The Planning Inspectorate

# Appeal Decision

Site visit made on 17 May 2017

**by John Morrison BA (Hons) MSc MRTPI**

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

**Decision date: 23 June 2017**

**Appeal Ref: APP/C1950/W/17/3167646**
**Swan Lodge, Bell Lane, Brookmans Park, Hatfield AL9 7AY**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
- The appeal is made by Restora AC Ltd against Welwyn Hatfield Borough Council.
- The application Ref 6/2016/2461/VAR is dated 11 November 2016.
- The application sought planning permission for the erection of 8no one and two bedroom apartments, car port, refuse and recycling store and associated works following demolition of existing buildings without complying with condition 1 attached to planning permission Ref 6/2016/0168/FULL, dated 21 July 2016.
- The condition in dispute No 1 which states: *the development/works shall not be started and completed other than in accordance with the approved plans and details: PSL01 & PSL02 & PSL03 received and dated 2.2.2016 and Landscape Masterplan received 1.6.2016 (and dated 24.5.2016) and PSL05/RevA & PSL07/RevA & PSL10 received and dated 23.6.2016 & PSL08 & PSL09 received and dated 26.6.2016 and PSL04/RevB & PSL06/RevB received and dated 6.7.2016.*
- The reason given for the condition is *to ensure that the development is carried out in accordance with the approved plans and details.*

## Decision

1. The appeal is dismissed and planning permission is refused.

## Main Issues

2. There are seven main issues in the determination of this appeal. These are:

    - Whether the proposed development represents a non-material amendment of the approved development to which the original planning permission relates;

    - Whether the proposed development would be inappropriate development in the Green Belt;

    - The effect of the proposed development on the openness of the Green Belt;

    - If the proposed development would be inappropriate development, whether the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations so as to amount to the very special circumstances necessary to justify the proposed development;

- Whether or not the proposed development would provide for acceptable external amenity space in the interests of the living conditions of future occupiers;
- Whether or not the proposed development would make sufficient provision for disabled parking; and
- Whether or not the proposed development should make financial contributions towards open space, play equipment and refuse storage.

## Reasons

*Non Material Amendment*

3. The original planning permission referenced above granted approval for the demolition of Swan Lodge and its associated garage and pool building and the erection of a detached building to house eight apartments. Included in the scheme was a detached single storey car port building, a car park to the rear and areas of communal garden space. Cycle storage would be provided inside part of the car port and a separate refuse storage area would be provided adjacent the access driveway.

4. The effect of the development subject of this appeal was to vary the planning condition that specified the plans that were approved as part of the original planning permission. The amended plans sought to use the approved car port as two further dwellings with associated enclosed private gardens. A single storey front extension would be added. The parking spaces displaced by this change would be added to the approved car park which would thus be made larger. The communal garden to the apartment block would be reduced in size and a detached secure cycle store would be erected.

5. What was approved to be an ancillary outbuilding would be two new dwellings. By definition, this change would be fundamental. They would be on the same footprint and in the location that has been approved but they would appear and be used as dwellings and not a car port. Their functional relationship with the remainder of the development would therefore change.

6. Whilst arguably minor in context, their size would be increased by the extension. The larger car park, enclosed private gardens and the new detached cycle storage building would also be additional new development. Changes to the nature of the development aside, I further consider that the extent of the other changes, taken together, would represent a material difference to the scheme that was granted planning permission. The changes cannot, for the above reasons, be considered as minor.

7. The proposed development would not therefore be acceptable as a scheme to vary a planning condition on a planning permission. Specifically in this case, the relevant condition setting out the approved plans. In essence, a fresh application for planning permission would be required.

*Inappropriate Development in the Green Belt*

8. The Framework[1] sets out that a local planning authority should regard the erection of new buildings in the Green Belt as inappropriate[2]. This would be

[1] The National Planning Policy Framework 2012
[2] Paragraph 89

the case here since the garage block is not yet built and cannot therefore be considered a conversion scheme. There are exceptions set out further by paragraph 89 of the Framework, into any of which the proposed development would not fall. I can only consider therefore that the proposed development would be inappropriate development in the Green Belt. By definition, this would be harmful[3].

*The Openness of the Green Belt and other considerations*

9. The Framework indicates that openness is an essential characteristic of the Green Belt. Not solely limited to visual considerations, openness also has a spatial aspect and can be taken to mean the absence of built form.

10. I do not have a floor space or volumetric comparison before me which shows the existing buildings against the approved although the Council have stated that what was granted planning permission was on the limit of what could be considered acceptable as proportionately increased replacement buildings.

11. I accept that the new dwellings would be on the same footprint as the approved car port. They would however have a front extension and the approved partially open structure would be completely enclosed, reducing its permeability. Communal garden spaces would be scythed off into separate plots with a greater propensity for added domestic clutter. The displaced parking from the car port would create a larger swathe of hardstanding and there would be a wholly new detached cycle store.

