

WELWYN HATFIELD BOROUGH COUNCIL
DEVELOPMENT MANAGEMENT COMMITTEE – 15 FEBRUARY 2023
REPORT OF THE ASSISTANT DIRECTOR (PLANNING)

Appeal Decisions 31/12/2022 to 03/02/2023

6/2021/0457/LAWE	
DCLG No:	APP/C1950/X/21/3280927
Appeal By:	Leslie Lord
Site:	Land parcel East of Newgate Street. Barn located South of Lodge Farm with the nearest postcode being SG13 8NQ which is located in East Herts District
Proposal:	Certificate of lawfulness for the Retention of barn as a B8: Storage and Distribution warehouse for a period of more than 10-years
Decision:	Appeal Dismissed
Decision Date:	06/01/2023
Delegated or DMC Decision:	Delegated
Summary:	<p>This appeal was against a refusal to grant a certificate of lawful use or development (LDC) for the retention of barn as a B8: Storage and Distribution warehouse for a period of more than 10-years.</p> <p>Prior approval for an agricultural barn was granted on 30 October 2006 under reference S6/2006/1310/AG. The appellant explained that was sought in good faith, but plans changed away from an agricultural barn for his own use, to the construction of a barn for general commercial use. However the inspector was satisfied that the appellant had demonstrated, on the balance of probabilities, that the building has been used for Class B8 storage or distribution for a period of more than ten years before the date of the application, without material interruption. Crucially however, S171B(3) states that ‘no enforcement action may be taken after the end of the period of ten years beginning with the date of the breach’. For a breach of planning control to have occurred in this case, there must have been a material change of use and it is only a material change of use which can have become immune from enforcement action. Having regard to s171A(1), use, in itself, is not an act of development. As explained by the appellant, following completion of the building, it was used for Class B8 purposes. Therefore, on the balance of probabilities, there was no material change of use of the building to Class B8 storage and distribution, at least ten years before the date of the LDC application; it was used for such purposes from the onset. Consequently, the use of the building is not lawful on the basis that it has become immune from enforcement action under s171B(3) of the 1990 Act.</p> <p>It states that in the case of Welwyn Hatfield the Supreme Court held that the actions of the developer amounted to ‘positive deception in matters integral to the</p>

planning process...[which] was directly intended to and did undermine the regular operation of that process'. The deliberate concealment of the dwellinghouse in that case meant that the developer could not rely on the time limits for taking enforcement action in s171B of the 1990 Act. It was emphasised in Welwyn Hatfield and later cases that this principle should only be applied in extreme cases. Local planning authorities and Inspectors ought not to cast around for marginal aspects of cases to rely on the principle; the appellant must do more than 'keep a low profile'. However, in R (oao Matilda Holdings Ltd) v SSCLG4, it was held that there are no 'exceptionality' or 'egregious' tests for determining whether there has been deliberate concealment. The prior approval plans showed a five-bay pitched roof building. On the north-east long elevation, three of the bays are shown to be open and two are shown with roller shutters. Five roof lights are shown above each bay on the north-east pitch. No other openings are shown on either gable end elevations or on the long south west elevation. However, the appellant's SD stated that the building was completed in March 2009 as per the LDC drawings and a contemporaneous invoice was exhibited which shows the balance for a new building, addressed to the appellant. In contrast to the prior approval drawings, the LDC plans show the main entrance (double sliding doors) on the previously blank north-west elevation and instead of five openings on the long north east elevation, that elevation is shown as blank and fully enclosed. The inspector concluded that the obvious and material differences which, even with the same green profiled cladding and the physical form of the building does not therefore point towards deliberate concealment.

The inspector did appreciate however that the design of the building could conceal its internal use but that is by no means a unique characteristic. Whilst it could well be taken for an agricultural building, it could not be reasonably physically mistaken for that which was approved. In any case, the main doors would need to be opened and goods moved in and out for a storage or distribution use.

Moreover, those particulars describe the unit as a detached storage building to let with pictures reflecting the LDC design, rather than the prior approval. That adds weight to the evidence that it was originally built out as per the former, rather than the latter. The location is described in detail on the second page of the particulars along with features and dimensions. Such marketing, in the public domain, does not therefore point towards a deliberate concealment of the use of the building.

The inspector stated that they had not been made aware of any deliberately misleading or false statements made by the appellant to prevent or deter discovery of the use. Nor does the evidence point towards positive conduct on the appellant's behalf to deceive the Council and undermine the planning process.

