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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/17/3172522**

**9 & 11 Crossfields, St Albans AL3 4NF**

- 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 H & F Hester against the decision of St Albans City & District Council.
  - The application Ref 5/2016/2754, dated 8 September 2016, was refused by notice dated 9 March 2017.
  - The development proposed is the demolition of 9 & 11 Crossfields and erection of four dwellings.
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### Decision

1. The appeal is allowed and planning permission is granted for the demolition of 9 & 11 Crossfields and erection of four dwellings at 9 & 11 Crossfields, St Albans AL3 4NF in accordance with the terms of the application, Ref 5/2016/2754, dated 8 September 2016, subject to the conditions set out on the attached schedule.

### Application for costs

2. An application for costs was made by H & F Hester against St Albans City Council. This application is the subject of a separate Decision.

### Procedural Matters

3. The application followed the refusal of planning permission for another proposal (Ref 5/2016/1293) which included the erection of 5 detached dwellings on a larger site.

### Policy Context

4. 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).
5. 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 Council has acknowledged that it can only demonstrate a 3.6 years supply of housing, the LP Policies for the supply of housing are by that definition out of date.

6. The courts have recently confirmed that policies for the supply of housing do not include other development management policies that may affect supply and which in consequence are not rendered out of date by paragraph 49.
7. 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.

### **Main Issues**

8. In its appeal statement the Council defines the main issues for the appeal as: *'firstly the impact of the proposed development on the character and appearance of the locality; and secondly the effect of the proposals on the living conditions of the occupiers of adjoining properties in relation to privacy'*. Whilst the Council's reason for refusal referred only to privacy in relation to one adjoining property (No 15), other neighbours have also alleged that there would be harm to their privacy and also to their outlook. I agree that it is appropriate to also consider other adjoining properties. Harm to the outlook from the garden at No 15 was a reason for refusal of the previous proposal. Parking provision was not clearly set out as a reason for refusal but has been raised as an issue by interested persons.
9. Having regard to the reasons for refusal, representations from interested persons and to local and national policy, the main issues are considered to be: the effect of the development on the character and appearance of the locality; the effect on the living conditions of neighbouring occupiers in respect of privacy and outlook; whether the provision for parking would harm highway safety or result in significant congestion; and whether any identified harm would outweigh, or be outweighed by, any benefits of the development.

### **Reasons**

#### Character and Appearance

10. Saved LP Policy 69 *'General Design and Layout'* provides amongst other things that all development shall have an adequately high standard of design taking into account *'(i) Context – The scale and character of its surroundings in terms of height, size, scale, density or plot to floorspace ratio'*. Policy 69 also requires that account be taken of other LP policies including Saved LP Policy 70 *'Design and Layout of New Housing'*. That policy provides that the design of new buildings should have regard to its setting and the character of its surroundings and meet other objectives set out in the policy.
11. Nos 9 and 11 Crossfields are adjoining detached bungalows in a street and area where there is a mixture of single storey and two storey houses that appear to date from the 1950s and 1960s and which are typical of suburban development in many parts of the country at that time. A bungalow nearby at 2 Netherway has recently been replaced by a large house. On the appeal site both bungalows have short front gardens that slope down towards the road. The

level rear gardens are unusually long in this area. At each property parts of the rear garden have been fenced off and are not used by the occupiers.

12. The proposal would replace the bungalows with two detached houses on the street frontage and a pair of semi-detached houses to the rear. All four houses would share a pedestrian and vehicular access through the gap between the two frontage plots.

