



Appeal Decision

Site visit made on 5 June 2023

by R Bartlett PGDip URP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 26 July 2023

Appeal Ref: APP/B1930/W/22/3299972

**The Cherry Trees Indian Restaurant, 261 Lower Luton Road,
Wheathampstead AL4 8HW**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
 - The appeal is made by Mr Hadley, KFH Property Ltd against St Albans City & District Council.
 - The application Ref 5/2021/3449, is dated 7 December 2021.
 - The development proposed is for change of use of restaurant to veterinary practice and outline planning permission for the construction of nine shared ownership dwellings comprising 3 detached three-bedroom chalet bungalows, 2 three-bedroom end of terrace houses and 4 two-bedroom terrace houses (all matters reserved except access).
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The planning application was submitted in outline form with all detailed matters reserved for subsequent approval except for access. I have considered the proposal on this basis and treated the additional drawings as being illustrative only. As outline planning permission cannot be sought for change of use, I have slightly re-ordered and amended the wording of the description in the banner heading above.
3. Whilst I have considered the proposals as a whole, I note that no objections have been raised in respect of the change of use, or to the proposed means of access to the residential development. As such my decision focuses primarily upon the principle of a new affordable housing development on the rear part of the appeal site.
4. The Council's Statement refers to an emerging neighbourhood plan. However, I have not been provided with a copy of this or referred to any conflict with it.
5. The appellant acknowledges that had planning permission been granted for the proposal, it should have been subject to a S106 agreement, to ensure the proposed dwellings constitute affordable housing and remain as such in perpetuity. A completed and certified copy of such an agreement was not submitted within the required timescale.

Main Issues

6. The Council failed to determine the application but has advised that it would have refused to grant planning permission on the following grounds:

"The site is located within the Metropolitan Green Belt. The proposed development would be inappropriate development in the Metropolitan Green Belt as defined in national planning policy, and is therefore harmful by definition. It would also adversely impact on the openness and character of this part of the Metropolitan Green Belt. No very special circumstances exist that would clearly outweigh the significant harm identified. The proposed development would conflict with the purposes of including land within the green belt and would be contrary to Policy 1 (Metropolitan Green Belt) and Policy 8 (Affordable Housing in the Metropolitan Green Belt) of the St Albans District Local Plan Review 1994 and the National Planning Policy Framework 2021. As such, the principle of the proposed development, for nine shared ownership units, is unacceptable when assessed against the applicable national and local planning policy."

7. The main issues are therefore:

- Whether the proposal would be inappropriate development in the Green Belt;
- The effect of the development on the openness of the Green Belt;
- The effect of the development on the character of the area; and
- 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

Inappropriate development

8. The St. Albans District Local Plan Review 1994 (the LPR) identifies the appeal site, on proposals map 2, as lying within the washed over Lea Valley Estate Green Belt Settlement. Policy 1 of the LPR pre-dates the National Planning Policy Framework 2021 (the Framework) and is not fully consistent with it in that it does not recognise the same exceptions to inappropriate development as those detailed in paragraphs 149 and 150. Moreover, the restrictions in Policy 1 do not apply to development in the Green Belt settlements referred to in Policy 2(3), which include the Lea Valley Estate.
9. Paragraph 149 of the Framework states that the construction of new buildings is inappropriate in the Green Belt with certain limited exceptions. This includes at 149(f) limited affordable housing for local community needs under policies set out in the development plan (including policies for rural exception sites). I am satisfied that the proposed shared ownership housing would constitute affordable housing as defined by Annex 2 of the Framework, and that the proposal would be a rural exception site as defined by Annex 2 of the Framework. Policy 8 of the LPR permits affordable housing in Green Belt settlement subject to it meeting the relevant criteria.
10. Paragraph 150(d) of the Framework states that the re-use of buildings of permanent and substantial construction is also not inappropriate in the Green Belt provided it preserves its openness and does not conflict with the purposes of including land within it. The Council has not disputed that the change of use

of the restaurant to a veterinary practice would not be inappropriate in the Green Belt.

11. Policy 2 of the LPR restricts residential development in Green Belt Settlements to, amongst other things, the local housing needs described in Policy 6. It also goes on to state that development must not detract from the character and setting of these settlements. Policy 6 requires affordable housing schemes in the Green Belt to be assessed against Policy 8. Policy 8 comprises a list of six criteria that must be complied with. I consider each of these in turn below.

Criterion (i)

12. In accordance with criterion (i) evidence has been produced in the form of a housing needs survey undertaken by the Parish Council, which demonstrates a local need for affordable housing. This need is accepted by the Council. The requirement to demonstrate that this need cannot be met in a non-Green Belt location is not consistent with the Framework, and accordingly I give it limited weight. Moreover, given that the identified need is local, almost all of St Albans is in the Green Belt and the Council's acknowledged absence of a five-year housing land supply, it is highly unlikely that any sites outside of the Green Belt would be available for 100% affordable housing to meet the local needs of the Parish. I note that no alternative sites have been suggested by the Council.

