
Appeal Decision

Site visit made on 4 April 2017

by David Troy BSc (Hons) MA MRTPI

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

Decision date: 23rd May 2017

Appeal Ref: APP/B1930/W/16/3165700

221 and 221a, b & c Hatfield Road, St. Albans AL1 4TB

- 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 Apprise Property Ltd against the decision of St Albans City & District Council.
 - The application Ref 5/16/0331, dated 1 February 2016, was refused by notice dated 21 June 2016.
 - The development proposed is demolition of existing buildings and erection of three buildings comprising one block with ground floor retail unit and upper floors comprising one, one bedroom and seven, two bedroom flats, one block with three, two bedroom flats and three, two bedroom terraced houses, associated parking and landscaping.
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Decision

1. The appeal is allowed and planning permission is granted for the demolition of existing buildings and erection of three buildings comprising one block with ground floor retail unit and upper floors comprising one, one bedroom and seven, two bedroom flats, one block with three, two bedroom flats and three, two bedroom terraced houses, associated parking and landscaping at 221 and 221a, b & c Hatfield Road, St. Albans AL1 4TB in accordance with the terms of the application, Ref 5/16/0331, dated 1 February 2016, subject to the conditions in the attached schedule.

Procedural Matters

2. I have used the Council's description of the development in reaching my decision as it more fully describes the details of the development than that given on the original planning application form. The appellant's appeal form also makes reference to the updated description. I shall determine the appeal on this basis accordingly.
3. A signed and completed S106 Unilateral Undertaking (UU) has been submitted by the appellant. It would secure contributions towards infrastructure provision and I return to this matter later.

Main Issues

4. The main issues are the effect of the development on
 - (i) the character and appearance of the area;
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- (ii) the potential impact on the living condition of the occupiers of the future potential residential site at No. 223 Hatfield Road, with particular regard to outlook, light and overshadowing; and
- (iii) existing leisure facilities and other local infrastructure and whether any adverse impacts can be effectively mitigated.

Reasons

Character and appearance of the area

5. The appeal site is located on the north side of Hatfield Road and comprises an open triangular parcel of land on the front section of the site, which had been occupied by retail building with a residential use above which I observed on my site visit had been demolished. The rectangular rear section is occupied by warehouse building currently in Class A1 retail use and the site is located within an allocated employment area.
6. The surrounding area is mixed in terms of land uses and character, with retail and commercial uses along the north side of Hatfield Road, residential uses to the west, south and north of the site and industrial/business uses to the east. The surrounding properties comprise mainly traditional two storey buildings although there are a number of modern three storey residential developments along Hatfield Road in the immediate vicinity of the site. Planning permission was recently granted at No. 223a Hatfield Road to the east for a three and four storey building with B1 uses at ground floor and residential units above¹.
7. Planning permission has already been granted in November 2016² for the demolition of the existing buildings and redevelopment of the site with three contemporary style buildings with associated car parking, landscaping and access off Hatfield Road. These comprise a three storey building with retail uses and 6no. flats above on the front section, a three storey apartment building with 3no. residential flats in the middle section and 3no. three storey terraced houses on the rear section of the site. This represents a material consideration to which I attach significant material weight in this case.
8. The approved development is essentially the same as the appeal scheme with the exception of two additional 2 bed flats to be built at first and second floor level, above the approved retail unit, to make a three storey block behind the front building. This block would be set back about 6.5m behind the front building and would be constructed with a pitched roof with a maximum ridge height of about 12.5m. The north-west corner would be set back and stepped down from the west elevation of the building. The external finish of the building would be predominantly constructed from quartz-zinc cladding and white painted render. The appellant and the Council agree that this is the main area of dispute between the parties and as such I have determined the appeal on this basis accordingly.
9. The proposed design of the building stepped down and set back behind the proposed front building, together with the use of matching materials and fenestrations would ensure the proposal would sit relatively unobtrusively against the three storey form of the main building along the frontage of the site. The rear building would be largely screened from public views from the

¹ 5/2016/3811

² 5/2016/2469

road and the backdrop provided by the proposed three and four storey building granted on the adjoining site at No. 223a Hatfield Road and at the rear of the appeal site, together with the industrial buildings on the Executive Park to the north east would allow the proposal to achieve an appropriate degree of subordination to the main front building within the street scene.

