



Appeal Decision

Site visit made on 15 July 2019

by Benjamin Webb BA(Hons) MA MA MSc PGDip(UD) MRTPI IHBC

an Inspector appointed by the Secretary of State

Decision date: 26 July 2019

Appeal Ref: APP/B1930/W/19/3225543

Land off Minister Court, Radlett Road, Frogmore, St Albans AL2 2NF

- 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 Minister Court Frogmore Ltd against the decision of St Albans City and District Council.
 - The application Ref 5/18/1945, dated 16 July 2018, was refused by notice dated 11 October 2018.
 - The development proposed is two self-build/custom build dwellings.
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Decision

1. The appeal is allowed, and outline planning permission is granted for two self-build/custom build dwellings, at Land off Minister Court, Radlett Road, Frogmore, St Albans AL2 2NF, in accordance with the terms of the application, Ref 5/18/1945, dated 16 July 2018, subject to the conditions set out in the schedule at the end of this decision.

Procedural Matters

2. The planning application was made in outline with permission sought for layout and access, with matters of appearance, landscaping and scale reserved for future consideration. Insofar as details of the appearance, scale and landscaping of the development have been shown on the submitted plans I have therefore treated these as indicative.
3. The appellant submitted revised plans with the appeal. These are plan PL01/F, and an annotated version of plan PL01/F contained within a revised Arboricultural Method Statement and Tree Protection Plan. The plans show a changed layout.
4. Layout is one of the two matters for which approval is sought, and though the changes shown are very modest, they are significant enough to reduce the level of on-site parking provision. As the level of parking provision was a matter which drew objections from interested parties in relation to the original plans, I have considered whether the interests of these parties would be prejudiced by accepting the revised plans. Given the generalised nature of the objections, I consider that they would be similarly raised, and are thus similarly applicable to the scheme as revised. Taking these objections into account therefore, I consider that interested parties would not be prejudiced by determining the appeal on the basis of the revised plans.
5. The Council has confirmed that the revised plans address its second reason for refusal, which relates to the loss of significant mature trees. This is because the

revised layout would not require the loss of any of these trees. As I am determining the appeal on the basis of the revised plans, it is not therefore necessary for me to consider this matter further.

6. I have edited the description of the development in the banner heading above from that given on the application form in order to omit superfluous details which describe the nature of the planning application, as opposed to the nature of the development.

Main Issue

7. The main issue is whether the development would be inappropriate in the Green Belt.

Reasons

8. The site lies within the Metropolitan Green Belt. It consists of a plot of land fronting the A5183 which is currently accessed from the car park of Minster Court. The plot is laid to grass and largely enclosed by trees.
9. The Council determined the planning application with reference to saved policies in the City and District of St Albans Local Plan Review 1994 (the LP), and the National Planning Policy Framework (the Framework). The LP is now of considerable age, and the Council accepts that saved Policy 1 of the LP, which outlines the circumstances within which permission will be given for development within the Green Belt, does not align with the exceptions currently set out within the Framework. Saved Policy 1 indeed omits the exception listed in paragraph 145(e) of the Framework, which states that the construction of new buildings in the Green Belt is not inappropriate where it would involve limited infilling in villages, and in relation to which the development has been principally promoted.
10. Saved Policy 2 of the LP, which sets out the Council's settlement strategy, defines 'Park Street, Frogmore', whose boundary runs just to the north of the site, as a non-Green Belt settlement. 'Radlett Road, Frogmore', which is identified as a separate settlement, but one lacking a boundary, lies immediately to the south, within the Green Belt.
11. I acknowledge that the courts have held that settlement boundaries are not determinative for the purposes of the identifying whether or not a site falls within a village. I have therefore had regard to circumstances as they exist on the ground.
12. The A5183 runs continuously through Park Street, Frogmore, and Radlett Road, Frogmore. Within each the street frontage is lined by reasonably dense urban development, the continuity of which is broken in the vicinity of the appeal site, just to the south of the settlement boundary. Here the A5183 goes through a bend as the adjacent ground level rises. Trees, including those on the appeal site, become prominent, and a large churchyard provides a reasonably open space along on the street frontage.
13. Development is not absent however. Whilst the churchyard itself contains built features, a number of dwellings are set back from the road within large and well treed plots, accessed from driveways which adjoin the bend. Furthermore, though it is not possible to gain a full or continuous view along the A5183 due to the bend, frontage development beyond it in either direction is nonetheless

clearly visible standing on, and moving around the bend. Therefore, whilst the character of the streetscene and the layout of development undoubtedly undergoes a change in the vicinity of the appeal site, there is little sense on the ground that this represents anything other than a very brief, and localised variation within the character of a single built-up area. In this regard I see no particular reason why the site should be excluded from this area simply because it is currently free from development. As such, for the purposes of paragraph 145(e) of the Framework, I consider that the appeal site can be reasonably viewed to fall within a village.

