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## Appeal Decision

Site visit made on 25 July 2017

**by Robert Mellor BSc DipTRP DipDesBEnv DMS MRICS MRTPI**

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

**Decision date: 8 August 2017**

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**Appeal Ref: APP/B1930/W/17/3174364**  
**363, Luton Road, Harpenden AL5 3LZ**

- 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 Dr David Cranston against the decision of St Albans City & District Council.
  - The application Ref 5/2016/1991, dated 27 June 2016, was refused by notice dated 6 January 2017.
  - The development proposed is described on the decision notice and appeal forms as 'Demolition of existing building, construction of two, four bedroom semi-detached dwellings including change of use from surgery to residential, with associated parking'.
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### Decision

1. The appeal is allowed and planning permission is granted for the demolition of existing building, construction of two, four bedroom semi-detached dwellings including change of use from surgery to residential, with associated parking' at 363, Luton Road, Harpenden AL5 3LZ in accordance with the terms of the application, Ref 5/2016/1991, dated 27 June 2016, subject to the conditions set out on the attached schedule.

### Policy Context

2. Statute requires that the appeal be determined in accordance with the provisions of the development plan unless material considerations indicate otherwise. The development plan here includes the City and District of St Albans Local Plan Review (1994) (the LP).
3. The National Planning Policy Framework (2012) (the Framework) is a material consideration. Paragraph 49 provides that 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 deliverable housing sites. As the officer report has acknowledged that the Council cannot demonstrate a 5 year supply of housing, the LP Policies for the supply of housing are by that definition out of date.
4. The courts have recently confirmed that policies for the supply of housing do not include other (development management) policies that may 'affect' supply. Those policies are not rendered out of date by paragraph 49.
5. The lack of a 5 year supply of housing does trigger Paragraph 14 of the Framework which provides amongst other things that 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 or specific policies in the Framework indicate development should be restricted. In this case the LP long predates the Framework but paragraph 215 provides that due weight should be given to relevant (saved) policies in existing plans according to their degree of consistency with the Framework.

### **Planning History**

6. In 2004 planning permission was granted (Ref 5/2004/1700) for a development of similar description on the appeal site. That followed the refusal in 2002 (Ref 5/2002/1509) of an outline application for development again of the same description because of a loss of privacy, amenity and light at No 361. The plans approved in 2004 have not been supplied in evidence and that permission has since lapsed. Whilst the LP policies at that date would have been the same as now it is likely that No 361 in particular has been extended since that date, thereby altering the context. I therefore accord that previous decision little weight.

### **Main Issue**

7. The Council refused permission owing to a claimed harmful effect on outlook from the adjoining dwellings at Nos 361 and 365. The neighbour at No 361 also objects to the loss of privacy in one or more bedrooms, to a loss of natural light in the garden at that property and to increased noise and disturbance from the additional car parking.
8. Having regard to local and national policy, the reason for refusal, and the representations from interested persons the main issue is considered to be the effect on the living conditions of the adjoining occupiers at Nos 361 and 365 Luton Road in respect of privacy, outlook, and natural light and whether any identified harm would outweigh, or be outweighed by, any benefits of the development.

### **Reasons**

9. In its statement the Council also claims conflict with LP Policies 2, 69 and 70. However LP Policy 2 does allow for residential redevelopment in Harpenden subject to the protection of the town's essential character. The Council has not in this case raised any objection to the effect of the development on the area's character.
10. LP Policy 69 'General Design and Layout' seeks a high standard of design taking account of (amongst other things) context and other plan policies which include LP Policy 70.
11. LP Policy 70 'Design and Layout of New Housing' includes a number of criteria and the Council has not identified which are offended by the propose development. There is no criterion specifically relating to the protection of outlook from neighbouring property. Criterion 70(vi) seeks that a tolerable level of visual privacy in habitable rooms and to a lesser extent in private gardens is provided. Minimum separation distances are provided for some circumstances which are not however relevant in this case. Criterion 70(viii) concerns sunlight and daylight requirements according to Building Research Establishment standards but there is no evidence before me that these would be infringed. Neither have I identified or had drawn to my attention any

relevant provisions in the Council's Design Guidance 'Design Advice Leaflet No 1 (November 1998) Design and Layout of New Housing'.

