
Appeal Decision

Site visit made on 20 September 2016

by J C Clarke BSc(Hons) BTP MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 31 October 2016

Appeal Ref: APP/B1930/W/16/3148961

Jane Campbell House, Waverley Road, St Albans, Hertfordshire AL3 5ST

- 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 Matthew Homes Ltd against the decision of St Albans City & District Council.
 - The application Ref 5/15/1072, dated 9 April 2015, was refused by notice dated 7 December 2015.
 - The development proposed is to erect 29 dwellings comprising: 10 X three bedroom houses; 7 X two bedroom and 2 X one bedroom flats for the private market; and 4 X one bedroom and 5 X two bedroom flats and 1 X two bedroom house as affordable housing.
-

Decision

1. The appeal is dismissed.

Procedural Matters

2. The Appellant has indicated that the description of development in the Council's decision notice did not correctly describe the mix of dwellings proposed. In response the Council has stated that this description was based upon the mix of dwellings indicated in the application form. Given these circumstances, my decision uses the revised description of development in paragraph 5.1.1 of the Appellant's statement.
 3. Following my site visit, it was drawn to my attention that a revised landscape plan (drawing MAT19761-11D) was submitted to the Council before it determined the application. I have determined the appeal on the basis of this and the other plans submitted with the appeal.
 4. The Council refused permission for 5 reasons. However, it has confirmed that it no longer wishes to contest reason number 3, relating to highways issues, following the submission of further information by the Appellant, or reason number 5, relating to the need for a planning obligation covering various matters, following the submission of a signed obligation by the Appellant. I assess the effectiveness and legal compliance of this obligation later in my decision.
 5. As the Council's first and fourth reasons for refusal both relate to the character and appearance of the site and the surrounding area I address these within a single main issue.
-

Main Issues

6. The main issues are:

- (a) The effect of the proposed development, in terms of its siting, design and scope for suitable landscaping, on the character and appearance of the site and the surrounding area; and
- (b) Whether satisfactory levels of natural lighting would be provided within the proposed dwellings and amenity areas without there being undue pressure to fell or lop existing trees.

Reasons

Policy Background

- 7. Planning law requires my decision in this case to be in accordance with the saved policies of the St Albans District Local Plan Review 1994 (SADLPR) unless material considerations indicate otherwise. The National Planning Policy Framework (the 'Framework') represents current national policy and is an important material consideration. Paragraph 17 of the Framework establishes that planning should always seek to secure high quality design and a good standard of amenity for all existing and future occupiers, while paragraphs 56 to 66 further emphasise the importance of good design.
- 8. Policies 69, 70 and 74 of the SADLPR are broadly consistent with, albeit more detailed than, the approach to design matters in the Framework. In accordance with paragraph 215 of the Framework, I have given these Policies full weight in my decision. I have also had regard to the guidance in the Council's Design Advice Leaflet number 1 'Design and Layout of New Housing' 1998, whilst recognising that this does not form part of the development plan.
- 9. The Council has accepted that it cannot currently demonstrate a supply of deliverable sites sufficient to provide five years of housing against its housing requirement. Paragraph 49 of the Framework states that, where this is the case, relevant policies for the supply of housing should not be considered up to date. Several of the Policies referred to in the Council officer report are relevant to the supply of housing. In this situation, paragraph 14 of the Framework requires that planning permission should be granted unless any adverse effects of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework as a whole.

Character and appearance

- 10. The site is located in a mainly residential, suburban area close to the edge of St Albans. Whilst existing housing in the area is of varied design and layout, close to the appeal site it mainly comprises 2 storey houses, which are in a mixture of detached, semi-detached and terraced forms and mainly set back from their respective highway frontages within their plots. An NHS office building which is located next to the site covers a large footprint but has a low lying built form of up to 2 storeys in height which is set back from the Waverley Road frontage within landscaped grounds. Although the frontages of a row of houses across Waverley Road from the appeal site have a substantial amount of hard surfacing within them, the area generally has a verdant and, for the most part, spacious character.