14. I note the Council's reference to dictionary definitions of the term 'infill', which generally means the act of filling or closing a gap. Insofar as this relates to a developed context, it is clear that such gaps should be defined by existing development. Paragraph 145(e) of the Framework furthermore indicates that such infill will be limited. Given that the character and layout of development varies, it follows that what does or does not constitute a gap, and what would or would not constitute limited infill, will itself vary on a case by case basis.
15. The site lies between and is bounded by Minster Court towards the north, 2 Radlett Road towards the south, and the A5183 towards the east. Though the distance between Minster Court and No 2 is broad, and the bend in the road means that each is not visible within the same view from the street frontage, they are nonetheless both clearly visible from within the appeal site itself. Notwithstanding the fact open land lies towards the west, there is therefore little doubt that the site represents a reasonably well-defined gap between Minster Court and No 2.
16. As noted above, existing development on the bend includes a number of dwellings on large plots. No 2 indeed provides the most immediate and visible example. As such, the subdivision of the site into 2 large plots would be consistent with the existing pattern, and in terms of the number of dwellings proposed, the development itself would be limited in amount.
17. I acknowledge the Council's reference to appeal APP/B130/W/16/3152521 within which the Inspector considered that development of gap similar in size to that of the appeal site would not fall within the definition of limited infill. I do not have full details of this case, but the location and specific context clearly differed from that of the appeal site. In this regard I have necessarily assessed the appeal scheme on its own planning merits.
18. As such, and for the reasons outlined above, I consider that the proposal would involve limited infill within a village, and that the proposal therefore complies with the exception set out within paragraph 145(e) of the Framework.
19. The effect of development on the openness of the Green Belt is implicitly considered in the exception outlined in paragraph 145(e) of the Framework. As such it is not necessary for me to further consider the effects of the development on the openness of the Green Belt.
20. Exercising my duty under section 38(6) of the Planning and Compulsory Purchase Act 2004 (as amended), and taking into account paragraph 213 of the Framework, which states that due weight should be given to existing policies depending on their degree of consistency with the Framework, I conclude that whilst the development would conflict with Policies 1 and 2 of the LP, which each seek to restrict development in the Green Belt, it would comply

with more recent national policy as set out in the Framework. Attaching greater weight to the scheme's compliance with the Framework than to its conflict with the development plan, I therefore conclude that the development would be not inappropriate in the Green Belt.

Other Matters

21. Interested parties have raised objection to the proposed level of parking provision within the development, and the loss of parking spaces to form the access. Parking provision was originally set at 4 spaces per dwelling, and this has fallen to 3 spaces per dwelling within the revised layout. However, notwithstanding reported parking pressure, in both regards the level of provision did and does comply with the quoted requirements of saved Policy 40 of the LP, which indicates that dwellings with 4 or more bedrooms should provide 3 off-street parking spaces. As 2 existing parking spaces would be relocated, there would furthermore be no loss of existing parking space. No material harm would therefore be caused by the parking strategy overall.
22. Interested parties also raise concerns regarding a sewer which runs through the site, rights of access to the site through Minster Court, and the impact of the development on ecology. However the revised layout clearly shows that the sewer would not be built over, rights of access are a private matter that can be dealt with separately by the appellant, and the application was supported by an ecological appraisal which indicated that no likely adverse effects would arise. Again therefore, no material harm would arise in any of these regards.
23. Part of the site fronting the A5183 falls at the periphery of Park Street Conservation Area (the Conservation Area). I have therefore given special attention to whether the development would preserve or enhance the character or appearance of the Conservation Area, and advice in the Framework to give great weight to the conservation of heritage assets.
24. The significance of the Conservation Area partly lies in the presence and layout of historic buildings along the A5183, most of which lie some distance to the north of the site. Inclusion of the frontage of the site appears to be solely in relation to the trees it contains, and the contribution that these make to the setting of Trinity Church opposite. As the trees would be retained and would furthermore help to screen the development, the character and appearance of the Conservation Area would be preserved.
25. Trinity Church is a Grade II listed building. I have therefore had special regard to the desirability of preserving its setting. The significance of Trinity Church partly resides in its attractive architectural design and the immediate setting provided by the spacious graveyard. As outlined above, the development would not result in loss of existing features on the site which positively contribute to the character of the general visual setting of the church within the streetscene. Thus the setting of Trinity Church would be preserved.
26. The Council accepts, and the appellant emphasises, that it does not have a 5-year supply of deliverable housing sites, and so policies most important for determining the application are out-of-date. Under paragraph 11 of the Framework planning permission should therefore be granted unless any adverse impacts would significantly and demonstrably outweigh the benefits, or if specific policies within the Framework that protect areas or assets of particular importance provide clear reasons for refusal. In view of my findings

above, neither exception applies in this instance. Consequently, paragraph 11 provides a further, additional indication that planning permission should be granted.

