

Appeal Decision

Hearing Held on 9 February 2022

Site visit made on 14 February 2022

by S Tudhope LLB (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 7 April 2022

Appeal Ref: APP/B1930/W/21/3271494
56A, Marshalswick Lane, St Albans AL1 4XF

- 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 D Hughes against the decision of St Albans City & District Council.
 - The application Ref 5/20/1530, dated 8 July 2020, was refused by notice dated 21 October 2020.
 - The development proposed is described as "Retention of dwelling including reduction of ridge and dormer height; creation of eaves at 2.5m above datum; retain blocking off to lightwells; insertion of level roof lights; removal of block and beam patio; retain obscure panels to upper windows".
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Decision

1. The appeal is allowed and planning permission is granted for a detached dwelling at 56A, Marshalswick Lane, St Albans AL1 4XF in accordance with the terms of the application, Ref 5/20/1530, dated 8 July 2020, subject to the conditions set out in the attached Schedule at the end of this Decision.

Preliminary Matters

2. At the Hearing both parties agreed that the description given on the Council's decision notice, minus the term 'retrospective' (which is not an act of development) accurately and succinctly describes the proposal. I have therefore used this description of development in my decision above rather than the original description on the application form which is shown in the banner heading of this Decision.
3. Although the appeal proposal is for the erection of a dwelling, its development would incorporate some elements of an existing building at the site. The proposal would result in alteration of the existing building rather than its extension. In this respect the development would be part retrospective. I have dealt with the appeal on this basis.
4. The appellant submitted late evidence prior to the Hearing by way of an addendum to his Statement of Case. This included additional arguments regarding development that he considers benefits from extant planning permission at the appeal site and plans and extracts from previous decision notices and Council officer reports. The late evidence was relevant, reasonably brief and was addressed in the parties' agreed Statement of Common Ground (SoCG). As a result, no one was prejudiced when I accepted this evidence.

5. The Council confirmed at the Hearing that the requirements of its Enforcement Notice, reference D/ENF/515/DOE (the enforcement notice), relating to development at the appeal site has been satisfactorily complied with. I have taken this matter into consideration in my determination of this appeal.
6. The SoCG listed the Council's supplementary planning document "Design Advice Leaflet No.1: Design and Layout of New Housing 1998" as relevant. This was submitted at the Hearing. However, neither party wished to draw my attention to any section of that document to support their case and advised that it had been listed for completeness.
7. The Council accepted at the Hearing that Policy 72 of the St Albans District Local Plan Review 1994 (LP), as referred to in its decision notice, is concerned with extensions to existing dwellings rather than the erection of a new dwelling. Whilst it is likely that the planning history of the site led to the consideration of the planning application against this policy, I do not find it to be relevant in this case.
8. On 20 July 2021 a revised National Planning Policy Framework was issued. The main parties were given the opportunity to comment on the implications of the resulting changes for this appeal. The references to 'the Framework' made within my decision are to this revised version.

Main Issues

9. Whilst not specifically raised in the Council's decision notice it is clear from the Council's statement of case and interested parties' representations that the effect of the proposal on character and appearance of the area is of concern.
10. Therefore, I consider that the main issues in this case are the effect of the proposed development on the character and appearance of the area and the living conditions of the occupiers of neighbouring properties, with particular regard to privacy and noise.

Reasons

11. The appeal proposal must be seen in the context of the planning history of the site which is extensive and spans over many years. Several planning permissions have been granted for a dwelling at the site, which lies in a backland position to the rear of an established frontage of large detached residential properties. The principle of the erection of a detached dwelling at the site has been established and a dwelling has been erected. At the Hearing the parties confirmed that the extant planning permission most relevant to the appeal proposal is reference 5/2011/0634¹ (the 2011 permission) for a detached dwelling with basement level (amendment to planning permission 5/2010/2057).
12. It is clear from the dismissed appeal² against the enforcement notice, which was concerned with the erection of a dwelling at the appeal site, which was not built in accordance with the 2011 permission, that a consequence of the requirements of the notice being carried out and the enforcement notice being complied with, was that an unconditional planning permission for the remaining development would be granted by way of s173 (11) of the Town and Country

¹ Granted on 27 May 2011.

² APP/B1930/C/12/2183837

Planning Act 1990. In particular the Inspector highlighted that there would not be any conditions imposed to restrict the provisions of 'permitted development'³ being undertaken to the altered dwelling.

