



Appeal Decision

Site visit made on 19 June 2019

by John Morrison BA (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 9 July 2019

Appeal Ref: APP/B1930/W/18/3216882
22-24 Grove Road, Harpenden AL5 1PX

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Jarvis Homes against the decision of St Albans City & District Council.
 - The application Ref 5/17/3209, dated 13 November 2017, was refused by notice dated 16 November 2018.
 - The development proposed is the demolition of existing buildings and redevelopment of the site for residential use comprising 4 one bed and 39 two bed flats with associated underground and surface level car parking, amenity space and other associated works.
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Decision

1. The appeal is dismissed.

Procedural Matter

2. Since the determination of the planning application, the Harpenden Neighbourhood Plan (HNP) has been made. The Council have referred to those policies they consider relevant in their submissions. The appellant has done similar in their evidence. I shall have regard to the development plan at the time I determine this appeal which includes the HNP.

Main Issues

3. There are three main issues. These are the effect of the proposed development on a) the character and appearance of the area; b) the living conditions of future occupants; and c) whether the proposed development would make appropriate provision for affordable housing and other contributions necessary to satisfactorily mitigate its effects.

Reasons

Character and Appearance

4. The appeal site is an expansive, flat and roughly rectangular land parcel. It is mostly laid to hard standing and comprises a number of single and two storey commercial buildings mainly associated with vehicle repair. There are access points either side of the main frontage building which lead to a yard area where vehicles are parked/stored.
5. The immediate area is the proverbial mixed bag of uses. There is a household waste and recycling centre to the north (rear) and a cluster of residential

dwelling opposite (south). To the west, on the north side of Grove Road, there is a builder's yard and beyond that there are town centre retail uses. To the south side of Grove Road and running west there are further residential uses.

6. Whilst outline planning permission is sought, details pertaining to access, layout and scale have been provided and proposed for consideration at this stage. The proposed development would comprise three detached two and three storey blocks. Block A would be three storeys and to the front of the site, set back from and facing the road. Blocks B and C would be to the rear and two storeys in part, accessed via a private driveway between block A and the aforementioned builder's yard. Parking would be provided via a communal court. There would be communal open space between the blocks.
7. The development proposed would be of a high density, noticeably so when compared to the much lower density of frontage development that defines the character of the area in residential terms. The type of development, being a flatted one, would also run against the general feel of the area which comprises mainly single, private and conventional dwellings in their own curtilage. The appeal scheme would be sprawling and expansive, spreading over a wide area and identifiable as a single entity. It would therefore be a marked change to the more compact character of other residential uses. There would be some degree of harm arising from these matters.
8. My main concern however would be the scale of the proposed development and in particular the frontage block. At three storeys and of a substantial range close to the front of the site it would be highly prominent in the street scene, it would be taller than the builder's yard main building and sit further forwards. It would dwarf the dwellings opposite and be completely out of scale with the more modest cottage style terraced dwellings that face the south side of Grove Road.
9. I do not object to the design elements per se or the use of a form that would be a feature of the street scene. Equally, I see that the design and appearance is not fixed at this stage. However, there is feature in a good way and feature in a bad way and due to the significant scale imbalance that the proposed development would cause, I feel this would be the latter. The raised height of block B to facilitate under ground parking would increase its prominence against smaller buildings and thus add to this harm but it is the overall scale of the entire scheme, with particular regard to the height and spread of the frontage block which would be most harmful in the context of this main issue.
10. With the above in mind, the proposed development would be harmful to the character and appearance of the area, such that it would be contrary to Policies 2, 4, 69 and 70 of the Local Plan¹ and Policies ESD1, ESD2 and ESD10 of the HNP. Amongst other things, and along with section 12 of the Framework², these policies seek to ensure that new development, housing specifically, should safeguard and make a positive contribution to the character of settlements, have regard to the character and amenity of an area, be designed to a high quality, take account of surroundings and not have a harmful visual impact on the townscape.

