
Appeal Decision

Site visit made on 24 January 2017

by Jonathon Parsons MSc BSc(Hons) DipTP Cert(Urb) MRTPI

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

Decision date: 03 April 2017

Appeal Ref: APP/B1930/W/16/3159662

Townsend Drive, St Albans, Hertfordshire AL3 5AB

- 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 Beechcroft Developments Ltd against the decision of St Albans City & District Council.
 - The application Ref 5/2015/3344, dated 13 November 2015, was refused by notice dated 9 August 2016.
 - The development proposed is the demolition of the existing buildings and the construction of four blocks consisting of 26 three bedroom, 16 two bedroom and 6 one bedroom dwellings and flats with associated landscaping.
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Decision

1. The appeal is allowed and planning permission is granted for the demolition of the existing buildings and the construction of four blocks consisting of 26 three bedroom, 16 two bedroom and 6 one bedroom dwellings and flats with associated landscaping at Townsend Drive, St Albans, Hertfordshire AL3 5AB in accordance with the terms of the application, Ref 5/2015/3344, dated 13 November 2015, subject to the following conditions on the attached Schedule A.

Procedural Matters

2. There are two planning applications forms within the appeal documentation which have different descriptions of the proposal. On the second application form, there is a more detailed description detailing mix of units in terms of bedroom numbers. As this revised description has been agreed by the Appellant, I have considered the proposal on this basis. However, unit mix is an issue between parties and I shall return to this in my reasoning.

Application for costs

3. An application for costs was made by Beechcroft Developments Ltd against St Albans City & District Council. This application is the subject of a separate Decision.

Main Issue

4. The main issue is whether or not a need for additional parking arises, having regard to the appropriateness of a condition restricting occupation to persons aged 55 and over, and if not, the effect of further parking needs on the character and appearance of the area and the safety of highway users.
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Reasons

5. The appeal site comprises the former Maryland Convent Care Home which comprises former care home buildings and communal gardens with extensive landscaping around the site. The buildings are centrally located within the site and are between two and three storeys in height. Many of the trees around the boundary of the site are included within a Tree Preservation Order.
6. The proposal would result in the demolition of the existing buildings and construction of four blocks comprising 48 residential units and would be intended for elderly people. Policy 39 of the St Albans District Local Plan Review (LPR) 1994 sets out vehicle parking standards and their applicability in the district. Under, LPR policy 40 and the Council's Revised Parking Policies Supplementary Planning Guidance (SPG) 2002, the standard parking requirement would be 106 car parking spaces in this location. However LPR policy 43 provides for reduced parking requirements in the case of elderly persons dwellings which would equate to 60 car parking spaces for the proposed development. The proposal's provision of 64 car parking spaces would be slightly in excess of the requirement.
7. The Council considered the following condition based on Planning Inspectorate's list of model conditions:

"The age restricted properties hereby permitted shall be occupied by persons aged 55 years or over; persons living as part of a single household with such a person or persons; persons who were living in the unit as part of a single household with such a person or persons who have since died."
8. Such a condition would allow persons under the age of 55 to occupy the development if they satisfied the 'household' link set out in the condition. This could include dependents or survivors of a person or persons aged 55 years or over, such as partners, spouses, relatives or children. Consequently, the Council has argued that there would be a greater car parking need by reason of likely younger aged occupiers.
9. However, occupiers satisfying the 'household' link could also be older than the age of 55. Furthermore, in choosing to move into any of the residential units, occupiers would be aware of the restricted car parking availability and the lack of substantial private outdoor space. Such factors would be a disincentive for households with significant car parking needs, especially for those with younger dependents that need greater car use. Although there will always be exceptions, older siblings above school age and employed would be unlikely to reside on a permanent basis at this development because they would have moved on elsewhere.
10. Crucially, the Appellant has indicated that the age of most residents occupying their developments, designed and aimed for the elderly, tend to be aged 70 and over. At their Milton House and Eleanor Place development at King Harry Lane, there is also a similar age restriction to that considered here. Here, the average number of bedrooms per unit is 2.61, the average age of occupants is 77 and the average car ownership 0.79 per household. It is also indicated that no more than 2 persons occupy each unit, despite some being three and four bedroom. With the appeal proposal, the average bedroom number per unit would be 2.78. However, even taking this into account, the average car parking space per unit on the appeal development is 1.33 which is greater than

that at their Kings Harry Lane development at 1.13. No substantive car parking issues at the King Harry Lane development have been brought to my attention. Given the purpose of this appeal development is also to provide for elderly people, I attach significant weight to this evidence in demonstrating that car parking provision would be acceptable.

