
Appeal Decision

Site visit made on 27 November 2017

by S Harley BSc(Hons) MPhil MRTPI ARICS

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

Decision date: 11th December 2017

Appeal Ref: APP/B1930/W/17/3179721
226A London Road, St Albans AL1 1JQ

- 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 D Allen against the decision of St Albans City & District Council.
 - The application Ref 5/17/0006, dated 1 January 2017, was refused by notice dated 23 May 2017.
 - The development proposed is demolition of existing and construction of nine apartments with ancillary parking and amenity space.
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Decision

1. The appeal is dismissed.

Procedural Matter

2. The development was described slightly differently on the planning application form, the decision notice and the appeal form. The above description succinctly describes the proposal and I have considered the appeal on this basis.

Background and Main Issue

3. There is one main issue which is the effect of the proposed development on the living conditions of occupants of all land and buildings. I consider this main issue to have two parts. The first part is whether or not the proposed development would provide satisfactory living conditions for occupants of the proposed apartments. The second part was not a reason for refusal set out on the decision notice but has been identified through representations made by third parties. It is the effect of the proposed development on the living conditions of occupants of adjacent land and buildings.

Reasons

4. Planning applications and appeals should be determined in accordance with the development plan, which includes the St Albans District Local Plan Review 1994 (the LP), unless material considerations indicate otherwise¹. The weight to be attached to policies in the development plan, whatever their chronological age, should be according to their degree of consistency with the National Planning Policy Framework (the Framework), which sets out the Government's planning policies and is a material consideration.

¹ Section 38 of the Planning and Compulsory Purchase Act 2004

- 5 The appeal site is in a predominantly residential area close to the centre of St Albans. There is a bus stop immediately in front of the site and good access to services and facilities. Redevelopment for residential use would be acceptable in principle, subject to compliance with local and national planning policies, and provided there were no material considerations to indicate otherwise.
- 6 The appeal property is a two storey style house, in use as two flats, with garages and a workshop in the garden. The appeal site is a large, wedge-shaped plot; considerably narrower at the north-west end than at the south-east end. The proposed building would occupy almost the full length of the site. It would be roughly rectangular in shape but with staggered sections projecting to a greater or lesser extent at each floor level. There would be at ground floor level two flats and vehicle/cycle parking in an under-croft; four flats at first floor level; and three flats at second floor level. Parts of the rear elevation would be in very close proximity to the railway land behind.
- 7 The Supplementary Planning Guidance "Design and Layout of New Housing Leaflet No 1" 1998 (the SPG) supplements Policy 70 of the LP. In respect of living conditions it is based on the BRE Guide².
- 8 The private "balcony" of Flat 2 would be an awkward shape, sandwiched between the site boundary and part of the under-croft. The under-croft, which here has two storeys above it, would be to the south of the kitchen and living/dining room windows/patio doors and "balcony" of Flat 2 creating a gloomy and oppressive effect. This combined with the railway embankment to the rear, which is some 3m high³, means there would be a particularly poor outlook from the living/dining room and "balcony". The windows of the other proposed apartments would have an acceptable outlook for occupants across the wide London Road and/or over the railway line to the golf course beyond.
- 9 The SPG states that, ideally, living room windows should face south or west, particularly when dwellings would have a single aspect. Three of the proposed apartments would have a single, north-east facing aspect, which would be less than ideal. Moreover, the windows of these would face a row of three trees which would add to the gloomy conditions within the living accommodation, even if the rooms benefited from ceiling heights of 2.5m.
- 10 The proposed flats would each have one or more private balcony area(s). Whilst some of these would be of a useful size and shape, others at about 4 sq. m in size or tapered to fit within the constraints of the site, would be significantly less so. An area of open space would be provided within the appeal site but this would be at the northern corner; shadowed by the proposed three storey building and tree planting; and next to the busy London Road and bus stop. The Council calculates the useable communal amenity space as about 75 sq.m, which, together with the balconies, would amount to some 135 sq.m or about half the 270 sq.m amenity space envisaged by the SPG guidelines. The appellant calculates the private communal gardens around the building as being about 117.2 sq.m⁴ which, with the balconies, would amount to about 65.5% of the guidelines. Even taking the appellant's figures, I consider the proposed open area to the front of the site would not amount to a particularly useable attractive amenity space, although it would provide an open setting for

² Site Layout and Planning for Daylight and Sunlight, A Guide to Good Practice, the British Research Establishment

³ Appendix 3 accompanying the Appeal Statement (the Amenity Statement)

⁴ Paragraph 2.5 Appeal Statement

the building, and that some balconies would be of contrived shape and restricted size making them much less useful.

