
Appeal Decisions

Hearing Held on 7 November 2019

Site visit made on 7 November 2019

by Sarah Dyer BA BTP MRTPI MCMI

an Inspector appointed by the Secretary of State

Decision date: 11th December 2019

Appeal A Ref: APP/H1515/W/18/3219321

Heron Court, 198 Brentwood Road, Herongate, CM13 3PN

- 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 T Sanders of Runwood Homes PLC against the decision of Brentwood Borough Council.
 - The application Ref 18/00099/FUL, dated 19 January 2018, was refused by notice dated 29 June 2018.
 - The development proposed is described as 'Proposed redevelopment of Heron Court Care Home. Proposed demolition of the 20th century wings and southerly day room. New extension on three floors to be created, forming a secure courtyard enclosure. Existing ground level to be reduced. Increase in bedroom numbers from 33 to 65 bedrooms'.
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Appeal B Ref: APP/H1515/W/18/3237055

Heron Court, 198 Brentwood Road, Herongate, CM13 3PN

- 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 T Sanders of Runwood Homes PLC against the decision of Brentwood Borough Council.
 - The application Ref 19/00346/FUL, dated 11 March 2019, was refused by notice dated 12 August 2019.
 - The development proposed is described as 'Proposed redevelopment of Heron Court Care Home. Proposed demolition of the 20th century wings and southerly day room. New extension on three floors to be created, forming a secure courtyard enclosure. Existing ground level to be reduced. Increase in bedroom numbers from 33 to 65 bedrooms'.
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Decisions

1. Appeal A is dismissed.
2. Appeal B is dismissed.

Procedural Matters

3. Updated wire-frame images of both appeal schemes against photographs were provided to me at the Hearing. The appellants explained that these show the current appearance of the site boundaries and for this reason they could not be provided any earlier. These documents were also provided to the Council and I do not consider that there would be any prejudice to any party were I to consider them as part of my determination of the appeal.

4. The appellants submitted a document entitled 'The financial appraisal of the proposed redevelopment of Heron Court' (the FA) in support of their planning applications. A copy of this document was given to me at the Hearing. As the Council was already aware of it and this document formed part of the application submissions, I do not consider that any party would be prejudiced by my consideration of the FA.
5. I also received a copy of an Appeal Decision Refs APP/H1515/A/08/2068488 and APP/H1515/E/08/2068486 at the Hearing and have had regard to this document.
6. The Council also refers to a planning application which was allowed on appeal in 2003. I have very limited information before me regarding this scheme. However, as it predates the Brentwood Replacement Local Plan 2005 and the National Planning Policy Framework, this decision attracts very limited weight in my determination of the current appeal.

Main Issues

7. The Council has confirmed that it no longer wishes to defend the third reason for refusal of Appeal A, therefore the main issues in respect of Appeal A and Appeal B are:
 - Whether or not the development is inappropriate development in the Green Belt having regard to the Framework, including any relevant effects on the openness of the Green Belt and with regard to any relevant development plan policies
 - The effect of the development on Herongate Conservation Area (Appeal B only)
 - If the development is inappropriate, whether or not any harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations, so as to amount to the very special circumstances required to justify the proposal in accordance with the Framework.

Reasons

Whether Inappropriate Development/Effect on Openness

8. Heron Court sits within a cluster of buildings on the outskirts of Herongate. Both Appeal A and Appeal B involve the removal of existing extensions and the erection of a three-storey building linked to Heron Court. A discussion at the hearing established that the two schemes were similar in terms of their design principles and that the key differences between them were the roof profile and materials.
9. The Framework establishes that the construction of new buildings in the Green Belt is inappropriate development subject to a number of exceptions. These include extensions to buildings and partial redevelopment of previously developed land (PDL).
10. The Brentwood Replacement Local Plan 2005 includes policies relating to development in the Green Belt. Policy GB1 states that planning permission will not be given, except in very special circumstances for the construction of new buildings or extension of existing buildings, for purposes other than those appropriate to a Green Belt. Policy GB2 sets out development criteria for

proposals in the Green Belt. Whilst these policies are consistent with the protective approach set out in the Framework, they are not fully in accordance with it in terms of how inappropriate development is categorised and the detailed judgements which need to be made in terms of quantifying the harm to the Green Belt.