11. For the appeal site's ward, the Council has produced 2011 Census evidence showing number of cars/vans per household by age range. It has highlighted that around 91% of households have access to one or more vehicles for those aged between 25 and 49. The corresponding figure for those aged 65 and over is about 66%. In addition, the Council indicates that around 50% of those aged between 25 and 49 have access to two or more vehicles and the corresponding figure for those aged 65 and above is just below 20%.
12. This evidence would indicate that the ratio of vehicles per household would increase with younger age. However direct comparison and analysis of the Census information with the proposal is difficult. Age ranges showing vehicles per household do not match up with the age range relevant to the appeal proposal, this being aged 55 or over. Furthermore, the data is of general nature and the assessment does not factor in the particular circumstances of the proposal. In this case, the development would be of blocks of retirement housing, with affordable housing units, and restricted vehicle parking availability that occupiers would be aware of when moving in.
13. In seeking the revised description of the proposal, the Council considered the mix of proposed housing to be different to the Appellant's originally identified mix, with many of the identified two bedroom units being three bedroom units. My attention has also been drawn to marketing details advertising the site as being for both three and two bedroom units. Some representations suggest a far greater number of three bedroom units than that now indicated. The floor layout plans do show spacious living accommodation in terms of floor space and facilities for many of the units. The purpose of some rooms for units greater than one bedroom is unspecified. Although not many, some units have an unspecified room with adjacent ensuite facilities which is strongly indicative of extra bedroom.
14. However, the Appellant has produced evidence to show other elderly person housing schemes developed by the company have average resident age significantly older than this age and that they typically are not occupied by more than two persons. Furthermore, many of the additional unspecified rooms including those now identified as third bedrooms could be used as a study room as indicated by the Appellant, or for storage or additional living room areas. People have requirements for study rooms within dwellings. In other instances, additional rooms could be used for guests or family to stay over when visiting, or for carers. No convincing reasons have been put forward why these considerations would not be relevant.
15. In conclusion, the proposed units would not generate a car parking requirement greater than planned, with the imposition of the age restricted model condition, on the balance of evidence before me. Consequently, there would be no need for residents to indiscriminately park within the development and 'nuisance' park on verges and open spaces elsewhere. Accordingly, the proposal would comply with policies 39 and 40 of the LPR and the SPG.

16. Under LPR policy 43, elderly persons dwellings can only be age restricted under a planning agreement. However, it is accepted by main parties that planning obligations should only be used where it is not possible to address unacceptable impacts through a planning condition. For the reasons indicated, there would be no harm based on the issues before me, and so whilst there is a technical breach, the conflict with this policy would not be significant.
17. Notwithstanding the above conclusions, the Council considered whether it was legitimate to impose a more restricted condition to overcome their objections. It concluded that it was not taking into account human rights considerations. Additionally, it has indicated that it was not imperative for it to impose a model condition citing a recent high court judgement. Nevertheless, I have no need to consider these arguments given my comments on the acceptability of the car parking as proposed in relation to the model planning condition.

