



Appeal Decision

Site visit made on 1 March 2022

by K Savage BA(Hons) MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25 April 2022

Appeal Ref: APP/B1930/W/21/3282256

Land to rear of 76-80 Oakwood Road, Bricket Wood, St Albans AL2 3QA

- 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 S Aherne (Edit Residential) against the decision of St Albans City and District Council.
 - The application Ref 5/21/0280, dated 29 January 2021, was refused by notice dated 30 July 2021.
 - The development proposed is 6 x 3 bedroom dwellings, access, landscaping and all enabling works.
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Decision

1. The appeal is allowed and planning permission is granted for 6 x 3 bedroom dwellings, access, landscaping and all enabling works, at Land to rear of 76-80 Oakwood Road, Bricket Wood, St Albans AL2 3QA, in accordance with the terms of the application, Ref 5/21/0280, dated 29 January 2021, subject to the conditions set out in the attached schedule.

Application for costs

2. An application for an award of costs has been made by Mr S Aherne against St Albans City and District Council. This is the subject of a separate decision.

Preliminary Matters

3. My attention is drawn to a subsequent application made to the Council on the same site, which was refused in December 2021 for different reasons relating to waste management and window separation distances. The appellant points out that the amendments made through this later application satisfactorily address the Council's reason for refusal in this appeal.
4. The appellant adds that it is open to me to consider this later scheme under the *Wheatcroft*¹ principles. However, I am not provided with a full set of drawings for the later scheme and so have no proper basis upon which to assess it. Moreover, were I to determine the proposal on the basis of an amended layout, it could come as a surprise to some parties who would justifiably have thought they were commenting on the original scheme. Consequently, whilst the later application is a material consideration, I have determined the appeal on the basis of the plans originally submitted to the Council.

Main Issue

5. Based on the Council's reason for refusal, the main issue in this case is whether the siting of the proposed dwellings would lead to future pressure from

¹ Wheatcroft (Bernard) Ltd v Secretary of State for the Environment (1982) JLP 37

occupants to prune or remove surrounding trees, and if so, the effect of this on the character and appearance of the area.

Reasons

6. The appeal site encompasses parts of the rear gardens of 76, 78 and 80 Oakwood Road and 29 Hornbeams. Access would be gained to the side of the dwelling at No 80, planning permission for the demolition and replacement of which has already been granted.² Three pairs of semi-detached dwellings would be arranged around a central access and parking areas, with rear gardens around the perimeter of the site on the western and southern sides.
7. The existing gardens are deep and have a sylvan quality at the rear due to the presence of many tall, mature trees. The trees are substantial in size, with the appellant's Arboricultural and Planning Integration Report (APIR) indicating several reach 23 metres or more in height. The trees within the site are protected by a tree preservation order (TPO) made in 2015. This replaced an earlier TPO that was found to be defective.
8. I saw the garden to No 78 was well-maintained to its full depth, but the rearmost parts of the other gardens to the rear of No 76 (which is part of 29 Hornbeams) and No 80 are evidently less actively used and left to a more natural appearance, in parts overgrown.
9. Policy 74 of the St Albans District Local Plan Review 1994 (the DLPR) states that, in considering planning applications, the Council will take account of the retention of existing landscaping, including significant healthy trees and other important features. It adds that dwellings should not be sited where they are likely to justify future requests for tree felling or surgery for reasons of safety, excessive shading, nuisance or structural damage.
10. The National Planning Policy Framework (the Framework) states that trees make an important contribution to the character and quality of urban environments and that existing trees should be retained wherever possible. The Framework also seeks to create places with a high standard of amenity for existing and future users.
11. The application was recommended for approval by officers, but refused following a meeting of the Council's Planning Committee, on the basis of the proximity of the dwellings to existing trees leading to issues of falling debris, safety, excessive shading, nuisance or structural damage for future occupants, which would lead to them making applications to the Council to prune or fell the trees to address these issues.
12. The proposed dwellings would be located centrally within the site with their back gardens towards the perimeter on the southern and western sides. The appellant's APIR has categorised the trees within and adjacent the site. It sets out that the trees to be removed to facilitate the development would all fall within Categories C or U, lesser specimens not regarded as impediments to development. No category A or B trees, the best specimens, are proposed to be removed. In addition, the proposal includes the planting of some 12 new trees and other decorative planting within the site as part of proposed landscaping.