11. The site itself is vacant, having previously been occupied by a now-demolished Care Home. It has a roughly triangular shape and generally slopes towards the northwest particularly along its frontage. The western boundary of the site is bounded by the by-way of Everlasting Lane, which is at a lower level than the site. The embankment on the side of Everlasting Lane which runs next to the site contains a substantial line of mature and semi mature trees and other vegetation. Another line of trees, which whilst heavily trimmed at the time of my visit are also fairly substantial, runs along the eastern boundary of the site next to the NHS premises. These lines of greenery add substantially to the area's character.
12. Given the location of the site and mix of land uses within the surrounding area, I agree that the site is suitable in principle for residential development. The Council has also, by granting outline planning permission 5/2013/2454 for the construction of up to 33 new dwellings, indicated its acceptance in principle to there being a substantial housing redevelopment within the site. I also agree with the Appellant that the development of the site need not replicate the site coverage or design principles of the previous care home on the site. The proposed development would have a slightly smaller number of dwellings than that which is subject to permission 5/2013/2454. However, none of these points determine the effect that the appeal proposal would have on the character or appearance of the area.
13. The proposed 3 storey apartment block would extend across the end of the proposed cul de sac and tightly enclose views towards this area from Waverley Road. The 2 storey brick gable wall of the proposed house in plot 25 would directly abut and tightly enclose the western side of the cul de sac. The feeling of enclosure within the site would also be emphasised by the alignment of the rear garden boundary of plot 25 if, as is likely for security purposes, this is marked by high boundary treatment.
14. Whilst the houses in plots 1-6 would be set back from the carriageway on the eastern side of the proposed cul de sac, much of their front curtilage areas would be occupied by drives. The communal areas around the head of the cul de sac would also be largely occupied by car parking and other hard surfaced areas. Whilst there would be some space for landscaping around these areas, given the extent of the coverage by buildings and hard surfacing this would be limited in impact. Although the frontages of the buildings around the cul de sac would contain design detail which would add visual interest, the overall effect would be of a densely packed and tightly enclosed development.
15. Whilst a visually enclosed style of development of this nature could fit in well in other settings, I am concerned that it would look incongruous given the fairly spacious and leafy suburban character of the area around the appeal site. Although development with similar design principles has been integrated into the built environment at Goldsmith Way, Pegasus Place and Cheyne Mews, and these sites are not far away, those developments are closer to the town centre and have surroundings which are generally of a less open and verdant character than the area around the appeal site. Goldsmith Way is also close to the large block of St Albans City Hospital.
16. Due to its height, massing and location, the block of flats would be fairly prominently seen in views through the gaps in the current vegetation alongside Everlasting Lane, particularly in the winter months when the trees are not in

- leaf. Due to the very close proximity of the nearest corners of the building to this boundary, there would only be limited opportunities to supplement the existing planting and some of the current vegetation is likely to need to be regularly trimmed, thereby limiting opportunities to adequately soften the visual impact of the building. The unsatisfactory physical relationship of the building to this boundary would be exacerbated by the fact that ground levels within the site at this point are higher than on Everlasting Lane.
17. Similar points can be made about the proximity of the 2 storey detached house within plot 29 to the western boundary and the south eastern corner of the 3 storey block to the line of trees/hedging which runs along the boundary with the car park to the adjacent NHS office, albeit accepting that ground levels in these locations are more even.
 18. A further design issue relates to the positioning of the proposed house in plot 1 on the Waverley Road frontage of the site. Although the scale of the end wall of this house, facing Waverley Road, would be limited by the fact that it would have a hipped rather than straight gabled roof, it would be closer to the highway than is the case for the NHS office and other nearby buildings on this side of Waverley Road. Whilst some planting is proposed along this frontage, a combination of the need to provide adequate visibility for drivers exiting the cul de sac onto Waverley Road, the curvature of Waverley Road at this point and the positioning of the building in plot 1 is likely to prevent this from providing substantial screening. I consider that the positioning of the dwelling in plot 1 would emphasise the cramped nature of the development as a whole.
 19. The dwellings in plots 25 to 29 would be set a considerable distance back from the Waverley Road frontage, which would itself contain some landscaping. However, I do not consider that this factor would result in the proposal as a whole having sufficient scope for landscaping or being sufficiently spacious in this location. Indeed, some of the land in front of these dwellings would be occupied by their proposed drive and parking areas and the narrow frontage and strong vertical emphasis of the front elevations of some of the dwellings would also emphasise the cramped nature of the proposal.
 20. The appearance of the flat block would be broken up by the use of a varied roof height and wall alignment, balconies and other design features, and other dwellings would have porch canopies, brick soldier courses and other detailing. However, these measures would not successfully mitigate the effects of the development referred to above. The cramped nature of the development within the site itself would also not be reduced by the fact that it would be between the NHS office car park and Everlasting Lane.
 21. The Appellant has commented on how the appeal proposal compares with that shown on a proposed site layout plan submitted in connection with application 5/2013/2454, which indicated that the development proposed at that point could include two blocks of flats of substantial footprint and slightly greater maximum height to the appeal proposal. However, whilst condition 1 on permission 5/2013/2454 did not identify site layout or internal arrangement as reserved matters the description of development within permission 5/2013/2454 indicates that all matters were reserved except access. Furthermore, the Appellant has accepted that the submitted layout plan was illustrative and no firm evidence has been submitted regarding the likelihood of permission 5/2013/2454 being implemented. Therefore, I do not consider that