S106 agreement

18. A section 106 agreement would secure affordable housing and the approval of a water scheme to secure fire hydrant provision on the site. Contributions towards leisure, libraries, parks and open space and sustainable transport would also be secured.
19. The provision of 35% affordable housing accords with that required under LPR policy 7A and St Albans Supplementary Planning Guidance (SPG)–Affordable Housing 2004. Given the level of need identified and robust methodology detailed for provision in this policy and SPG, I consider that the contribution is necessary and would meet the statutory tests under Regulation 122 of the Community Infrastructure Levy (CIL) Regulations 2010 (as amended). It is also a benefit of the proposal that would weigh in favour of the proposal.
20. The requirement for satisfactory fire hydrants on the site would be necessary in the interests of safeguarding people and property from harm. For this reason, the obligation would be necessary to make development acceptable in planning terms and would comply with all the tests of paragraph 204 of the National Planning Policy Framework.
21. Turning to the other infrastructure contributions, the Council has provided consultee support and detail on where the schemes to which contributions would be directed to. Support for the requirements is provided in the Planning obligations guidance –toolkit for Hertfordshire 2008. On the basis of Council comments, I am satisfied that the contributions would comply with the five obligation limit as detailed under Regulation 123(3) of the CIL Regulations. For all these reasons, the contributions would meet the tests of Regulation 122 of the CIL Regulations and therefore these parts of the obligation have been taken into account in my decision.

Other matters

22. The Appellant's Transport Assessment Addendum (TSA) confirms an increase in vehicle movement compared to the previous convent care home use along Townsend Drive. Some of this road is not adopted highway. The TSA analysis is based on good practice and professional judgement, taking into account Trip Rate Information Computer System (TRICS) and Automated Traffic Counts (ATC). The TRICS assessment is correctly based on the potential traffic generation of the permitted use rather than what may have been generated

- under the previous existing users. Finding a TRICS analysis wholly representative of any proposal is difficult. Inevitably the empirical data informing the analysis will not relate exactly to a similar proposal and site.
23. Nevertheless, the TSA assessment has been subjected to sensitivity testing that assumes double the level of units on the site and takes into account a Transport Assessment for the expansion of a nearby school. Such sensitivity testing would allow for the proportion of three-bedroom units in the development and on this basis, I find the TSA assessment to be robust and its conclusions that additional vehicle movements would not be significant, including at school peak times, to be valid. Whilst I note some criticism of the timing of the ATC, similarly the sensitivity testing undertaken would more than compensate for this. No contrary assessment of similar detail has been put to me. Therefore, the proposal would not result in severe transport impacts, including on highway safety for these reasons. Such a view is supported by the highway authority, the technical consultee advising on such matters.
24. Demolition consent has been approved for the demolition of existing buildings on the site. The residential development would comprise four blocks of up to four storeys and would be attractively designed by the use of traditional detailing and materials, feature balconies and dormers. The scale and extent of development would be greater than the original development on the site. However the appeal site is spacious and the buildings would be sited away from the boundaries of the site, with the higher storey elements sited more centrally. The four storey element of the development is only on one block and mainly contained within the pitched roof of that building. The massing and bulk of the buildings would not be visually oppressive for these reasons and by virtue of their varied roof and elevation design.
25. The existing landscaping around the perimeter of the boundaries of the site would also be largely retained. There would be some removal of trees, including a conspicuous Larch tree, but most trees would be retained and there would be additional planting to compensate for the removed trees. For all these reasons, the character and appearance of the area would not be adversely affected.
26. Turning to the living conditions of neighbours, there are residential properties on the other sides of the common boundaries of the site. However, higher storey elements would be significantly sited back from these boundaries. Where lower parts of blocks face neighbouring properties, their height and size would be reduced by reason of being mainly two storey with pitched roofs. Areas of communal garden would also separate them from the site's boundaries with these neighbouring properties. In respect of block B, the second floor facing neighbouring properties is accommodated within a roof within dormers. For these reasons, the buildings would not result in significant loss of outlook for neighbouring residents.
27. At first floor and above, these blocks would have windows and some balconies facing neighbouring properties. Nevertheless there would be no significant loss of privacy for the occupiers of neighbouring dwellings by virtue of the separation distances between the proposed buildings and neighbouring properties. In terms of daylight and sunlight, the blocks would also be separated from adjacent residential properties, including those in Eleanor Close and Townsend Drive, by substantial areas of communal garden space.

