
Appeal Decision

Site visit made on 15 October 2019

by Helen O'Connor LLB MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 31 October 2019

Appeal Ref: APP/A1910/W/19/3233612

Milbor Engineering Hemel Hempstead Ltd, Belswains Lane, Hemel Hempstead HP3 9XE

- 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 Hobbs of Hobbs Developments Ltd against the decision of Dacorum Borough Council.
 - The application Ref 4/02781/18/MFA, dated 5 November 2018, was refused by notice dated 25 June 2019.
 - The development proposed is the demolition of the existing building and construction of 21 one-bed flats.
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Decision

1. The appeal is allowed and planning permission is granted for the demolition of the existing building and construction of 21 one-bed flats at Milbor Engineering Hemel Hempstead Ltd, Belswains Lane, Hemel Hempstead HP3 9XE in accordance with the terms of the application, Ref 4/02781/18/MFA, dated 5 November 2018, subject to the conditions set out in the attached schedule.

Application for costs

2. An application for costs was made by Mr Hobbs of Hobbs Developments Ltd against Dacorum Borough Council. This application is the subject of a separate Decision.

Procedural Matters

3. In my heading above I have used the description of development on the appeal form and decision notice rather than that on the planning application form, as the proposal and description of development was revised from 27 to 21 flats during the course of the application.

Main Issue

4. The main issue is the effect of the proposal on the character and appearance of the area.

Reasons

Character and appearance

5. The appeal site comprises a broadly triangular shaped plot within a predominantly residential area. To the south this is mostly recent development

comprising a mixture of apartment blocks and townhouses¹, much of which is between 3-5 storeys in height, in a contemporary design achieving a relatively high density with a layout and form that responds to the presence of the canal to the west. This contrasts with more conventional but still relatively modern, residential development to the north-west, whereby the prevailing form comprises two storey, detached houses. There is an established belt of trees between Kingfisher Drive and the more recent development. In addition, a remnant of historic residential terraced built form along Belswains Lane to the north-east of the site adds a further dimension to the mixture of residential development in the immediate area. The range of development combines to result in a somewhat mixed, but pleasant sub-urban character and appearance to the area.

6. The appeal site lies between these different residential areas and accommodates an unremarkable red brick industrial building that has undergone a series of alterations over time. Given the significant development that has occurred to the south of the site its use and appearance is somewhat at odds with the prevailing residential context. The lack of an obvious principal elevation, unassuming form and generally poor condition of the building contributes little to the appearance of the street. Nevertheless, this is tempered by the discreet location of the building which is shielded by a combination of other built form and established trees.
7. The development proposes 21 flats contained in a single block over four storeys with a footprint that would not be significantly different from the position of the existing building within the site. The mass, height and form of the structure takes design cues from, and would be similar to, nearby existing modern apartment buildings. When entering Croxley Road, the appeal proposal would be to the right of a more prominent apartment block that fronts the road and would read as part of a cluster of such buildings. Accordingly, its scale and position would not dominate the streetscape. In addition, the use of similar materials would be coherent with the adjacent recent development such that it would be assimilated into the street scene.
8. I have not seen evidence to suggest that the density of the appeal proposal would be inconsistent with the density evident in nearby apartment blocks. Furthermore, it would accord with advice in paragraph 123 of the National Planning Policy Framework (the Framework) that where there is an existing shortage of land for meeting identified housing needs² decisions should avoid homes being built at low densities and ensure that development makes optimal use of the potential of each site.
9. The two units proposed on the third floor give a stepped roof line to the block, which when viewed together with the balcony detailing would add interest and articulation to the building that would break up its mass thereby preventing it from appearing to be bulky.
10. The contemporary form of the appeal proposal would contrast with the style of houses in Kingfisher Drive, but this is also true of the style of the existing industrial building. It does not follow that this would necessarily have a harmful effect. The two units on the third floor would be setback such that the height of

¹ Sappi site reference 4/01382/09/MFA

² Paragraph 9.41 Council's committee report states that the Council cannot currently demonstrate a 5 year housing land supply

the building nearest to Kingfisher Drive would not be significantly higher than the existing building³ thereby preventing the third storey from dominating pedestrian views from Kingfisher Drive⁴. Furthermore, the separation distance and existing row of trees act as a natural boundary and shield between the appeal site and Kingfisher Drive denoting a change in character. Moreover, given that the entrance to the appeal site would be through the modern development to the south, the appeal site more naturally and closely integrates with this area and therefore, notwithstanding the mixture of residential form in the vicinity, it is appropriate for the design to respect and respond to that character area.