the illustrative plan firmly establishes how the site would be likely to be developed if the appeal is not allowed. Whilst the presence of permission 5/2013/2454 is an important material consideration, I have determined the appeal proposal, as I must, on its own merits having regard to the development plan and other considerations.

22. I conclude that, whilst the principle of developing the site for housing has been established, the appeal proposal would have shortcomings in its design and layout which would mean that it would cause material harm to the character and appearance of the site and the surrounding area. As a result its approval would conflict with the relevant provisions of Policies 69, 70(i) to (v) (inclusive), 74(i)(c) and (ii)(a) of the SADLPR and the emphasis on good design set out in the Framework.
23. Whilst the proposal would enable the redevelopment of a site which is currently vacant and has security boarding along its front boundary, this does not justify the acceptance of development which has design shortcomings.

Lighting levels

24. The Council's concerns in relation to this issue focus upon its view that some of the proposed dwellings and outdoor amenity areas would be subject to shading caused by the trees alongside the western and south eastern boundaries of the site. In considering this issue I have focussed in particular on the lighting levels that would be available, due to their positioning and orientation, in the ground floor flats which would be at either end of the apartment block (flats 11, 12, 7 and 8 in this order) and in the adjacent parts of the communal amenity area. Whilst other dwellings may experience some shading at times I do not consider that this would be to such an extent as to cause substantial harm to living conditions within them.
25. The Building Research Establishment document 'Site Layout Planning for Daylight and Sunlight' referred to by the Appellant considers sunlight and daylight issues separately, and I have done the same. As stated by the Council, no detailed technical assessment, for example addressing the guideline lighting levels set out in 'Site Layout Planning for Daylight and Sunlight', has been submitted.
26. The combined living/dining room of flat 11 would have 2 windows and one external 'patio' door, all of which would provide daylight. However, one of these windows would face north whereas the south facing patio doors would look out into the inward corner area formed by part of the apartment block which would project outwards from the rear elevation of flat 11 to a height of up to 3 storeys and a distance of about 10 metres. The daylight through the west facing window would be affected by its close proximity to the vegetation alongside Everlasting Lane.
27. For sunlight provision to its living/dining room, flat 11 would rely heavily on the south facing patio style entrance. This opening would not receive any substantial sunlight in the morning, due to its position in relation to the rear projecting part of the apartment block referred to above. During the afternoons, this opening would receive some sunlight although the extent of this would vary according to the time of year and would be restricted at times by its close proximity to the line of trees and other vegetation alongside Everlasting Lane. In the absence of a technical assessment having been

submitted, it has not been demonstrated that the daylighting and sunlighting to flat 11 would satisfy the advice in 'Site Layout Planning for Daylight and Sunlight'. The outlook from flat 11, aside from lighting levels, would also be adversely affected by the factors set out above.

