

APPEALS UPDATE

A. LODGED

4/01857/16/FUL WHISTON
NEW DWELLING WITH VEHICLE ACCESS FROM GRAVEL LANE
(AMENDED SCHEME).
1 BARBERRY ROAD, HEMEL HEMPSTEAD, HP1 1SD
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4/02875/16/FUL MR WEIR-RHODES WATTS
TWO STOREY FRONT AND SIDE EXTENSION. CONVERSION OF
PROPERTY TO FORM FOUR SELF-CONTAINED FLATS
2 BRACKNELL PLACE, HEMEL HEMPSTEAD, HP2 6BT
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B. WITHDRAWN

None

C. FORTHCOMING INQUIRIES

4/00488/16/ENA MR A MATHERS
APPEAL AGAINST ENFORCEMENT NOTICE, CONVERSION OF ONE
DWELLINGHOUSE TO SEVEN FLATS
1 AIREDALE, HEMEL HEMPSTEAD, HP2 5TP
[View online application](#)

4/02321/16/ENA Mr Eames
APPEAL AGAINST ENFORCEMENT NOTICE - CHANGE OF USE OF
BARN FOR VEHICLE STORAGE AND CREATION OF
HARDSTANDING
PIGGERY FARM, HAMBERLINS LANE, NORTHCHURCH,
BERKHAMSTED, HP4 3TD
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D. FORTHCOMING HEARINGS

None

E. DISMISSED

4/01355/16/FHA Mr Young
FORMATION OF VEHICULAR ACCESS ONTO WATFORD ROAD
75 WATFORD ROAD, KINGS LANGLEY, WD4 8DY
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Decision

PINS fully supported the LPA's refusal in terms of highway safety impacts. There was no award of costs to the Appellant.

4/01364/16/LDP Mr Pritchard
CONSTRUCTION OF 2 DETACHED OUTBUILDINGS WITHIN THE
CURTILAGE OF THE PROPERTY.
6 HIGHCROFT ROAD, FELDEN, HEMEL HEMPSTEAD, HP3 0BU
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Decision

1. The appeal is dismissed.

Main Issue

2. A Lawful Development Certificate (LDC) is not a planning permission. Its purpose is to enable owners and others to ascertain whether specific operations or activities would be lawful.

Therefore, for the avoidance of doubt, I make clear that the planning merits of the proposed outbuildings are not relevant in this appeal. My decision rests on the facts of the case and on relevant planning law and judicial authority.

3. The main issue is whether the Council's decision to refuse to grant a LDC was well founded
Reasons

4. Class E, Part 1 of Schedule 2 of the Town and Country Planning (General Permitted Development) Order 2015 (the Order) grants planning permission for 'any building or enclosure, swimming or other pool required for a purpose incidental to the enjoyment of the dwellinghouse as such, or the maintenance, improvement or other alteration of such a building or enclosure'. Those 'permitted development rights' are subject to a number of conditions and restrictions, listed at paragraphs E.1 to E.3.

5. The Council do not dispute that the proposed outbuildings would comply with the conditions and limitations listed at paragraphs E.1 to E.3 but dispute whether the proposed building would be 'incidental to the enjoyment of the dwellinghouse'. If a building or enclosure is not required for a purpose that would be incidental to the enjoyment of a dwellinghouse then it would fall outside the scope of the permitted development rights granted under Class E and planning permission would be required. The Council contend that the size, scale and extent of the facilities is excessive and would go beyond what would be 'required' for 'a purpose incidental to the enjoyment of the dwellinghouse'. In particular, they refer to the scale of the proposed cinema, which would have a cloak room and space for 10 people; the size of the gym; and the scale of the indoor bowling green which would accommodate two full size rinks.

6. I am satisfied that the proposal would comply with the restrictions set out within paragraphs E.1 to E.3 of the Order, having regard to size, footprint and location. However, the terms of paragraphs E.1 to E.3 are such that it is possible to design substantial outbuildings or means of enclosure to fit within the limitations, particularly where dwellings have generous gardens as is the case in this instance. It does not follow that a building or enclosure will be incidental to the enjoyment of a dwellinghouse purely because it meets the terms of paragraphs E.1 to E.3.

Relatively small buildings may often fall outside the scope of Class E if they are not required for a

purpose incidental to the enjoyment of the dwellinghouse and, vice versa, comparatively large buildings may constitute permitted development depending on the circumstances of any given case.

