



Appeal Decision

Hearing held on 14 November 2023

Site visit made on 15 November 2023

by Beverley Wilders BA (Hons) PgDURP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19 January 2024

Appeal Ref: APP/B1930/W/23/3322279

Land to rear of 28 to 34 North Cottages, Napsbury, Hertfordshire AL2 1AW

- 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 Montway Limited against the decision of St Albans City Council.
 - The application Ref 5/22/2163, dated 30 August 2022, was refused by notice dated 24 January 2023.
 - The development proposed is residential development of nine units comprising six terraced houses, two semi-detached houses and one detached house, together with associated landscaping and parking.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The Council's decision notice includes 5 reasons for refusal. However, the agreed Statement of Common Ground (SOCG) states that following the submission of additional information with the appeal, the Council no longer objects to the proposal on the basis of the sunlight/daylight provision for future occupiers. The Council therefore proposes an amendment to reason for refusal 3 to omit reference to future occupiers.
3. A Daylight/Sunlight Assessment¹ and an amendment to units 8 & 9 in the form of the insertion of a rooflight in each unit were submitted with the appeal. This additional information and this amendment were discussed at the hearing and the Council advised that it did not object to my acceptance of them. Having regard to the stage at which the Assessment and the amendments were submitted and to the relatively minor nature of the amendments relative to the overall proposal, I am satisfied that no party would be prejudiced by my acceptance of them. I have determined the appeal accordingly.
4. Noting that Hertfordshire Fire and Rescue Service no longer object to the proposal, subject to the imposition of conditions, the Council no longer wishes to defend reason for refusal 5 which relates to fire safety. However, at the hearing, it was clear that interested parties, including local residents, still have concerns in this regard.
5. Following the submission of the appeal, two revisions have been made to the National Planning Policy Framework (the Framework), one published on

¹ Daylight/Sunlight Assessment Prepared by Cass Design Consultants Limited April 2023

5 September 2023 and a more recent one, following the close of the hearing on 19 December 2023. The parties have had the opportunity to comment on the revisions made to the Framework and in determining the appeal, I have had regard to any comments received.

6. The Council is currently in the process of preparing a new Local Plan for the area. However, given its early stage of preparation and having regard to paragraph 48 of the Framework, I give very little weight to policies in the emerging Local Plan.

Main Issues

7. The main issues are:

- Whether the proposal is inappropriate development in the Green Belt having regard to the Framework and any relevant development plan policies;
- The effect of the proposal on the purposes of including land in the Green Belt;
- The effect of the proposal on the character and appearance of the area including on the Napsbury Hospital Grade II Registered Historic Park and Garden;
- The effect of the proposal on the living conditions of occupiers of neighbouring properties having particular regard to privacy;
- Whether any harm by reason of inappropriateness, and any other harm, would be clearly outweighed by other considerations, so as to amount to the very special circumstances required to justify the proposal.

Reasons

Whether inappropriate development

8. The appeal site is in the Green Belt. Paragraph 154 of the Framework states that the construction of new buildings should be regarded as inappropriate development unless the development falls within one of the stated exception categories. This includes exception g) limited infilling or the partial or complete redevelopment of previously developed land, whether redundant or in continuing use (excluding temporary buildings) which would not have a greater impact on the openness of the Green Belt than the existing development. Policy 1 of the City and District of St Albans District Local Plan Review adopted November 1994 (LPR) relates to the Metropolitan Green Belt but as it pre-dates the Framework, it is not consistent with it, and I therefore attach limited weight to it insofar as it relates to permitted exceptions.
9. There is disagreement between the parties as to whether the site is previously developed land and whether it benefits from paragraph 154(g).
10. The agreed Statement of Common Ground (SOCG) states that the appeal site contains some areas of hardstanding and the remains of a small tin shed. At the hearing, the appellant accepted that this should form the baseline for assessing the effect of the proposal on openness.
11. The application form describes the current use of the site as "self-contained parcel of derelict vacant land". The SOCG states that the parties agree that the

land is not and has not been used for allotments for at least 40 years. Having regard to this and noting the definition of previously developed land (PDL) in the Framework, part of the appeal site appears to be PDL.

12. With regard to the effect of the proposal on openness, the existing plan (200102-02-P1) shows the footprint of the existing building and the extent of the areas of hardstanding. The existing building is modest in size and appearance and its position centrally within the site together with its limited, height means that it is not visible or prominent from public vantage points. By contrast, though positioned to the rear of existing dwellings, the proposed development by virtue of the scale and position of the dwellings, would be visible from beyond the site boundaries. It would result in a moderate effect on the visual dimension of openness. Noting the significant increase in the amount of development proposed relative to existing development on site, the proposal would result in a significant loss of openness having regard to its spatial dimension.
13. At the hearing, the appellant accepted that the proposal would have a greater impact on the spatial dimension of openness but did not consider that there would be any greater impact on the visual dimension. However, even if I were to concur with this view, the fact that the spatial dimension of openness would be affected is enough to result in a greater impact on openness under the terms of paragraph 154(g). I do not accept the appellant's position that the visual dimension of openness is more important than the spatial dimension and I note that my attention was not drawn to any specific evidence to support this assertion.
14. Taking the above matters into consideration, the proposal would have a greater impact on openness and would not meet the exception test set out in paragraph 154(g) of the Framework or any other exception tests within that paragraph. The proposal is therefore inappropriate development in the Green Belt.