13. During the Hearing the Council confirmed that the requirements of the enforcement notice had been complied with and that the overall scale of the appeal proposal would be the same as that approved under the 2011 permission. This confirmation means that the appeal site benefits from extant consent for a dwelling of a height and general scale of the appeal proposal, but which also benefits from unrestricted permitted development rights.
14. In part this means that alterations and extensions of the approved dwelling (the 2011 permission), within the permitted limits set out in The Town and Country Planning (General Permitted Development) (England) Order 2015, could be undertaken without the need to seek the express consent of the local planning authority. This would include alterations to the roof for the purposes of a loft conversion. Thereby resulting in a three-storey dwelling at the site. Given the obvious desire, as demonstrated by the various attempts to gain permission for accommodation at first floor level in a dwelling at the site, I consider that there is a real prospect that these unrestricted rights would be utilised.
15. This matter, therefore, attracts considerable weight in the determination of this appeal, as it could result in development at the site that would be more harmful, in terms of impacts on character and appearance and on the living conditions of neighbouring occupiers, than would result from the appeal proposal. Against this 'fallback position' the appeal proposal, which would contain living accommodation within its roof space, without the need to erect a building of greater size and scale than previously approved, would be less visually prominent and intrusive.
16. Although the proposal would result in a three-storey dwelling, the design would give the appearance of a single storey dwelling with accommodation in the roof space. The overall scale and profile of the dwelling would not be increased from that previously approved. The changes in the design of the dormer features and the small crown roof element are minor and would not materially alter the size and impact of the building in its surroundings when compared to the extant permission. On this basis and notwithstanding the findings of previous Inspectors⁴, given the change in circumstances as discussed above, I conclude that the proposal would not result in unacceptable harm to the character and appearance of the area.
17. The proposal includes the installation of obscure glazing to the front dormers which would be non-opening. This would protect the privacy of the occupiers of No 58 by preventing overlooking of their rear garden area. Conditions could be imposed if the appeal were allowed to ensure these details would be retained in perpetuity. The appellant has indicated acceptance of such a condition. Rooflights are also proposed to serve the first-floor rooms. As these would be positioned some 1.7 metres above floor level, in combination with the angle of view out of these windows, they would not introduce any harmful overlooking of neighbouring properties or gardens. The proposed roof lights would not need

³ As set out in the Town and Country Planning (General Permitted Development) Order 1995 as amended.

⁴ APP/B1930/A/04/1155784; B1930/A/07/2035463; APP/B1930/A/08/2075394; APP/B1930/A/09/2100955; and APP/B1930/C/12/2183837

to be fitted with obscure glazing because of these reasons. Their provision would ensure that the living conditions of future occupiers would be satisfactory with regard to the provision of light and outlook, particularly given that they would serve bedrooms and a dressing room.

18. A cloakroom window is proposed in the western elevation. Due to its proximity to the shared boundary with No 54, were the appeal to be allowed, the privacy of neighbouring and future occupiers could be protected by imposition of a condition to require the use and retention of obscure glazing, and for this window to be non-opening below a height of 1.7 metres above floor level. In contrast, due to the separation distance between the proposed dwelling and No 56 and the intervening boundary treatments, I do not consider that there would be any loss of privacy of the occupiers of No 56 from the door and window proposed to the north elevation.
19. Although there would be a material increase in the floorspace provided, the proposal seeks the same number of bedrooms as previously approved. Even if I were to accept that the size of the accommodation would likely result in a greater number of people living in the appeal building than would have been the case with the 2011 permission, under which the same access was approved, I do not accept that the volume of traffic associated with a single dwelling of the size proposed is likely to cause significant disturbance. This is the case in relation both to vehicular movements along the access and within the site, including parking arrangements.
20. The original dwelling at No 54 has recently been replaced with a substantial sized dwelling situated further forward in its plot, near to and alongside the proposed access. However, its side elevation is largely devoid of openings with only a secondary entrance at ground floor level. There is a reasonable distance between that property and the proposed access, with the potential for the provision of an intervening boundary treatment. This situation is akin to that of the relationship between No 56 and the proposed and previously approved access. Therefore, the occupiers of Nos 54 and 56 would not be subject to unreasonable levels of noise disturbance by the passage of vehicles.
21. I therefore conclude that the proposal would not result in unacceptable harm to the character and appearance of the area or to the living conditions of the occupiers of neighbouring properties, with particular regard to privacy and noise. Thus, the proposal would not conflict with LP Policy 69 which seeks to ensure adequately high standards of design. For the same reasons the proposal would not conflict with the requirements of the Framework.

Other Matters

22. The appeal proposal does not seek the provision of lightwells. Therefore, whether or not lightwells to serve the basement level were previously approved has no bearing on my decision.
23. It was clear at my site visit that the existing building on the appeal site differs considerably from the appeal proposal and contains accommodation in the roof space served by both front and rear dormers. Whether or not this is a lawful development is a separate matter for the Council and lies outside the remit of this appeal, which I necessarily determine on its own merits, taking into consideration any demonstrated fallback position.