¹ St Albans District Local Plan Review 1994

² The National Planning Policy Framework 2019

11. I note the Council's mention of Policy 47 in their reasons for refusal in regard to this main issue. On my reading however it seems to be more concerned with landscaping and tree preservation which don't seem to me to be areas of concern in character and appearance terms for the Council. I have therefore not referred to it. Notwithstanding the fact that the other policies I have referred to are more than sufficient to explain and support the key matters at play.

Living Conditions

12. The crux of the Council's stance on this main issue concerns all three of the proposed blocks and can be summarised as being related to the quality of the outlook, disturbance from noise and nuisance from odour. I shall aim to address each matter in turn but there may be some overlap.
13. The appellant has not provided floor plans or the make up and location of each individual flat. These detailed matters are not for consideration at this stage. It is equally not clear for these reasons how many of the total 44 flats would be contained in each block although it is reasonable to assume that blocks A and B would have the higher number and C the smaller given their size. The layout and scale of the blocks, when factoring in the number of units proposed, would tend to suggest that some may be single aspect, on the ground floor and the rear of blocks B and C.
14. It is in this respect that I have concerns. Unit(s) in these areas would have an outlook consisting of the rear elevation of a household waste and recycling centre which is slightly elevated from the appeal site. It also appears to have high sided metal security fencing associated with it which would be in close proximity to said units which is unclear from the evidence if it is in the control of the appellant. The outlook from the windows in these units would therefore be unacceptably poor. The difference in land levels and the heights of the proposed blocks would also garner an oppressive and hemmed in feel in respect of the use of communal outdoor spaces to the rear.
15. The outlook from the front and side of the blocks would be less of a problem to my mind. The developed site would be more expansive in the spaces between the front of blocks B and C and the rear of block A which would offer a more unencumbered outlook. In addition, some of the units in the rear of block B would look over an adjacent allotment which would not be as poor as a recycling facility but I do not feel that these matters together would be sufficient to make up for the shortcomings I have identified.
16. In terms of noise and odour, the household waste and recycling centre is not a land fill site and consequently the materials deposited there tend not to be overly odorous to the point that they would necessarily be the source of nuisance. In terms of disturbance from noise, it strikes me that as what appears to be a local authority site, the centre would be controlled by reasonable operating hours and as such future occupiers of the units would not be unacceptably disturbed during those periods when some quieter time would be expected. It is also perhaps pertinent to point out that the proposed development would be in a semi commercial area and fronting a relatively busy main road which would mean occupiers would be used to a degree of activity at most times.

17. I return to the point about the absence of floor plans in the appeal scheme and with this there is, I admit, a degree of ambiguity as to the final location of units and thus where windows in each unit will look. I would therefore concede that it is eminently possible some of my concerns with regard to outlook could be addressed. Referring to my earlier comments, I do not however feel that the problems could be eliminated to the point the scheme would be acceptable in regard to this main issue. The layout is fixed, as is the scale. One can therefore take an educated guess as to where the units would have to be and it seems, on my understanding of the plans in this context, that ground floor single aspect units would be somewhat unavoidable. I would therefore be inclined to agree with the Council that such matters could not be 'ironed out' at detailed stage.
18. The appeal scheme would therefore be harmful to the living conditions of future occupiers in the terms I have described it. This would result in conflict with Policy 70 of the Local Plan. Amongst other things and along with paragraph 127 of the Framework, this policy seeks to ensure that new development is acceptable in the context of the amenities of existing and future occupants.