11. The proposal includes some undercroft parking thereby limiting the number of parked cars that would be visible in the street scene. Accordingly, the design would accord with criteria (f) of policy CS11 of the Dacorum Borough Council, Core Strategy 2006-2031, September 2013 (CS) which seeks to avoid large areas dominated by car parking.
12. Additionally, the proposal would provide appropriate protection to retain the established poplar trees to the north west⁵ that make a positive contribution to the character of the area, which together with additional planting around the building and boundaries, would assist in softening the appearance of the development.
13. The significance of the nearby historic residential properties⁶ as non-designated heritage assets primarily derives from their vernacular aesthetic appearance and prominence of their principal elevations facing Belswains Lane. The appeal site is located to the rear of these buildings whereupon the modern alterations, outbuildings and boundary treatments that are in existence considerably curtail their historic significance and appearance. Given its position and the intervening distance, the appeal proposal would not be easily visible from Belswains Lane⁷. Therefore, it would not interfere with the way that the principal elevations of the heritage assets would be experienced and as a result, would not be harmful to their significance.
14. In reaching my findings I have had regard to the guidance provided in the Dacorum Urban Design Assessment, Hemel Hempstead Supplementary Planning Document, January 2006. The site is located in the employment zone⁸ whereby the appeal proposal would not conflict with the general advice given.
15. Accordingly, the proposal would not result in harm to the character and appearance of the area and accords with policies CS11 and CS12 of the CS. Policy CS11 requires new development to adhere to criteria to respect the quality of neighbourhood design as reinforced by a Supplementary Planning Document on urban design. Policy CS12 sets out criteria for the design of the site itself including that development should retain important trees, integrate with streetscape character and respect adjoining properties in terms of, amongst other things, layout, site coverage, scale, height, bulk, materials and landscaping.

³ Drawing number WH/1863505

⁴ Section Drawing No WH/1836501

⁵ Arbtech Arboricultural Method Statement 1.11.18 and drawings Arbtech TPP 01 Demo, Arbtech TPP 01 Con & Arbtech AIA 01 Rev A

⁶ 276-292 Belswains Lane

⁷ Section Drawing WH/1836501

⁸ Page 10 map, Dacorum Urban Design Assessment, Hemel Hempstead SPD, January 2006

Other Matters

16. The Council refers to the need for an obligation under Section 106 of the Planning Act 1990 to secure a financial contribution of £16,875 towards towpath improvement works between Two Waters Road and Red Lion Lane. The appellant has provided a signed Unilateral Undertaking (UU) purporting to provide this prior to the implementation of the appeal proposal. However, the UU before me is not dated and therefore, it is not clear that the obligation would come into effect such that the Council could enforce it.
17. Nevertheless, the absence of the obligation was not included as part of the refusal reason on the decision notice and I have not been provided with evidence to detail the nature of the towpath improvement works. As such it is not shown that such an obligation is necessary, directly related to the development and fairly and reasonably related in scale and kind to the development having regard to the statutory tests in Regulation 122 of the Community Infrastructure Regulations 2010 and paragraph 56 of the Framework. Consequently, I am not persuaded that it is required to make the development acceptable in planning terms. Hence based on the information presented, this obligation would fail to meet the tests in the Regulations and in my view, it would not be lawful to take it into account as a reason for granting planning permission.
18. Some concerns are raised that there is no provision of affordable housing, which would be contrary to the normal requirement for 35% provision in policy CS19 of the CS. Nevertheless, a viability assessment⁹ accompanied the proposal in line with the requirements of paragraph 7.7 of the Affordable Housing Supplementary Planning Document, September 2013. This was independently reviewed for the Council whereby it was accepted that the proposal would otherwise not be viable¹⁰ and I have not seen detailed evidence to the contrary. On this basis, the evidence shows the proposal would accord with the provisions of policy CS19 that allow for such circumstances.
19. I have had regard to the representations that raise objections to the proposal including those on behalf of Nash Mills Parish Council. Amongst the principal concerns highlighted is that competition for parking on surrounding roads has already led to problems and it is considered that the level of off-street parking provided by the development would exacerbate this. The evidence suggests that the proposal would provide a level of off-street parking¹¹ in excess of the maximum standard in the development plan which reflects the pressures in the surrounding context. On this basis, there is no objection from the Highway Authority to the provision of car parking or the access arrangements. On the evidence provided, I have no reason to take a different view or consider that the proposal would be contrary to the relevant transportation policies of the development plan. Therefore, this matter is given limited weight.
20. It is further suggested that the proposal would have an unacceptable impact upon the living conditions of nearby residents due to a loss of privacy and overshadowing. Although, this was not explicitly stated as a reason for refusal in the Council's decision notice, I note that policy CS12 includes a criterion that