7. It is necessary to consider proposals in the particular context within which they would be situated; an outbuilding that may be considered incidental to the enjoyment of a substantial dwelling with many occupants and large grounds may not be incidental if situated in the garden of a small cottage with a single occupant. Size alone is not necessarily a determining factor and a wide range of outbuildings, for different purposes may be permitted under Class E, depending on the specific circumstances. Those principles have been established through the Courts, including the cases of *Emin*¹ and *Wallington*². The Courts have also established that the term 'required' should be interpreted as meaning 'reasonably required'.

8. Turning to the present case, two outbuildings are proposed, one of which would contain an indoor bowling green with two full sized rinks. The submitted plans show that the building would be 16.82m wide and 40.35m long, with an overall footprint in excess of 650m². The bowling green within the building would have an area of 640m². The adjacent building would house a gym, home cinema, film library and cloak room, with a width of 15.19m, a length of 22m and a footprint of 311.5m² according to the plans. By any measure, the scale of the buildings would be substantial and the structures would take up a large portion of what is a considerable rear garden.

9. At present, the associated dwelling is a modest property but I note that extensions could be undertaken under the permitted development regime, as shown in relation to a previous appeal³. The dwelling is currently vacant but the information before me indicates that the appellant and his wife intend to move into the house once refurbishment is complete. They would apparently be the only permanent occupants and the sheer scale of the facilities would appear to be way in excess of what could be considered reasonably required as an incidental use for a dwelling that would be occupied by two people.

10. The indoor bowling green would equate to the provision a full sized bowling rink per occupant. Similarly, the size of the indoor cinema which could accommodate at least ten people, with large areas of circulation space surrounding the viewing seats, could not reasonably be said to be for a purpose incidental to the enjoyment of a dwellinghouse that is occupied by two people. It seems to me that the gym is not unduly large, given the need to house and provide safe circulation space between pieces of equipment but that does not outweigh my concerns relating to the scale of the development as a whole.

11. I note that the appellant and his wife have a large family who would be likely to visit the property on a frequent basis. Friends may also visit. Therefore, the suggestion appears to be that larger facilities are required, than would otherwise be the case, on the basis that people who do not normally reside at the property would visit for the purpose of using those facilities. It seems to me that the rationale in that respect is based upon the need to accommodate those who reside elsewhere, and not necessarily the requirements of the occupants of the dwellinghouse itself. That adds to my concern that the scale of the proposed development goes beyond what is reasonably required for the enjoyment of the particular dwellinghouse in question.

12. Moreover, I have noted the description of development that was proposed in relation to the previous appeal. The Inspector in that case noted that four outbuildings were proposed, one of which was described as a 'two lane bowling alley' with a size of 342.8m². The appellant at that time had suggested that the alley would be used for skittles as opposed to bowls. The bowling green proposed in the current application is almost twice the size of the bowling alley previously put forward. Whilst I am mindful of the difference between bowls and skittles, little information has been put forward to indicate why a much larger building is 'required' as part of the current proposal when no such facility was seemingly required when the previous application was made in the summer of 2015.

13. Government guidance in relation to development within Class E is provided in the publication *Permitted Development Rights for Householders - Technical Guidance* (Department of Communities and Local Government, 2016) (the *Technical Guidance*). With regard to Class E, the *Technical Guidance* states:

'.....the rules also allow, subject to the conditions and limitations..... a large range of other buildings on land surrounding a house. Examples could include common buildings such as garden sheds, other storage buildings, garages, and garden decking as long as they can be

properly be described as having a purpose incidental to the enjoyment of the house. A purpose incidental to a house would not, however, cover normal residential uses, such as separate self-contained accommodation nor the use of an outbuilding for primary living accommodation such as a bedroom, bathroom, or kitchen (my emphasis in italics)'.
14. In other words, if the use of a space was fundamental to the ordinary day to day functioning of the dwelling it would not be incidental but part of the primary accommodation. Within his statutory declaration, Mr Pritchard suggests that the large viewing screen in the cinema room would be used in the evenings 'almost every day' for the purpose of watching films and television, as an alternative to watching a smaller television in the lounge. To my mind, that suggests that the cinema room would, in effect, be used as an extension to the primary accommodation, very much like an additional lounge, as opposed to an incidental use. As such, it would fall outside the scope of permitted development rights granted through Class E.