The inspector did not find a situation in which there has been positive deception so as to engage the 'Welwyn principle' and the appellant is not disentitled from relying on the provisions of s171B(3) of the 1990 Act.

Therefore on the balance of probabilities, the inspector did not find positive deception, the use of the building is not lawful on the basis that it has become immune from enforcement action under s171B(3) of the 1990 Act. However the Inspector concluded that the Council's refusal to grant a LDC was well-founded and that the appeal should fail.

	The appeal was therefore dismissed.
6/2021/2272/outline	
DCLG No:	APP/C1950/W/22/3293855
Appeal By:	Mr Daniel Brunt
Site:	Swan Stables Woodside Lane Bell Bar Hatfield Brookmans Park AL9 6DE
Proposal:	Outline application for replacement of stables buildings with 1 x 2 bed dwelling with landscaping reserved
Decision:	Appeal Allowed with Conditions
Decision Date:	18/01/2023
Delegated or DMC Decision:	Delegated
Summary:	<p>This appeal relates to the replacement of the Old Swan Stable buildings with the erection of a detached dwelling.</p> <p>The main issue was whether the proposal would be inappropriate development in the Green Belt, including the effect it would have on openness.</p> <p>The Inspector considered that the appeal scheme could not be considered as an exception under Paragraph 149e) of the NPPF in respect of 'limited infilling' since the application did not include sufficient information to substantiate that Bell Bar functions as a village. The Inspector did however acknowledge that this conclusion differs from that of an Inspector colleague's decision on a different site in the area (APP/C1950/W/21/3272408).</p> <p>The application is assessed by the Inspector against Paragraph 149g) of the NPPF which allows as an exception, limited infilling or the partial or complete redevelopment of previously developed land, where development would not have a greater impact on the openness of the Green Belt. In this regard, the Inspector considered that the scale of redevelopment results in the scheme having no greater physical impacts on the openness of the Green Belt than existing.</p> <p>Moreover, the Inspector considered that the extraneous development which could affect openness including the spread of paraphernalia and the extent of proposed parking areas should be balanced against the reduction in the existing footprint, concluding that it is likely that the current use generates more parking and traffic movement with other activities compared to the proposed scheme.</p> <p>Having regard to permanence and the proposed building being of more substantial construction than the existing stables, the Inspector did not regard these matters as adversely impacting on the openness of the site.</p> <p>Overall, it was concluded that the appeal scheme would not have greater impact on openness than the existing development and for this reason would not be inappropriate development in the Green Belt. For this reason, a consideration in respect of 'openness' is unnecessary.</p>

	The appeal was allowed, subject to conditions.
6/2021/1547/full	
DCLG No:	APP/C1950/W/21/3286104
Appeal By:	Mr Ben Gilpin
Site:	Welwyn Ambulance Station Ascots Lane Welwyn Garden City AL7 4HL
Proposal:	Proposed 12 month temporary extension for 25m tall telecommunications installation upgrade and associated works
Decision:	Appeal Dismissed
Decision Date:	26/01/2023
Delegated or DMC Decision:	Delegated
Summary:	<p>This appeal relates to the proposed 12 month extension of temporary permission for a 25m tall telecommunications installation upgrade and associated works at the Welwyn Ambulance Station on Ascots Lane.</p> <p>By way of history, prior approval was initially granted at the site for a 17.5m high monopole under 6/2017/2928/PN15. This was however never implemented. The applicant subsequently sought retrospective planning permission for the installation of a 17.5m tall telecommunications mast under 6/2018/1495/FULL which was granted temporary permission for 12 months. This remained in place until late 2020 where 12-month temporary permission was granted under 6/2020/1780/FULL to replace the 17.5m tall mast with a 20m tall variant. A 25m tall telecommunications mast of the same design was however installed instead and this currently remains on site.</p> <p>The planning application was refused as the proposed development, by virtue of its height, siting, bulk and design, would appear incongruous and visually intrusive leading to unacceptable harm to the character and appearance of the streetscene and surrounding area.</p> <p>The Inspector states that the mast, at 25m in height, is a prominent and highly visible structure that could be seen above all other features from numerous vantage points along Ascots Lane, Howlands, Kingsley Court, and further afield. It was also considered that the industrial appearance of the monopole would have a negative visual impact on the residential areas in the vicinity and appear as an imposing structure to the dwellings that adjoin it.</p> <p>The Inspector acknowledges the social and economic benefits of the scheme (including the need to expand the communications network and the delivery of 5G infrastructure), however only moderate weight was afforded to this in this instance. Therefore the positives of the scheme does not outweigh the identified harm caused to the character and appearance of the area.</p> <p>The appeal was dismissed.</p>
6/2022/1015/FULL	