#### *Frontage Dwellings*

13. The proposed frontage houses would be similar in their design and siting to those included in the previous application. I note that the Council did not then object to their design or scale. Each would have 2 main floors of accommodation together with accommodation in the roofspace. Some basement accommodation would be included to take advantage of the change in ground levels. The land falls from north to south on the frontage and the overall height to the ridge at the northern dwelling would be only marginally less than the adjoining dwelling at No 7. That of the southern dwelling would be only marginally higher than the adjoining dwelling at No 15. In each case the height difference would be less than that between the existing bungalows and their neighbours.
14. Each proposed dwelling would be a little narrower than their existing neighbour. The gap formed by the shared central access would be wider than that between the bungalows which would retain a sense of spaciousness notwithstanding the increased height of the dwellings. Whilst each dwelling would stand a little closer to the road than their neighbours, I saw that there is already variation in the way that existing houses in this and nearby streets are set back from their road frontages.
15. I conclude that the height, size and scale of the frontage dwellings is similar to that in the previous scheme when it was not a reason for refusal, would not appear out of character in this context, and would not be harmful to the appearance of the streetscene or in their visual relationship to these adjoining dwellings at Nos 7 and 15.

#### *Backland Dwellings*

16. The pair of semi-detached house proposed to the rear would be a novel form of layout in this local area but they would be set well back from the road and only seen from the street through the gap between the frontage houses. As such they would have little impact on the streetscene or on the character of the wider area. They have been set further in from their side boundaries where their visual impact when seen from adjoining private land would be much reduced compared to the previous scheme which proposed 3 large detached houses in this location and which included part of the curtilage of No 7.
17. By constructing 4 dwellings on land currently occupied by 2 it is obvious that there would be an increase in the current density of that site. However there is already considerable variety in plot size and shape in the local area. The locality already includes adjoining development in Allandale where plot sizes are typically smaller and density higher. Nevertheless the variations in plot and garden dimensions in each road are not readily apparent in public views from the street because most dwellings are closely spaced side to side, thereby screening views towards the rear. That would not change materially.

18. A footnote to Policy 69 explains that where density is used to judge the effect of building volumes on the character of the area, the Council will use the measure of *'habitable rooms per hectare'* for residential development. However in this case the Council has not employed the habitable room measurement of density and there is no other evidence before me on that point. In any event neither plot size nor the number of habitable rooms would be of much assistance when judging the impact of development on character and appearance in a suburban area of this type and where there is such variation in plot size.

#### *Access Design and Layout*

19. In relation to Policy 70 the Council relies on the objectives in sub-paragraphs (i) and (ii). LP Policy 70(i) *'Design and Layout'* provides that *'massing and siting of buildings shall create safe, attractive spaces of human scale'*. The Council's Design Advice Leaflet No 1 clarifies that human scale relates to the height and width of buildings and spaces from the pedestrian's point of view and that safety relates to concepts of defensible space and security. It was not intended to relate to highway safety as the Council now suggests.
20. The previous application was refused in part because it had not been demonstrated that refuse, fire appliances and other large vehicles could turn within the accessway. The access has since been altered and the Council no longer objects on those grounds. However the Council's appeal statement is critical of the narrow 1m width of what they describe as a discontinuous 'footway' beside the access as unsafe. There is convincing evidence from the Appellant that this is a 1m service strip and not a footway. The adjacent 4.8m shared surface access for vehicles and pedestrians is confirmed in correspondence to be acceptable to the highway authority and consistent with their guidance. I am aware that such shared access driveways are widely employed for small developments of this type.
21. LP Policy 70(iv) *'Parking and garaging'* provides that *'the parking and garaging requirements set out in Policies 40 and 43 shall be met without allowing the motor car to dominate public areas'*. Design Advice Leaflet No 1, in seeking to avoid such domination, also advocates the provision of residents' parking spaces at the rear of houses with access between the houses. The layout is consistent with that advice. I consider that the shared access driveway parking area is an area which only the residents of the appeal scheme and their visitors would use and that it would not qualify as a public area for the purposes of that policy. Neither do I consider that the layout would be unattractive. As such the design and layout, by siting the parking behind the frontage houses, is consistent with LP Policy 70(iv) and the Design Advice Leaflet.

#### *Conclusion*

22. Overall I conclude on this issue that the development would have an acceptable impact on the character and appearance of the locality and that there would be no material conflict with the development plan or national policy in that regard.

