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# Appeal Decision

Site visit made on 14 June 2017

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

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

**Decision date: 5<sup>th</sup> July 2017**

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**Appeal Ref: APP/N1920/W/16/3166128**

**The Field House, Barnet Lane, Elstree, Hertfordshire WD6 3QU**

- 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 Mr M Smyth against the decision of Hertsmeire Borough Council.
  - The application Ref 16/2063/FUL, dated 20 October 2016, was refused by notice dated 21 December 2016.
  - The development proposed is the demolition of existing dwelling and construction of 2 new dwellings.
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## Decision

1. The appeal is dismissed.

## Background

2. Planning permission was initially refused for the demolition of the existing dwelling and the erection of two in December 2016<sup>1</sup>. This scheme proposed a subdivision of the entire existing curtilage. The development site area triggered the Council's development plan policy requirement for developer contributions. Specifically affordable housing. An agreement was never completed to secure this which informed the Council's eventual reason for refusal.
3. A second planning application was submitted in October of 2016<sup>2</sup> which is the subject of this appeal. It was identical to the first, save for that the curtilages to each dwelling were made smaller. It was also refused in December 2016.
4. A third planning application was submitted in December 2016<sup>3</sup> which was identical to the first in all respects but supported by a viability assessment demonstrating that the development was unable to support the contributions required by the development plan. This was accepted by the Council and planning permission was granted in May 2017. The granting of this planning permission occurred during the appeal process but prior to this Decision being issued. The appellant and I have been provided with a copy of the Council's report and decision notice. I have taken these matters into account.

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<sup>1</sup> Hertsmeire Borough Council Ref 16/0242/FUL

<sup>2</sup> Hertsmeire Borough Council Ref 16/2063/FUL

<sup>3</sup> Hertsmeire Borough Council Ref 16/2479/FUL

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## **Main Issues**

5. There are three main issues in the determination of this appeal. These are:
- The effect of the proposed development on the character and appearance of the area;
  - The effect of the proposed development on the openness of the Green Belt; and
  - The principle of the proposed development and specifically whether or not the creation of a 'nil' use' would be harmful.

## **Reasons**

### *Character and Appearance*

6. The appeal site is a large detached dwelling in an equally substantial elongated rectangular garden. In this respect, it shares the most defining characteristic of built form to space in the area which is very open and spacious. Dwellings are arranged as frontage development, located to the northern end of the plot, set back from and facing the road. Some of the gardens have outbuildings but there is no fixed uniformity to their siting. The street scene is leafy and verdant with mature hedges and trees making up front boundaries and the back edges of the highway. Extensive planting is also a key feature of rear gardens.
7. The proposed development seeks to replace the existing dwelling with two. The two dwellings (both of a reasonable size in themselves) would be afforded significantly truncated plots. Shortening their rear garden by a substantial degree over the current arrangement. This would be wholly contrary to the prevailing character of the area as I have described it above. As a result of this, I agree with the Council that the dwellings would, in character terms, seem cramped within their plot. Essentially, a far tighter urban grain than that which currently exists.
8. The Council have expressed concern over what they describe as the potential removal of trees to the frontage of the site and the erection of three sets of entrance gates and other hard boundary treatments. This is in the context of the wooded and leafy character of the street scene as I have identified it.
9. Whilst it would seem clear from the plans and my findings on site that there would have to be some management of the planting to the front of the site, it seems equally clear that this would not amount to wholesale changes. Much of the dense planting could be retained and indeed a substantial amount is outside of the red line as shown, effectively therefore out of the control of the appellant on the face of the information before me. Through the retention of the planting, the proposed gates and other hard boundary treatments would not be the dominant feature of the street scene, a scene that in any event does have a number of brick wall flanked entrance gates evident.
10. The appellant comments that some of the surrounding plots, including the appeal site, are divided by hedgerows and shrubs, thereby giving the appearance of separate land parcels. However, the existing garden is readily accessible in its entirety and whilst landscaping does change in some areas, one can clearly still read the extent of land as one curtilage. I would not

therefore go as far as to say that the different areas of the existing garden are, or indeed are intended to be, separate land parcels.

11. I further accept that there would be no statutory requirement for future residents to fence off what would be their rear boundary from the remaining land beyond. Nevertheless, the need for security, domestic paraphernalia to the rear of the buildings, their separation from each other and the general use of their own garden land would make the extent of their gardens clear from the land beyond.
12. The proposed development would be acceptable in respect of the proposed frontage treatment. Nonetheless, this would amount to a lack of harm which cannot be used to balance against harm. Specifically in this case, to the character of the area in the manner that I have described. Thus it would conflict with Policy CS22 of the Core Strategy (CS)<sup>4</sup>, Policy SADM30 of the Local Plan<sup>5</sup> and section 7 of the Framework<sup>6</sup>. These policies, amongst other things, seek to ensure a high quality and contextually appropriate design and appearance to new development.