⁹ Prepared by Brasier Freeth 1 February 2019

¹⁰ Paragraph 9.60 Council's committee report

¹¹ 29 parking spaces provided including visitors spaces, maximum standard 26.25 spaces according to paragraph 9.35 Council's committee report

requires new development to avoid visual intrusion, loss of sunlight and daylight, loss of privacy and disturbance to the surrounding properties. However, the separation distance the proposal would maintain between most dwellings in Kingfisher Drive, Belswains Lane and nearby apartment buildings¹² would be in excess of the minimum separation distance of 23 metres between the main rear wall of a dwelling and the main wall (front or rear) of another set out in saved Appendix 3 of the Dacorum Borough Local Plan 1991-2011, April 2004. This would be sufficient to maintain a reasonable degree of privacy. Although this is lower in the case of 1 Kingfisher Drive, the orientation of the property would prevent inter-visibility that would safeguard the privacy of the occupants. Similarly, the degree of separation and orientation of properties would prevent overshadowing of properties located to the south, and there is little specific evidence presented to demonstrate otherwise. Accordingly, these concerns attract limited weight.

Planning balance

21. Paragraph 11 of the Framework sets out the presumption in favour of sustainable development, whereby sub-paragraph (c) states that for decision making this means approving development proposals that accord with an up-to-date development plan without delay. As will be seen from my reasoning above, I have found that the proposal would accord with the development plan policies that are relevant to the consideration of the impact on the character and appearance of the area. Furthermore, although the policies pre-date the Framework, they are reasonably consistent with the aims of section 12 in order to achieve well-designed places such that they are reasonably up-to date. Therefore, irrespective of the housing land supply position, the proposal should be approved.

Conditions

22. The Council have suggested 19 conditions. The three-year period in which the planning permission may be implemented is a statutory requirement, but I also consider that it is necessary in the interests of clarity to specify the plans that are approved, and that the development shall be undertaken in accordance with these. This is also the case in relation to the measures proposed to protect trees and wildlife based on the recommendations of the respective tree reports and preliminary bat roost assessment.
23. Conditions requiring agreement in relation to the external materials, landscaping of the outdoor space and green roof are reasonable and necessary in order to protect the character and appearance of the area. However, these are not such fundamental matters that details need to be submitted prior to the commencement of any development. In addition, I have adjusted the wording of the conditions to ensure they are proportionate to the nature and size of the proposed development. Furthermore, a condition is imposed to prevent the use of the roof as a balcony or garden area, in order to prevent overlooking from the roof to nearby properties and a consequent reduction in privacy for the occupants.
24. Parts of the site lie within Flood Zone 2 and close to the canal system. On this basis it is reasonable to require a detailed surface water drainage scheme to be agreed that would incorporate sustainable drainage systems in order to provide

¹² Paragraphs 9.24-9.26 Council's committee report

adequate drainage and reduce surface water flood risk. I have combined the Council's suggestions into one condition and agree that the details should be agreed prior to the commencement of development in order to ensure maximum opportunity to incorporate sustainable drainage methods into the development.