12. Where the LP lacks specific relevant policy criteria I acknowledge that paragraph 17 of the Framework is a material consideration and it includes as a core principle that planning should always seek high quality design and a good standard of amenity for all existing and future occupants of land and buildings and that other provisions of the NPPF also seek good design which objective encompasses the function as well as the appearance of development.

#### No 365

13. The existing building on the appeal site to be demolished is a bungalow. It is located between two 2-storey detached dwellings at Nos 361 and 365 Luton Road respectively. The bungalow stands forward of the front elevation of No 365 but its low height and sloping roof would avoid any significant impact on outlook and natural light at the nearest window in the front elevation of that property which is a wide window in a single storey wing.
14. The proposed semi-detached dwelling adjoining No 365 would be set further back from the road where in consequence its greater height would only intrude marginally on the generally open outlook from that nearest ground floor window.
15. Both properties would face north east. The proposed semi-detached house would cast a shadow over part of the curtilage of No 365 but this would only briefly affect direct sunlight at the nearest window and would otherwise mainly fall on a metalled parking area where it would not materially affect living conditions.
16. In relation to privacy, the proposed development would allow some oblique views over the rear garden of No 365 where not obscured by trees. However such overlooking is commonplace in suburban areas and similar views would currently be available from first floor windows at No 365 towards the appeal property's garden
17. I do not consider that the living conditions at No 365 would be materially harmed by the proposed development in respect of outlook and neither would there be conflict with the development plan or national policy in that regard.

#### No 361

18. No 361 has an unusual siting at an angle to its rectangular plot. The dwelling has been considerably extended to the rear by comparison with the Ordnance Survey based site plan submitted with the current application and which was the basis for the plan at Figure 1 of the Council's appeal statement.
19. I saw that there are now 3 first floor bedroom windows facing the appeal property and 3 larger ground floor windows/patio doors. The main rear elevation at No 361 is angled towards the rear garden of the appeal property and overlooking from those 3 first floor windows would currently be possible of the rear garden to the appeal property except where screened by trees and shrubs.
20. In the appeal development the single small first floor bathroom window at the side directly facing No 361 could be obscure glazed to prevent direct

overlooking towards similar small window in the flank elevation of No 361. Consequently there would be no direct views available from the appeal development into any habitable rooms at No 361. Oblique overlooking of part of the rear garden at No 361 would be possible from rear-facing first floor bedroom windows but this is commonplace in suburban areas and the overlooking would be less direct than currently occurs from No 361 towards the garden at No 363. The level of privacy at No 361 would be tolerable in the terms of the development plan.

21. The Council refused permission in part because the development would be overbearing and visually obtrusive when viewed from No 361. In that regard the scheme was amended prior to its determination to reduce the depth of the building and to set the first floor away from the boundary. The view from the nearest ground and first floor windows at No 361 would be at an angle toward the blank 2 storey side elevation of the side elevation of the semi-detached house. However the first floor element would be set back such that the nearest windows at No 361 should still retain a view of the sky as well as the current oblique views of the garden at No 361. The present view from the nearest window towards the appeal property is already limited by tall shrubs and trees near the boundary. The west facing rear facing windows at No 361 should also still receive some direct sunlight for part of the day although there may be a loss of some evening sunshine for the windows closest to the appeal site. I conclude that the occupiers of No 361 would retain a reasonable outlook from the habitable rooms in their property and from their garden. There is no conflict with the development plan or national policy in this regard.

#### Benefits

22. The housing supply policies in the LP were adopted 23 years ago and are now out of date. The Council acknowledges that it cannot demonstrate the 5 year supply of housing land to meet identified needs that is required by national policy in the Framework at paragraph 47. There is no evidence before me to demonstrate when this will be rectified by bringing the development plan up to date and securing the delivery of additional housing.
23. The proposed development would result in a net gain of 1 dwelling with associated social and economic benefits. That would make a modest but important contribution towards the shortfall in housing provision and would accord with national policy aims in paragraph 47 of the Framework to boost the supply of housing both locally and nationally. Moreover housing land is obviously scarce and the Green Belt is a constraint on outward expansion of the urban areas.

#### **Other Matters**

24. Whilst the neighbour at 361 objects to increased noise and disturbance from the additional parking the traffic movements would be typical of a suburban residential area and are likely to be masked by background noise from the adjacent main road. Neither that nor any other matter raised outweighs my conclusions on the main issues.

