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## Appeal Decision

Site visit made on 21 March 2017

**by J C Clarke BSc(Hons) BTP MRTPI**

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

**Decision date: 2 May 2017**

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**Appeal Ref: APP/N1920/W/16/3164429**

**Land at 66-72 Ladbroke Drive, Potters Bar EN6 1QW**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
- The appeal is made by M & C Land Ltd against the decision of Hertsmere Borough Council.
- The application Ref 16/1767/OUT, dated 9 September 2016, was refused by notice dated 28 November 2016.
- The development proposed is Demolition of No 70 Ladbroke Drive, new access road and erection of 4 dwellings.

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**This decision is issued in accordance with section 56 (2) of the Planning and Compulsory Purchase Act 2004 as amended and supersedes that issued on 12 April 2017.**

### Decision

1. The appeal is dismissed.

### Procedural Matters

2. The application was submitted in outline, with all matters reserved for subsequent approval except for access and layout. Whilst drawings have been submitted showing the floor layout of the proposed dwellings I have treated these as being solely illustrative.

### Main Issues

3. The main issues are:
  - (a) The effect of the proposed development on the character and appearance of the site and the surrounding area;
  - (b) Whether the proposed development should be required to make provision for affordable housing; and
  - (c) The effect of the proposed development on biodiversity.

### Reasons

#### *Policy Context*

4. The development plan, with which my decision must accord unless material considerations indicate otherwise, comprises the Hertsmere Core Strategy (HCS) 2013 and the Site Allocations and Development Management Policies Plan (SADMPP) 2016.
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5. The SADMPP was adopted very shortly before the Council's decision on the application. The Council has confirmed that the details and numbering of some of the SADMPP policies cited in its decision notice differ from those which occur in the adopted Plan. My decision refers to the policies as they appear in the adopted version of the Plan.
6. The National Planning Policy Framework (the 'Framework') forms an important material consideration as it constitutes up-to-date national policy. I have also taken into account the Council's Planning and Design Guide Supplementary Planning Document (SPD) 2013, Biodiversity, Trees and Landscape SPD 2010 and the draft Planning and Design Guide SPD Part D: Guidelines for High Quality Sustainable Development 2016.

*Character and appearance*

7. The appeal site is in an established suburban housing area which is characterised by lines of outward facing dwellings, laid out alongside lengthy interconnecting roads. The dwellings are mostly set back from the highways along well established building lines behind front gardens and have long and in some cases extensively planted rear gardens. Whilst there is some variety in the design of the dwellings, many of them are bungalows with similarly designed front facing gables. The regularity of the plot layout and of the spacing between dwellings lends the area a pleasing sense of uniformity and rhythm. The area has a verdant and spacious character.
8. Number 70 Ladbroke Drive forms, with number 72, a pair of semi-detached dwellings which is characteristic of the housing in the area. The rear of the site, which includes the long rear garden of number 70 and large parts of the rear gardens of numbers 66, 68 and 72 Ladbroke Drive, contains many mature trees and shrubs and contributes substantially in itself to the character of the area.
9. Whilst the site is not within a Conservation Area or other area designated for its townscape or landscape character, or within the setting of any Listed Building, these points do not detract from its quality or that of the surrounding area.
10. I agree with the Appellant that change to an area is not necessarily harmful. However, in this case the appeal proposal would, by causing the demolition of number 70 and its replacement by a new access through to the rear of the site, cause substantial disruption to the rhythm and integrity of the built form on this side of Ladbroke Drive. The proposed cul de sac and layout of the 4 detached houses at the rear of the site would have a poor spatial relationship with the outward looking 'perimeter style' development in the area. To my mind when viewed from Ladbroke Drive the development would, even if suitable landscaping is planted alongside the access, appear incongruous in the context of the lines of existing dwellings to either side.
11. A further area of concern is that numerous trees within the site would be likely to be lost to accommodate the new dwellings or in some cases due to their proximity to them. The lack of a submitted tree survey clearly identifying which trees would be kept and which would be removed represents a material weakness in the proposal. Whilst the trees are not to my knowledge covered by Tree Preservation Order or any equivalent statutory controls this does not detract from their contribution to the area's character. Although the proposal

would allow for some new planting to take place, due to the need to maintain adequate separation distances to foundations and hard surfaces and to provide adequate lighting to the dwellings this is unlikely to be as extensive as that which would be lost.