24. Nevertheless, if the appeal were to be allowed, development of the appeal proposal would require alterations to the existing building rather than the erection of a new building. The appellant confirmed at the Hearing that the form of construction of the existing dwelling was such that it would be possible to alter it in accordance with the proposal.

Conditions

25. Conditions were proposed and agreed between the parties in the SoCG. These were discussed at the Hearing, whereby the appellant raised objection to the agreed condition relating to the installation of a sprinkler system. Having regard to the discussion and the requirements of the Framework and the Planning Practice Guidance, I have imposed those conditions I consider meet the six tests, subject to minor amendments to ensure precision and brevity without changing their overall intent. I have not imposed the suggested condition requiring removal of a concrete slab foundation as the parties agreed that this work had already been undertaken.
26. It was agreed at the Hearing that a commencement condition is not necessary as part of the appeal dwelling already exists. I have imposed a condition specifying the relevant drawings as this provides certainty. I have included a condition relating to materials to be used on the external surfaces of the development in the interests of ensuring a satisfactory appearance.
27. A condition for obscure glazing and restricted opening for the western elevation window and the dormer windows is necessary to protect the living conditions of neighbouring occupants.
28. It is reasonable and necessary, in the interests of protection of the character and appearance of the area and the protection of the living conditions of neighbouring occupiers, to remove permitted development rights relating to enlargements and extensions of the dwelling and the erection of outbuildings and enclosures. A condition to remove permitted development rights for the insertion of additional windows, doors or other openings to the western elevation is reasonable and necessary to protect the living conditions of the occupiers of No 54.
29. I have included a condition requiring the approval of details of hard and soft landscaping in the interests of the character and appearance of the area. I have not included car parking layout as a detail to be provided as this is already indicated on the approved plan. It is also unnecessary to require details of other vehicles and pedestrian access and circulation areas given the proposal is for a single dwelling.
30. I have imposed a condition related to a residential sprinkler system in the interests of fire safety because the driveway does not meet the requirements of the Hertfordshire Fire and Rescue Service in terms of its length and turning provision. Whilst this may not have been a requirement of the 2011 permission, I am satisfied that this condition is necessary to comply with current standards.

Conclusion

31. For the above reasons the appeal is allowed.

S Tudhope

Inspector

Schedule of Conditions

- 1) The development hereby permitted shall be carried out in accordance with the following approved plans: Site Location Plan; Existing Floor Plans Drawing No 56/PP/002 dated June 2020; Proposed Sections and Elevations Drawing No 56A/PP/003A dated June 2020; Proposed Roof Plan Drawing No 56A/PP/004 dated July 2020; and Site Plan Drawing No 56A/PP/005A dated Jul 2020.
- 2) The materials to be used in the construction of the external surfaces of the development hereby permitted shall accord with the submitted details and shall match those used in the existing building.
- 3) The dwelling hereby permitted shall not be occupied until the window to the western elevation and the dormer windows have been fitted with obscured glazing, and no part of those windows that is less than 1.7 metres above the floor of the room in which it is installed shall be capable of being opened. Once installed the obscured glazing shall be retained thereafter in accordance with these details.
- 4) The dwelling hereby permitted shall not be occupied until a domestic sprinkler system has been provided in accordance with details which shall have been previously submitted to and approved in writing by the local planning authority.
- 5) Prior to the first occupation of the dwelling hereby permitted, there shall have been submitted to and approved in writing by the local planning authority a scheme of hard and soft landscaping. These details shall include: means of enclosure; hard surfacing materials and should identify existing trees and hedgerows to be retained. The landscaping works shall be carried out in accordance with the approved details including the agreed programme for implementation.
- 6) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that Order with or without modification), no form of enlargement of the dwelling hereby permitted shall be carried out and no building or enclosure shall be erected.
- 7) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that Order with or without modification), no windows, doors or other openings, other than those expressly authorised by this permission, shall be constructed on the west elevation.

- 8) The dwelling hereby permitted shall not be occupied until means of vehicular access and parking areas have been constructed in accordance with the approved plans which shall thereafter be kept available for the approved purposes.

End of Schedule

APPEARANCES

FOR THE APPELLANT:

Mr D Hughes, Appellant

FOR THE LOCAL PLANNING AUTHORITY:

Mr N Ozier, Director of the Planning and Development Division of Aitchison Rafferty, Chartered Town Planning Consultants

INTERESTED PERSONS:

Mr D Leedham, Near Neighbour

DOCUMENTS SUBMITTED AT THE HEARING

1. St Albans City and District Council – Design Advice Leaflet No.1: Design and Layout of New Housing 1998