

## 6. APPEALS UPDATE

### A. LODGED

4/02263/18/FHA

Patel  
NEW DRIVEWAY AND ASSOCIATED WORKS.  
2 WHITEWOOD ROAD, BERKHAMSTED, HP4 3LJ  
[View online application](#)

4/02739/18/ENA

Cavendish Park Homes Ltd  
APPEAL AGAINST ENFORCEMENT NOTICE RAISED PLATFORMS  
THE OLD OAK, HOGPITS BOTTOM, FLAUNDEN, HEMEL HEMPSTEAD,  
HP3 0PX  
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### B. WITHDRAWN

4/00091/18/ENA

Peters  
APPEAL AGAINST ENFORCEMENT NOTICE - COMMERCIAL USE OF  
LAND AND METAL FRAMED BUILDING  
LAND ADJ. TWO BAYS, LONG LANE, BOVINGDON, HP3 ONE  
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### C. FORTHCOMING INQUIRIES

None

### D. FORTHCOMING HEARINGS

None

### E. DISMISSED

4/02316/17/FUL

Rivergate Homes Ltd and Paul and Elizabeth Rooksby  
CONSTRUCTION OF A PAIR OF SEMI-DETACHED DWELLINGS  
LAND ADJ. TO 26, STATION ROAD, BERKHAMSTED, HP4 2EY  
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Decision

1. The appeal is dismissed.

Procedural matters

2. The revised Framework1 was published on 24 July 2018. Both main parties have been given the opportunity to comment on this and I have taken their responses into account.

3. The appellant has confirmed that the certificate of ownership submitted with the application form is incorrect and that they own all of the land to which the proposal relates (as specified on the appeal form). I

have considered the appeal on this basis and am satisfied that this would not prejudice the interests of any party.

#### Main issue

4. The Council has raised no concerns regarding the design of the dwelling or its impact upon:- (a) the character and appearance of the conservation area; (b) the living conditions of neighbouring occupiers; (c) the local highway network; (d) trees; and (e) ecology. Accordingly, within the context of the Council's reason for refusal and the evidence in this case, the main issue is whether future occupiers would be likely to experience acceptable living conditions in terms of amenity space provision.

#### Reasons

5. The appeal site lies to the south-east of Nos 26 and 27 Station Road ('Nos 26 and 27'), an attractive pair of semi-detached properties. It lies within the Berkhamsted Conservation Area (the 'conservation area'), with a railway line running adjacent to the rear boundary. The plot significantly slopes up in a north-easterly direction and at the time of my inspection, was overgrown, with a number of mature trees adjacent to the rear boundary.

6. Appendix 3 of the Local Plan<sup>2</sup> seeks to ensure a good standard of amenity space for future occupants and recommends that rear garden areas should have a minimum depth of 11.5 metres. Whilst this is not achieved by both of the proposed dwellings, it also allows garden depths below 11.5 metres for infill developments, on the provision that they are of equal depth to adjoining properties. Given that I consider the proposal to constitute an infill development and because the garden depths are similar to the adjacent properties at Nos 26 and 27, I am satisfied that the development would comply with this requirement.

7. However, Appendix 3 also states that gardens should be of a width, shape and size to ensure that the space is functional. Set against this context, whilst the width of each plot has been increased from the previous scheme to approximately 16 metres, with a further 24 square metres provided to the side of each dwelling, it is my view that the amenity space would still be unduly restricted in depth, size and functionality by the terraced nature of the site and the proximity of the side garden to the off-road parking spaces and tall boundary fences.

8. Furthermore, because both proposed dwellings would have 3 bedrooms, with two further rooms in the roof, they would be suitable for large families with children. However, the attractiveness of both gardens as an area for play and for them to be used for other routine activities such as sitting out and drying clothes would, to my mind, be substantially reduced by the height, depth and gradient of the retaining structures and terraces, and the mature trees that overhang the site. In such circumstances, I would also consider there to be a reasonable prospect that future occupiers would seek to have the adjacent mature trees lopped, topped or felled.

9. In view of the above factors, it is my view that the scheme would create the impression of a development that has been tightly squeezed onto the site with insufficient functional amenity space.

10. I recognise that that the development is in reasonable walking distance to public open space and that other private gardens to existing housing may have a smaller footprint than that currently proposed, but this does not overcome the harm identified to the living conditions of future occupants.