10. The scale and form of the proposal, although not identical to other residential developments identified by the Council and the appellant, would be not significantly out of keeping with the mixed character and scale of development in the area, including the mixed use development at No. 188 Hatfield Road. This development comprises of a three storey contemporary style frontage building with retail at ground floor level and residential above and behind that extends some way back into the site.
11. Consequently, I conclude that the proposal would not have a harmful effect on the character and appearance of the area. The development would accord with Policies 69 and 70 of the City and District of St Albans District Local Plan Review 1994 (LPR). These policies, amongst other things, seek to ensure that all development will be of a high standard of design to reflect local distinctiveness and that the proposal respects the character, visual quality and landscape of the surrounding area. The proposal would accord with the National Planning Policy Framework (the Framework) that development should seek to secure a high quality of design (paragraph 17); to respect the local character (paragraph 58); and to promote or reinforce local distinctiveness (paragraph 60).

Potential impact on neighbouring future potential residential site

12. The proposed three storey blank gable end of the rear block behind the frontage building would be located on the shared common side boundary with the two storey commercial premises at No. 223 Hatfield Road (No. 223). A communal access and amenity space for the proposed flats would be located at first floor level behind the frontage building. This would be separated from No. 223 by a brick balustrade wall with trellis above of about 2m in height along the side boundary.
13. LPR Policy 70(vii) states that the potential future development of adjoining land should not be compromised where a development site abuts land with potential for residential development. This is primarily related to privacy issues but LPR Policy 70 (viii) expands on this and provides that the sunlight and daylight requirements set out in the BRE report³ should normally be achieved. Moreover, the Council's adopted Supplementary Planning Guidance, "Design Advice Leaflet No. 1" 1998 (SPG), requires the daylight levels of adjoining potential development land to be protected so as to allow future nearby developments to enjoy equal access to daylight.
14. Evidence provided by the Council shows that the appeal scheme would breach the SPG 43 degree line used to protect daylight levels of adjoining potential development land. Given the overall height and scale of the proposed rear building and the orientation of the buildings, I share the Council's view that the proposal would result in some overshadowing and the loss of available daylight and sunlight reaching the adjoining property at No. 223. However,

³ Building Research Establishment – Site Layout Planning for Daylight and Sunlight: A Guide to Good Practice

when considered alongside the buildings approved on the frontage at No. 221 and at the rear at No. 223a and the proposed new boundary wall between the properties, I consider that the proposal would not result in a significant loss of available light and overshadowing.

15. The appellant claims that the premises at No.223 is in active use, is not allocated for redevelopment and there are no recent planning applications to redevelop the site. Whilst the Council consider that it is not unreasonable that a scheme for the redevelopment of No. 223 might come forward, particularly given the applications received to redevelop the appeal site and the adjoining site at No.223a, no evidence has been provided by the Council to contradict the appellant's claims. The appellant has also provided sketch drawings to show two potential ways in which the site at No. 223 could be redeveloped in a manner that would be compatible with the appeal scheme. Given the evidence before me, there appears to be little reasonable prospect that the adjoining site would be redeveloped in the foreseeable future and as such I do not consider the proposal would unduly prejudice the potential future development of the neighbouring site, in line with the relevant policy.
16. The Council have also raised issues regarding loss of outlook and overlooking. However, given the recently approved developments on the adjacent sites, the outlook at the rear of No. 223 would be towards the new wall along the common shared boundary between the properties and the buildings approved at No. 221 and at No. 223a and as such, the rear block behind the frontage building would not result in a significant loss of outlook. In relation to overlooking, the upper bedroom windows of the proposed flats would be sufficiently far away from No. 223 and the proposed boundary treatment along the common shared boundary would prevent undue overlooking of No. 223 from the communal access and amenity space.
17. Consequently, I conclude that the proposal would not result in significant harm to the living conditions of the occupiers of the future potential residential site at No. 223, with particular regard to outlook, light and overshadowing. Despite a technical breach of the 43 degree line guidance, given the site specific circumstances, I conclude that the development would accord with the overall amenity aims of Policy 70 of the LPR. This policy, amongst other things, seeks to ensure new residential development does not adversely affect the amenities of nearby properties or the locality in general and would not compromise the potential future development of adjoining land. In addition, it would accord with the Framework that seeks to secure a good standard of amenity for all existing and future occupants of land and buildings (paragraph 17).

