



Appeal Decision

Site visit made on 15 September 2021

by Robert Fallon B.Sc. (Hons) PGDipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17 December 2021

Appeal Ref: APP/B1930/W/20/3261466

14 Starlight Way, St Albans, AL4 0JP

- 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 Stephen Wallace against the decision of St Albans City & District Council.
 - The application Ref 5/20/0666 dated 17 March 2020, was refused by notice dated 24 July 2020.
 - The development proposed is described on the application form as "Erection of a detached three bedroom dwelling".
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Decision

1. The appeal is dismissed.

Procedural matters

2. Since the appeal was submitted, a revised version of the Framework¹ has been published. Both main parties have been given the opportunity to comment on this, but no responses were received.
3. The appellant has submitted an updated arboricultural impact assessment report² with their appeal submission. I am satisfied that the Council has had sufficient opportunity to review its contents and respond accordingly and would not be prejudiced by my consideration of this additional information. As a consequence I have considered the appeal on this basis.

Main issues

4. The main issues are:
 - the effect of the development on living conditions, with specific regard to amenity space provision for future occupiers of the proposed dwelling, and privacy & visual impact to neighbouring occupiers at Nos 14 and 16 Starlight Way;
 - the effect of the development on protected trees;
 - whether the proposal would be inappropriate development in the Green Belt, and if so, the effect of the development on the openness of the Green Belt;

¹ National Planning Policy Framework, Ministry for Housing, Communities and Local Government, July 2021.

² SJ Stephens Associates arboricultural impact assessment report 1521 dated 6 October 2020.

- if the development is inappropriate, whether the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations, so as to amount to the very special circumstances necessary to justify the development.

Reasons

Appeal site context

5. The appeal site forms part of the private garden to No 14 Starlight Way, a large extended end-of-terrace dwelling at the end of a cul-de-sac on a modern housing estate. It falls within the Metropolitan Green Belt and lies near two mature Oak trees on adjacent land protected by a Tree Preservation Order³.

Living conditions

6. The appellant states that there would be a significant distance between the first floor rear bedroom window of the dwelling and the rear elevation of No 16 Starlight Way. However, this window would nonetheless be in very close proximity to the boundary with this property's rear garden and clearly overlook it. The existing Oak tree would filter out some views of this private garden area, but not all given its deciduous nature, and as a consequence the loss of privacy to the occupants of No 16 would be harmful.
7. The proposed dwelling would also be in very close proximity to the front elevation of No 14 Starlight Way. In particular, there are two main habitable rooms (a lounge and bedroom) with their only source of outlook from this front elevation that would directly overlook the building. Given the short intervening distance between the two buildings, the development would be harmful to the outlook of these rooms and appear visually oppressive & intrusive.
8. Although the rear garden area to the proposed dwelling would be of a sufficient size, a substantial amount of it would be covered by the canopy of the Oak tree protected individually as part of Group G17 in the TPO. As a consequence, it would experience a loss of direct sunlight during the last part of the day, but more significantly, a loss of diffuse daylight throughout all of the day. As a consequence, it would not provide a sufficient standard of amenity space for the proposed dwelling.
9. The appellant states that there are other properties in the area with similar separation distances to that proposed and also other gardens covered by tree canopies. However, none of the cases put forward were exactly the same as that before me, and in any event, this does not justify further harmful development. Similarly, the lack of objections from the occupants of No 16 does not in itself demonstrate a lack of harm.
10. In view of the above, I conclude that the development would be harmful to the living conditions of future occupiers of the dwelling and neighbouring occupiers at Nos 14 and 16 Starlight Way. The proposal would therefore conflict with Policies 69 and 70 of the Local Plan, which seek, amongst other things, to ensure that new development is of a high design standard and protects privacy.

³ One forming part of Group G17 and the other specified individually as No 218, of Tree Preservation Order No. 1254, dated 10 June 1992, relating to Hill End and Cell Barnes Hospitals, St Albans.

11. I also find that the scheme conflicts with Paragraph 130 of the Framework which seeks, amongst other things, to ensure that development creates places with a high standard of amenity for existing and future users.

Protected trees

12. The updated arboricultural impact assessment report reveals that there will be excavation within 4.1% of the root protection area for the Oak tree protected individually as No 218 in the TPO, and 3.2% of the root protection area for the Oak tree protected as part of Group G17 in the TPO.
13. In addition, the updated arboricultural impact assessment report states that no-dig construction has been specified for a total of 7.6% of the unsurfaced part of the root protection area for the Oak tree protected individually as No 218 in the TPO and a total of 10.6% of the unsurfaced part of the root protection area of the Oak tree protected as part of Group G17 in the TPO. The report concludes that in both cases, this is less than the 20% maximum recommended in BS5837.
14. Given the minimal intrusion into the root protection areas for both trees, along with the use of measures such as tree protection fencing, no-dig construction areas, ground protection areas and hand-dig areas, it is my view that both trees will be adequately protected from construction. This protection could be further enhanced by imposing a condition removing permitted development rights for any outside structures or hardstandings within the site.
15. In view of the above, I conclude that the development would not be harmful to protected trees. The proposal would therefore accord with Policies 69 and 74 of the Local Plan which seek, amongst other things, to retain significant existing healthy trees.