11. Although the appeal site is in close proximity to a railway line to the rear, the Council's Environmental Health Officer has raised no objections to the appellant's noise and vibration assessment. Based on the evidence before me, I see no reason to take a different view.

12. The appellant has emphasized their attempts to address concerns relating to the previous scheme by reducing the number of dwellings, reconfiguring the internal accommodation and increasing the size of the overall plots. I also acknowledge that the application was the subject of a recommendation for approval from planning officers at the Council. Nevertheless, matters such as these do not, in themselves, confer acceptability and I have considered this appeal strictly on its planning merits. I have also noted the lack of objections by the Council's Conservation Officer, but this in itself does not demonstrate a lack of harm in terms of living conditions.

13. In reaching my conclusion, I have had regard to the two previous appeal decisions referred to by the Council and appellant. Although these are an important consideration, I have assessed the proposal on its own merits in the light of all the evidence which is now before me.

14. In view of the above, I conclude that future occupiers would experience unacceptable living conditions in terms of the functionality and restricted size of the amenity area. The proposal would therefore conflict with Appendix 3 of the Local Plan, which seeks, amongst other things, to ensure that all new gardens are of a width, shape and size to ensure the space is functional.

15. I also find that the scheme would conflict with Paragraph 127 of the Framework which seeks, amongst other things, to ensure that development provides a high standard of amenity for future users.

16. Despite the Council having referred to Policy CS12 of the Core Strategy<sup>3</sup> in its reason for refusal, I can find no requirements in this policy that refer to the living conditions of future residents in terms of amenity space provision. I am as a consequence satisfied that the scheme is not in conflict with this policy.

#### Other matters

17. Given my conclusion on the main issues that the development is unacceptable, the other matters raised by interested parties have not been central to my decision. Accordingly, there is no need for me to

consider them further as it would not alter the outcome of the appeal.

Planning balance

18. Although the site is located in a sustainable location where the principle of development is acceptable, for the reasons set out above, I conclude that the harm to the living conditions of future occupiers would significantly and demonstrably outweigh the modest amount of social and economic benefits that the development would contribute, namely, making an efficient use of land, the provision of an attractive additional family dwelling and employment during construction.

Conclusion

19. All representations have been taken into account, but no matters, including the benefits of the development and the scope of possible planning conditions, have been found to outweigh the identified harm and policy conflict. For the reasons above, the appeal should be dismissed.

4/03329/17/ENA

Ellisdon

APPEAL AGAINST ENFORCEMENT NOTICE - ROADWAY

THE HOO, LEDGEMORE LANE, GREAT GADDESSEN, HEMEL

HEMPSTEAD, HP2 6HD

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An appeal was lodged against the Enforcement Notice served in respect of the construction of a new road, compound/turning area and earth bund. The appeal was made under grounds (a), (b), (c) and (f). All grounds of appeal were dismissed, resulting in the refusal of the deemed planning application and the upholding of the Enforcement Notice and its requirements.

In terms of the ground (b) appeal ('whether the breach has occurred') the Inspector commented on the aerial photos submitted by the Council and the lack of evidence submitted by the appellant. The Inspector noted some historic 'wear' along part of the current route of the road/track, but stated that this was simply a 'route for access', very different to a constructed farm track. The Inspector concluded that this is new development that did not exist previously.

In respect of the ground (c) appeal ('whether this is a breach of planning control') the Inspector concluded that the works involved (significant total length and width) constituted a substantial engineering operation. The Inspector agreed with the Council that the works are also not permitted development within the GPDO.

In respect of the ground (a) appeal ('the deemed planning application') the Inspector concluded that the development represents an unacceptable risk to ground conditions and the wider environment in terms of the use of potentially contaminated materials, that it results in significant harm to the character and appearance of the countryside and diminishes the scenic beauty of the AONB, and that it results in harm to the setting of the Grade II\* listed building, The Hoo. As such the development conflicts with the stated Local Plan and NPPF policies.

Finally, in terms of the ground (f) appeal ('that the requirements of the Notice are excessive') the Inspector found that it cannot be excessive for the notice to require the removal of the development in order to remedy the breach, as any lesser steps would not fully remedy the breach. The Inspector stated that the appellants are best placed to know what condition the land was in prior to the breach and therefore the extent of the necessary remedial works, and as such rejected the appellant's claim that this was a vague requirement.

**F. ALLOWED**

None