Existing leisure facilities and infrastructure in the area

18. Paragraph 204 of the Framework and Regulation 122 of the Community Infrastructure Levy Regulations require that planning obligations should only be sought, and weight attached to their provisions, where they are: necessary to make the development acceptable in planning terms; directly related to the development; and fairly and reasonably related in scale and kind to the development.
19. Refusal Reason 3 related to the appellant's failure to make a contribution towards existing leisure facilities and other infrastructure. There is a signed

and completed UU that has now been provided by the appellant. It requires the appellant to make financial contributions totalling £14,143 towards existing leisure facilities as follows: £2,607 towards play areas, £4,468 towards parks and public open space, and £7,068 towards leisure and cultural facilities. Support for the contributions in the UU and how they would be spent is set out in LPR Policy 143B, the Local Planning Authority appeal statement and the statement from the Council in response to the draft UU received from the appellant dealing the appeal process.

20. I am satisfied that the proposed contributions are necessary, directly related, and fairly and reasonably related in scale and kind to the proposed development, in accordance with CIL Regulation 122. I have therefore attached weight to them in reaching my decision.

Other matters

21. I have noted the objections raised by local residents and a third party regarding loss of light, privacy, visual impact, boundary treatment, the retention of trees and the impact of the scale and height of the proposal on the adjacent dwellings and the redevelopment of the adjoining site at No.223a. However, these matters did not form part of the Council's reasons for refusal and I am satisfied that these matters would not result in a level of harm which would justify dismissal of the appeal and can be dealt with by planning conditions where appropriate. In addition, I have considered the appeal entirely on its own merit and in the light of all the evidence before me; any future proposals nearby would also need to be considered in the same manner.
22. The Council accepts that it cannot demonstrate a five year supply of deliverable housing sites. Paragraph 49 of the Framework states that housing applications should be considered in the context of the presumption in favour of sustainable development (Paragraph. 14) bearing in mind the objective (Paragraph. 47) to boost significantly the supply of housing.
23. Paragraph 14 states that where the presumption in favour of sustainable development applies, and where relevant policies are out of date, permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole. Despite their age I have in any event concluded that the proposed development would accord with the Council's Development Plan policies.
24. Moreover, the development would provide a social benefit of much needed additional housing at a time when there is a recognised shortage. It would add to the economy by sustaining construction jobs, contributing additional retail facilities and, through additional residents, it would likely result in an increase in spending on local shops and services. In environmental terms it the proposal would make efficient use of previously developed land in an accessible location and result in a development which would be constructed and occupied utilising sustainable design and energy efficient features.
25. Overall the adverse impacts identified above do not significantly and demonstrably outweigh the scheme's benefits. Consequently the proposal would represent sustainable form of development when assessed against the policies of the Framework taken as a whole.

Conditions

26. Having regard to the Framework, and in particular paragraph 206, I have considered the conditions suggested by the Council. The conditions I shall impose are based on those suggested by the Council but with some variation to the wording in the interests of clarity and the elimination of duplication.
27. In addition to the standard time limit condition, I have specified the approved plans as this provides certainty. Those conditions relating to the detailing of the finishing materials, window and balcony details, landscaping, tree retention, construction works, refuse disposal facilities, external lighting, withdrawal of the permitted development rights, opening and deliveries times of the retail uses are necessary in the interests of amenity and the character and appearance of the area. Highways conditions, including provision of the access, car and cycle parking, servicing and turning areas are necessary to ensure highway and pedestrian safety and to encourage more sustainable forms of transport.
28. A condition to secure a Construction Management Plan (including access during demolition and construction) is necessary to ensure there are no significant adverse impacts upon the living conditions of local residents, or upon the highway. Conditions relating to the investigation of contamination on the site are necessary to ensure adequate protection of human health and the quality of the groundwater is protected. A condition relating to the surface water drainage is necessary to ensure that adequate drainage facilities are provided in connection with the development and to prevent flooding.

Conclusion

29. For the reasons given above and having considered all other matters raised, I conclude that the appeal should be allowed.