15. I have noted that toilet and shower facilities have been removed from the proposed buildings further to the decision of the previous Inspector who commented that such facilities would not be incidental. However, the Inspector noted that the presence of the facilities was 'a point of relative detail when considering a scheme of this scale' and his decision to dismiss the appeal was clearly based on fundamental concerns regarding the scale of development proposed. In this case, the absence of toilet and shower facilities does not alter my view that the development would not be required for a purpose incidental to the enjoyment of the dwellinghouse.

16. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful development was well-founded and that the appeal should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended.

F. ALLOWED

4/01801/16/FUL BRAYBEECH HOMES LTD
CONSTRUCTION OF FIVE DETACHED DWELLINGS (AMENDED
SCHEME)
LAND REAR OF 27-33, GROVE ROAD, TRING
[View online application](#)

1. The appeal is allowed and planning permission is granted for the construction of five detached dwellings at Land rear of 27-33 Grove Road, Tring, Hertfordshire HP23 5HA in accordance with the terms of the application, Ref 4/01801/16/FUL, dated 29 June 2016, subject to the conditions set out in the attached schedule.

Application for costs

2. An application for costs was made by BrayBeech Homes Limited against Dacorum Borough Council. This application is the subject of a separate Decision see below.

Main Issue

3. The main issue is the effect of the proposed development on the character and appearance of the area.

Reasons

4. The appeal site would mainly comprise the rear gardens of Nos 27 to 33 Grove Road and would be accessed between No 27 and No 29 Grove Road. The surrounding area is characterised by a mix of detached and semi-detached dwellings of a variety of styles.

5. A scheme for the same site and including the erection of six dwellings on the appeal site was allowed in December 2016 where the Inspector found the density of the site would be at a comparable level to the surrounds, and the design of the properties would also assimilate well into the local character. The Inspector in December 2016 noted the heights of the proposed properties, whilst not strictly two storey, would match other similar modern housing nearby and the spacing between dwellings would be similar to the prevailing character of the area. Gardens would be of a reasonable size and overall the proposal would not appear as overdevelopment of

the site or contrived or cramped. Thus, the Inspector in December 2016 concluded that the development proposed at that time would not have an adverse effect on the character and appearance of the area.

6. I am not aware of any significant developments nearby which have taken place since December 2016 which have altered the character or appearance of the area in the vicinity of the appeal site in any way. Furthermore, there have been no changes to the development plan since that decision. I therefore attach significant weight to the previous appeal decision relating to this site and the fall back position provided by the approved scheme.

7. The scheme before me is very similar to the scheme which formed the subject of the December 2016 decision. The main differences are that the approved scheme is for six dwellings whereas the appeal scheme would involve the erection of five dwellings and would be a lower density development with less overall built mass, more space around the proposed buildings and larger gardens. The proposed dwellings would not be as tall as the approved dwellings.

8. Thus, in my view the proposed scheme is of a lesser scale of development than the approved scheme. Therefore, the proposed scheme would better blend into its setting and would not be as visually prominent as the approved scheme. Furthermore, the appeal proposal would provide a relatively spacious development with opportunities for landscaping along the site and plot boundaries which would further soften its visual impact.

9. That said, consistent with the Inspector's findings in December 2016 and given the fall back position I find the proposed development would not harm the character and appearance of the area. The proposed development would therefore accord with the development plan, specifically saved Policies CS11 and CS12 of the Dacorum Borough Local Plan 1991-2011(2004) which aim to ensure good design and that new development does not harm the character of an area. For the same reasons the proposed development would accord with the aims of the Area Based Policies Development in Residential Areas Tring Supplementary Planning Guidance (2004).

Other Matters

10. I have noted the concerns raised by interested parties including the effect of the proposed development on parking, traffic, highway safety, sewage and drainage and biodiversity. However, all of these matters were considered in detail in the December 2016 appeal decision and given the fall back position of the approved scheme and that the appeal proposal is very similar I have not reconsidered these matters in detail in this decision.

Conditions

11. The conditions I have imposed are broadly the same as those imposed on the December 2016 decision except where I have adjusted them to reflect the specific details of the appeal scheme and had regard to the conditions suggested by the Council.

12. I have imposed a condition specifying the approved plans and documents as this provides certainty. Conditions requiring tree protection measures, landscaping, materials and boundary treatments to be agreed are necessary to protect the trees and safeguard the character and appearance of the area.

13. Furthermore, as requested by the Council's contaminated land officer due to potentially contaminative former land uses nearby a condition is necessary to ensure the site is appropriately investigated for such and appropriate actions undertaken thereafter to ensure the safety of future occupiers. Moreover, conditions are also necessary to ensure appropriate parking provision and visibility in the interests of highway safety.

