the effect on the living conditions of neighbours, there would be adequate distance separation between the

proposed dwelling and existing properties, so as not to cause any undue overlooking or detriment to outlook. Light from car headlights and general disturbance would unlikely be significant in respect of one dwelling. Construction works would be for a limited period and a condition requiring a Construction Management Plan would adequately control any disturbance related to such. Therefore, the proposal would not, subject to conditions, cause unacceptable harm to the living conditions of nearby neighbours.

21. Concerns raised regarding house values, effect on property sale and loss of views from a neighbouring property relate to the protection of private interests and so are not material considerations. Furthermore, no substantive evidence has been provided to justify the concern that there is no need for an expensive large house within the village. Therefore, I consider there would be no planning harm caused in respect of such matters.
22. I note the concerns raised regarding flooding, including that the adjacent pond overflows; the paddock gets water-logged; and that, drainage systems are already at capacity. However, I have no substantive evidence in regard to such matters. Furthermore, no statutory body has raised concerns in relation to such. Therefore, there would unlikely be unacceptable harm caused in relation to flooding and drainage.
23. The concerns raised that the proposal would set a precedent for future development of other infill development plots in the village and that the village lacks facilities, including bus services are noted. However, as concluded above, the village is a category B village, as defined in Policy SP2 of the NHLP, which supports the principle of infill development in contributing to the housing needs of the district. Furthermore, each application is determined having regard to its individual merits. The fact that other developments have been rejected or agreed elsewhere in the village or wider district have not therefore affected my decision.
24. In respect of concerns raised that certain parties were not consulted on the application, I have had regard to the Town and Country Planning (Development Management Procedure) (England) Order 2015. This has not led me to find that any statutory party has been unduly restricted or prejudiced from making comment on the application. This has not therefore affected my decision.

Conditions

25. I have considered the conditions suggested by the Council, should I be minded to grant permission, in light of the advice contained within the national Planning Practice Guidance and the Framework. In addition to the standard implementation condition, it is necessary for the avoidance of doubt and in the interests of certainty to define the plans with which the scheme should accord.
26. Conditions would be necessary to ensure an appropriate form of development which would be sympathetic to the character and appearance of the area and, also in the interests of biodiversity. Accordingly, conditions would be relevant to the development and necessary in respect of the submission and agreement of a landscape scheme; a condition that replacement hedgerow planting is carried out and maintained along the site frontage; and, a condition that existing trees and hedgerows, would be

retained, and protected during construction of the development. These details would need to be in accordance with the most up to date plans submitted. Also, to ensure a high-quality design, in keeping with the character and appearance of the area, a condition would be necessary to require the submission and agreement of external materials.

27. As noted above, a condition would be necessary to require the precautionary measures set out in the PEA to be carried out, in order to protect ecological interests.
28. The recommended conditions which require the new vehicular access be provided in accordance with the approved plans prior to the occupation of the dwelling; that the redundant field access is permanently closed; and, that a Construction Management Plan (CMP) is submitted and agreed prior to commencement, would all be relevant to the development and necessary in the interests of highway safety. However, amended wording of the CMP condition would be required so it is more precise and, conditions relating to the vehicular access would need to refer to the most up to date plan numbers.
29. The North Hertfordshire District Council Vehicle Parking at New Development Supplementary Planning Document (Sept 2011) (VPND SPD) notes that the Hertfordshire Local Transport Plan promotes EV infrastructure in line with national policy. Therefore, a condition would be required to ensure an EV charging point is provided within the development.
30. The proposed garage could provide cycle storage, in line with the residential parking standards set out in the VPND SDP. Therefore, a condition would not be necessary for cycle parking in this instance.
31. The Council's environmental protection officer has noted that the proposed land use is sensitive to the presence of contamination and therefore a land contamination preliminary risk assessment should be undertaken prior to any development commencing. However, no substantive evidence of potential contamination has been provided and I note the present use of the site is open grazing land, which was previously in agricultural use. Therefore, such a condition would not be necessary or relevant to this development.
32. Due to the significant degree of separation to existing dwellings on the opposite side of The Street, a condition would not be necessary to obscure the front bathroom rooflight of the proposed dwelling to protect the privacy of neighbouring occupiers.
33. A condition has been recommended to remove permitted development (PD) rights, to restrict any additions to the property, additions, and alterations to the roof and, any building or enclosures or swimming pool within the curtilage, in the interests of the character and amenities of the area. Paragraph 54 of the Framework states that planning conditions should not be used to restrict national PD rights unless there is clear justification to do so.
34. The reasons given by the Council for the condition are generic. The proposed dwelling would be some distance from any neighbour and therefore, it would be unlikely to cause unacceptable harm to their living conditions by reason of any alterations or additions to the dwelling. However, large outbuildings and other structures within the curtilage could have the potential to cause

harm to the character and appearance of the area, having regard to public views and to protect the characteristic gaps between dwellings. A condition would therefore be necessary to restrict permitted development rights for such outbuildings and other structures.