Conditions

27. The Council has requested a range of additional conditions which I have considered in light of the guidance set out in the Framework and Planning Practice Guidance (the PPG), and with regard to the definitions of the reserved matters set out in the Town and Country Planning (Development Management Procedure) (England) Order 2015 (as amended).
28. I have imposed standard conditions setting out the time limit for the commencement of development, the procedure and time limit for approval of the reserved matters, and identifying the approved plans for sake of certainty. I have not however referenced plans PL02, PL03 or PL04 as listed by the Council, given that these show details of the appearance, scale and landscaping of the development which remain to be fixed in clearance of the reserved matters.
29. The Council has proposed a number of conditions which between them require the agreement of a range of details. These details will be considered in the following paragraphs. However, insofar as they include materials, finishes, lighting, fences, walls or other means of enclosure, and hard surfacing materials, all fall within the scope of the reserved matters of appearance and landscaping. As such there is no necessity to require their separate agreement by condition.
30. The Council has requested a condition requiring agreement of the car parking layout, and vehicle and pedestrian access and circulation areas. All are however already shown on the plans submitted in relation to the matters of access and layout. As such, a condition is again unnecessary.
31. The Council has requested details of the proposed finished levels and contours of the site to be submitted. Given that the site is reasonably flat, the specific reason for the condition is unclear. Furthermore, any earthworks undertaken on site would again fall within the scope of the reserved matter of landscaping, whilst the height of development in relation to its surroundings would fall within the scope of the reserved matter of scale. Again therefore, there is no demonstrable need for the condition.
32. The Council has further identified a requirement to agree details of 'minor artefacts and structures (e.g. furniture, play equipment, refuse, waste recycling or other storage units, signs, lighting etc)'. Bin stores will clearly be required by the dwellings, but these are omitted from the layout plan. As such, a condition requiring details of the provision and position of bin stores is necessary in the interests of visual amenity, and I therefore imposed one. With the exception of lighting however, which as noted above, falls within the scope of the reserved matter of appearance, the relevance of the other minor artefacts and structures listed is unclear. I have not therefore imposed a condition requiring their agreement.
33. The Council has lastly identified a requirement to agree details of 'proposed and existing functional services above and below ground (e.g. drainage, power, communications cables, pipelines etc, indicating lines manholes, supports etc)'

in the interests of visual amenity. However, there is no obvious need to agree details of underground services on this basis, as they cannot and will not be seen. As I note that above ground cabling already runs across the road frontage of the site, it is furthermore unclear what harm would arise from establishing a connection. As such I again see no demonstrable need for the condition.

34. The Council has requested a condition restricting the permitted development right of erecting fences, gates, walls or other means of enclosure. The PPG advises that conditions restricting the future use of permitted development rights will rarely pass the test of necessity, and should only be used in exceptional circumstances. The Council states that the condition is necessary in the interests of residential and visual amenity, and the character and appearance of the area. However, as outlined above, fences, gates and walls are all subject to future agreement in relation to landscaping. It is therefore impossible to know what further scope for the erection of fences, gates and walls would exist after such details are agreed, or indeed whether it is likely that this would be harmful. As such the proposed condition is neither necessary nor reasonable.
35. I have imposed a condition requiring the development to be carried out in accordance with the revised Tree Survey, Arboricultural Impact Assessment and Tree Protection Plan. This in order to ensure the protection of trees on site with regard to the layout of development.
36. I have imposed a further condition requiring the provision of parking spaces and their retention thereafter. This is necessary in the interests of ensuring that the development caters for the parking demand that it will generate.

Conclusion

37. For the reasons outlined above, and taking into account all other matters raised, I conclude that the appeal should be allowed.

Benjamin Webb

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) Details of appearance, scale and landscaping, (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development takes place, and the development shall be carried out as approved.
- 3) Application for approval of the reserved matters shall be made to the local planning authority not later than 3 years from the date of this permission.
- 4) The development hereby permitted shall take place not later than 2 years from the date of approval of the last of the reserved matters to be approved.
- 5) The development hereby permitted shall be carried out in accordance with the following approved plans: PL00 Rev D; and, PL01/F.
- 6) The development hereby permitted shall be carried out in accordance with the Tree Survey, Arboricultural Impact Assessment and Tree Protection Plan Revised 14th January 2019.
- 7) Details of the provision and position of bin stores for the dwellings hereby permitted shall be submitted to and agreed writing by the Local Planning Authority. The bin stores shall then be installed in accordance with the approved details prior to first occupation of the dwellings, and will thereafter retained and kept available for the storage of refuse.
- 8) The dwellings hereby permitted shall not be occupied until all the parking spaces shown on plan PL01/F have been provided and made available for parking. The parking spaces shall thereafter be retained and kept available for parking.

End of Schedule