#### Living Conditions

##### *Privacy*

23. Although not referred to in the decision, LP Policy 70(vi) is potentially relevant to the privacy issue cited in the reasons. It seeks a *'tolerable level of privacy'*

*in habitable rooms and to a lesser extent in private gardens’.* It indicates that this will normally be achieved between facing windows to the rear of dwellings provided that they are at least 27m apart. There are qualifications including the use of alternative methods of achieving a tolerable level of privacy and increasing distances where greater space between buildings is a feature of the character of the area.

24. In this case it is not disputed that the facing windows of habitable rooms in the appeal properties and the adjoining dwellings would in every case be at least 27m apart. In my experience that is already a generous distance compared to the standards adopted by many other authorities. I do not consider that a greater separation distance is justified on the basis that the first floor bedroom windows in the semi-detached house would include facing windows on the front elevation. Neither is a greater separation for privacy reasons here justified on the basis of the area’s character.
25. Some typically oblique views towards the neighbours’ gardens would be available from bedroom windows at shorter distances. But the LP does not include minimum distances for views into gardens. Lower standards of privacy are to be expected in suburban areas such as this where most rear gardens are already overlooked from neighbouring properties. For example I saw that the garden of No 11 is currently overlooked from first floor windows at No 15 and that the garden at No 9 is overlooked from the first floor windows of No 7.

#### *Outlook*

26. The previous application was refused in part because it would have been visually overbearing in the outlook from the rear amenity spaces of neighbouring properties. The Council’s reason for refusal of the current scheme does not clearly restate an objection on these grounds but its appeal statement does claim an overbearing impact on No 15 Crossfields. The current scheme has reduced the number and size of the houses at the rear and has placed them further from the boundaries. The neighbouring dwellings at Nos 7 and 15 Crossfields each have large rear gardens and I do not consider that the smaller houses now proposed and set away from the respective garden boundaries would have an overbearing impact as viewed from either the house or the garden. Neither would the positioning of the front elevation of the frontage dwellings in advance of the adjacent houses at Nos 7 and 15 materially intrude into the outlook from those dwellings.
27. At the rear the nearest Allandale houses are set at a slightly lower level than the appeal site but I consider that the separation distance of more than 27m between the houses would still avoid an unacceptably overbearing effect in views from those properties or their gardens.

#### *Conclusion*

28. Overall I conclude on this issue that whilst some direct views would be available between the appeal dwellings and neighbouring properties the development would result in a tolerable level of privacy in habitable rooms and lesser but also tolerable privacy in private gardens both within the development and at neighbouring properties. It would also avoid an overbearing impact on outlook from neighbouring properties. Consequently there would be no conflict with relevant development plan policies or national policy in this regard.

### Parking Provision

29. Parking provision is a matter that has been raised by interested persons. The Council's reason for refusal did not clearly state an objection to the amount of parking. Neither does the Council's appeal statement define parking provision as a main issue. Nevertheless under a character and appearance heading that statement goes on to claim that there is a conflict with LP Policy 70 which cross refers to parking standards in LP Policy 40 that are said to seek provision of 12 spaces whereas only 8 spaces are to be provided. However there was no objection by the Council to the amount of parking proposed in the previous scheme which would have provided only 11 parking spaces for 5 dwellings, a greater shortfall against the standards LP Policy 40.
30. To the extent that there may be a literal conflict with LP Policy 40 in relation to parking provision, that policy was not directly referenced in the decision and it appears to be out of date if it is interpreted as a minimum requirement. The Revised Parking Standards (2002) lack the full weight of an adopted development plan policy but they do provide for the treatment of the Policy 40 parking standards as maxima, not minima. They do not specify alternative minimum standards, instead specifying that schemes 'slightly below' standard may be accepted. The Council has raised a new argument at the appeal stage that the parking provision would be more than 'slightly below' the LPR 40 figures. However the Council has not identified what harm may result, only saying that on-street parking has been identified as a concern of residents. There is no highway authority objection.
31. Each dwelling would be provided with 2 parking spaces. Whilst there is no separate on-site provision for visitors, I saw that there is unrestricted kerbside parking in the area and that, whilst the roads are narrow, there was ample free kerbspace available in the area for visitors when I visited. No 11 currently has a single garage but no full length parking space and it appears likely that its occupier parks on the street. There may be less on-street parking space available at other times of day. If so, on street parking may slightly inconvenience other motorists at times by briefly delaying 2-way movements but I do not consider that there is evidence to demonstrate that this development would result in a significant adverse impact on safety or congestion or character or conflict with any up to date local or national policy objectives in that regard.