28. Reference has been made to the King Harry Lane development where age occupancy restrictions were lifted. However, the exact circumstances leading to the lifting of these restrictions has not been detailed and it is not possible to withhold planning permission without good planning reason on the basis of possible future applications to lift or vary restrictions. In any case, every proposal has to be considered on its particular planning merits. There would be some noise and disturbance arising from construction activities on the site but the duration of the works would be temporary. Planning conditions can also be imposed to control construction hours and works through the submission of a Construction Method Statement to safeguard the living conditions of residents.

Conditions

29. Suggested conditions have been considered in light of the advice contained in Planning Practice Guidance (PPG). For clarity and to ensure compliance with the Guidance, I have amended some of the Council's suggested wording.
30. A condition requiring that the development is carried out in accordance with the approved plans is necessary in the interests of providing certainty. In the interests of the character and appearance of the area, conditions are necessary to ensure the implementation of satisfactory external materials, landscaping and the protection of existing trees. For the same reason, a condition withdrawing permitted development rights for the erection of fences, walls or other means of enclosure is required. To protect the living conditions of adjacent residents, the implementation of a Construction Method Statement and a restriction on construction hours are necessary. In the interests of biodiversity, a condition requiring fruit tree planting, bat and bird boxes is necessary.
31. To prevent flooding, conditions are necessary to ensure the implementation of a drainage strategy including mitigation measures, taking into account climatic change. In the interests of archaeology, a condition is necessary to secure a programme of work for investigation. Turning to transport and highway safety matters, conditions are necessary to secure parking, access and a footway to the front of the site. Given the Appellant's discussions with relevant parties and acceptance within the TSA, I am satisfied that the 'Grampian' wording in the condition on the footway is acceptable. A condition is necessary to require the provision of a remediation strategy if contamination not previously identified is found to be present on the site. Finally, a condition is necessary to restrict the age of residents for all the reasons previously indicated. 'Condition precedent' wording has been used where the consideration to be addressed is so fundamental to the development permitted that it would have otherwise been necessary to refuse the proposal.
32. A swept path analysis plan shows that a refuse vehicle could enter and leave the site in a forward gear without any significant overriding or overhanging of either the internal access or adjacent highway. This would negate a need for a condition requiring such details. There would be no necessity to obscure glaze windows on the side elevation of block C because there is adequate separation between it and the front elevation of block B to prevent significant loss of privacy for occupiers. On side elevation of block C facing block D, there would be no openings. As there is a duty to comply with conditions on tree

protection and landscaping, the matter of the employment of an arboricultural consultant during works is a matter for the Appellant.

Conclusion

33. The proposal would provide acceptable parking to serve the occupants of the development with the imposition of the model condition. As a result, there would be no need for residents to indiscriminately park or 'nuisance' park on the site or surrounding area. The proposal would comply with LPR policies 39 and 40. Although there is a conflict with LPR policy 43, this is of a technical nature and there are no other conflicts with other LP policies. For these reasons, looking at the proposal in the round, there would be compliance with the development plan. There would be no severe transport impacts arising from the development. The proposal should be determined in accordance with the development plan as there are no material considerations to indicate otherwise. The site is suitable for the type of housing proposed.
34. For the above reasons and having regard to all other matters raised, I conclude that the appeal should be allowed.