Green Belt Purposes

15. Paragraph 143 of the Framework states that the Green Belt serves five purposes. These include safeguarding the countryside from encroachment. At the hearing, both parties agreed that the proposal would conflict this purpose and based on the evidence before me, I concur with this view.

Summary of Green Belt Harm

16. The proposal is inappropriate development in the Green Belt, and it would conflict with one of the Green Belt purposes. Paragraph 153 of the Framework states that substantial weight should be given to any harm to the Green Belt.
17. The proposal is therefore contrary to relevant paragraphs of the Framework and to the relevant and up to date parts of Policy 1 of the LPR. These policies seek to control development in the Green Belt in order to prevent urban sprawl and to keep land permanently open.

Character and Appearance and effect on Napsbury Park

18. The appeal site comprises a triangular shaped piece of land accessed off The Drive. As stated, it is largely undeveloped but does contain a modest sized shed and some areas of hardstanding. The site adjoins two-storey semi-

detached and terraced dwellings to the north-east, east and south-east with the railway line forming the western boundary. The semi-detached dwellings along The Drive are relatively large in scale with reasonably large gaps between them offering views of trees and landscaping on the site. They have modest sized front gardens and larger rear gardens adjoining the site. A number of these dwellings have rear extensions including dormers and single storey outbuildings at the end of the rear gardens. The terraced properties are slightly smaller in scale but have narrower but longer front and rear gardens, some of which contain outbuildings. Beyond the adjoining dwellings and the railway are landscaping and open fields to the east, south and west.

19. The proposed terrace of 6 dwellings would be located centrally within the appeal site, running north to south. The pair of semi-detached dwellings (units 8 & 9) would be positioned in the south-eastern corner of the site, very close to the rear garden boundaries of existing dwellings with the detached dwelling being positioned in the south-western corner, close to the railway line and the rear garden boundary of 57 & 58 North Cottages. Various figures have been quoted by the main parties in respect of the height of existing and proposed dwellings and no clarification was reached on this at the hearing. Nevertheless, the submitted plans and sections show the eaves and ridge heights of the proposed dwellings and show them relative to existing dwellings. I have had regard to these plans when reaching my decision.
20. The detached dwelling is two-storey with a hipped roof whilst the terrace and semi-detached dwellings provide 3 storeys of accommodation. This is achieved in the terrace by the provision of large rear dormers and by large triangular glazed dormers to the front and in the semi-detached dwellings by a raised eaves height. It is proposed to excavate land around units 8 & 9 to lower the floor level of these properties and this means that they would have a lower ridge height relative to existing properties to the east and to the proposed terraces to the west. However, notwithstanding this artificial change in levels, the particular design, scale and layout of the proposed dwellings means that their height and bulk would be perceptible from public vantage points nearby, particularly between gaps in built development along The Drive. I note that new hedging and tree planting is proposed along the eastern boundary of the site and if successful, this would serve to partially screen the development from The Drive. I also note that the proposed dwellings may be narrower than existing dwellings. However, this does not compensate for their increased bulk and prominence.
21. The number of dwellings proposed and the need to provide associated access and parking, means that the proposed layout is cramped with large areas of hard surfacing, particularly on the eastern part of the site. The space around Units 8 & 9 would be particularly tight and would be dominated by hard surfacing. The lack of space would be exacerbated by the lower ground floor level of these dwellings. Very little planting is proposed within the site with the majority of new tree planting proposed very close to the site boundaries. This lack of greenery within the site would be at odds with the character and appearance of the surrounding area which has a semi-rural feel to it, notwithstanding its proximity to the busy A414, given the spaciousness of existing nearby development and the presence of surrounding landscaping and fields. Whilst I note that the revised Landscape Masterplan has sought to improve the landscaping of the site, it has not adequately overcome concerns regarding the amount of built development. Moreover, whilst the amount of

hard surfacing proposed may be the minimum necessary to service the proposed development, this does not justify the cramped development proposed.