25. The appeal site has had a longstanding industrial use whereby there is a reasonable likelihood to suppose that the land may be contaminated. The change to a residential use requires appropriate investigation and mitigation to safeguard human health. A series of conditions to this end are imposed. This is of fundamental importance such that pre-commencement conditions are justified.
26. The site is close to established residents and the development will take some time to construct. In order to protect their living conditions during the period of construction, a construction management plan is required to be agreed, which logic dictates must be agreed prior to the commencement of construction works. I have included a requirement to provide a demolition method statement as part of this plan removing the need for a separate condition.
27. To prevent unreasonable pressure for on-street car parking arising from the development, a condition to provide the car parking shown on the layout plan is necessary prior to the occupation of the apartments. In addition, suitable cycle parking provision to accord with the Council's standards is also required to be agreed and provided. Based on the recommendation of the Highway Authority, submission and agreement of a swept path analysis should be provided showing appropriate turning for larger vehicles. However, as the evidence does not suggest that there would be difficulty in providing this, this need not be a pre-commencement condition as Planning Practice Guidance advises that such pre-commencement conditions should only be used where they are so fundamental to the development permitted it would have been otherwise necessary to refuse the whole permission.
28. I have seen little evidence to substantiate the need for a Servicing and Delivery Plan arising from the provision of 21 apartments. Similarly, the reasonably modest nature of the proposal is located some considerable distance from any Air Quality Management Zones¹³. As such, aside from the period of construction, which is specifically addressed by a construction management plan, there is little basis to require an Air Quality Report in order to make the development acceptable in planning terms. Therefore, I do not consider that a condition to require this information would meet the tests set out in paragraph 55 of the Framework, which also advises that conditions should be kept to a minimum.

Conclusion

29. For the reasons given above I conclude that the appeal should be allowed.

Helen O'Connor

Inspector

¹³ Paragraph 9.53 Council's committee report indicate AQMA's are 1.0 and 1.2 miles away

Schedule of conditions (15 Conditions)

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans:
 - 1836 01 Rev 6 Site Plan as Proposed
 - 1836 02 Rev 4 Ground Floor Plan as Proposed
 - 1836 03 Rev 7 First and Second Floor Plans as Proposed
 - 1836 04 Rev 4 Third Floor and Part Roof Plan as Proposed
 - 1836 05 Rev 6 NE & SE Elevations
 - 1836 06 Rev 6 NW & SW Elevations
 - 1836 07 Rev 1 Roof Plan as Proposed
 - 1836 08 Block Plan as Proposed
 - WH/1836/501 Site Sections
 - WH/1836/502 Tree Shading Details
- 3) The development shall proceed in accordance with the Arbtech Arboricultural Method Statement dated 1 November 2018 and the tree protection measures in drawings numbered Arbtech TPP 01 Demo October 2018 Tree Protection Plan Demolition Phase; Arbtech TPP 01 Con October 2018 Tree Protection Plan Construction Phase and Arbtech AIA 01 Rev A Arboricultural Impact Assessment.
- 4) The development shall be carried out in accordance with the recommendations for bats and birds set out in pages 3 & 4 of the Arbtech Bat Survey Preliminary Roost Assessment dated 4 October 2018.
- 5) Prior to works above ground level taking place details of the external facing materials and fenestration shall be submitted to and agreed in writing by the local planning authority. The relevant works shall be carried out in accordance with the approved details.
- 6) The roof area of the extension hereby permitted shall not be used as a balcony, roof garden or similar amenity area.
- 7) Prior to first occupation of the building a scheme of landscaping shall be submitted to and agreed in writing by the local planning authority. The scheme shall include details of planting and hard surfacing. All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding seasons following the occupation of the building or the completion of the development, whichever is the sooner; and any trees or plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species.
- 8) Prior to first occupation of the building details and a timescale for the provision of the green roof and associated long term landscaping work and green roof maintenance plan shall be submitted to and agreed in writing by the local planning authority. Thereafter, the green roof shall be provided and maintained in accordance with the approved details.