12. I accept that some of the development would be at least partly screened from public viewpoints by the existing housing outside the site. However this point does not apply to the proposed new access into the site and the dwellings at the rear of the site would be prominently seen from nearby dwellings.
13. I also agree that the massing of the proposed dwellings would, due to their spacing and varied orientation, be to some extent broken up and the development would be of fairly low density. The remaining width of the plot at number 72 would still be similar to that of other plots in the area. Plot 2 could be designed to provide a focal point in views along the access road. As the access to the site would not be shared with any existing dwelling the proposal would not be 'tandem' development. 'Back land' development of the type proposed is not specifically precluded by relevant development plan policies or SPDs. However, none of these points mean that the proposal would avoid causing harm in relation to this main issue.
14. Whilst I have noted the other appeal decisions referred to by the appellant the sites and proposals subject to those decisions appear to be materially different to those which are subject to the current appeal. I have in any event considered the appeal as I must on its own merits.
15. I conclude that the proposal would cause substantial harm to the character and appearance of the site and the surrounding area. Its approval would conflict with the relevant provisions of Policies CS1 and CS22 of the HCS, Policies SADM3, SADM12 and SADM30 of the SADMPP, the Planning and Design Guide SPD and the Framework related to this matter.

#### *Affordable housing*

16. Policy CS4 of the HCS requires that within housing developments on sites of over 0.2 hectares in size in the location of the appeal site, at least 35% of the new dwellings should be affordable. The Affordable Housing SPD establishes that this contribution can be in the form of a commuted sum towards off-site provision. As the appeal proposal fails to make any provision for affordable housing its approval would conflict with these requirements.
17. However, the Planning Practice Guidance<sup>1</sup>, the relevant part of which post-dates the adoption of the HCS and the Affordable Housing SPD, establishes that '*...contributions should not be sought from developments of 10-units or less, and which have a maximum combined gross floorspace of no more than 1000 square metres*'. The PPG is informed by the previous Written Ministerial Statement dated 28 November 2014 concerning this topic and the outcome of relevant case law.
18. I acknowledge that the Council's Strategic Housing Market Assessment identifies a need for 434 affordable units per annum. The Council's Technical Appendix on Affordable Housing in Small Sites confirms amongst other things that there is a substantial need for affordable housing in Hertsmere, that small sites comprise a notable proportion of the developable housing land in

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<sup>1</sup> Paragraph: 031 Reference ID: 23b-031-20161116

Hertsmere and that the Council's preferred approach would not require provision to be made where this is not viable. However, whilst the identified affordability ratio in Hertsmere is, at 16.9, considerable this and the other information presented are not so exceptional as to persuade me that a different approach to that set out in the WMS or PPG is justified. In coming to this view I have noted that the PPG and WMS do not make any reference to exceptions being made to the 10-unit threshold based on need.

19. Whilst I have also noted the Council's reference to appeal decision APP/K605/W/16/3146699 concerning a site in Surrey, that decision must also be considered in the context of the subsequent appeal decision referenced APP/N1920/W/16/3154681 relating to a site in Hertsmere. This identified that the WMS and PPG should be given more weight than the conflict with the development plan that would result from failure to provide for affordable housing. I intend to follow this approach in my decision.
20. I conclude that, despite the resultant conflict with Policy CS4 of the HCS and the Affordable Housing SPD, material considerations indicate that no provision for affordable housing should be required in this case.

### *Biodiversity*

21. Paragraph 109 of the Framework establishes that the planning system should contribute to and enhance the natural and local environment by minimising impacts on biodiversity and providing net gains in biodiversity where possible. The Conservation of Habitats and Species Regulations 2010 and other relevant legislation identifies species which are protected by law. Whilst the PPG<sup>2</sup> advises that local planning authorities should only require an ecological survey in specific circumstances, these include where protected species may be present.
22. The appeal site does not constitute or fall within a Site of Special Scientific Interest or Local Nature Reserve and is not subject to any other wildlife-related designation. It does however contain an extensive coverage of trees and other vegetation and an existing building at number 70 Ladbrooke Drive, and is contiguous with and therefore forms a potential wildlife corridor alongside neighbouring large gardens to either side. The appellant has also not refuted the Council's point that bats, which are a protected species, are prevalent throughout the borough.
23. Having regard to these points there is at least a reasonable possibility that bats or other protected species may be present, which could be adversely affected by the proposed removal of existing trees, the loss of foraging habitat and/or the demolition of number 70. Furthermore, no tree survey has been submitted to identify the extent of tree coverage which would be lost and no ecological survey has been submitted which would establish the extent of any habitat loss. Requiring an ecological survey to be submitted by condition, or relying on the implementation of mitigation measures to be agreed by means of a condition, would not be a suitable way forward as, in the absence of further information indicating to the contrary, the development could give rise to adverse effects which could not be adequately mitigated.