DCLG No:	APP/C1950/W/22/3305719
Appeal By:	Mr Larry Kenney
Site:	110 Hawkshead Road Little Heath Potters Bar EN6 1NG
Proposal:	Demolition of existing property and erection of new dwelling
Decision:	Late Appeal turned away
Decision Date:	31/01/2023
Delegated or DMC Decision:	Delegated
Summary:	No summary required
6/2022/0756/HOUSE	
DCLG No:	APP/C1950/D/22/3305302
Appeal By:	Bogdan Gervasa
Site:	18 St Albans Road East Hatfield Hertfordshire AL10 0EH
Proposal:	Installation of a vehicular access, crossover and hardstanding; and erection of boundary wall, railing, sliding gate and pedestrian gate
Decision:	Appeal Allowed with Conditions
Decision Date:	01/02/2023
Delegated or DMC Decision:	Delegated
Summary:	<p>This was an appeal for the installation of a vehicular access, crossover and hardstanding; and erection of boundary wall, railing, sliding gate and pedestrian gate.</p> <p>The works had already begun on site before the application was determined.</p> <p>The Highways Authority had commented with the following concerns:</p> <ol style="list-style-type: none"> 1. The proposed access is too close to the junction with Stonecross Road and does not comply with HCC's Dropped Kerb policy. 2. The proposed gates are too close to the public highway and do not comply with the Roads in Hertfordshire Design Guide. 3. The property already benefits from access to the rear off of Stonecross Road. The closure of this access does not appear to form part of the proposed development, nor would it form part of a proposed carriageway drive. This is therefore contrary to HCC's Dropped Kerb policy. 4. There is insufficient information supplied with this application creating doubt over possible implications for highway safety and convenience, specifically relating to the following issues: <ol style="list-style-type: none"> a. The ability for vehicles to turn on-site and leave in a forward gear. b. Vehicle and pedestrian visibility splays.

	<p>The development was therefore refused on the basis of adverse impact to the safety and operation of the adjoining highway network.</p> <p>While the Inspector attributed weight to the above highway concerns, the Inspector also considered a similar degree of weight to the shortage of on-street car parking and the high levels of car ownership in the area. The Inspector therefore considered conditions would be appropriate to mitigate the highway concerns. These conditions included limiting the forecourt to parking of one vehicle only and that the sliding gates to be controlled by remote use. The Inspector considered that the design of the piers and intervening metal railings would mitigate the visibility concerns.</p> <p>The Inspector also noted that the removal of the soft landscaping from the front of the application site is uncharacteristic of the locality and included a landscaping condition.</p> <p>Subject to the inclusion of the conditions, the appeal was allowed.</p>
6/2022/1719/HOUSE	
DCLG No:	APP/C1950/D/22/3309152
Appeal By:	Mr Gaspare Giambrone
Site:	16 Burleigh Way Cuffley Potters Bar EN6 4LG
Proposal:	Alterations to the roof including the Insertion of a front dormer window, the enlargement of the existing side dormer window and the insertion of side dormer window
Decision:	Appeal Allowed with Conditions
Decision Date:	02/02/2023
Delegated or DMC Decision:	Delegated
Summary:	<p>The application relates to alterations to the roof including the insertion of a front dormer window, the enlargement of the existing side dormer window and the insertion of side dormer window at 16 Burleigh Way, Cuffley.</p> <p>The appeal property is a detached bungalow and has a small side dormer window. The proposal would increase the size of the side dormer window to cover the majority of the side roof slope, a similar dormer window is proposed on the other side roof. A dormer extension is also proposed to the front.</p> <p>Reason for refusal: The proposal would materially harm the character and appearance of the host dwelling and the surrounding area. It would conflict with Policies D1 and D2 of the Welwyn Hatfield District Plan 2005 of the Welwyn Hatfield Supplementary Design Guidance. Policy SP9 of the Emerging Local Plan. Accordingly, it is considered that the proposed development represents a poor standard of design and is therefore contrary to the National Planning Policy Framework</p> <p>The inspector commented that “The Council’s Supplementary Design Guidance (the SDG) states that dormer windows should be contained in the roof slope, be</p>

set in at least 1metre from the flank wall, and not extend beyond the ridge of the existing dwelling. The proposed development would not comply with the SDG.