11. The emerging Brentwood Local Plan 2019 has yet to be examined and found sound which means that the weight to be attached to it is limited. Consequently, in terms of my determination of the appeals as they relate to development in the Green Belt, I have attached significant weight to the policies within the Framework.
12. The Council regarded the development as an extension and therefore applied the test set out in Paragraph 145 (c) of the Framework. There is no dispute between the parties that in this case the 'original building' for the purposes of the Framework is generally Heron Court minus the extensions which were constructed after 1948 and which are to be largely demolished as part of the appeal schemes. On this basis, the proposed new buildings would amount to a 'disproportionate addition' over and above the size of the original building and this constitutes inappropriate development under Paragraph 145 (c) of the Framework.
13. On the other hand, the appellants put forward the contention that the development would amount to partial redevelopment of PDL. In this case the test under Paragraph 145 (g) of the Framework is different and relates to whether the development would have a greater impact on the openness of the Green Belt than the existing development. The existing development includes the single storey extensions which are present on the site.
14. In terms of its spatial impact on the Green Belt, the development, in either its pitched roof form (Appeal A) or flat roof form (Appeal B) would have a greater impact. The existing extensions are raised out of the ground to a significant degree which affects their mass and scale, however the comparison plans demonstrate that the proposed extensions would be larger in terms of their footprint and, in their pitched roof form, height.
15. Heron Court is set in landscaped grounds which include a deep tree screen along some of the boundaries. This has the effect of screening the existing extensions from wider views and would have a similar screening effect on the proposed development. The appellants Landscape and Visual Impact Assessment notes that there may be glimpsed views of the Appeal A scheme and to that extent the development would have a visual impact on the Green Belt. Furthermore, the appellants Design and Access Statement (DAS) shows that both the Appeal A Scheme and the Appeal B Scheme would be visible in the context of Heron Court, which is itself in the Green Belt, on the images which are included. There is limited evidence before me to demonstrate that these images are inaccurate depictions of the future state.
16. To summarise both Appeal Scheme A and Appeal Scheme B would have a greater impact on the openness of the Green Belt than the existing development in both spatial and visual terms, notwithstanding that Appeal Scheme A would have a greater affect in visual terms than Appeal B.
17. On this basis the partial redevelopment of the site would have a greater impact on the openness of the Green Belt than the existing development. However,

the courts have held that rather than treating any change as having a greater impact on the openness of the Green Belt, the correct approach is to consider the impact of the harm. Based on the evidence before me and the scale, location and spatial and visual implications of the development, the development would have a limited adverse impact on the openness of the Green Belt. However, on the basis of Paragraph 145 (g) this would still amount to inappropriate development and this is a matter which must be given substantial weight.

18. I have concluded that, whether the development is to be considered as an extension or as partial redevelopment of PDL, both of which could be applied in this case, it would amount to inappropriate development in the Green Belt. Consequently, both the Appeal A scheme and the Appeal B scheme would be contrary to Policy GB2 of the Brentwood Replacement Local Plan 2005 which despite its limited weight remains part of the Development Plan, against which applications for planning permission must be judged. This policy requires amongst other things that development in the Green Belt does not harm its openness.

Conservation Area (Appeal B only)

19. The site lies within Herongate Conservation Area (the CA). For the purposes of the analysis of townscape character, the Herongate Conservation Area Appraisal and Management Plan (2007) (the CAC) divides the CA into zones and the appeal site falls within Zone 3. This zone is described as the 'most wooded part of the Conservation Area, being largely enclosed by mature trees, which also succeed in effectively screening the Brentwood Road'. The CAC also refers to the important visual relationship that Heron Court has with Button Common. Notwithstanding the passage of time since the CAC was produced, these observations remain relevant to the existing site context and the contribution which Heron Court makes to the CA.
20. The main building of Heron Court which incorporates steeply pitched roofs, red brick, black and white false timbering and decorative chimneys, is a prominent feature in the group of buildings close to Button Common and Heron's Chase. The Council consider that the building is worthy of 'local listing' and the appellant agrees that it has aesthetic merit and architectural value.
21. The existing extensions to Heron Court are set well below the ridge and eaves height of the main building. In terms of the wider CA the current extensions, which are effectively screened by trees, have a very limited impact on the character and appearance of the CA. Whilst they have a greater impact on the appearance of the original building particularly when viewed from within the site, their steeply pitched roofs, white painted gables and red brick provide a degree of homogeneity across the site.
22. The Appeal B scheme would introduce a sizeable flat roofed building adjacent to the main building. A contrasting building style can be a successful way of altering a prominent building in a CA and allowing it to continue to contribute successfully to its wider context. However, in this case the development by virtue of its flat roofed, monolithic appearance would have a jarring effect on the pitched roof form and decorative qualities of Heron Court.
23. Given the importance of the contribution which Heron Court makes to the character and appearance of the CA, the adverse impact of the proposed