² Council Ref 5/2020/2720

13. The Council's main concern appears to relate to Dwellings 3 and 4 and their proximity to trees on the southern boundary. The dwellings would be some 10 metres from the crown spread of the large ash tree directly to the rear, whilst the crown of a beech tree within 29 Hornbeams would just about meet the rear corner of Dwelling 3. A new oak tree is also proposed to the rear of Dwelling 4.
14. The presence of such tall trees would have an effect on the light and outlook enjoyed by occupants of the proposed dwellings. The appellant has undertaken a Sunlight and Daylight Assessment in response to the Council's concerns. It sets out that light reaching the windows and gardens of each of the proposed dwellings would meet acceptable levels, both in summer and winter. In summer, the trees in leaf would provide a shading effect that would be a positive feature for occupants, whilst in winter the surroundings would be more open with light coming through the trees not in leaf. Having regard to the evidence before me, I am satisfied that the existing trees would not lead to unacceptable levels of light for future occupants, and in this respect I am not persuaded that this would form a likely reason for occupants to seek significant pruning or complete removal of trees.
15. The Council further refers to problems arising from falling tree debris, including safety issues, damage to property or the inconvenience in removing it. I acknowledge that these are practical considerations that residents will have, but equally they would purchase the dwellings in the knowledge that the trees exist and that they are subject to protection through the TPO. The Council would retain control over any works to these trees, including refusing applications where the works are not considered acceptable.
16. In this respect, as indicated within the appellant's APIR, a number of methods, such as crown reduction, crown lifting and crown thinning, can alleviate inconveniences for residents, such as shading or debris, whilst still maintaining the trees in a healthy condition and positively contributing to the visual amenity of the area. Therefore, whilst I accept that a certain pressure may arise from the proximity of trees, and some applications for tree works may ensue, it is not inevitable that this would lead to reduction or loss of trees within or around the site on such a scale as to result in significant harm to the sylvan character and appearance of the area.
17. The detailed tree evidence before me also shows that the footprints of the proposed dwellings would not encroach into the root protection areas of protected trees. Therefore, the likelihood of significant structural damage being caused by the trees is low. The APIR further sets out details of tree protection measures to be employed during the construction process to prevent damage to the trees and their root systems. These measures could be secured through an appropriately worded condition. A further condition would ensure the implementation of the proposed tree planting and include steps to ensure it establishes itself and is maintained.
18. I am referred by the parties to other appeal decisions where the question of future pressure on trees was considered. I have had regard to the comments of the respective Inspectors, and those of the main parties. Although there are some parallels with the present appeal, I am not provided with the full particulars of these other appeals, including specific evidence relating to trees, and therefore I cannot be certain that the cases are directly comparable.

Ultimately, I have considered this issue on its own merits, having regard to the site-specific evidence before me.

19. I have also noted comments from interested parties in respect of the alleged removal of protected trees within the site several years ago. However, the Council refers to tree removal only in respect of drainage issues, and not as a relevant factor in terms of this main issue. The evidence before me in relation to past tree removal is limited and inconclusive, and does not alter my conclusions on this main issue.
20. For the reasons set out, therefore, I conclude that the proposed development would not lead to sustained or excessive future pressure to prune or fell protected trees, and therefore would not result in a noticeable loss of trees that would harm the character and appearance of the area. No conflict would therefore arise with Policies 69, 70 and 74 of the DLPR, which together require that new development achieves a high standard of design; that new housing has regard to its setting and the character of its surroundings; that significant healthy trees and other landscape features are retained; and that dwellings are not sited where they are likely to justify future requests for tree works on the grounds of safety, excessive shading, nuisance or structural damage.

Other Material Considerations

21. The Council did not refuse the application for any other reason. However, I have had regard to the several representations made by interested parties and consultees raising other concerns. I address these below.

Character and Appearance

22. Setting aside the main issue, the dwellings themselves would be a form of backland development to the rear of a mainly linear pattern of housing on Oakwood Road. However, the dwellings to the west on Hornbeams are clustered around a cul-de-sac and stand to the rear of dwellings on Ashridge Drive. The Council also acknowledges a number of backland developments in the vicinity, and it has not opposed the location of the dwellings in spatial terms. Having regard to the surrounding pattern of development, I do not take a different view.
23. In visual terms, there is variety to the built form, with chalet bungalows characterising Oakwood Road and two storey dwellings to the rear on Hornbeams and Ashridge Drive. The proposed dwellings would have a simple, pitched roof form and brick finish reflective of surrounding properties. They would be located in a concealed position behind other dwellings, where existing trees and hedges, together with new planting to the site perimeter, would help to screen the dwellings and embed them into their surroundings. Therefore, I am therefore satisfied that the proposal would preserve the character and appearance of the area.