Notwithstanding this, it is important to recognise that such guidance does not constitute a ‘black and white’ set of rules to be applied rigidly or exclusively when other material considerations indicate that an exception may be appropriate. The proposal would add bulk to the modest size of the existing property. Nonetheless I observed during my site visit that properties in the area vary in terms of design, and that side and front dormer windows are a common design feature within the area. Whilst large, the dormers would be similar in terms of location, size and design to others within the immediate area.

Due to the similarities of the appeal proposal to others in the area I find that the proposed development would not harm the character and appearance of the area nor the appeal property itself”.

Subsequently, this appeal was allowed.

6/2022/1633/HOUSE

DCLG No:	APP/C1950/D/22/3310686
Appeal By:	Mrs Laura Jevons
Site:	2 The Driveway Cuffley Potters Bar EN6 4EB
Proposal:	Erection of first floor extension with increase in roof height
Decision:	Appeal Dismissed
Decision Date:	02/02/2023
Delegated or DMC Decision:	Delegated
Summary:	<p>This appeal relates to the erection of a first floor extension with increase in roof height.</p> <p>The application dwelling and its adjoining neighbour No. 1 are chalet bungalows and are the only dwellings accessed from The Driveway. The proposal was considered to alter the character of the application dwelling from a chalet bungalow to a two-storey dwelling and the scale, height and massing of the development would fail to respond to neighbouring building forms within The Driveway. The proposal was considered to interrupt the transition in height of the buildings from Hill Rise to The Driveway and East Ridgeway beyond, due to the topography of the area and substantial increase in ridge height.</p> <p>Furthermore, the positioning of the development in proximity to No. 1 The Driveway, in combination with the sloping land levels and increase in height and massing at the first floor and roof levels, would appear overbearing and unduly dominant towards the occupiers of No. 1 The Driveway.</p> <p>The Inspector stated that the proposed development would be a prominent addition to the area and would appear incongruous and stark in the streetscene, concluding that the development would harm the character and appearance of the area.</p>

Moving on to neighbouring amenity, the Inspector stated that the difference in levels, the proposed development would be visually dominant and overbearing to the occupiers of neighbouring properties and concluded that the development would harm the living conditions of occupiers of neighbouring properties.

The appeal was therefore dismissed.

6/2022/1566/HOUSE

DCLG No:	APP/C1950/D/22/3312439
Appeal By:	Mr Graham Swanson
Site:	23 Gresley Close Welwyn Garden City AL8 7QA
Proposal:	Erection of single storey rear extension, first floor front extension & loft conversion including raising existing roof height, addition of rear dormer & rooflights to front
Decision:	Appeal Allowed
Decision Date:	02/02/2023
Delegated or DMC Decision:	Delegated
Summary:	<p>The development proposed is described as a single storey rear extension, first floor front extension & loft conversion including raising existing roof height, addition of dormer to rear & rooflights to front. The reasons for refusal focussed on the first-floor side extension and the large rear dormer.</p> <p>In respect of the first-floor extension, the Inspector concluded that the first-floor extension would not be incongruous nor dominate the property or the streetscene.</p> <p>In considering the rear dormer, the Inspector considered the Supplementary Design Guidance (the SDG) (which states that dormer windows should be contained in the roof slope, be set in at least 1metre from the flank wall, and not extend beyond the ridge of the existing dwelling). She concluded that the proposed large rear dormer would not comply with the SDG.</p> <p>However, the Inspector said, "Notwithstanding this, it is important to recognise that such guidance does not constitute a 'black and white' set of rules to be applied rigidly or exclusively when other material considerations indicate that an exception may be appropriate". Taking account of the surroundings, she stated that "the dormer would not be obvious to the surrounding properties".</p> <p>This appeal was allowed.</p>

6/2022/2139/HOUSE

DCLG No:	APP/C1950/D/22/3313727
Appeal By:	Mr J Barnett
Site:	30 Barleycroft Road Welwyn Garden City Hertfordshire AL8 6JU
Proposal:	Erection of part single & part 2-storey rear extension, roof extension & alterations to openings

Decision:	Appeal Dismissed
Decision Date:	02/02/2023
Delegated or DMC Decision:	Delegated
Summary:	<p>This appeal relates to the proposed erection of part single & part 2-storey rear extension, roof extension & alterations to openings at 30 Barleycroft Road.</p> <p>The planning application was refused as the proposed development, by virtue of its scale, design and form would represent a dominant and bulky addition that would overwhelm the original property. Furthermore, the design of the crown roof would fail to respect the character and appearance of the original dwelling and surrounding area and would therefore represent a poor quality of design that would fail to preserve or enhance the character and appearance of the Welwyn Garden City Conservation Area.</p> <p>The Inspector states that the cumulative impact of the proposed development, including the alterations to the openings, loss of original chimney features, and replacement crown roof, would detract from the distinct character of the property and would diminish unacceptably the character and appearance of the conservation area, resulting in less than substantial harm with no public benefits to outweigh such harm.</p> <p>The appeal was therefore dismissed.</p>