development upon this building has the potential to have a consequential adverse effect on the CA. The appellants Design and Access Statement demonstrates that the proposed extension would be visible from within the CA and in the context of the main building of Heron Court. The incongruous visual relationship between Heron Court and the new development under the Appeal B scheme would therefore be evident in the wider context of the CA and would have a harmful effect upon it.

24. I conclude that the Appeal Scheme B would neither preserve nor enhance the character and appearance of the CA. This development is therefore contrary to Policies CP1 and C14 of the Brentwood Replacement Local Plan 2005. These policies, amongst other things, require that development would not have an unacceptable detrimental impact on the character and appearance of the surrounding area and would preserve or enhance the character of Conservation Areas.
25. The statutory duties in Sections 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 are matters of considerable importance and weight. As a consequence of its incongruous visual relationship with Heron Court, the new development would have a harmful impact on the CA. However, I find that the harm would be less than substantial.
26. The Framework directs at Paragraph 196 that where a development proposal will lead to less than substantial harm, this harm should be weighed against the public benefits of the proposal. In this case there is no dispute between the parties that public benefits would arise from the scheme in terms of meeting the need for additional bed spaces for people in residential care.
27. The evidence before me is compelling in this regard. The need for additional bed spaces arises from the aging population in the area and this has been exaggerated by the closure of existing care homes since the development proposals have been under consideration. The evidence before me and my observations during the site visit have also demonstrated that the existing provision at Heron Court is urgently in need of improvement. The need to provide for older people in care homes of an appropriate standard is a public benefit and in this case one which outweighs the harm to the designated heritage asset that I have found in this instance.

Other Considerations

28. The Framework sets out that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. Furthermore, very special circumstances will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm such as that which I have identified in respect of harm to the character and appearance of the CA, is clearly outweighed by other considerations.
29. There is no dispute between the main parties that there is a need for additional care home places in the Council's area and the appellants have presented a compelling case to demonstrate that a point has been reached where the fulfilment of this need is becoming critical in order to ensure that appropriate facilities are available to an increasingly ageing population. Furthermore, the appellant refers to two care homes which have closed since the Council took its

- decision on the Appeal A Scheme, which has reduced the availability of bed spaces.
30. Reference was also made to the Rayleigh Road scheme which the Council advised is under construction but was unable to confirm when those beds will come on stream. There is limited information before me to suggest that this development will fulfil the current need for bed spaces including those which have resulted from homes which have recently closed. Neither was there any substantive evidence before me that other schemes for care homes or extensions for care homes are currently under consideration.
31. In regard to the existing quality of accommodation at Heron Court, the Council describes this as far from ideal and acknowledges that the development would provide benefits in terms of, amongst other things, larger rooms with ensuite facilities. My observations at the site visit were that the existing residents have to endure cramped rooms with limited washing facilities, shared bathrooms and common spaces of restricted size and shape. Opportunities to access the gardens were also constrained by the changes in levels. There is no doubt that the privacy and dignity of the elderly residents is compromised by the existing arrangements.
32. In summary the additional bed spaces and the significant improvement in the quality of accommodation which would arise from either the Appeal A scheme or the Appeal B scheme, represent significant benefits in favour of the development.
33. Both appeal proposals take the form of a linked courtyard layout and would result in the removal of extensions to Heron Court which, it was agreed at the hearing, have at best a neutral effect on the Conservation Area. Notwithstanding the concerns which I have regarding the design of the Appeal B Scheme, the potential to improve the appearance of Heron Court within the site by adopting a concept which provides accommodation in a linked as opposed to attached way would be an improvement. Given that the Council consider Heron Court to be worthy of inclusion on their local list, this amounts to a significant consideration in favour of both Appeals.
34. The Council raised concern in its submissions and at the Hearing regarding the Financial Appraisal (the FA) which was commissioned by the appellants on the basis that it concerned a 55-bed scheme and not the 65-bed scheme as proposed. The FA establishes that a smaller 55-bed scheme would be viable, and it has not been updated to relate to the 65-bed scheme. This raises an important point in terms of whether the development is the minimum necessary to achieve the benefits which derive from it.
35. A smaller scheme, involving fewer beds, would not reap the same benefit as the provision of 32 additional bed spaces in terms of meeting the accepted need for additional bed spaces in the area. However it would have the benefit of improving the quality of the existing accommodation.
36. Although reference was made at the hearing, to the negative consequences of a smaller scheme on the design of the development there is limited substantive evidence before me to justify this point. Similarly, there is little information to show that the Council are contemplating removing land from the Green Belt to provide for more residential care units or the comparative effects of those changes against the effect of the appeal schemes on the Green Belt. It follows