Conclusion

35. For the reasons given above, I conclude that the appeal should succeed and grant planning permission.

C Billings

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 permitted shall be carried out in accordance with the following approved plans 2021/60/01; 2021/60/02 C; 2021/60/03 B; and ST-3239 700.
3. No development hereby permitted shall commence until a Construction Management Plan (CMP) has been submitted to and approved in writing by the local planning authority. The CMP shall include elements of the CLOCS standards, as set out in the Councils' Highway Authority's Construction Management template. Thereafter, the development shall only be carried out in accordance with the approved CMP. The CMP shall include details of the following:
 - a. Access arrangements to the site;
 - b. Traffic management requirements;
 - c. Construction and storage compounds (including areas designated for car parking, loading / unloading, and turning areas);
 - d. Siting and details of wheel washing facilities;
 - e. Cleaning of site entrances, site tracks and the adjacent public highway;
 - f. Provision of sufficient on-site parking prior to commencement of construction activities;
 - g. Post construction restoration/reinstatement of the working areas and temporary access to the public highway;
 - h. Where works cannot be contained wholly within the site, include a plan showing the site layout on the highway including extent of hoarding, pedestrian routes, and remaining road width for vehicle movements.

4. No development hereby permitted shall commence until full details of the landscaping scheme for the areas surrounding the proposed dwelling have been submitted to and approved in writing by the local planning authority. The details of the landscaping scheme shall include the following:
 - a) what new and existing trees, shrubs, hedges, and grassed areas are to be retained/planted, together with the species proposed and the size and density of planting;
 - b) the location and type of any new walls, fences or other means of enclosure and any hardscaping proposed;
 - c) details of any earthworks proposed.
 - d) a schedule of maintenance for the soft landscaping, including that any planting will be maintained for a period of at least 5 years from the date of planting.

The soft landscaping within the approved scheme shall be implemented in the first planting season following the completion of the development, and any hard landscaping, including any means of enclosure within the approved scheme shall be completed prior to the first occupation of the proposed dwelling.

5. No development hereby permitted nor any works associated thereto shall commence on the site, until trees and hedgerow to be retained are protected by the erection of temporary chestnut paling or chain link fencing of a minimum height of 1.2 metres on a scaffolding framework, located at the appropriate minimum distance from the tree trunk, in accordance with Section 4.6 of BS5837:2012 'Trees in relation to design, demolition and construction - Recommendations. The fencing shall be maintained intact for the duration of all construction and associated works. No building materials shall be stacked or mixed within 10 metres of the trees to be protected. No fires shall be lit where flames could extend to within 5 metres of the foliage, and no notices shall be attached to trees.
6. Before any part of the development hereby permitted is commenced above ground level, details and/or samples of all materials to be used on the external elevations and the roof of the proposed dwelling shall be submitted to and approved in writing by the local planning authority. The development shall thereafter be implemented in accordance with the approved details.
7. Prior to the first occupation of the development hereby permitted, the vehicular access shall be completed and thereafter retained as shown on drawing 2021/60/02 C, in accordance with detailed specifications to be first submitted to and approved in writing by the local planning authority. The details shall also include appropriate arrangements for surface water to be intercepted and disposed of separately, so that it does not discharge from or onto the highway carriageway.
8. Prior to the first occupation of the development hereby permitted the vehicular access to, and egress from, the adjoining public highway shall be limited to the access shown on drawing number 2021/60/02 C only. The existing field access shall be permanently closed, and the highway verge /hedgerow shall be reinstated, in accordance with a detailed scheme to be first submitted to and approved in writing by the local planning authority.

9. The development hereby permitted shall be carried out wholly in accordance with the programme of measures stated to adhere to guidance, legislation and planning policies, set out in Table 6 of the submitted 'Preliminary Ecological Appraisal by Arbtech' dated April 2022.
10. Following removal of the proposed part of the existing hedgerow that fronts The Street, the replacement hedgerow as indicated on plan no. 2021/60/02C shall be planted in the first planting season immediately after the construction of the new access or prior to occupation of the dwelling hereby permitted, whichever is sooner. The hedgerow shall be maintained in the approved location and allowed to mature to a height of 2.5m. If any sections of the hedgerow die within the first five years of being planted, they shall be replaced in accordance with details to be submitted to and approved in writing by the local planning authority.
11. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015, as amended, (or any order revoking and re-enacting that Order with or without modification) no development as set out in Class E of Part 1 of Schedule 2 to the Order, including any building, structures and swimming pool, shall be erected other than those expressly authorised by this permission.