Whether the proposal would be inappropriate development in the Green Belt

16. Policy 1 of the Local Plan⁴ states, amongst other things, that within the Green Belt, except for development referred to in Policy 2, or in very special circumstances, permission will not be given for purposes other than mineral extraction, agriculture, small scale sport facilities, other uses appropriate to a rural area, and the conversion of buildings.
17. Paragraphs 149 and 150 of the Framework state that the construction of new buildings and other forms of development in the Green Belt are inappropriate unless they fall within a number of exceptions.
18. There is no substantive evidence before me that the proposed development falls within any of the specified exceptions identified in Policy 1 of the Local Plan. There is also no dispute between the parties that the scheme does not fall within any of the exceptions specified in Paragraphs 149 and 150 of the Framework.
19. Although the development would have a greater impact on the openness of the Green Belt than the existing development, this would be limited given its location on a well-established modern housing estate at the end of a cul-de-sac between two dwellings. I also find that the site provides a limited contribution to the Green Belt purpose of; (1) providing a check to the unrestricted sprawl

⁴ St Albans District Plan, City and District of St Albans District Local Plan Review, Adopted 30 November 1994, Written Statement.

of large built-up areas; and (2) preserving the setting and special character of historic towns.

20. In view of the above, I conclude that the proposal constitutes inappropriate development in the Green Belt. I have assessed the scheme's impact upon the openness of the Green Belt and concluded that it would cause limited harm to the openness and purpose of including the land within the Green Belt.

Other considerations

21. Despite the scheme constituting inappropriate development in the Green Belt, the appellant asserts that there exist very special circumstances that justify an exception in this instance.
22. Although the appellant states that the Green Belt allocation was removed from the site in the emerging Local Plan, this document was withdrawn on 19 November 2020 and as a consequence, I can afford it no weight in my consideration. Notwithstanding this, I do not find the removal of the Green Belt allocation from this draft surprising given the location and character of the area as an established housing estate within St Albans, and recognise that it may provide a general indication of the Council's future intentions for a new draft Local Plan. However, I am unable to give this factor anything other than limited weight in my consideration.
23. Policy 1 of the Local Plan states that development falling outside the permitted criteria may be allowed in very special circumstances. Paragraph 147 of the Framework states that inappropriate development is by definition harmful to the Green Belt, and should not be approved except in very special circumstances. Paragraph 148 states 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.
24. I have concluded that the proposal would constitute inappropriate development and therefore be, by definition, harmful to the Green Belt. I have also concluded that the proposal would cause limited harm to the openness of the Green Belt. In accordance with Paragraph 148 of the Framework, I have given substantial weight to this harm in my assessment.
25. The appellant states that the dwelling would provide them with a long-term housing solution to remain in the area when they reach old-age. However, I see no reason why the existing dwelling at No 14 could not be adapted to enable this to occur, and neither do I see any reason why many of the larger existing houses on the estate could not be extended or adapted to contain ground floor bedrooms with ensuite bathrooms for the same purpose. As a consequence, I do not consider the provision of an accessible dwelling for elderly people to be a benefit to the wider area and have given this limited weight in my assessment.
26. I recognise that the scheme would result in benefits from; - (a) the provision of an energy efficient dwelling towards the Council's housing land supply; (b) future occupiers contributing to the vitality and viability of shops, services, facilities, businesses and community organisations in the wider surrounding area; and (c) local employment during construction. However, given that only 1 dwelling is proposed, I consider these benefits, together with that relating to

its accessibility to elderly people, to be of limited value, and not clearly outweigh the development's limited harm to the openness of the Green Belt, which I have given substantial weight to in my assessment. I also find that these limited benefits do not outweigh the harm to the living conditions of future and neighbouring occupiers.

27. I recognise that there would be no harm in respect of the main issue relating to protected trees. However, I am nonetheless satisfied that this would not outweigh the harm identified in respect of the main issues relating to the Green Belt and living conditions, which I deem to be sufficient to still justify dismissal of the appeal.
28. In view of the above, I find that there are no very special circumstances that clearly outweigh the scheme's harm to the Green Belt by reason of inappropriateness, and the limited harm to its character, openness and permanence. As a consequence, I conclude that the scheme would conflict with Policy 1 of the Local Plan, and also find that it would not accord with Paragraphs 147, 148, 149 and 150 of the Framework.
29. Although the Local Plan is over 5 years old, Paragraph 219 of the Framework states that existing policies should not be considered out-of-date simply because they were adopted or made prior to the publication of the Framework and that due weight should be given to them according to their degree of consistency with the Framework.
30. Policies 69, 70 and 74 of the Local Plan are generally compliant with the Framework insofar as they relate to the main issues of this case. However, Policy 1 of the Local Plan does not accord with the more comprehensive and balanced approach of the Framework and is out of date. I have as a consequence attached only limited weight to the scheme's conflict with this policy. In such circumstances, this would normally mean that the Framework's presumption in favour of sustainable development applies.
31. Furthermore, the Council has confirmed that there is a shortfall in the District's 5-year housing land supply and I have also noted that the delivery of housing was substantially below the housing requirement over the previous three years⁵. In such circumstances, this would mean that the policies which are most important for determining the application are out of date and that the Framework's presumption in favour of sustainable development applies.
32. However, the presumption in favour of sustainable development does not apply where policies in the Framework protect areas of particular importance, such as Green Belt, and provide a clear reason for refusal. I have concluded that the scheme conflicts with Paragraphs 147, 148, 149 and 150 of the Framework in relation to Green Belt, which as a consequence means that the presumption in favour of sustainable development is not engaged in accordance with Paragraph 11(d)(i) Footnote 7.
33. In view of the above, I conclude that the proposal does not accord with the development plan and that other material considerations do not indicate that the proposal should be determined other than in accordance with this.

⁵ 2020 Housing Delivery Test.

Conclusion

34. All representations have been taken into account, but no matters, including the scope of possible planning conditions and the willingness of the appellant to enter into a planning obligation to restrict occupation of the dwelling to people over 55, have been found to outweigh the identified failures, harm and policy conflict. For the reasons above, the appeal scheme should be dismissed.

Robert Fallon

INSPECTOR