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## Appeal Decision

Site visit made on 25 January 2022

**by M Aqbal BA (Hons) DipTP MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 5<sup>th</sup> April 2022**

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**Appeal Ref: APP/B1930/W/21/3275907**

**Land rear of Hawthorns, Roestock Lane, Colney Heath, St Albans AL4 0QW**

- 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 and Mrs M Tearle against the decision of St Albans City & District Council.
  - The application Ref 5/20/2986, dated 3 December 2020, was refused by notice dated 31 March 2021.
  - The development proposed is erection of detached dwelling following removal of existing structures.
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### Decision

1. The appeal is allowed and planning permission is granted for the erection of detached dwelling following removal of existing structures at land rear of Hawthorns, Roestock Lane, Colney Heath, St Albans AL4 0QW in accordance with the terms of the application Ref 5/20/2986, dated 3 December 2020 and subject to the following conditions:
  - 1) The development hereby permitted shall be begun before the expiration of 3 years from the date of this permission.
  - 2) The development hereby permitted shall be carried out in accordance with the following approved plans: DNG No.'s 531-01-A, 532-10-A and 531-11.
  - 3) Prior to the commencement of above ground construction works, samples of the materials to be used in the construction of the external surfaces of the development hereby permitted shall be submitted to and approved in writing by the local planning authority. Sample materials should be made available on site when discharging this condition. Thereafter, the development shall be carried out in accordance with the approved details.
  - 4) Prior to occupation of the dwelling hereby approved, a scheme showing the location of sprinklers for the proposed dwelling in accordance with Fire and Safety standards (Approved document B vol. 1 2019) shall be submitted to and approved in writing by the local planning authority. The approved sprinklers shall be installed prior to the occupation of the dwelling and retained for the life of the development.

### Main Issues

2. The main issues are: i) whether or not the proposal would be inappropriate development in the Green Belt in terms of the National Planning Policy

Framework ('the Framework') and development plan policy; and ii) the effect of the proposal on the character and appearance of the area.

## **Reasons**

### *Development in the Green Belt*

3. The appeal site comprises a driveway at Hawthorns which is a detached dwelling, and an area of hardstanding to the rear of this property. The site is largely enclosed from Hawthorns and neighbouring land and properties by boundary treatments and is occupied by outbuildings and a concrete pad, which are to be removed to facilitate the proposed detached dwelling. The site is located within the Metropolitan Green Belt.
4. Policy 1 of the St. Albans District Local Plan Review (1994) ('LP') sets out the extent of the Green Belt and specifies certain types of development which would be acceptable in the Green Belt. It also states that the siting and external appearance of development in the Green Belt are of importance.
5. The proposal before me does not fall under any of those accepted forms of development, and so constitutes inappropriate development under the terms of Policy 1 of the LP.
6. However, Policy 1 of the LP pre-dates the Framework and does not recognise the full extent of exceptions to inappropriate development detailed in the Framework. In this regard it is therefore inconsistent with the Framework.
7. Paragraph 149 of the Framework states that a local planning authority should regard the construction of new buildings as inappropriate in the Green Belt save for certain exceptions. This includes an exception that is not found in Policy LP1, namely (e) limited infilling in villages.
8. In considering whether or not the appeal site is located within a village, the main parties have referred to Figure 4 of the LP. This relates to the settlement strategy and shows the location of settlements, including Colney Heath, which is identified as a Green Belt settlement. Figure 4 is a diagrammatic and identifies Colney Heath as three clusters of development but because of the scale this is drawn at, it is not possible to clearly identify how this translates on the ground. Figure 4 is also about 25 years old and since then the extent of actual development has also changed.
9. Irrespective, whether a site is within a defined village boundary in a development plan is not conclusive to determining whether a site is within a village or not. It is for the decision maker to decide, as a matter of fact and degree on the ground, if the site appears to be in a village.
10. On the ground, the first cluster of development which forms part of the village is centred along the High Street. The second incorporates development located off Roestock Lane.
11. Although separated by some areas of undeveloped land, the third cluster incorporates dwellings to the north of Rednall Lane, which includes Hawthorns and the appeal site. In part, this third cluster of development is visible from parts of the second cluster and is linked to this by the highway. Furthermore, the appeal site is largely surrounded by dwellings and forms part of a small but developed area which is clearly distinguished from surrounding undeveloped

countryside. Therefore, the appeal site falls within the third cluster of development which is part of the village of Colney Heath.