#### **Conditions**

25. The Council has suggested a number of conditions to be applied in the event that the appeal is allowed together with reasons why they should be applied.

Subject to the following amendments, I agree that those conditions would satisfy the tests for planning conditions and are needed for the reasons stated.

- The reasons should state their planning purpose but do not need to refer to individual policies which are likely to become out of date.
- The landscaping conditions need amending to reduce repetition and to remove unnecessary provisions for this development.
- The requirement for obscure glazing should be made permanent and any variation should be the subject of a formal application with any necessary consultation.
- The construction hours condition lacks clarity as worded
- The restriction on permitted development is excessive. Such restrictions require special justification which is here valid in relationship to protecting the amenities of neighbouring residents and no control on outbuildings or hardstandings has been justified.

The revised conditions are set out on the attached schedule.

### **Conclusions**

26. It is concluded overall that whilst the development would marginally reduce the outlook available from windows in the neighbouring dwellings and would also result in some overshadowing of parts of those properties there has not been demonstrated to be a literal conflict with the development plan policies. The development would provide tolerable levels of privacy. Neither would there be a material conflict with the objectives of national policy to seek a good standard of amenity for existing and future occupants. The slight reduction in amenity which would occur would be outweighed in the public interest by the social and economic benefit of providing 2 modern dwellings including the net addition of 1 dwelling to the housing stock dwelling in an area with an acknowledged housing shortfall and where policies for the supply of housing are out of date, housing land is scarce and the outward expansion of the urban area is constrained by the Green Belt. The appeal should therefore be allowed.

*Robert Mellor*

INSPECTOR

## **SCHEDULE OF CONDITIONS**

1. The development hereby permitted shall be begun before the expiration of 3 years from the date of this permission.

Reason: To comply with the requirements of Section 91 of the Town and Country Planning Act 1990.

2. The development hereby permitted shall be carried out in accordance with the following approved plans and information: CRAN/001 Rev 5, CRAN/002, CRAN/003A, CRAN/004A Rev 1 and CRAN/008.

Reason: For the avoidance of doubt and in the interests of proper planning.

3. No development shall take place until samples of the materials to be used in the construction of the external surfaces of the development hereby permitted have been submitted to and approved in writing by the Local Planning Authority. Development shall be carried out in accordance with the approved details.

Reason: To protect the character and appearance of the area.

4. Neither of the dwellings hereby permitted shall be occupied until all the windows at first floor level in the side elevation shall have been glazed in obscure glass to a standard comparable with Level 4 of the Pilkington Glass range. These windows shall be non-opening below a height of 1.7 metres taken from internal finished floor level, and, following their installation in accordance with this condition, they shall not thereafter be altered in any way.

Reason: To maintain the privacy of adjoining residents.

5. No demolition or construction works relating to this permission shall be carried out: before 07.30 hours or after 18.00 hours on Monday to Friday (inclusive); before 08.00 hours or after 13.00 hours on any Saturday; or at any time on Sundays and Bank or Public Holidays.

Reasons: In the interests of residential amenity.

6. No development shall take place until details of both hard and soft landscape works have been submitted to and approved in writing by the Local Planning Authority and these works shall be carried out as approved before either of the dwellings is first occupied. These details shall include:
  - (a) all boundary treatments and means of enclosure;
  - (b) car parking layout and surfacing;
  - (c) other hard surfacing materials;
  - (d) existing trees to be retained; and
  - (e) existing hedgerows to be retained.

Reason: To protect the character and appearance of the area and the amenity of adjoining occupiers.

7. Notwithstanding the provisions of Schedule 2, Part 1 Classes A, B, and C of the Town and Country Planning (General Permitted Development) (England) Order 2015, as amended, (or any order revoking and re-enacting that Order with or without modification), there shall be no additional openings in the north west or south east elevations and no enlargement or extension of either of the dwellings hereby permitted or alterations to the roofs.

Reason: To allow the Local Planning Authority to retain control of the development in the interests of the neighbours' residential amenities.

8. Neither of the dwellings hereby permitted shall be occupied until:
- (a) details of the arrangements to be made for surface water from the site to be intercepted and disposed of separately so that it does not discharge into the highway have been submitted to and approved by the Local Planning Authority; and
  - (b) those details shall have been provided as approved.
- Once provided, those details shall be retained thereafter.

Reason: In order to minimise danger, obstruction, and inconvenience to users of the highway and of the premises.