### **Benefits**

32. 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 and can only demonstrate a 3.6 year supply. There is no evidence before me to demonstrate when this shortfall will be rectified by bringing the adopted development plan up to date and securing the delivery of additional housing.
33. The proposed development would result in a net gain of 2 dwellings 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 the development would make efficient use of an area of underused land in a city where housing land is

obviously scarce and where the Green Belt is a constraint on outward expansion of the urban area.

### **Other Matters**

34. I acknowledge that an appeal has recently been dismissed in relation to a refused permission for a replacement dwelling at No 15 Crossfield (Ref APP/B1230/W/16/3172790). However that dismissal related to the particular design of that scheme and to highway safety matters which are different from the proposal before me. Neither this nor the other matters raised outweigh the reasons that have led to my decision.

### **Conditions**

35. 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.
- Two of the drawings listed in Condition 2 are only indicative and have therefore been deleted from the approved drawings.

36. The revised conditions are set out on the attached schedule.

### **Conclusions**

37. For the above reasons and notwithstanding that the on-site parking provision is less than that required, I conclude that the proposed development is in overall accord with the development plan and that the benefits of providing additional dwellings in an area where there is a shortfall significantly and demonstrably outweigh the slight harm to privacy, outlook and the literal conflict with LP Policy 40 in respect of parking provision, which policy is out of date if treated as a minimum requirement.

*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:
  - 445-01 (received 08/09/2016),
  - 445-10-F Proposed block plan (received 9.11.16),
  - 445-11-C Plot 1 and 2 elevations (received 8.9.16),
  - 445-12-A Plot 1 and 2 plans (received 8.9.16)
  - 445-14-C Plot 3 and 4 plans and elevations (received 8.9.16),
  - TPP/911CSAH/010B Tree Protection Plan: (received 29.9.16).

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. No development shall take place until details of the balustrades to Plot 1 and Plot 2 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

5. 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. These details shall include:
  - (a) proposed finished levels and contours;
  - (b) means of enclosure;
  - (c) hard surfacing materials;
  - (d) proposed and existing functional services above and below ground (e.g. drainage, power, communications cables, pipelines etc, indicating lines manholes, supports etc.);
  - (e) existing trees to be retained;

Reason: To protect the character and appearance of the area

6. An arboricultural consultant (whose details shall be notified in writing to the Local Planning Authority before any work is commenced on site) shall supervise tree protection during the course of development including demolition and construction phases.

Reason: To protect existing trees during the construction works in order to ensure that the character and amenity of the area are not impaired.

7. The plans and particulars submitted in accordance with Condition 5 above shall include details of size, species and positions or density of all trees to be planted, and the proposed time of planting.

Reason: To ensure satisfactory landscape treatment of the site in the interests of visual amenity.

8. Soft landscape works required to be submitted under Condition 5 shall include:
  - (a) planting plans;
  - (b) written specifications (including cultivation and other operations associated with the plant and grass establishments);
  - (c) schedules of plants, noting species, plant sizes and proposed numbers/densities where appropriate;
  - (d) an implementation programme.

Reason: To ensure satisfactory landscape treatment of the site in the interests of visual amenity.

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.

Reason: To ensure satisfactory landscape treatment of the site in the interests of visual amenity.

10. No burning of materials shall take place where it could cause damage to any tree or tree group to be retained on the site or on land adjoining.

Reason: To protect health of trees to be retained in the interests of visual amenity and to comply with Policy 74 of the St. Albans District Local Plan Review 1994.

