



Appeal Decision

Site visit made on 24 October 2023

by A Price BSc MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 6th November 2023

Appeal Ref: APP/J1915/W/23/3320083

Elbow Lane Farm, Elbow Lane, Hertford Heath SG13 7QA

- 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 Mrs Teresa Walker against the decision of East Herts District Council.
 - The application Ref 3/22/1935/FUL, dated 12 September 2022, was refused by notice dated 2 December 2022.
 - The development proposed is the demolition of stable block and partial demolition of equestrian block and the development of the remaining equestrian block to include 4, 4 bedroomed dwellings and 2, 3 bedroomed dwellings, including associated landscaping.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. I have used the Council's description of development as this more concisely describes the development proposed.
3. The site lies within the Green Belt. There is no dispute between the Council and appellant in that regard, or in respect of design. I have no reason to disagree with those findings. I therefore deal below with the matters in dispute.

Main Issues

4. The main issues are:
 - whether the site is a suitable location for housing having particular regard to the accessibility of services and facilities;
 - the effect of the proposed development on the living conditions of the occupants of neighbouring properties, with particular regard to overlooking; and
 - whether appropriate measures to mitigate against overheating and carbon dioxide emissions are proposed.

Reasons

Site and location

5. The appeal site is located outside of any defined settlement boundary, and therefore within the open countryside. Notwithstanding this, as the site is located within a complex of established residential properties, it cannot in my view be reasonably described as 'isolated' within the terms of National Planning Policy Framework paragraph 80 (the Framework).

6. Policy DPS2 of the East Herts District Plan (DP, 2018) directs development to sustainable brownfield sites, sites within urban areas, urban extensions and limited development in villages. DP Policy TRA1 seeks to promote sustainable transport by directing development in locations where sustainable journeys can be made to key services and facilities.
7. Some key services including a school, public houses and local shop exist within Hertford Heath, to the north of the site. A greater variety of services and facilities exist at Hoddesdon, further afield. I accept that the distance between the proposed dwellings and those settlements would be similar to that of those adjacent. Nevertheless, to reach those settlements by foot or cycle, individuals would need to proceed along the access drives of the site, and then along a rural lane, either Elbow Lane or Mangrove Lane. Both of these routes are narrow, unlit and do not have dedicated footways, cycle paths or wide verges. Irrespective of the precise distance, these routes are unsatisfactory and would be particularly undesirable in winter months, outside daylight hours or during inclement weather conditions.
8. I also acknowledge that there are public rights of way in the area, including near to the appeal site, which could in part be used to reach services and facilities. However, these routes, whatever the precise distance, are not sufficient to rely on, particularly as they are unlit and of an uneven terrain. They would unlikely provide a realistic or attractive alternative for most people to access shopping facilities, schools or day-to-day needs. Furthermore, there is no evidence before me to demonstrate the distance between the site and the nearest bus stops. I note a bus route serves Hertford Heath, but this requires access via the same unsatisfactory routes discussed above.
9. Paragraph 105 of the Framework acknowledges that opportunities to maximise sustainable transport solutions will vary between urban and rural locations. However, in this location, the occupants of the proposed dwellings would be highly reliant on the use of private vehicles to access most services and facilities due to a lack of satisfactory walking routes and a lack of public transport facilities within a reasonable distance of the site.
10. I accept that the former commercial use of the site, initially a research facility and later an equestrian centre, was likely intensive. However, there is no substantive evidence before me, such as a transport assessment, to demonstrate the number of vehicle movements then compared with those now likely. In any case, as the appellant has set out, those former commercial uses ceased some time ago and cannot be relied on in perpetuity to make comparisons in favour of inappropriate development. I also appreciate that the scheme has been amended since a previously refused planning application for a larger scheme. Nevertheless, those matters do not lead me to an alternative conclusion.
11. The appellant sets out that no objection was received from the highway authority in respect of this, or some previous, schemes¹ at Elbow Lane Farm. However, planning officers are not bound to take the advice of specialist officers in making decisions. Even where there is no dispute in respect of highway safety, matters of sustainable travel must still be taken into account.

¹ Refs 3/19/1597/FUL; 3/19/1696/VAR; 3/20/1440/FUL

12. For the above reasons, I conclude that the appeal site would form an inappropriate location for the proposed development, contrary to the relevant provisions of DP Policies DPS2 and TRA1. These policies, in summary, seek to ensure development is located in the most sustainable locations. This is in a similar vein to the objectives of paragraph 104(c) of the Framework, which says that transport issues should be considered from the earliest stages of plan making and development proposals so that opportunities to promote sustainable transport are identified and pursued.