David Troy

INSPECTOR

Schedule of Conditions

- 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:
 - (i) Drawing Nos. 5289 97, 5289 98 and 5289 99, Management Asbesto Survey Report (received 25/02/2016);
 - (ii) Report on the impact of trees of proposals for development, Planning Design and Access Statement, Transport Statement (received 02/02/2016)
 - (iii) Geo-Environmental Assessment (received 25/02/2016);
 - (iv) Drawing Nos. 5289 120, 5289 121, 5289 122, 5289 123, 5289124, 5289125 and 5289 126 (received 02/06/2016).
- 3) No works (other than works of demolition) shall be commenced in respect of any of the 3 blocks of the development hereby permitted until samples of the materials to be used in the construction of the external surfaces of the relevant block have been submitted to and approved in writing by the Local Planning Authority. Development shall be carried out in accordance with the approved details.
- 4) The first floor and above east and west side-facing windows of the rear block and the first floor and above east-facing windows of the middle block shall be glazed in obscure glass to a height of at least 1.7 metres taken from finished floor level, and the hardwood timber louvre balcony screens to the middle block shall be opaque and in place prior to first occupation of the middle block. The windows and balcony screens shall not thereafter be altered in any way without the prior written approval of the Local Planning Authority.
- 5) In this condition "retained tree" means an existing tree which is to be retained in accordance with approved plan and particulars; and paragraphs (a) and (b) below shall have effect until the expiration of 5 years from the date of the occupation of the buildings hereby permitted.
 - (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, without the written approval of the Local Planning Authority. 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;
 - (c) the erection of fencing for the protection of any retained tree shall be undertaken in accordance with the recommendations set out in BS 5837 (2012) and the approved plans and particulars before demolition or any equipment, machinery or materials are brought on to 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 in any area fenced in accordance with this condition and the ground levels within those areas shall not be altered, nor shall any excavation be made, without the written consent of the Local Planning Authority.

- 6) No development shall commence until a method statement has been submitted to and approved in writing by the Local Planning Authority to cover the protection of trees during demolition and construction phases based on guidelines set out in BS5837. Thereafter the development shall be carried out in accordance with these approved details.
- 7) Prior to first occupation of any part of the development hereby approved, details of both hard and soft landscape works shall have been submitted to and approved in writing by the Local Planning Authority and these works shall be carried out as approved. These details shall include:
 - (a) proposed finished levels and contours;
 - (b) means of enclosure;
 - (c) car parking layouts;
 - (d) other vehicles and pedestrian access and circulation areas;
 - (e) hard surfacing materials;
 - (f) any external lighting;
 - (g) existing trees to be retained;
 - (h) existing hedgerows to be retained;
 - (i) details of the proposed construction and maintenance of the first floor amenity areas to serve the frontage block.
- 8) Notwithstanding the details shown on the approved plans, the details to be submitted to discharge the requirements of Condition 7 shall include details of planters or other landscape treatment located along the east and north boundaries of the first floor amenity space to the rear of the frontage block. This landscaping shall be provided in accordance with the approved details prior to the first residential occupation of any part of the frontage block and shall be retained as such thereafter unless otherwise agreed in writing by the Local Planning Authority.
- 9) All hard and soft landscape works shall be carried out in accordance with the approved details. The works shall be carried out prior to the occupation of any part of the development or in accordance with the programme agreed with the Local Planning Authority.
- 10) Prior to the first occupation of any part of the development hereby permitted the proposed access, on-site car and cycle parking, servicing, loading, unloading, turning and waiting areas shall be laid out, demarcated, levelled, surfaced and drained in accordance with the approved plans and retained thereafter available for that specific use.
- 11) The development hereby permitted shall not be commenced until a Construction Management Plan has been submitted to and approved in writing by the Local Planning Authority. Thereafter the construction of the development shall only be carried out in accordance with the approved Plan. The Construction Traffic Management Plan shall include details of:
 - (a) construction vehicle numbers, type, routing;
 - (b) traffic management requirements;