that these arguments do not justify the scale of the scheme which is proposed in comparison with a scheme of fewer bed spaces.

37. Drawing these strands together in relation to the Appeal A scheme, I have established that the development would amount to inappropriate development by virtue of its spatial and visual impact on openness. The Appeal A proposals would not be harmful to the Conservation Area and this has a neutral effect on any balance in favour of the development. I have also found that the layout of the Appeal A accommodation would have a positive effect on the Heron Court building in its setting, that the additional bed spaces would meet an acknowledged and urgent need for such accommodation and that the development would result in a significant improvement in the quality of the existing accommodation.
38. In relation to the Appeal B Scheme, the development would have the same significant benefits in terms of the provision of additional bed spaces and the improvement of the existing accommodation. However, whilst the layout of the linked building would provide an improved setting for Heron House, its design would have an adverse effect on the retained building and consequently the Conservation Area. Nevertheless, I have found that this harm would be outweighed by the public benefits in this case.

Conclusion

39. The Framework establishes that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. Furthermore, the Framework establishes that very special circumstances will not exist unless the potential harm to the Green Belt by reason of inappropriateness and any other harm resulting from the proposal, is clearly outweighed by other considerations.
40. I have established that both schemes would be inappropriate development in the Green Belt. Weighed against this I have found that the additional bed spaces would meet an acknowledged and urgent need for such accommodation, that the development would result in a significant improvement in the quality of the existing accommodation and that the layout of the linked courtyard would have a positive effect on the Heron Court building in its setting. These are significant benefits of both schemes.
41. The Council do not consider that Appeal A would be harmful to the CA and I have concluded that the public benefits of the scheme would outweigh the harm to the CA arising from the Appeal B scheme. However, these factors have a neutral effect on the Green Belt balance.
42. The harm arising from inappropriate development in the Green Belt, which attracts substantial weight, and the benefits of the development to which I attribute significant weight is finely balanced in this case. However, I have also been unable to establish that the scale of development which is planned is the minimum necessary to achieve the benefit in terms of the improvement of the existing facilities, which reduces the weight which I attach to that benefit. This has the effect of shifting the balance towards a conclusion that the other considerations do not clearly outweigh the harm that I have identified. It follows that the very special circumstances necessary to justify either the Appeal A development or the Appeal B development do not exist.

43. For the reasons set out above, I conclude that both appeals should be dismissed.

Sarah Dyer

Inspector

APPEARANCES

FOR THE APPELLANT:

Simon Bird QC	FTB Chambers
Martin Carpenter	Enplan
Philip Branton	Wincer Kievenaar Architects
Jodie O'Reilly	Heritage Collective
Nigel Appleton	Contract Consulting
Roger Sinden	Runwood Homes
Cathy Fishenden	EnPlan

FOR THE LOCAL PLANNING AUTHORITY:

Fiona Bradley	Attwells
Tessa Outram	Brentwood Borough Council
Paulette McAllister	Brentwood Borough Council

INTERESTED PERSONS

John Berry	Resident
Christine Berry	Resident
Peter Laurie	Resident
Doreen Laurie	Resident
Jennie Penkul	Herongate and Ingrave Preservation Society
Sheila Murphy	Herongate and Ingrave Preservation Society
Alan Kingsford	Herongate and Ingrave Parish Council (Chair)

Documents submitted at the hearing:

1. Updated wire-frame images against photographs of both appeal schemes
2. The financial appraisal of the proposed redevelopment of Heron Court by Flying Free Management Ltd
3. Copy of Appeal Decision Refs APP/H1515/A/08/2068488 and APP/H1515/E/08/2068486
4. Council's Notification Letter – venue/date/time of the hearing.