12. There is no definition of 'limited infilling' within the Framework or the development plan. As such, this is a question of planning judgement based on an assessment of the site and its surroundings. In my view 'limited infilling' would be filling of a small gap within existing development, such as the building of one or two houses on a small plot in an otherwise built-up frontage or area.
13. Whilst there is largely open land to the rear of the site, it is generally surrounded by developed areas to the front and sides. Consequently, the proposal for a single dwelling, on a modest plot occupying a gap in an otherwise built-up area would be 'limited infilling'.
14. For the above reasons, the proposal constitutes limited infilling in a village and accords with the exception under paragraph 149 e) of the Framework and therefore is not inappropriate development in the Green Belt. There is no requirement to consider the impacts on openness or the purposes of the Green Belt as this is implicitly taken into account within this exception. To my mind and having regard to s38(6) of the Planning and Compulsory Purchase Act 2004 the Framework constitutes a material consideration that justifies a determination otherwise than in accordance with the development plan.
15. I have taken account of the appeal decision (APP/B1930/A/12/2173873) relating to a proposed dwelling on land which is adjacent to the appeal site. Although the Inspector allowed that appeal, he found that the proposal did not amount to infill development. Nonetheless, the circumstances of that proposal were different in that there was no development to the north of the site and there was a greater degree of separation between the proposed dwelling and the host dwelling. In contrast, the dwelling in the scheme before me would have a stronger physical relationship to existing development.
16. Although planning application (ref. 5/2014/0286) for a dwelling at the appeal site was refused by the Council, since then the dwelling allowed under the abovementioned appeal (The Oaks) has been built and this has changed the physical context to the appeal site. Also, the above proposals were considered under a previous version of the Framework which referred to 'limited infilling in villages under policies set out in the local plan'. In any event, each application is determined on its planning merits. Accordingly, these examples and others in the evidence before me, do not alter my findings on this main issue.
17. Therefore, although the proposal constitutes inappropriate development under Policy 1 of the LP as it does not meet any of the exceptions in that policy, having regard to more recent Green Belt policy in the Framework, the proposal would not be inappropriate development in the Green Belt.

#### *Character and appearance*

18. The area surrounding the appeal site comprises predominantly residential development in a range of styles. In general, these dwellings face the highway with direct frontage access and have front and rear gardens which vary in sizes. However, there are some variations to this layout. For example, dwellings which are located behind others, such as at Corrys End and The Oaks.

19. The proposed dwelling is a detached dormer bungalow that would be of a similar scale and height and on a comparable sized plot to nearby properties. Therefore, and subject to the details of proposed external materials being agreed by a condition, the proposed dwelling would be compatible with the varied siting and appearance of dwellings in the area.
20. Accordingly, the proposal is consistent with the design aims of Policy 1 of the LP and Policy 69 of the LP which seeks to ensure that all development has an adequately high standard of design, and Policy 70 of the LP which requires new housing development to have regard to its setting and the character of its surroundings.

### **Conditions**

21. I have considered the conditions put forward by the Council in light of the requirements of the Planning Practice Guidance and the Framework. In addition to the standard timescale condition, I have imposed a condition specifying the relevant plans as this provides certainty. I have also imposed a condition requiring details of external materials in the interests of the appearance of the development and area. In the interests of fire safety, it is necessary to require the details and implementation of sprinklers for the proposed dwelling.
22. The Council has suggested a condition removing permitted development rights under Classes A, B, C, D and E of Part 1 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 ('GPDO'). The Framework advises that conditions should not be used to restrict national permitted development rights unless there is clear justification to do so. Bearing in mind the limitations of the GPDO in terms of size and position of development permitted, I am not persuaded that the site circumstances are such, to justify the removal of these permitted development rights to safeguard the character of the area.
23. The existing levels and proposed slab levels are shown on drawing 531-11 and a condition requiring this information is therefore not necessary. Where necessary and in the interests of clarity and precision, I have altered the conditions to better reflect the relevant guidance.

### **Conclusion**

24. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that decisions on planning applications should be made in accordance with the development plan unless material considerations indicate otherwise.
25. The proposal would be inappropriate development under the terms of Policy 1 of the LP. Nonetheless, for the reasons already given, the proposal meets exception e) of Paragraph 149 of the Framework. Consequently, it is not inappropriate development in the Green Belt and this material consideration is of sufficient weight to outweigh the conflict with the development plan. I, therefore, conclude that the appeal should be allowed.

*M Aqbal*

INSPECTOR