- (c) construction and storage compounds (including areas designated for car parking);
 - (d) siting and details of wheel washing facilities;
 - (e) cleaning of site entrances, site tracks and the adjacent public highway;
 - (f) timing of construction activities to avoid school pick up/drop off times;
 - (g) provision of sufficient on site parking prior to commencement of construction activities.
- 12) The presence of any contamination not previously identified that becomes evident during the development of the site shall be brought to the attention of the Local Planning Authority. An intrusive investigation will not necessarily capture all contaminants present; hence there is a need to keep a watching brief and to appropriately address any new sources discovered during excavation and development. No further development shall take place unless otherwise agreed in writing with the Local Planning Authority.
- 13) An additional site investigation shall be carried out in those areas of the site that are currently inaccessible in accordance with the recommendations made in the 'Geo- Environmental Assessment' prepared by WDE Consulting (Document ref:20468R1). The investigation shall be carried out by a competent person to characterise fully and effectively the nature and extent of any land and/or groundwater contamination and provide information for a detailed assessment of the risk to all receptors that may be affected. The site investigation shall comply with *BS10175: 2011 Investigation of potentially contaminated sites - Code of practice*. Copies of the interpretative report on the completed site investigation shall be submitted to the Local Planning Authority without delay on its completion.
- 14) The results of the site investigation and the detailed risk assessment referred to in Condition 13 shall be used to prepare an options appraisal and remediation strategy giving full details of the remediation measures required and how they are to be undertaken. The options appraisal and remediation strategy shall be agreed in writing by the Local Planning Authority prior to the commencement of the development hereby approved (apart from works of demolition) and all requirements shall be implemented and completed by a competent person.
- 15) A verification report demonstrating completion of the works set out in the remediation strategy referred to in Condition 14 and the effectiveness of the remediation shall be submitted in writing and approved by the Local Planning Authority prior to first occupation of any part of the development hereby approved. The report shall include results of validation sampling and monitoring carried out in accordance with an approved verification plan to demonstrate that the site remediation criteria have been met. It shall also include any plan for longer-term monitoring of pollutant linkages, maintenance and arrangements for contingency action, as identified in the verification plan. The long-term monitoring and maintenance plan shall be implemented as approved.
- 16) No demolition or construction works relating to this permission shall be carried out on any Sunday or Bank Holiday nor before 07.30 hours or

after 18.00 hours on any days nor on any Saturday before 08.00 hours or after 13.00 hours.

- 17) A methodology for the screening or enclosure of plant and machinery to be used during the construction period shall be submitted to and approved in writing by the Local Planning Authority before any construction works are commenced. The siting of the plant and machinery shall be away from noise sensitive areas wherever possible. Vehicles and machines in intermittent use shall be shut down in the intervening periods between works, or throttled down to a minimum.
- 18) If piling is considered the most appropriate method of foundation construction, prior to commencement of development (apart from works of demolition), a method statement detailing the type of piling and noise emissions shall be submitted to and approved in writing by the Local Planning Authority. All piling works shall be carried out in accordance with the approved details.
- 19) No deliveries shall be taken at or dispatched from the premises:
 - (a) before 07:00 hours or after 18:00 hours on Mondays to Fridays;
 - (b) before 08:00 or after 18:00 hours on Saturdays; and
 - (c) at any time on Sundays or Bank Holidays.
- 20) The retail use hereby permitted shall only be open to customers during the following times:
 - (a) between 08.00 hours and 18:00 hours on Mondays to Saturdays inclusive;
 - and
 - (b) between 09.00 hours and 18:00 hours on Sundays and Public Holidays.

Any customers remaining on the premises after 18.00 hours shall leave the premises not later than 18.30 hours.
- 21) No external lighting shall be provided anywhere on the development except in accordance with details which shall first have been submitted to and approved in writing by the Local Planning Authority.
- 22) Details of facilities to be provided for the storage and removal of refuse from the site shall be submitted to and approved in writing by the Local Planning Authority. The facilities shall be provided as approved prior to the first occupation of any part of the development hereby approved.
- 23) The development permitted by this planning permission shall be carried out in accordance with the drainage statement prepared by EAS dated August 2016 job number 808 revision Final 3 (submitted with planning application reference number 5/2016/2469) and the following mitigation measures as detailed within the surface water drainage strategy:
 - (a) The surface water run-off generated by the site must not exceed of 5 l/s during the 1 in 100 year event + climate change event.

- (b) A minimum attenuation volume of 87.4 m³ must be provided to ensure that there is no increase in surface water run-off volumes for all rainfall events up to and including the 1 in 100 year + climate change event. Attenuation to be provided in permeable pavements as shown in drawing SK09 rev A included in Appendix L of the drainage strategy.
 - (c) Finished floor levels must be set at 90.750 m AOD or higher in the residential unit in order to avoid internal flooding of the dwellings during any rainfall event below the 1 in 100 year return period event.
 - (d) Finished floor levels must be set at 90.580 m AOD or higher and a flood proof roller shutter must be installed in the retail unit in order to avoid internal flooding of the unit during any rainfall event below the 1 in 100 year return period event.
- 24) 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), there shall be no enlargement or extension of the dwellings (Part 1, Class A) hereby permitted, including any additions or alterations to the roof (Part 1, Classes B and C), without the prior written permission of the Local Planning Authority.