### *Openness of the Green Belt*

13. Openness is an essential characteristic of the Green Belt. Not solely limited to a visual aspect, openness is also concerned with a spatial aspect and can be taken to mean the absence of built form.
14. Whether or not the proposed development would be inappropriate development in the Green belt has been established. The proposed two dwellings would be of the same design, scale and location as has been approved previously and remains extant at the time of writing. The fact that they can be built at any time regardless of the outcome of this appeal is relevant and material to my findings. They have been considered as replacement buildings through the redevelopment of a previously developed site<sup>7</sup>. There is no further evidence before me that would lead me to conclude other than that there would be no harm to the Green Belt in this respect.
15. Essentially, the key difference in the scheme before me would be the smaller plot sizes. My findings on this with regard to character and appearance aside, the proposed development as part of this scheme is not any greater in size or scale and includes no further built form.
16. The reduction in the size of the gardens would result in a substantial swathe of what would become open land to the rear of each dwelling. This would not be part of a residential curtilage in the lawful planning sense and as such would likely be free from domestic related paraphernalia. Being in the Green Belt, the land would be subject to future planning controls on new buildings.
17. It follows that the proposed development would have the potential to increase the openness of the Green Belt in net terms. This is of course putting aside my earlier findings on its effect on the character and appearance of the area. This is distinct from openness with regard to the particular circumstances of this case, since the harm arising out of the changes to garden sizes would not be

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<sup>4</sup> Hertsmere Local Plan Core Strategy Development Plan Document 2013

<sup>5</sup> Hertsmere Local Plan Site Allocations and Development Management Policies Plan 2016

<sup>6</sup> The National Planning Policy Framework 2012

<sup>7</sup> Paragraph 89 of the Framework

harmful to openness or the purposes of including land with the Green Belt. There would therefore be no harmful effect on either the visual or spatial aspects of openness. The proposed development would thus comply, with regard to this main issue, with Policy CS13 of the CS, Policy SADM26 of the Local Plan and section 9 of the Framework. These policies seek to ensure, amongst other things, that the essential characteristics of the Green Belt are protected from harm.

#### *A Nil Use*

18. The Council have concerns that the creation of what they describe as a nil use would not make the most efficient use of the site and would thereby be unsustainable in land use terms.
19. The proposed development would indeed result in a substantial amount of land being outside of any residential curtilage that would be created. Whilst this land would not therefore be in residential use, it would be somewhat short sighted to consider it unsustainable in land use terms. It is correct that any future use would require planning permission as would likely the erection of new buildings that do not fall into any of the exceptions specified by section 9 of the Framework.
20. In this respect, and looking at this matter purely in isolation, I cannot reconcile a clear argument that the lack of inclusion of the remaining land into residential curtilages would be harmful. Quite the contrary in Green Belt terms as I have set out above. The land would still be in private hands and thus be subject to an obligation to manage in some way. In addition, there are a number of uses (whilst planning permission would be required) set out by the Framework that would be compatible with its Green Belt location. The fact that the areas of land would become locked and accessible therefore purely via the plots afforded to the new dwellings would be a constraint of the appellants own making. Nonetheless the land also abuts other land under other ownership and a future ownership change cannot be completely ruled out.
21. There would therefore be no clear demonstrable planning harm arising out of the effective creation of a nil use alone. Further, the reasons for the reduction in the size of the gardens that would be afforded to the new dwellings is not a matter for this appeal to consider which has been assessed with regard to its own individual merits.
22. I am therefore of the view that the principle of the development would be acceptable and consequently, with regard to this main issue, there would be no conflict with Policies SP1 of the CS. This Policy, along with one of the key principles underpinning the Framework, advocates a sustainable approach to new development.

#### **Other Matters**

23. With regard to the second main issue, the Council have made reference to Policies CS22 of the CS and SADM3 of the Local Plan. CS22 appears to be more concerned with matters of character and appearance and high quality design which is therefore more relevant to the first main issue. SADM3 sets out the Council's consideration of schemes for residential development with an emphasis on the loss of such uses. It also focusses on conversion schemes and the loss of affordable housing. I am of the view that these matters are not

directly relevant to the second main issue. In any event, CS13 and SADM26 along with section 9 of the Framework are sufficient in this regard.

24. Policy CS2 of the CS is referred to in the context of the third main issue. On my reading of this Policy, it is geared toward assessing the location of new homes, specifically how they will be directed towards main settlements. It is therefore not directly relevant to an assessment of the third main issue which concerns the matter of the land that would remain to the rear of the appeal site.

### **Conclusion**

25. I have not found harm in respect of the effect of the proposed development on the openness of the Green Belt or the separation of the land at the rear of the appeal site that would result from the creation of smaller gardens for the dwellings proposed. This would however, afford the dwellings with gardens substantially smaller than those that surround it, such as to the extent that it would fail to reflect the prevailing character of the area. It is for this reason that the appeal fails.

*John Morrison*

INSPECTOR