Criterion (ii)

13. The second criterion requires secure arrangements to be made to ensure, in short, that the housing is affordable, is reserved for those with local connections and is retained as such in perpetuity. Whilst the appellant submitted heads of terms indicating a willingness to enter into a legal agreement to secure this, no such agreement has been progressed and completed. Nevertheless, I have no reason to doubt that this was the appellant's intention. It is proposed that all nine dwellings would be affordable shared ownership, with priority given to those with local connections by birth, upbringing, family or personal residence of three years or more or local employment. It is also noted that key workers such as those employed at a new school approximately one mile from the site could also benefit. The absence of a completed agreement does not alter the proposal or the basis on which the application was clearly submitted, despite its implications upon my decision.

Criterion (iii)

14. This requires sites to be within the reasonable physical limits of Green Belt settlements in locations dominated by buildings rather than open countryside. The Council suggest that part of the site lies outside of the Green Belt settlement but have not provided any evidence of this. The settlement boundary plan submitted by the appellant, which was supplied to them by the Council, shows that the whole of the site is within the settlement boundary. Although the land to the south and west of the site is open countryside, there is built development to the north, northwest and east. The site itself also comprises a variety of buildings and hardstanding and is contained by established boundary landscaping.

Criterion (iv)

15. It is common ground that the site area would not exceed 0.4 hectares and as such would accord with criterion (iv).

Criterion (v)

16. The fifth criterion seeks to ensure proposals do not detract from the character and setting of the settlement or harm the ecology, natural beauty and amenity of the countryside. It also states that substantial landscaping will normally be required. The effect on the character and setting of the settlement is addressed further in this decision. I have not been provided with any evidence of any harm to the ecology, natural beauty and amenity of the countryside that would result from the proposal. As landscaping is a reserved matter it is not necessary to consider it in detail at this stage, albeit I note from the submitted information that additional landscaping is proposed.

Criterion (vi)

17. This requires that proposals also comply with other relevant policies. The Council has only cited conflict with Policies 1 and 8 of the LPR and the Framework.
18. I therefore conclude that neither the change of use of the restaurant to a veterinary practice or the construction of nine affordable dwellings would constitute inappropriate development in the Green Belt.

Openness

19. I am satisfied that the change of use of the existing former restaurant building to a veterinary practice, would preserve the openness of the Green Belt and would not conflict with the purposes for including land within it, in accordance with paragraph 150 of the Framework. This has not been disputed.
20. As the proposal for 100% affordable housing would not be inappropriate development in the Green Belt under paragraph 149(f) of the Framework, which is not subject to an openness test, openness is not a determinative matter in relation to the affordable housing element of the proposal and consequently, I do not need to consider it further.

Character and setting

21. The site comprises a two-storey, hipped roof building with single storey additions to the front rear and side. The building was last used as a restaurant and is of permanent and substantial construction. There are numerous additional outbuildings to the side and rear, together with vehicular access to the side, car parking to the front and rear and a large garden comprising the remains of a variety of children's play equipment and further outbuildings and structures used in connection with the former public house/restaurant businesses. It is proposed to demolish all existing buildings on the site except for the former restaurant.
22. The change of use of the existing restaurant to a veterinary practice would bring the traditional building on the site frontage back into beneficial use. This would retain the character of the settlement, particularly in its most prominent views from the main road. The enclosed parking and garden area to the former

commercial use are of little value to the character and setting of the wider area.

23. Mature boundary hedges and trees provide screening and contain the site, which is clearly distinguishable from the open countryside to the south and west. The existing landscaping would be retained and would reduce the visibility of the proposed development in the wider landscape. Whilst I acknowledge that some of this screening is outside of the appellant's ownership and control, it appears to be on public rather than private land and as such it is unlikely to be removed. New landscaping is also proposed, which would be assessed and considered further at the reserved matters stage.
24. As the proposal would utilise the existing access, which would be widened following the removal of an existing outbuilding and would extend roughly along the existing car park area, this would not result in any significant change in character or appearance, given that the area has always been designed for use by, and occupied by vehicles.
25. Indicative plans demonstrate how the houses could be sited in a linear form similar to those on nearby Cherry Tree Lane, which extend further south than the proposal. The only harm cited by the Council is that the illustrative layout lacks the spacious character and setting between and around buildings and appears more urban in character than adjacent dwellings. Whilst I give very limited weight to the illustrative material, it does demonstrate blocks of buildings of smaller footprint than those on Cherry Tree Lane, with reasonably sized gaps in-between blocks, and longer rear gardens. The illustrative elevations also demonstrate that the proposed homes need not be significant in terms of their height and bulk. The Council also state that proposed plots 7-9 would encroach beyond the settlement limit, which based upon the settlement boundary plan I have been provided with is not the case.
26. The proposal would result in an increase in density and built form across the site, changing its character from that of a car park and garden area, largely devoid of buildings, to a small housing development. However, change is not the same as harm, and subject to suitable details being submitted at reserved matters stage, the proposal would be in keeping with the character of adjacent residential development and the wider area.
27. Consequently, the proposal would not result in harm to the character and setting of the settlement and in this respect would accord with Policy 2(3) and Policy 8(v) of the LPR.