Neighbours' Living Conditions

24. Policy 70 of the DLPR sets minimum distances for facing rear windows (27m) and the depth of the rear garden (13.5m). The first of these measurements would not apply to Dwellings 1 and 2 given they would stand perpendicular to the existing dwellings on Oakwood Road. The Council indicates that the other dwellings would achieve the necessary window separation distance; however, it is raised in a letter of representation that the distance from Dwelling 6 to 29

Ashridge Drive would actually be around 22m, which appears would be the case based on the plans. The Council adds that only Dwelling 5 would achieve the required 13.5m rear garden depth, others being between 9.5m and 12m.

25. However, these shortfalls would be relatively modest, and there would still be a reasonable depth to the rear gardens. Moreover, the dwellings would be separated from neighbouring properties by existing and proposed boundary landscaping, which would provide screening and filter views between properties. I note concern from neighbours to the rear at the potential removal of a cypress hedge (G9) to the rear of Plot 6; however neither the APIR nor the plans before me show this is proposed to be removed. Solid boundary fencing would also ensure privacy between gardens. Given these factors, I am satisfied that there would be sufficient separation distances so as not to cause undue overshadowing or loss of outlook, nor loss of privacy, to neighbouring occupants. I am also content that lighting from the proposal would be typical of a residential use and would not cause disturbance to neighbouring dwellings. Therefore, the proposal would preserve neighbours' living conditions.

Standard of Accommodation

26. The proposed dwellings would meet national space standards and the Council's standard for external amenity space of 80sqm. Having regard to the layout of the dwellings and the development as a whole, I find that a suitable standard of accommodation would be provided for future occupants.

Access for Refuse and Emergency Services

27. The evidence before me indicates that the dwellings would be accessible by the Council's refuse lorries, which could turn within the site and leave in forward gear. No objection has been raised by the Council's Waste Officer, and I have no substantive reasons to conclude otherwise.
28. The appellant has provided vehicle tracking analysis which indicates that fire engines used by Hertfordshire Fire and Rescue Service (HFRS) could reach the dwellings, despite parts of the access road being narrower than the 3.7m clear width set out under the Building Regulations. HFRS however maintain some doubt as to the feasibility of access by a fire engine and therefore advise that the dwellings should be fitted with sprinkler systems to comply with the Building Regulations in the event access cannot be provided. Such measures could be secured by condition.

Highway Safety and Parking

29. Various concerns have been raised in respect of the width of the access road, lack of a dedicated pedestrian route, visibility at the site entrance and increased congestion. I note that the Hertfordshire County Council (HCC) as the local highway authority has not opposed the proposal, and the Council has not pursued any reason for refusal relating to highways matters. Given the limited scale of the development, I agree that the access would be acceptable despite it serving more than the usual five-unit limit for private accesses, as the volume of vehicular traffic would not be significant, and it would travel at slow speed. Therefore, a shared surface for drivers and pedestrians would not cause significant safety concerns in this case.
30. Despite concerns from interested parties, the Council's committee report indicates that the proposed level of on-site parking would meet with its

standards, and no objection is raised to the proposed tandem arrangement. However, the Council has recommended a condition which would secure full details of the parking layout prior to occupation. This would ensure a satisfactory parking arrangement is provided.

31. I observed the site entrance and whilst I saw some on-street parking, there appeared to be sufficient visibility in both directions and traffic was relatively infrequent and not excessive in speed. Visibility splays are proposed which would ensure drivers and pedestrians can see each other when vehicles are leaving the site. These could be secured by condition. Consequently, I have no reasons to differ from the conclusions of the Council in highways matters.

Ecology, Flooding and Drainage

32. The adverse ecological impact from the development is assessed as 'negligible-low' by Hertfordshire Ecology, who consider that an overall net ecological gain can be achieved if the recommendations of the appellant's Ecological Enhancement Plan and Landscape and Ecological Management Plan are followed. These could be secured by condition.
33. The appeal site is located in Flood Zone 1, which is considered to be at the lowest risk of flooding. Concerns have been raised that the removal of trees on the site has exacerbated flooding problems within the gardens, and would be made worse by the proposed development. However, I have limited information to demonstrate that significant problems have occurred, or to doubt that a suitable means of draining the site could be achieved, which could be addressed by way of a appropriately worded planning condition.