14. A condition is also necessary to ensure the recommendations of the ecological survey are carried out, in the interests of biodiversity. To safeguard the living conditions of neighbouring residents a condition to ensure windows facing neighbouring plots are fitted with obscured glass is also necessary, for the same reasons a condition requiring a construction management plan is also necessary.

15. It has not been demonstrated and thus I do not consider that exceptional circumstances exist to justify the removal of all permitted development rights for the proposed dwellings. However, given the proximity of neighbouring residents I consider that restricting roof extensions is necessary and justified in this case. Furthermore, to ensure the garages are used for parking is also justified in the interests of highway safety. Thus, I have imposed conditions which remove permitted development rights for roof extensions and the conversion of garages to living accommodation.

16. Finally, as was imposed on the scheme approved in December 2016, although not on the

Council's list of suggested conditions and given it was a specific concern raised by interested parties a condition is reasonable and necessary to ensure appropriate site drainage in the interests of safeguarding the water environment and the living conditions of neighbouring residents.

Conclusion

17. For the reasons set out above, having had regard to all other matters raised, the appeal is allowed.

SCHEDULE OF CONDITIONS

1) The development hereby permitted shall begin not later than three years from the date of this decision.

2) The development hereby permitted shall be carried out in accordance with the following approved plans: Site Plan Drawing No BBH/005/PL/08; Plots 1 & 2 Plans and Elevations Drawing No BBH/005/PL/09; Plots 3 & 4 Plans and Elevations Drawing No BBH/005/PL/10; Plot 5 Plans and Elevations Drawing No BBH/005/PL/11; Site Sections and Street Scenes Drawing No BBH/005/PL/12; Site Survey Drawing No K1215-T; Landscape Proposal Drawing No 2258-11-01; Landscape Presentation Plan Drawing No 2258-11-02; Bat Mitigation and Enhancement Strategy (Arbtech) dated 22 July 2016; Ecological Assessment (Arbtech) dated 24 March 2016 and Design and Access Statement.

3) No development shall take place until details of the materials to be used in the construction of the external surfaces of the development hereby permitted have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.

4) No development shall take place until full details of both hard and soft landscape works have been submitted to and approved in writing by the local planning authority. These details shall include:

hard surfacing materials; means of enclosure; soft landscape works which shall include planting plans; written specifications; schedules of plants, noting species, plant sizes and proposed numbers/densities where appropriate; trees to be retained and measures for their protection during construction works;

proposed finished levels or contours; car parking layouts and other vehicle and pedestrian access and circulation areas;

The approved landscape works shall be carried out prior to the first occupation of the development hereby permitted. The plans and particulars submitted shall include details of the size, species, and positions or density of all trees to be planted, and the proposed time of planting and a scheme indicating all of the proposed means of enclosure within and around the site whether by means of walls, fences or hedges. The approved means of enclosure around the external boundaries of the site shall be constructed, erected or planted prior to the commencement of other construction work on site and the approved means of enclosure within the site shall be constructed, erected or planted at the same time as the buildings to which it relates are constructed. If within a period of five years from the date of the planting of any tree that tree, or any tree planted in replacement for it, is removed, uprooted or destroyed or dies (or becomes, in the opinion of the local planning authority, seriously damaged or defective), another tree of the same species and size as that originally planted shall be planted at the same place in the next planting season. The development shall be carried out in accordance with all the approved details.

5) Prior to the commencement of the development hereby permitted a Phase I Report to assess the actual or potential contamination at the site shall be submitted to and approved in writing by the local planning authority. If actual or potential contamination and/or ground gas risks are identified further investigation shall be carried out and a Phase II report shall be submitted to and approved in writing by the local planning authority prior to the commencement of the development. If the Phase II report establishes that remediation or protection measures are necessary a Remediation Statement shall be submitted to and approved in writing by the local planning authority. For the purposes of this condition: A Phase I Report consists of a desk study, site walkover, conceptual model and a preliminary risk assessment. The desk study comprises a search of available information and historical maps which can be used to identify the likelihood of contamination. A simple walkover survey of the site is conducted to identify pollution linkages not

obvious from desk studies. Using the information gathered, a 'conceptual model' of the site is constructed and a preliminary risk assessment is carried out.

A Phase II Report consists of an intrusive site investigation and risk assessment. The report should make recommendations for further investigation and assessment where required.