Jonathon Parsons

INSPECTOR

Schedule A

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: DAT/9.1; DAT/9.2; 31383T-01B; 102 Rev A; 110 Rev H; 111 Rev H; 112 Rev C, 113 Rev E, 114 Rev D; 115 Rev A; 116 Rev A; 130 Rev C; 131 Rev A; 132 Rev A; 133 Rev B; 134 Rev B; 135 Rev A; 136 Rev A; 137 Rev A; 138; 161 Rev K; 162 Rev F; 163 Rev F; 164 Rev F; 165 Rev F; 170 Rev F; 171 Rev J; 172 Rev E and 173 Rev F.
- 3) No development shall take place above ground level until samples of all external facing materials have been submitted to and approved by the local planning authority in writing. The relevant works shall be carried out in accordance with the approved sample details.
- 4) No development shall commence until 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:
 - i) proposed finished levels and contours;
 - ii) means of enclosure;
 - iii) car parking layouts;
 - iv) other vehicles and pedestrian access and circulation areas;
 - v) hard surfacing materials;
 - vi) minor artefacts and structures (e.g. furniture, play equipment, refuse or storage units, signs and lighting.);
 - vii) proposed and existing functional services above and below ground (e.g. drainage, power, communications cables, pipelines etc. indicating alignments, levels, access points, manholes, supports as relevant);
 - viii) retained historic or other landscape features and proposals for restoration, where relevant;
 - ix) existing trees to be retained;
 - x) existing hedgerows to be retained;
- 5) All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding seasons following the occupation of the buildings or the completion of the development, whichever is the sooner; and any trees or plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species.
- 6) Details of the soft landscape works under Condition 4 shall include planting plans; written specifications (including cultivation and other operations associated with plant and grass establishment); schedules of plants noting species, plant supply sizes and proposed numbers/densities where appropriate; and an implementation programme.
- 7) No development shall take place, including any works of demolition, until a Construction Method Statement has been submitted to, and approved

in writing by the local planning authority. The Statement shall provide for:

- i) construction vehicle numbers, type and routing;
- ii) traffic management requirements;
- iii) construction and storage compounds (including areas designated for vehicle parking);
- iv) details of wheel washing facilities and their siting within the site;
- v) frequency and method of cleaning site entrances, site tracks and adjacent highway;
- vi) timing of construction activities and vehicle movements (to avoid school pick up/drop off times);
- vii) provision of on-site parking prior to the commencement of construction activities;
- viii) post construction restoration/reinstatement of the site, working areas and temporary access to the public highway.

The approved Construction Method Statement shall be adhered to throughout the construction period for the development.

- 8) No demolition/development shall take place until a Written Scheme of Investigation shall have been submitted to and approved in writing by the local planning authority. The scheme shall include an assessment of significance and research questions - and :
 - i) the programme and methodology of site investigation and recording;
 - ii) the programme for post investigation assessment;
 - iii) the provision to be made for analysis of the site investigation and recording;
 - iv) the provision to be made for publication and dissemination of the analysis and records of the site investigation;
 - v) the provision to be made for archive deposition of the analysis and records of the site investigation;
 - vi) the nomination of a competent person or persons/organization to undertake the works set out within the Written Scheme of Investigation.
- 9) The development hereby permitted shall be carried out in accordance with the Phase 1 Habitat Survey prepared by Arbtech dated 10 November 2014 and Bat Presence/Likely – Absence Survey prepared by Arbtech dated 13 July 2015 and the following mitigation measures detailed within these reports:
 - (a) the planting of traditional fruit trees;
 - (b) the erection of bird boxes;
 - (c) the erection of bat boxes.

No development above ground level shall take place until detailed specifications of the ecological mitigation measures have been submitted to and approved in writing by the local planning authority and the development shall be carried out in accordance with the approved details.

- 10) No development shall take place until a detailed surface water drainage scheme for the site based on the Flood Risk Assessment Issue 5 dated 19

January 2016 and associated sustainable drainage principles, and assessment of the hydrological and hydro geological context of the development has been submitted to and approved in writing by the local planning authority. The scheme shall include the following details:

- (a) detailed engineering drawings of the proposed SuDS features including their size, volume, depth and any inlet and outlet features including any connecting pipe runs;
- (b) detailed surface water run-off and volume calculations for 1:100 year (+30% Climate Change (CC)) are required within the surface water drainage assessment, which ensures that the site has the capacity to accommodate all rainfall events up to 1:100 year (+30% CC).

The scheme shall demonstrate that the surface water run-off generated up to and including 1 in 100 year + CC critical storm will not exceed the run-off from the undeveloped site following the corresponding rainfall event. The scheme shall subsequently be implemented in accordance with the approved details before any part of the development is occupied.