Living conditions - neighbouring occupiers

13. The proposed dwellings would be positioned to the north of established dwellings, including 9 Beaufort Park. No 9 is not currently overlooked from the north or west by reason of the lack of residential development in those directions at present. The nearest proposed dwellings would be south facing and would feature ground and first floor windows in their front elevations. Those windows are illustrated on the submitted plans as being angled.
14. Whilst the windows of the nearest proposed dwelling would be angled away from No 9, the windows of the proposed other south facing dwellings would be angled directly towards it, including its private amenity space. Due to the position of the proposed dwellings relative to the established No 9, together with the relatively short separation distance, future occupiers would be able to overlook, from an elevated position, the rear windows of No 9 and its amenity space. Consequently, the proposed development would have a harmful effect on the privacy of those occupiers.
15. That this was not a reason for refusal on a previous planning decision² for an alternative scheme does not change my conclusion. I am assessing the scheme based on the plans before me.
16. Overall, I conclude that the proposed development would have a harmful effect on the living conditions of the occupiers of neighbouring properties, contrary to the relevant provisions of DP Policy DES4, which taken as a whole seeks to ensure adequate amenity for residents.

Overheating and carbon dioxide emissions

17. DP Policies CC1 and CC2 require all new development proposals to demonstrate how the design, materials, construction and operation of the development would minimise overheating in summer and reduce the need for heating in winter, and demonstrate how carbon dioxide emissions would be minimised across the development site.
18. I note the appellant's argument in respect of the building being designed to align with modern standards, including through the use of air source heat pumps and installation of insulation. However, I have no details of those proposed measures, or substantive evidence before me, that demonstrates that the proposed development could realistically achieve those policy objectives.
19. Nevertheless, I note that the Council has suggested a number of conditions should the appeal be allowed, including one in relation to overheating and the reduction of energy demand. Under a previous appeal³ at the site, the

² 3/21/1326/FUL

³ APP/J1915/W/22/3304110

Inspector in that case considered this an appropriate and reasonable approach. I have no reason to disagree with those findings.

20. Consequently, whilst I have found that there is insufficient evidence to demonstrate that the proposal would have an acceptable effect in respect of overheating and carbon dioxide emissions, such matters could be satisfactorily dealt with by condition. Therefore, subject to condition, the proposed development would be in accordance with the relevant provisions of DP Policies CC1 and CC2. These policies, in summary, seek to ensure that development proposals avoid overheating in homes and minimise carbon dioxide emissions.

Other Matters

21. My attention is drawn to appeal reference APP/J1915/W/22/3298432. Although I acknowledge that that appeal dealt with similar issues, the proposal was for a single dwelling and not on the same site. For these reasons, the two cases are not directly comparable. In a similar vein, I do not consider that referenced appeal APP/J1915/W/15/3141323 is directly comparable to the scheme before me as this relates to a proposal under prior approval. In that appeal decision, it is clearly stated that there was, under the relevant legislation, no test in respect of sustainability of location. Ultimately, those decisions do not lead me to an alternative conclusion under the main issues.
22. No substantive information in relation to cited cases 3/18/1806/VAR or 3/20/0242/FUL are before me and, as such, I cannot make direct comparisons between them and the case before me. Nevertheless, each case is considered on its own individual circumstances and the existence of those previous permissions has not led me to an alternative conclusion under the main issues.

Planning Balance

23. The submitted evidence indicates that the Council cannot demonstrate a five-year housing land supply. As such, and noting the Government's objective of significantly boosting the supply of homes, the provisions of Framework, paragraph 11(d) are engaged. This states that in such a situation where development plan policies are deemed out-of-date, planning permission should be granted unless one of two criteria apply. One of these, and which is pertinent to the appeal scheme before me, is if any adverse impacts would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole.
24. The appeal scheme would represent a net addition of six dwellings to the district's housing supply. This is a clear benefit. There would also be some economic benefits during the construction of the dwellings and the bringing about of extra trade to services and facilities in the wider area once occupied. However, these benefits, including the supply of housing, would inevitably be limited due to the relatively small scale and nature of the development proposed.
25. The improvement of the wider grounds, in respect of open space and amenity space, for the benefit of existing residents and biodiversity, as contended by the appellant, is not inherently dependant on the scheme before me. This matter does not weigh in favour of the appeal.
26. Against those matters is the significant and long-lasting harm I have identified in respect of a lack of access to services by a sustainable choice of travel. On

balance, I find that the adverse effects of granting permission would significantly and demonstrably outweigh the benefits when assessed against the policies of the Framework as a whole.

Conclusion

27. For the reasons above, having regard to the development plan as a whole and to all other relevant material considerations, I conclude that the appeal should be dismissed.

A Price

INSPECTOR