- 11 Examples of flats that have little or no private amenity space have been drawn to my attention. I do not have the full planning history of these or the reasons why they were considered acceptable. I acknowledge that a variety in types of accommodation, including without private amenity space, provides choice for future occupants. Nevertheless, I consider that, where there is new build development taking place, it would be good design to provide private and/or communal amenity space that is of a functional size and shape and desirable to use within the site, even given the presence of public parks in the locality.
- 12 For the reasons set out above I conclude that the proposal would not provide satisfactory amenity space and would fail to provide good quality internal space within four of the proposed apartments. The proposal would therefore not provide satisfactory living conditions for occupants of the proposed apartments.
- 13 The proposed building would step down in height from three storeys in the middle section; to two storeys at the north-west end; and single storey at the south-east end. Due to the shape of the building, and the high internal floor to ceiling heights, the roofs would be of significant bulk and height even though they would be hipped.
- 14 The proposed building would be significantly closer to the shared boundary with No 224A London Road than the existing house. It would be some 1.5m from the boundary and partly stepped away from it, so that the three storey element to the rear would be about 4.5m away. The roofs would be hipped away from the boundary. However, the building would be to the south of No 224A and would extend, in a mix of two and three storey elements, about two thirds of the length of its garden overshadowing the garden, in particular, and the windows in the rear elevation to a slightly lesser extent, creating a gloomy and oppressive outlook for occupants of that property. For these reasons I conclude that the proposed development would have a significant and unacceptable adverse effect on the living conditions of occupants of No 224A.
- 15 The proposed development would be to the north of No 228 London Road which is a three storey building in use as flats. The proposed building would not protrude beyond the main rear wall of No 228 and the nearest part to the shared boundary would be single storey. For these reasons I conclude that the proposed development would not have an unacceptable effect on the outlook for occupants of that property.
- 16 There would be no windows in the side walls of the proposed building that would directly overlook windows or gardens at Nos 224A and 228. The balconies would have privacy screens that could be secured by condition. The proposed building would be of sufficient distance from properties on the other side of London Road to prevent significant overlooking. Accordingly I do not consider there would be a loss of privacy for occupants of adjoining properties or those opposite that would justify dismissing the proposal on that basis.
- 17 For the reasons set out above I conclude that the proposed development would not provide satisfactory living conditions for occupants of the proposed apartments and would have a significant adverse effect on the living conditions of occupants of No 224A. Accordingly it would conflict with Policies 69 and 70 of the LP and the guidance in the SPG. It would also conflict with the core

planning principle of the Framework that seeks to secure high quality design and a good standard of amenity for all existing and future occupants of land and buildings. The proposal would, therefore, not amount to good design and would not be environmentally sustainable.

Other Matters

- 18 The site overall does not meet the definition of previously developed land set out in Annex 2 of the Framework, which specifically excludes land in built-up areas such as private residential gardens. I therefore give this point little weight in the context of the proposal before me.
- 19 The Planning (Listed Buildings and Conservation Areas) Act, 1990, requires that special attention is paid to the desirability of preserving or enhancing the character or appearance of conservation areas. The Cunningham Avenue Conservation Area (the CA) is on the other side of London Road to the appeal site and further to the north. The proposed development is some distance from the CA and the proposal would have no effect on its character or appearance.
- 20 The planning application was refused by the Planning Committee against the Officer recommendation. That, in itself, is not a material planning consideration and I have reached my own conclusions based on the planning merits of the proposal before me.
- 21 I have taken into account other relevant matters raised, including the lack of objections from statutory consultees, and that the proposal has been reduced in size compared to a previous proposal. None of these matters have led me to any different conclusions.

Planning Balance and Final Conclusion

- 22 The Council has indicated that, for the purposes of this appeal, a five-year supply of deliverable housing land cannot be demonstrated. Paragraph 49 of the Framework states that relevant policies for the supply of housing should not be considered to be up-to-date if the Council cannot demonstrate a five-year supply of deliverable housing sites. Where relevant policies are out-of-date, Paragraph 14 of the Framework indicates that permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against policies in the Framework taken as a whole (the tilted balance).
- 23 As indicated above the proposal would fail to provide satisfactory living conditions for future occupants of the new building and would have a significant adverse effect on the living conditions of occupants of No 224A. It would conflict with the development plan in these respects and with a core planning principle in the Framework. It would not be good design or environmentally sustainable. I give these matters significant weight.
- 24 The addition of seven dwellings would provide much needed housing in a location which has good accessibility to facilities and services. There would be economic benefits from jobs during construction and spending by future residents in the local economy. However, the scale of these benefits would be modest.
- 25 Applying the tilted balance I conclude that the adverse impacts of the proposed development would significantly and demonstrably outweigh the benefits when

assessed against the Framework taken as a whole. As such, the scheme does not benefit from the presumption in favour of sustainable development and I conclude the appeal should not succeed.

S Harley

INSPECTOR