Housing Provision

34. The Council concedes that it is unable to demonstrate a five year supply of deliverable housing sites. Moreover, the latest Housing Delivery Test results show that the Council delivered only 69% against its target over the last three years. Given this shortfall, the provision of six dwellings within an accessible area would be a substantial benefit of the scheme.

Other issues raised

35. I have had regard to other concerns raised by interested parties beyond those already addressed. Ultimately, taking account of the evidence before me, I have not identified other matters of such significance as to result in further material benefits or harms to be factored into the overall planning balance.

Planning Balance

36. On the main issue of the appeal, I have found that the proposal would not lead to demonstrable pressure to prune or fell existing trees, and therefore the proposal would not be harmful to the character and appearance of the area in this respect, and no conflict would arise with the development plan.
37. It is common ground between the main parties that the Council is unable to demonstrate a five year supply of deliverable housing sites. Therefore, pursuant to paragraph 11(d) of the Framework, the presumption in favour of sustainable development is engaged.
38. I have found that the other material considerations in this case do not raise significant adverse impacts, with any concerns being minor in nature and

capable of being addressed by condition. Conversely, the proposal would deliver significant benefits in terms of housing delivery at a time when the Council cannot demonstrate a sufficient supply of deliverable housing sites. In the context of paragraph 11, therefore, there are no adverse impacts associated with granting planning permission which would significantly and demonstrably outweigh the benefits.

39. Overall, therefore, the proposal accords with both the development plan for the area and the Framework, and the appeal should succeed.

Conditions

40. I have had regard to the list of suggested conditions provided by the Council. Where necessary, I have amended their wording to ensure they meet the relevant test for conditions set out in the Framework. The appellant has also confirmed their agreement to those conditions which would be pre-commencement.
41. In addition to the statutory time limit for implementation, a condition setting out the approved plans is necessary to provide certainty. Conditions are required in respect of existing land levels and finished floor levels, and a method statement in respect of works affecting the root protection areas of trees. These are pre-commencement as they relate specifically to the construction phase and would be ineffective or lead to harm or loss were they required to be addressed at a later stage.
42. It is further necessary to secure the implementation of tree protection measures and ecological enhancements during the construction phase, to protect and enhance the natural environment. Details of external materials and proposed landscaping are also required to ensure a satisfactory appearance. The provision of a suitable system of on-site drainage is required to avoid increasing flood risk to the site and surrounding properties.
43. Conditions requiring the implementation of the vehicular access, visibility splays and car parking spaces are necessary in the interests of highway safety. Installation of sprinkler systems is necessary to ensure the safety of occupants. The erection of solid boundary fencing and installation of obscurely glazed windows are required to maintain privacy, as is a waste management plan to prevent pollution and protect the immediate environment.
44. Finally, given the particular layout of the development and the proximity of trees, it is necessary in this case to remove permitted development rights for extensions and alterations to the dwellings or their roofs or the erection of outbuildings which may otherwise lead to harm to the appearance of the buildings, the living conditions of adjoining occupants or threaten the health of protected trees.

Conclusion

45. For the reasons set out, and taking all relevant matters into consideration, I conclude that the appeal should be allowed.

K Savage

INSPECTOR

Schedule of Conditions

Timing/Plans

- 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: 101 Rev P.02; 121 Rev P.01; 141 Rev P.01; 201 Rev P.01; 211 Rev P.01; 251 Rev P.03; 301 Rev P.02; 321 Rev P.02; 331 Rev P.02; 401 Rev P.01; 501 Rev P.01; 521 Rev P.01; 531 Rev P.02; 551 Rev P.01.

Pre-commencement conditions

- 3) The development hereby permitted shall not be commenced until drawings showing existing levels and proposed slab levels have been submitted to and approved in writing by the Local Planning Authority. The development shall then be carried out in accordance with the details so approved.
- 4) No development shall commence unless a method statement has first been submitted to and approved in writing by the Local Planning Authority to cover the methods of construction of hardstanding areas within the root protection area of trees within the site during demolition and construction phases, based on guidelines set out in British Standard BS5837: Trees in relation to design, demolition and construction - Recommendations (or in an equivalent British Standard if replaced). Thereafter the development shall be carried out in accordance with the approved details.