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<sup>2</sup> Paragraph: 016 Reference ID: 8-016-20140612

24. Given these circumstances, I consider that insufficient information has been submitted to demonstrate the effects of the proposed development on biodiversity. Its approval would therefore conflict with relevant provisions of Policy CS12 of the HCS, Policy SADM 10 of the SADMPP, the Framework and the Biodiversity, Trees and Landscape SPD related to this matter.

### **Other Considerations**

25. As the proposal would deliver 4 new homes, it would contribute albeit to a modest extent to the Government's objective, set out in paragraph 47 of the Framework, of significantly boosting the supply of housing. It would also widen choice and competition within the housing market.
26. Paragraph 47 of the Framework requires the Council to demonstrate a supply of specific deliverable sites which can provide 5 years' worth of new housing against its housing requirement. Paragraph 49 of the Framework establishes that relevant policies for the supply of housing should not be considered up-to-date if the local planning authority cannot demonstrate a five-year supply of such sites. Paragraph 14 confirms that in such circumstances planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits.
27. According to the figures provided by the parties the supply of specific deliverable sites can deliver 2,155 new dwellings in the period 2015/16 until 2019/20. Incorporating a 5% buffer as suggested by the appellant, this would provide about 7.7 years supply against the target of 266 dwellings per year in Policy CS1 of the HCS. However, it would only provide a supply of about 3.4 years against the Objectively Assessed Need (OAN) of 599 dwellings per annum identified in the more recent South West Hertfordshire Strategic Housing Market Assessment (SHMA) 2016. Furthermore, the Council has not refuted that, whilst the HCS was adopted in 2013 its housing target is a minimum based on older evidence and was adjusted downwards to reflect the existence of Green Belt and other constraints to development in the Borough.
28. The SHMA has not to my knowledge been independently tested or moderated. Its findings concerning OAN should also not be confused with any new housing requirement figure for the Borough which would need to be identified in the Council's proposed new Local Plan. Nevertheless, its findings do emphasise the benefits that would be derived from allowing the appeal proposal. I take account of this in the context of the harm that I have identified earlier and of paragraph 14 of the Framework in my final planning balance.
29. As it would be located in Potters Bar, the proposed housing would comply with the first part of Policy CS2 of the HCS, and I have no reason to doubt that it could be delivered within 5 years. Its occupiers would also have good accessibility to a range of jobs and services by public transport, walking and cycling. However, whilst these points weigh in support of the proposal particularly given the constraints which exist on housing development in the Borough, none of them are likely to be unique or unusual to it.
30. The proposed new housing would support local shops, public transport and other services, and could provide local construction jobs. Given the small scale of the proposal these benefits carry only very limited weight.

31. The proposed development would not cause any substantive harm to the living conditions of neighbouring residents, highway safety or capacity or in respect of flooding. However, these points represent a lack of harm in relation to these matters rather than positive benefits to weigh in the planning balance.

**The planning balance and overall conclusion**

32. I have found that the proposal would cause substantial harm to the character and appearance of the site and the surrounding area. Furthermore, insufficient information has been submitted to demonstrate its effects on biodiversity. Due to the resultant conflict with relevant development plan and national policies, these points carry substantial weight against allowing the appeal.
33. In support of the proposal it would deliver 4 new dwellings in a Borough where evidence suggests that housing needs are higher than those which are accommodated within the HCS. The site is also too small to justify specific provision being made for affordable housing. However, the proposal would make only a modest contribution to meeting housing requirements and its other benefits would carry only very limited individual and collective weight.
34. Even if I were to conclude that there is a shortfall in 5 year housing land supply of the scale suggested by the appellant, and that relevant policies for the supply of housing should not be considered up-to-date, the adverse impacts of granting permission would significantly and demonstrably outweigh the benefits. Whilst the proposal would bring economic and social benefits, due to the shortcomings that I have identified it would not accord with the development plan as a whole or constitute sustainable development in the terms of the Framework.
35. For the reasons given above I conclude that the appeal should be dismissed.

*Jonathan Clarke*

INSPECTOR