- 11) No development shall take place until a drainage strategy detailing any on and/or off site drainage works has been submitted to and approved in writing by the local planning authority. The development hereby approved shall be carried out in accordance with the approved details. In particular, no part of the development hereby permitted shall be occupied and no foul or surface water from the site shall be discharged into the public system until the drainage works referred to in the strategy have been completed.
- 12) No development shall take place until the following mitigation measures have been fully implemented in accordance with the timing/phasing arrangements as set out in the Flood Risk Assessment Issue 5 dated 19 January 2016 and drainage strategy (to be approved under condition 11) and in accordance with such details as may be otherwise approved in writing by the local planning authority:
 - (a) attenuation to ensure no increase in surface water run-off volumes for all rainfall events up to and including the 1 in 100 year + climate change event;
 - (b) limiting the surface water run-off generated by the 1 in 100 year + climate change critical storm so that it will not exceed the run-off from the undeveloped site and not increase the risk of flooding off-site;
 - (c) implementation of SuDS measures as shown on the Surface Water Drainage Layout drawing dated June 2015 titled Appendix I within the Flood Risk Assessment Issue 5 dated 19 January 2016.
- 13) No development shall take place until all access improvement works as shown on drawing number TR8141111/02 (Glanville February 2016) and 172 Rev E have been constructed and completed in accordance with the approved details, including the creation of a footway link between the site and the public highway footway network and the widening to a minimum width of 4.1m of the private access to the site at its junction with Townsend Drive.

- 14) No residential unit shall be occupied until vehicle parking spaces have been laid out within the site in accordance with drawing nos. 162 Rev F and 165 Rev F for 64 cars to be parked. These spaces shall have measurements of not less than 2.5m by 5m. The spaces shall thereafter be kept available at all times for the parking of vehicles.
- 15) Demolition or construction works shall take place only between hours of 0730 and 1800 Monday to Friday, 0800 and 1300 on Saturdays and shall not take place at any time on Sundays or on Bank or Public Holidays.
- 16) If, during the course of development, any contamination is found which has not been previously identified, work shall be suspended and additional measures for its remediation shall be submitted to and approved in writing by the local planning authority. The measures shall detail how this unsuspected contamination shall be dealt with and a verification report for all the remediation works shall be submitted to the local planning authority for written approval. Work shall only commence upon written approval from the Council.
- 17) The residential units hereby permitted shall be occupied by persons aged 55 years or over; persons living as part of a single household with such a person or persons; persons who were living in the unit as part of a single household with such a person or persons who have since died.
- 18) In this condition "retained tree" means an existing tree which is to be retained in accordance with the approved plans and particulars; and paragraphs (a) and (b) below shall have effect until the expiration of 5 years from the date of the first occupation of any building for its permitted use.
 - (a) No retained tree shall be cut down, uprooted or destroyed, nor shall any retained tree be topped or lopped other than in accordance with the approved plans and particulars. Any topping or lopping approved shall be carried out in accordance with British Standard 3998 (tree work).
 - (b) If any retained tree is removed, uprooted or destroyed or dies, another tree shall be planted at the same place and the tree shall be of such size and species, and shall be planted at such time as may be specified in writing by the local planning authority.
- 19) All the trees and hedges shown on the approved landscaping plan as "to be retained" and/or any trees whose canopies overhang the site shall be protected by strong fencing, the location and type to be previously approved in writing by the local planning authority. The fencing shall be erected in accordance with the approved details before any equipment, machinery or materials are brought onto the site for the purposes of the development, and shall be maintained until all equipment, machinery and surplus materials have been removed from the site. Nothing shall be stored or placed within any fenced area, and the ground levels within those areas shall not be altered, nor shall any excavation be made, without the prior written consent of the local planning authority.

[In this condition "retained tree" means an existing tree which is to be retained in accordance with the approved plans and particulars.]
- 20) No fires shall be lit within 10 metres of the nearest point of the canopy of any retained tree.

[In this condition “retained tree” means an existing tree which is to be retained in accordance with the approved plans and particulars.]

- 21) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that Order with or without modification), no fences, gates or walls shall be erected within or on the boundaries of the site.