28. Within flat 12, the 2 south facing windows which would serve the dining/living room would receive good levels of sunlight and daylight for much of the day, but experience restrictions on sunlight during the late afternoon and evening, mainly within the westernmost of these windows, due to the proximity of the vegetation alongside Everlasting Lane. The 2 west facing bedroom windows in flat 12 would also be subject to restricted levels of lighting and outlook.
29. Within flats 7 and 8, the kitchen/lounge/dining areas would each be in a single room which would have two main openings and a smaller third opening. The third opening in the end elevation of each of these flats would be very small and only provide a secondary source of lighting. However, the line of currently heavily trimmed trees alongside the eastern boundary of the site would also be close to one of the rear facing main openings in the kitchen/lounge/dining area of flat 8, as a result of which if allowed to grow to its full extent it would cause some restriction on available sunlight around mid-day, mainly in winter when the sun is low in the sky.
30. Due to the above factors, I consider that whilst lighting conditions in most of the proposed dwellings would be satisfactory, the occupiers of flat 11 in particular, and to a lesser extent flats 8 and 12 would experience some restrictions on available lighting if nearby trees are not felled or lopped in the future.
31. Furthermore, sunlight within those parts of the proposed communal external amenity area which would be between the ends of the apartment building and the adjacent boundaries would also, taking account of the limited width of these gaps and the height and positioning of the apartment block and boundary vegetation, be restricted to short periods during the day. Whilst the overall amount of amenity space provided for the flats (in excess of 500 square metres) would exceed that which is required (480 square metres)¹, the degree of shading of parts of the amenity area, particularly the areas next to the end of the apartment building during specific periods would limit the area which is attractive for sitting out purposes unless nearby trees are felled or lopped.
32. The proposal is therefore likely to lead to pressure to remove or lop nearby trees alongside the site in the future. Furthermore, due to the important contribution that the trees and vegetation around the site make to the character of the area, substantial felling or lopping works would be likely to cause visual harm. It would be possible to require by condition that approval be required for the felling or lopping of any trees within the appeal site. However, this does not justify allowing development which, through its design and layout, creates pressure for such works to be carried out.
33. I consider that the points set out above constitute further shortcomings in the design of the proposal to add to those which I have identified in relation to my

¹ I have derived the figure of 500 square metres from page 10 of the Council officer report, and the figure of 480 square metres from the standards set out in that report. The latter figure takes account of the slightly different mix of proposed dwellings confirmed in the Appellant's statement.

first main issue. They are sufficient in themselves to cause the proposal to conflict with Policy 74 (c) of the SADLPR.

Other Considerations

34. As stated by the Appellant, the proposal would secure the redevelopment of a previously developed site. The proposal would also secure the delivery of 29 new dwellings, of which 10 would be affordable units. The proposal would therefore help to achieve the Government's objectives of significantly boosting the supply of new housing and delivering a wide choice of homes in a district within which development opportunities are constrained by Green Belt restrictions and which has a shortfall in its 5 year land supply of housing sites. Furthermore, it would also do so in a site which has good accessibility to services and public transport provision and in which the principle of housing development being allowed has already been set.
35. I therefore consider that the proposal would bring notable benefits, although it is not clear that an alternative proposal could not be brought forward which would deliver these benefits to at least some degree without causing the harm which I have identified.
36. Whilst the proposal would be consistent with the overall settlement strategy and presumption in favour of housing development in the town of St Albans set by Policies 2 and 4 of the SADLPR, by conflicting with Policies 69, 70 and 74 of the SADLPR the appeal proposal would also conflict with the first paragraph of Policy 2 and the final paragraph (before the schedule of sites) in Policy 4. This conflict would also not be addressed by the fact that the site is not required for any purpose other than housing.
37. With regard to the Council's third reason for refusal, relating to highway safety matters, the Appellant has submitted a copy of an e-mail from Hertfordshire County Council as highway authority which confirms that, on the basis of additional information submitted after the Council's decision to refuse permission, the Highway Authority would not be able to sustain an objection on highway grounds. Paragraph 32 of the Framework states that development should only be prevented or refused on transport grounds where the residual cumulative impacts of development are severe. There is no evidence before me which demonstrates that such severe impacts would arise in this case.

Planning Obligation

38. As mentioned earlier, the Appellant has submitted a planning obligation, as a result of which the Council no longer wishes to contest reason for refusal number 5. Under Regulation 122(2) of the Community Infrastructure Levy Regulations 2010 (as amended) (the 'CIL Regulations') a planning obligation may only constitute a reason for granting planning permission for a proposed development if the obligation is (a) necessary to make the development acceptable in planning terms; (b) directly related to the development; and (c) fairly and reasonably related in scale and kind to the development. Regulation 123 requires that in most circumstances no more than 5 or more separate obligations can be entered into within a given local authority area which contribute towards funding or provision of a specific project or type of infrastructure.