6/2022/1476/HOUSE

DCLG No:	APP/C1950/D/22/3306336
Appeal By:	Mr P Martin
Site:	11 Aldock Welwyn Garden City AL7 4QF
Proposal:	Erection of a double detached garage following the demolition of existing attached garage and removal of Cypress and Hawthorn hedge. Extension to driveway, new hedging and 2m high fencing
Decision:	Appeal Allowed with Conditions
Decision Date:	02/02/2023
Delegated or DMC Decision:	Delegated
Summary:	<p>This appeal relates to the replacement of an existing garage and changes to boundary treatment.</p> <p>The main issue was the effect of the proposed development upon the character and appearance of the host dwelling and its setting within the CA.</p> <p>The proposal involves the removal of an existing flat-roofed garage at the front of the property and its replacement on the side garden with access across the existing forecourt and garage footprint. The alteration would result in a more open frontage to the house.</p> <p>The Inspector considers that the proposed garage would change the appearance</p>

of No.11 in the street by adding apparent width to the built form whilst removing more prominently placed built form to the front of the dwelling. But change is not to be assumed as harmful. As the building would be inset into the garden and behind a fence at the boundary this increased built form would only be apparent in partly obscured frontal and oblique views from the public realm and, being flat-roofed, would not unduly harm the sense of openness currently found.

Moreover, the Inspector considers that whilst the height of the proposed building would be greater than that of the proposed hedge replacement fence which seeks to screen the building from the public realm, construction detailing plays an important part in the character and appearance of a building and, in this case would be material to the impact of the proposal on the Conservation Area.

Overall it was concluded that the proposal would neither be unduly prominent nor, on the basis the Inspector had reasoned, uncharacteristic and detrimental to the character and appearance of the area.

The appeal was allowed, subject to conditions.

6/2021/3335/PN15

DCLG No:	APP/C1950/W/22/3291297
Appeal By:	MBNL
Site:	Welwyn Garden City Ambulance Station Ascots Lane Welwyn Garden City AL7 4HX
Proposal:	Prior approval for the installation of a 20.0m Phase 7 Monopole complete with wraparound cabinet to be installed on root foundation and associated ancillary works.
Decision:	Appeal Dismissed
Decision Date:	02/02/2023
Delegated or DMC Decision:	Delegated
Summary:	<p>This prior approval application was for the erection of a 20.0m Phase 7 Monopole complete with wraparound cabinet to be installed on root foundation and associated ancillary work.</p> <p>This monopole was to replace the phone masts that used to be on the QE2 buildings which have been demolished. The area is largely residential in character.</p> <p>In 2018 prior approval was granted for a permanent 17.5m mast in the same location as the current appeal (LPA Reference: 6/2017/2928/PN15) but has not been installed.</p> <p>At ground level the proposed mast and cabinets would largely be obscured from view by coniferous and deciduous trees, and the rear of the ambulance station and medical centre buildings. At 20m in height, the proposed mast would only be slightly higher than that previously approved, but it would be a broader mast, and</p>

with antennas for EE, 3UK and the Emergency Services Network (ESN), would be visually more complex. At 20m in height it would stand around 10m above the trees around it, and 14.5m higher than the ambulance station building adjacent. The Planning Inspectorate then makes some in depth points about the character and appearance including its negative presence of industrial character in views, and adjusting the colour of the proposed mast would not provide adequate mitigation.

Therefore the proposal was dismissed on the siting and appearance of the proposal and it was stated it would therefore harm the character and appearance of the area, and the harm should be weighed against the need for the installation to be sited in this location.

The Planning Inspectorate was critical of the needs and alternatives of the proposal put forward by the applicant on the terms of accuracy and detail. The appeal was therefore dismissed.

6/2021/2881/FULL

DCLG No:	APP/C1950/W/22/3300873
Appeal By:	Sir/Madam
Site:	Land at Great North Road Welwyn Garden City AL8 7TQ
Proposal:	Redevelopment of the site to include the erection of 9 x 3-bedroom dwellings following the demolition of existing buildings
Decision:	Appeal Dismissed
Decision Date:	02/02/2023
Delegated or DMC Decision:	Delegated
Summary:	Summary to follow