Conditions to be met during construction

- 5) The proposed development shall be carried out in full accordance with measures set out within the Ecological Enhancement Plan (dated 2 January 2021, prepared by Cherryfield Ecology) and Landscape and Ecological Management Plan (dated 2 January 2021, prepared by Cherryfield Ecology).
- 6) All recommendations within the submitted Arboricultural and Planning Integration Report (18 January 2021) and Tree Protection Plan (January 2021) should be implemented and followed during all construction phases. No works should take place on site until the recommended protection measures to BS5837 standard are in place on site.
- 7) No works above slab level shall take place until samples of the materials to be used in the construction of the external surfaces of the development hereby permitted have been submitted to and approved in writing by the Local Planning Authority. Sample materials should be made available on site when discharging this condition. Development shall be carried out in accordance with the approved details.

Pre-occupancy conditions

- 8) The development hereby permitted shall not be occupied until details of hard landscaping works have first been submitted to and approved in writing by the Local Planning Authority and thereafter carried out in accordance with the approved details.

- 9) All planting, seeding or turfing comprised in the approved details of soft landscaping as shown on drawing 251 Rev P.03 shall be carried out in the first planting and seeding seasons following the occupation of the dwelling or the completion of the development, whichever is the sooner. If within a period of five years from the date of the planting of any tree or plant, that tree or plant, or any tree or plant planted in replacement for it is removed, uprooted or destroyed or dies or becomes seriously damaged or defective, another tree or plant of the same species and size as that originally planted shall be planted at the same place, unless otherwise the Local Planning Authority gives its written consent to any variation. The tree or plant shall be planted within 3 months of felling/dying or if this period does not fall within the planting season by 31 January next.
- 10) Prior to the first occupation of the development hereby permitted the vehicular access shall be provided and thereafter retained at the position shown on the approved plan drawing number (201 Rev P.01), and arrangements shall be made for surface water to be intercepted and disposed of separately so that it does not discharge from or onto the highway carriageway.
- 11) Prior to the first occupation of the development hereby permitted 0.65 metre x 0.65 metre pedestrian visibility splays shall be provided and permanently maintained each side of the access. They shall be measured from the point where the edges of the access way cross the highway boundary, 0.65 metres into the site and 0.65 metres along the highway boundary therefore forming a triangular visibility splay, within which there shall be no obstruction to visibility between 0.6 metres and 2.0 metres above the carriageway.
- 12) The development shall not be occupied until all car parking spaces have been constructed, surfaced and permanently marked out within the site in accordance with details first submitted to and approved in writing by the Local Planning Authority. Such spaces shall be maintained as a permanent ancillary to the development and shall be used for no other purpose.
- 13) Prior to the first occupation of the development hereby permitted a sprinkler system in accordance with BS 9991: 2014 or BS EN 12845 shall be installed and fitted throughout the proposed development.
- 14) Prior to the bringing into use of any part of the development hereby permitted, a 1.8m high close boarded fence shall be erected along the west, south and east boundaries of the site, and thereafter maintained.
- 15) The windows to be created in the first floor side elevations of Units 4 and 5 shall be glazed in obscure glass and shall be non-opening below a height of 1.7 metres taken from the internal finished floor level. The obscurity of windows shall not thereafter be altered in any way without the prior written approval of the Local Planning Authority.
- 16) Prior to the first occupation of the development hereby permitted, a waste management plan shall be submitted to and approved in writing by the Local Planning Authority. The plans shall include details of who will be responsible for waste collection and where the waste will be collected from. The development shall be carried out, and bin collection arrangements shall proceed, in accordance with the approved details and

shall remain thereafter unless otherwise first agreed in writing by the Local Planning Authority.

- 17) No building hereby permitted shall be occupied until surface water drainage works shall have been implemented in accordance with details that shall first have been submitted to and approved in writing by the Local Planning Authority. Before any details are submitted, an assessment shall be carried out of the potential for disposing of surface water by means of a sustainable drainage system, having regard to Defra's non-statutory technical standards for sustainable drainage systems (or any subsequent version), and the results of the assessment shall be provided to the Local Planning Authority. Where a sustainable drainage scheme is to be provided, the submitted details shall provide information about the design storm period and intensity, the method employed to delay and control the surface water discharged from the site and the measures taken to prevent pollution of the receiving groundwater and/or surface waters; include a timetable for its implementation; and, provide, a management and maintenance plan for the lifetime of the development which shall include the arrangements for adoption by any public authority or statutory undertaker and any other arrangements to secure the operation of the scheme throughout its lifetime.

Removal of permitted development rights

- 18) Notwithstanding the provisions of 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 (as amended) (or any order revoking and re-enacting that Order with or without modification), there shall be no enlargement or extension of the dwelling(s) hereby permitted, including any additions or alterations to the roof, or erection of outbuildings, without the prior written permission of the Local Planning Authority.

END OF SCHEDULE