39. The planning obligation would, if permission were to be granted, require that 10 of the proposed dwellings would be affordable. This and the other provisions of the obligation related to affordable housing are consistent with Policy 7A of the SADLPR and the Council's 'Affordable Housing' Supplementary Planning Guidance note 2004 which requires that in most cases 35% of units within proposals for housing development in the area of the appeal site would be affordable. There is no evidence to suggest that this requirement should not be met in this case.
40. The planning obligation would also require the developer to pay contributions of: £42,989 to the Council towards leisure and open space provision (the 'Leisure and Open Space Contribution'); £24,625 to Hertfordshire County Council to be spent towards the upgrading of 2 bus stops (the 'Sustainable Transport Contribution') and a sum to be spent towards increasing the capacity of adult fiction at St Albans library, the amount of which would be calculated in accordance with a table appended to the obligation² (the 'Library Contribution').
41. Policy 143B of the SADLPR establishes that the Council will expect planning applications for development to include provision to address any consequences for infrastructure provision in the area. The development would, given its scale and nature, be likely to increase pressure on all the infrastructure facilities referred to in the obligation. However, it is also necessary to assess whether each contribution would meet the requirements of the CIL Regulations, as set out below.
42. With regard to the Leisure and Open Space Contribution, the Council officer report indicates how the sum of £42,989 is derived from standards for the provision of different types of leisure provision. However, as there is limited evidence before me for example concerning what these standards are based on, the levels of existing pressure on leisure facilities in the area, how the development would impact upon these or which specific projects the money would be spent on, further clarification would be needed to show that the Leisure and Open Space Contribution would be necessary to the granting of planning permission and adequately linked to the proposed development as required by Regulation 122(2). It is also not clear from the evidence whether this aspect of the obligation satisfies the pooling restriction in Regulation 123.
43. The Sustainable Transport Contribution and Library Contribution have been identified using the formulae in the 'Planning obligations guidance – toolkit for Hertfordshire' 2008. I agree that this toolkit can provide a useful aid in ensuring that individual contributions sought are fairly and transparently derived. In the case of the Library Contribution, the statement submitted by Hertfordshire County Council (Property Services) justifies the way in which the figures are calculated and why the money would be spent on the specific project identified and confirms that the pooling restriction in Regulation 123 in respect of this contribution would be satisfied. However, it is not clear that the dwelling mix which has been used to derive the sum of £24,625 for the Sustainable Transport Contribution (described in appendix 1 to the Council statement) matches that set out in the appeal proposal.

² Hertfordshire County Council has identified for illustrative purposes that the Library Contribution would be £3,646 although the dwelling mix used to calculate this figure, set out in paragraph 3.6 of its statement, differs slightly from that set out in the Appellant's statement

44. In summary, further clarification would be required to address matters set out above concerning the Leisure and Open Space Contribution and the Sustainable Transport Contribution if the obligation is to constitute a reason for granting planning permission under the CIL Regulations. This would only be a sole determinative factor in the appeal, however, if the planning balance related to other matters is positive.
45. The Council has confirmed, following the receipt of advice from Hertfordshire County Council, that a contribution towards educational provision is no longer required and there is no evidence before me which would justify coming to a different conclusion on this point.

The 'planning balance' and conclusions

46. I have found that the proposal would, having regard to its layout, design and scope for suitable landscaping, cause material harm to the character and appearance of the surrounding area. In addition, the design and layout of the proposal would, by failing to provide satisfactory lighting levels or outlook within parts of the development, create future pressure to fell or lop trees and vegetation which contribute positively to the character of the area. Due to the resultant conflict with development plan policy and the emphasis on good design set out in the Framework the harm that would be caused in relation to these issues carries substantial weight.
47. In favour of the proposal it would deliver 29 new dwellings, including 10 affordable units, in a district which has a shortfall in its 5 year supply of deliverable housing sites. Furthermore, it would do so in a site which has good accessibility to services and public transport provision and in which the principle of housing development being allowed has already been set. It would also secure the redevelopment of an unsightly vacant site. However, it is not clear that an alternative proposal could not be brought forward which would deliver broadly similar benefits without causing the harm which I have identified.
48. Having regard to the matters summarised above, I conclude that the adverse effects of granting planning permission would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework as a whole. Furthermore, due to the effects of the proposal on the natural and built environment it would not promote the environmental dimension of sustainable development set out in paragraph 7 of the Framework, or jointly and simultaneously promote the three arms of sustainable development as required by paragraph 8 of the Framework. Application of the approach in paragraph 14 of the Framework in these circumstances indicates that planning permission should not be granted.
49. I therefore dismiss the appeal.

Jonathan Clarke

INSPECTOR