Other Considerations

28. As the proposal would not be inappropriate development in the Green Belt, it would not normally be necessary to consider whether or not there are any very special circumstances to justify the development. However, in the absence of an appropriate mechanism, such as a completed legal agreement, to ensure the proposed housing is and remains affordable to meet local needs, the proposal would be inappropriate development and I must consider whether there is anything that would outweigh this.
29. The evidence before me, which is not disputed by the Council and is taken from an appeal decision¹ dated 14 June 2021, is that of a significant shortfall of

¹ APP/B1930/W/20/3265925

affordable housing in the district, in the region of 4000 affordable dwellings. There is nothing before me to suggest that this shortfall has been met or significantly reduced since this decision was made. I am also advised there are no other shared ownership homes within the Lea Valley Green Belt settlement. Given the critical shortfall I would normally attach very substantial weight to the delivery of nine affordable homes. However, in this instance, as there is no mechanism to ensure the homes would be affordable and retained as such in perpetuity, I can give this no weight.

30. I am advised that the emerging Neighbourhood Plan identifies a deficit of 10 acres of amenity green space and seeks to safeguard existing spaces, while seeking opportunities for new ones. In response to this, the appellant is offering part of the site for this purpose, which could form an extension to the existing adjoining amenity green space in the village. However, I have not been referred to any policy requirement or other evidence to confirm that such a contribution would be directly and fairly related in scale and kind to the proposed development. Even if this was the case, in the absence of any legal agreement to secure the transfer of land to the local authority or Parish Council, I can give this no weight.
31. The appellant has also offered to make a financial contribution to the Parish Council towards the upgrading of Primary Access Route number 11, which connects Wheathampstead to Harpenden via Leasey Bridge. As I have been provided with no further details of what this route is, whether it is a pedestrian, cycle or bus route, what improvements would be required to it as a result of this development, how much that contribution would be, how it would be used, or a mechanism for securing it, I cannot be sure that it would meet the relevant tests and I therefore afford it no weight.
32. I note that planning permission has been granted to demolish the restaurant building and to construct two market houses on the site frontage. This fallback position is not comparable to the scheme currently before me, which seeks to develop the car park and garden area to the rear of the restaurant. Whilst the approved site would extend to the rear, the majority of it would remain as open garden land free from built development. However, I acknowledge that the proposed scheme, unlike the fallback position, would retain the existing historic building on the site. As this makes a positive contribution to the area and is a more sustainable option than demolition and new build, I afford this moderate weight.
33. Any visual impact of the development would be significantly reduced by existing mature landscaping as demonstrated by the submitted landscape and visual impact assessment. I afford this moderate weight.
34. I acknowledge that the site is in an accessible location, with good pedestrian, cycle and public transport links. The proposal would create employment during its construction and in the veterinary practice. The reuse of the existing building would also provide an additional local service/facility. Future occupiers of the new housing would support the vitality and viability of services and facilities in the Parish and wider local area. Although occupancy would (in theory) be restricted to local people, in the absence of affordable housing those people may be forced to move further away. The proposal would (in theory) deliver much needed affordable housing for local people, a need for which has been identified by a housing needs survey. Potentially the proposal would also

deliver open space, which would benefit local people and address an identified shortfall. This together with new landscaping could also result in biodiversity enhancements. Paragraphs 78 and 79 of the Framework support housing in rural areas. I afford all of these benefits significant weight.

35. The appellant has referred me to an appeal decision² that allowed 5 houses and 5 bungalows, all of which would be affordable. However, in that case a completed S106 agreement had been submitted to secure the affordable housing. That site was also in a different local authority area and subject to different development plan policies. I therefore afford this no weight.

Balance and Conclusion

36. It is undisputed that the Council cannot demonstrate a five-year supply of housing land and that the shortfall is significant. The policies which are the most important for the determination of the proposal (Policies 2 and 8 of the LPR) are therefore out of date and I afford them little weight.
37. Consequently, paragraph 11(d) of the Framework is engaged and planning permission should be granted unless i) the application of policies in the Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed; or ii) any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.
38. Whilst there are policies in the Framework that seek to protect the Green Belt from inappropriate development, the proposal for a change of use of an existing building and for the construction of affordable housing in the Green Belt would not be inappropriate. However, in the absence of an appropriate mechanism to ensure that the housing is affordable, and remains as such in perpetuity, I cannot be certain that the proposal would meet the exceptions set out in paragraph 149(f) of the Framework or Policies 2(3)(a) and 8(ii) of the LPR.
39. In the absence of such an agreement the proposal would constitute inappropriate development in the Green Belt, which would be harmful by definition and I must afford this substantial weight. The benefits put forward, that could be achieved without an agreement, would not outweigh that harm and consequently, the very special circumstances necessary to justify the development do not exist.
40. For the reasons given above and having considered all relevant matters, I conclude that the appeal should be dismissed.

R Bartlett

INSPECTOR

² APP/C3430/W/19/3237890