- 9) No development shall commence until surface water drainage details incorporating sustainable drainage systems have been submitted to and approved in writing by the local planning authority. The surface water drainage system submitted shall accord with the Flood Risk Assessment and Drainage Strategy, EAS reference 2042/2019 January 2019 and shall be accompanied by a management and maintenance plan for the SuDs features. The development shall be carried out in accordance with the approved details and the sustainable drainage system shall be managed and maintained thereafter in accordance with the agreed management and maintenance plan.
- 10) No development shall commence until an assessment of the risks posed by any contamination shall have been submitted to and approved in writing by the local planning authority. This assessment must be undertaken by a suitably qualified contaminated land practitioner, in accordance with British Standard BS 10175: Investigation of potentially contaminated sites - Code of Practice and the Environment Agency's Model Procedures for the Management of Land Contamination (CLR 11) (or equivalent British Standard and Model Procedures if replaced), and shall assess any contamination on the site, whether or not it originates on the site. The assessment shall include:
 - i) a survey of the extent, scale and nature of contamination;
 - ii) the potential risks to:
 - human health;
 - property (existing or proposed) including buildings, crops, livestock, pets, woodland and service lines and pipes;
 - adjoining land;
 - ground waters and surface waters;
 - ecological systems; and
 - archaeological sites and ancient monuments.
- 11) No development shall take place where (following the risk assessment) land affected by contamination is found which poses risks identified as unacceptable in the risk assessment, until a detailed remediation scheme shall have been submitted to and approved in writing by the local planning authority. The scheme shall include an appraisal of remediation options, identification of the preferred option(s), the proposed remediation objectives and remediation criteria, and a description and programme of the works to be undertaken including the verification plan. The remediation scheme shall be sufficiently detailed and thorough to ensure that upon completion the site will not qualify as contaminated land under Part IIA of the Environmental Protection Act 1990 in relation to its intended use. The approved remediation scheme shall be carried out and upon completion a verification report by a suitably qualified contaminated land practitioner shall be submitted to and approved in writing by the local planning authority before the development is occupied.
- 12) Any contamination that is found during the course of construction of the approved development that was not previously identified shall be reported immediately to the local planning authority. Development on the part of the site affected shall be suspended and a risk assessment carried out and submitted to and approved in writing by the local planning authority. Where unacceptable risks are found remediation and

verification schemes shall be submitted to and approved in writing by the local planning authority. These approved schemes shall be carried out before the development is resumed or continued.

- 13) No development shall take place, including any works of demolition, until a Construction Method Statement has been submitted to, and approved in writing by the local planning authority. The Statement shall provide for:

- i) the parking of vehicles of site operatives and visitors;
- ii) loading and unloading of plant and materials;
- iii) storage of plant and materials used in constructing the development;
- iv) the erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate;
- v) wheel washing facilities;
- vi) A demolition method statement to control the emission of pollutants and dust arising from the process of demolition.
- vii) measures to control the emission of dust and dirt during construction;
- viii) a scheme for recycling/disposing of waste resulting from demolition and construction works;
- ix) delivery, demolition and construction working hours.

The approved Construction Method Statement shall be adhered to throughout the construction period for the development.

- 14) No dwelling shall be occupied until the car parking spaces have been laid out within the site in accordance with drawing no.1836 01 Rev 6 Site Plan as Proposed and cycle storage facilities provided in accordance with details previously agreed in writing with the local planning authority for 21 bicycles to be parked. Those spaces shall thereafter be kept available for the parking of vehicles or bicycles respectively.
- 15) Prior to the first occupation of the building a swept path analysis shown on a scaled plan shall be submitted to and agreed in writing by the local planning authority. The swept path analysis should include details of the largest anticipated vehicles that will access the site, the surface materials and nature of the shared surface access roads. The development shall be carried out in accordance with the approved details prior to first occupation of the building.