Affordable Housing and other Developer Contributions

19. Policy 7A of the Local Plan sets out, amongst other things, that developments of 15 or more units or on sites of over 0.4 hectares in towns should make provision for affordable housing. The expected number of units would depend on the size of the proposed development but the Council's adopted SPG³ on the matter sets out a requirement of 35%.
20. There is disagreement between the Council and the appellant with regards to the amount of affordable housing provision that should be made from the appeal scheme. Details of the appellant's viability work during the life of the planning application have been set out in the appeal documentation, the findings of which the Council dispute. The crux of the disagreement is the values placed upon build costs, site value benchmark, profit and professional fees. The appellant's viability work suggests that the scheme would be unviable with affordable housing contributions. The Council's reveals that it would be viable, given there would be a sufficient surplus.
21. The appellant does state that the scheme would be able to stand the cost of providing cycle infrastructure, library provisions, youth services, play areas, open space, leisure facilities and fire hydrants. The Council do not appear to dispute these as being reasonable and proportionate. I have no reason to necessarily disagree. Further to this, and following from the Council's consideration of a revised scheme for lesser flats, the appellant has shown willingness to provide a Unilateral Undertaking (UU) as a planning obligation to make the above mentioned contributions as well as six affordable housing units which would equate to approximately 15%.
22. I am mindful that the Council and the appellant are some way apart on whether the appeal scheme would be viable with affordable housing contributions. Whilst I have no specific reason to necessarily question the appellant's conclusions on viability it does strike me as odd that a scheme that was purported to be unviable with affordable housing contributions can now stand the cost of some. I have not been advised, as far as the appellant's

³ Supplementary Planning Guidance: Affordable Housing March 2004

evidence on this matter is concerned, that any of the variables or inputs have changed. The only explanation for the level of contribution the appellant is proposing seems to come from the level of affordable housing that the Council have considered acceptable for a lesser scheme. In essence, it appears to have been applied as a rule to the appeal scheme.

23. A debate about whether a reduced provision for the appeal scheme is acceptable temporarily aside, I do not have a completed UU before me as I write this decision. It appears there is every intention of doing so from recent communications I have seen which have included the Council's comments on a draft. In the event there was an obligation for me to consider it seems from the Council's comments on the draft that they would maintain their objection that a lesser provision would not be policy compliant.
24. On the matter of policy, I do note that the development plan (Policy 7A) is worded so as to suggest that the amount of provision is a negotiable point and it is supplementary guidance that sets the 35% level. Firstly, conflict with guidance would not be the same as conflict with the development plan. Secondly, even the wording of the SPG sets out that the percentage of affordable housing will normally (emphasis added) be 35%. There is still therefore some inference that the level is not applicable in all cases.
25. With this and the above ambiguity over viability in mind, it seems to me that there is at least some room for manoeuvre in and around the 35% mark. It appears that it is the precise level over which there remains disagreement and given the appellant has said previously the scheme would be unviable with contributions and then offered a roughly 15% provision casts doubt in my mind as to the robustness of their viability work.
26. All of this aside, and as I have mentioned above, I have no completed obligation before me to secure any contributions. Be they in respect of affordable housing or the others mentioned. If there was and its content was agreed by the parties, it would only be sufficient to address concerns on this main issue, the harm I have identified in respect of the first two would remain and be unaffected. Therefore, it is the case that the wider effects of the appeal scheme could not be satisfactorily mitigated and it would provide no affordable housing which would conflict with Policy 7A of the Local Plan and Policy H6 of the HNP. These policies seek to ensure appropriate levels of affordable housing are provided through new development.

Other Matters

27. It does not appear to be in dispute that the Council are unable to demonstrate the supply of housing sites as required by the Framework. If I were to therefore follow the so called 'tilted balance' identified by paragraph 11 of the Framework and treat the most important policies accordingly I would make the following conclusions.
28. The appeal scheme would provide a number of new dwellings which would make a not insignificant contribution to the current undersupply albeit I cannot attach weight to the provision of affordable housing in its absence. As well as this social benefit, the construction phases of the scheme would support employment, generate income and expenditure as well as taxation and spending from future occupiers. However, these benefits are placed against multiple environmental harms that would result in conflict with development

plan policies not so affected by a paragraph 11 situation. It is for this reason, and taking into account the above, that I would find the adverse impacts of granting a planning permission would significantly and demonstrably outweigh the benefits. It would not therefore be sustainable development for which the presumption in favour applies.

Conclusion

29. For the reasons set out above, and whilst having regard to other matters raised, the appeal is dismissed.

John Morrison

INSPECTOR