11. 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.

12. No part of the development hereby permitted shall be commenced until details of the method of the washing of the wheels of vehicles leaving the site during the construction of the dwellings shall have been submitted to and approved in writing by the Local Planning Authority. The approved method shall be operated at all times during the period of site works.

Reason: In the interests of highway safety and visual amenity.

13. Notwithstanding the provisions of Classes A, B, C and D of Part 1 of Schedule 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 hereby permitted, including any additions or alterations to the roof, without the prior written permission of the Local Planning Authority.

Reason: To allow the Local Planning Authority to retain control of the development in the interests of: the character and appearance of the dwellings, the development as a whole, the street scene and the general locality; neighbours' visual and residential amenities; to safeguard existing and proposed landscaping; to ensure the retention of adequate amenity space.

14. No part of the development hereby permitted shall be occupied until details of screened facilities for the storage of refuse shall have been submitted to and approved in writing by the Local Planning Authority and constructed in accordance with the approved details. The storage facilities shall thereafter be retained as constructed and shall not be used for any other purpose.

Reason: To ensure a satisfactory appearance and standard of environment and to comply with Policies 69 and 70 of the St. Albans District Local Plan Review 1994.

15. 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.

Reason: To ensure that adequate protection of human health is maintained and the quality of groundwater is protected and to comply with Policy 84 of the St. Albans District Local Plan Review 1994.

16. No part of the development hereby permitted shall be occupied until all the parking spaces shown on the approved drawings have been provided. Those spaces shall measure a minimum of 2.4m x 4.8m and, once provided, they shall be retained for the purpose provided as an ancillary to the development.

Reason: To ensure that adequate parking provision is made to meet the needs of the development both now and in the future in the interest of highway safety and the free flow of traffic.

17. No part of the development hereby permitted shall be occupied until arrangements shall have been put in place for surface water from the site to be intercepted and disposed of separately so that it does not discharge on to the public highway, in accordance with details which shall have previously been submitted to and approved in writing by the Local Planning Authority.

Reason: In order to minimise danger, obstruction, and inconvenience to users of the highway and of the premises. To comply with Policy 34 of the St Albans District Local Plan Review 1994.

18. The gradient of access shall not be steeper than 1 in 10 or 10% for the first 5 metres from the edge of the carriageway.

Reason: So that a vehicle is approximately level before being driven onto the carriageway and that vehicles may enter and leave the site with the minimum of interference to the free flow and safety of other traffic on the highway, in the interests of highway safety.

19. No part of the development hereby permitted shall be occupied until the proposed access has been constructed so that it will accommodate adequately both fire appliances and refuse collection vehicles. Details of the design, layout and weight bearing capacity of the access shall be submitted to and approved in writing by the Local Planning Authority and the width of the access road shall be maintained at not less than 4.8m. All works relating to the construction of the access shall be carried out in accordance with the approved details.

Reason: To ensure that the access is constructed of a sufficient standard to serve the development hereby approved and in the interests of fire safety.

20. Concurrent with the construction of the access, sight lines of 2.4m by 43m shall be provided and thereafter permanently maintained in each direction within which there shall be no obstruction to visibility between 0.6m and 2.0m above carriageway level.

Reason: To provide adequate visibility for drivers entering or leaving the site in the interests of highway safety.

21. The windows listed below shall be glazed in obscure glass and shall be non-opening below a height of 1.7m measured from the internal finished floor level of way and shall be retained in that condition. The windows referred to above are:
- (a) in the first floor of the north elevation of the dwelling on Plot 1 facing towards No. 7 Crossfields;
  - (b) in the first floor of the south elevation of the dwelling on Plot 2 facing towards No. 15 Crossfields;
  - (c) in the first floor south elevation of the dwelling on Plot 3 facing towards No. 15 Crossfields;
  - (d) in the first floor north elevation of the dwelling on Plot 4 facing towards No. 7 Crossfields.

Reason: To maintain the privacy of adjoining residents.