12. When taking all of these factors together in the context of the Council's consideration of the redevelopment scheme, it seems clear that there would be a net reduction in openness by virtue of the proposed development. The site is well screened but as I have set out above, openness has both a visual and spatial aspect and the proposed development would cause harm to its spatial aspect. I ascribe substantial weight to this harm[4], which adds to the harm that would be caused by the inappropriateness of the proposed development.

13. There would be social benefits in the provision of two new additional dwellings but the scale of this would be very limited. No further considerations have been advanced that can be weighed against the harm that would be caused both by the inappropriateness of the proposed development and the stated reduction in openness. As a result, a case for the very special circumstances necessary has not been demonstrated.

14. For these reasons, the proposed development would conflict with saved Policy GBSP1 of the Local Plan[5] and the Framework which seek, amongst other things, to both define the boundaries of the Green Belt and protect it from harm through inappropriate development and that which would adversely affect its openness.

*External Amenity Space*

15. As I have alluded to above, the amended plans also seek to create smaller private gardens for the two dwellings out of the areas of communal amenity space. They would be provided to the side of each unit.

[3] Paragraph 87
[4] Paragraph 88
[5] Welwyn Hatfield District Plan 2005

16. Mews A would have a contextually small space. It would be effectively hemmed in by the communal access driveway, the side elevation of the dwelling and the refuse storage building. Its size and proximity to abutting structures would lead to an oppressive space. In addition, the regular comings and goings (which would be related to all of the residential uses on the site and visitors) associated with the communal driveway would lead to unacceptable noise disturbance. These factors would combine to reduce the quality of the external amenity space that would be provided, to the detriment of the living conditions of future occupiers.

17. I note that the Council's development plan does not stipulate minimum standards for external amenity space and the amount afforded to Mews B would be more than sufficient both qualitatively and quantatively. Further, both dwellings would have an acceptable level of internal floor space. None of these factors would however make up for the shortcomings in the quality of the external space provided for Mews A.

18. For these reasons, the proposed development would fail to meet the high standards of design expected by saved Policy D1 of the Local Plan and section 7 of the Framework.

*Disabled Car Parking*

19. I note the Council's concerns with regard to the revised scheme representing a retrograde step in terms of the provision for disabled parking in accordance with the requirements of the development plan. I see from the scheme subject of this appeal that the covered car parking spaces that were to be provided in the car port would be displaced and disabled provision therefore would have to be in the open.

20. Whilst the revised car park layout does not appear to make provision for disabled spaces, it seems to me that there would be sufficient space to create them. There would be a total of 14 spaces provided for what would be ten self-contained residential units, eight of which would be flats. There is nothing compelling in the evidence before me that would suggest the total provision for spaces would not be sufficient. Similarly, I am not advised of any specific reason that the scheme would have to provide more than two disabled spaces which the approved scheme was required to do.

21. I accept that any disabled spaces would be out in the open but there is nothing explicit in the evidence before me, the relevant policy of the development plan specifically, that stipulates they have to be covered. Further, they would be as close to the new ground floor units as the spaces that were approved to be housed in the car port. Looking at the approved scheme, users of the car port spaces would also use the main entrance to the flatted development, the location of which would not change. It may also be fair to consider that the two proposed dwellings made out of the approved car port would provide solely ground floor accommodation, also suitable for disabled residents and sited even closer to the main car park.

22. Having regard to relevant policy on this matter and my findings on this main issue, I am of the view that an appropriate scheme could be agreed by planning condition to ensure that an acceptable level and standard of disabled parking could be provided.

23. As such, and with regard to this main issue, I do not find conflict with saved Policies D9 and M14 of the Local Plan. Along with the Framework and amongst other matters, these policies seek to secure acceptable access for disabled people and an appropriate level of car parking respectively.

*Developer Contributions*

24. The appellant has submitted a completed Unilateral Undertaking (UU) which seeks to address one of the Council's reasons for refusal. Specifically, the Council's concern in this respect stemmed from the fact that the changes proposed by the appellant represented a wholly new development proposal. My own findings on this matter aside, a proposal that would require a fresh planning application. The Council state that this would be for ten residential units, thus a major development scheme. The scheme would require, amongst other things, a legal agreement to secure financial contributions in respect of open space, play equipment and refuse storage.

25. The Council evidently have some concerns over the provisions of and some wording used in the completed UU. These concerns do not appear on their face to be insurmountable. However there seems to be little merit in proceeding with further changes in light of my concerns on the proposed development which clearly relate to more fundamental matters that even an amended UU would not be sufficient to overcome.

**Conclusion**

26. I have found that the proposed changes to the approved scheme would go beyond that which would be acceptable under this very process. Further, they would represent inappropriate development in the Green Belt which would be harmful in planning terms by definition. Harm that would be exacerbated by a reduction in openness. A case for very special circumstances in light of this harm has not been demonstrated.

27. Notwithstanding my findings on the matter of how disabled parking could be provided, the proposed development would provide garden space to one of the new dwellings that would be of an unacceptably poor quality.

28. Taking all of these matters together, the appeal fails.

*John Morrison*

INSPECTOR