A Remediation Statement details actions to be carried out and timescales so that contamination no longer presents a risk to site users, property, the environment or ecological systems.

All remediation or protection measures identified in the Remediation Statement shall be fully implemented within the timescales and by the deadlines as set out in the Remediation Statement and a Site Completion Report shall be submitted to and approved in writing by the local planning authority prior to the first occupation of any part of the development hereby permitted. For the purposes of this condition a Site Completion Report shall record all the investigation and remedial or protection actions carried out. It shall detail all conclusions and actions taken at each stage of the works including validation work. It shall contain quality assurance and validation results providing evidence that the site has been remediated to a standard suitable for the approved use.

6) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any Order amending or re-enacting that Order with or without modification) no development falling within the following classes of the Order shall be carried out without the prior written approval of the local planning authority: Schedule 2 Part 1 Classes B and C.

7) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any Order revoking or re-enacting that Order with or without modification) the garages hereby permitted shall be kept available at all times for the parking of vehicles associated with the residential occupation of the dwellings and they shall not be converted or adapted to form living accommodation.

8) Prior to first occupation of the dwellings hereby approved, the lower section of the bathroom windows at first floor level in the north-western elevations of Plots 1, 2, 3 and 4; the bathroom window at first floor level in the south-eastern elevation of Plot 5; the bedroom window at first floor level in the south-eastern elevation of Plot 1; along with the other windows shown with their lower sections fitted with obscured glazing on Drawing Numbers BBH/005/PL/09, 10 and 11 respectively hereby permitted shall be permanently fitted with obscured glass.

9) The proposed car parking spaces shall have measurements of 2.4m x 4.8m min. and be located on land within the ownership of the applicant. Such spaces shall be maintained as a permanent ancillary to the development and shall be paved and used for no other purpose.

10) Construction of the development hereby approved shall not commence until a Construction Traffic Management Plan has been submitted to and approved in writing by the Local Planning Authority in consultation with the Highway Authority. Thereafter the construction of the development shall only be carried out in accordance with the approved Plan. The Construction Traffic Management Plan shall include details of:

- a) Construction vehicle numbers, type, routing;
- b) Traffic management requirements;
- c) Construction and storage compounds (including areas designated for car parking);
- d) Siting and details of wheel washing facilities;
- e) Cleaning of site entrances, site tracks and the adjacent public highway;
- f) Timing of construction activities to avoid school pick up/drop off times;
- g) Provision of sufficient on-site parking prior to commencement of construction activities;
- h) Post construction restoration/reinstatement of the working areas and temporary access to the public highway.

11) Prior to first occupation a visibility splay shall be provided in full accordance with the details indicated on the approved plan Site Plan Drawing No BBH/005/PL/08. The splay shall thereafter be maintained at all times free from any obstruction between 600mm and 2m above the level of the adjacent highway carriageway.

12) Before first occupation or use of the development the access roads and parking areas as shown on the approved plans shall be provided and maintained thereafter.

13) Prior to the commencement of development, the further bat survey work identified in the Arbtch Worse Case Scenario Bat Mitigation Strategy shall be undertaken and the reports submitted to the Local Planning Authority for approval. The development hereby permitted shall be

undertaken in accordance with the mitigation and recommendations identified within the Arbtech Ecology Assessment and the Worse Case Scenario Bat Mitigation Strategy.

14) No development shall take place until a scheme for surface water drainage, including timing, phasing and works, has been submitted to and approved in writing by the local planning authority. The agreed scheme shall be implemented in accordance with the approved details.

CLAIM FOR COSTS

1. The application for an award of costs is refused.

Reasons

2. The Planning Practice Guidance (PPG) advises that costs may be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.

4. The appellant alleges that the Council has acted unreasonably in reaching its decision on the planning application by failing to produce evidence to substantiate its reason for refusal and made vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by objective analysis.

5. However, whilst the Council took its decision contrary to an officer recommendation it is entitled to do so. In my view, the reason for refusal is relatively self-explanatory and the Council's statement provides a clear explanation as to why the Council considered the scheme to be unacceptable with reference to site specific circumstances and relevant development plan policies.

6. Even though I have found that the proposed development would not harm the character and appearance, such matters are subjective and I find the Council gave clear substantiated reasons for reaching its own views.

7. For these reasons, I consider that the Council's decision was not unreasonable on its planning merits and the Council has provided sufficient evidence to support its decision. I therefore find that unreasonable behaviour resulting in unnecessary expense has not been demonstrated.