22. In reaching my decision I have had regard to the submitted LVA². I accept the findings of the LVA that the visual effect of the proposal would be limited in longer range views from the east and west. However, for the reasons stated above, I consider that the proposal would be more visible in shorter range views from The Drive and that its scale and layout mean that it would have an adverse effect on the character and appearance of the area. It is therefore contrary to policies 69, 70 and 74 of the LPR and to relevant paragraphs of the Framework. These policies require, amongst other things, that all development has a high standard of design taking into account the scale and character of its surroundings, that existing landscape features are retained, and that adequate space and depth is allowed for planting.
23. The site is located in the northern part of Napsbury Hospital Grade II Registered Historic Park and Garden (NHPG). Middlesex County Asylum (Napsbury Hospital) was designed in 1900 and a key element of the new asylum was its grounds which were laid out by the landscape designer William Goldring c.1902-5 in order to enhance the therapeutic benefit for inmates. The existing dwellings along North Drive were constructed in the 1920s to house hospital staff.
24. Insofar as is relevant to the appeal, the significance of NHPG derives from the extensive landscape grounds within it and their historical connection with William Goldring and the asylum. The main parties agree that the heritage significance of the appeal site is low. However, it nevertheless still forms part of the NHPG and at the hearing it was confirmed that the parties agree that the proposal would, in the terms of the Framework, result in less than substantial harm to the significance of NHPG. I concur with this view.
25. At paragraph 205 the Framework sets out that great weight should be given to a heritage asset's conservation irrespective of whether any potential harm amounts to substantial harm, total loss or less than substantial harm to its significance. Paragraph 208 of the Framework states that less than substantial harm should be weighed against the public benefits of a proposal. Whilst I note the appellant's view that the harm to the heritage asset would be at the lower end of less than substantial harm, I also note that the Framework makes no reference to the spectrum of harm but only requires the decision maker to differentiate between substantial and less than substantial harm for the purposes of undertaking the weighted balance exercise. I have determined the appeal accordingly.
26. The key public benefit relied upon by the appellant is the provision of 9 dwellings at a time when the Council acknowledges that it cannot demonstrate a deliverable five year housing supply. Whilst no affordable housing is proposed, I nevertheless give this benefit significant weight given the Council's current housing land supply shortfall. At the hearing the appellant also referred to the ecological and biodiversity benefits that would result from the implementation of the landscape proposals. Whilst there would inevitably be some benefits associated with additional planting, in the absence of any specific evidence quantifying the level of this benefit, particularly given the

² Weddle Landscape Designs Landscape and Visual Appraisal (LVA) June 2022

small amount of green space proposed on the site, I attach limited weight to this benefit. The Council also acknowledges that the proposal would bring economic benefits both during the construction phase and afterwards through spend in the local economy. Given the scale of the proposed development, I attach moderate weight to this benefit.

27. In this case, the proposal would result in harm to the character and appearance of the area and less than substantial harm to the significance of NHPG. Whilst the public benefits of providing 9 dwellings would be significant this together with the other benefits would not be of sufficient weight to justify the proposals when set against the great weight and importance I attach to the harm which would be caused to the significance of the heritage asset.
28. The proposal therefore conflicts with policies 69, 70 and 74 of the LPR and with relevant paragraphs of the Framework. These policies, amongst other things, require high standards of design, that development conserves the significance of heritage assets and where less than substantial harm is caused to the heritage asset, that this should be weighed against public benefits.

Living Conditions

29. As previously stated, the proposed dwellings are located adjacent to existing two-storey dwellings along The Drive. The Council's concerns regarding the effect of the proposal on the living conditions of the occupiers of nearby properties relate to the loss of privacy that would be experienced by the occupiers of 32 and 33 North Cottages to the east of the site and Nos 52 and 53 to the south.
30. The proposed pair of semi-detached dwellings (units 8 & 9) is positioned very close to the rear garden boundaries of residential properties to the east and south. The northern and southern elevations of the dwellings contain large bedroom windows at first and second floor level and a hallway window at first floor, with some of the windows being positioned on parts of the dwellings nearest to neighbouring rear boundaries and garden areas. At my site visit I noted that some properties along The Drive have outbuildings positioned at the end of their rear gardens, a number of which are large in size and extend across the full width of the rear garden and that there is some fencing and landscaping along the garden boundaries.
31. Policy 70 of the LPR relates to the design and layout of new housing and part (vi) of the policy states that a tolerable level of visual privacy in habitable rooms and, to a lesser extent in private gardens, should be provided. The policy states that this objective will normally be deemed to have been achieved where a window to window distance of 27 metres is provided between habitable rooms. Part (vii) of the policy in relation to privacy between dwellings and rear boundaries states that a minimum of half the distance in part (vi) should normally be attained, that is 13.5 metres.
32. The distance between units 8 & 9 and the rear garden boundaries of nearby properties falls well below the 13.5 metre guideline. The position of the dwellings together with the position of first and second floor habitable room windows within them relative to nearby rear gardens means that there is the potential for a material loss of privacy to the occupiers of these properties. I acknowledge the presence of existing outbuildings and boundary treatments and the oblique angle of the proposed dwellings and windows relative to the

rear gardens. I also note that landscaping is proposed along the appeal site boundaries close to units 8 & 9 and that ground levels on this part of the site would be reduced.

33. Whilst this would reduce the extent of overlooking to some degree, given that windows are proposed at first and second floor levels and given the close proximity of windows to rear boundaries, I am nevertheless concerned about the effect of the proposal on occupiers of 33 & 53 North Cottages in particular given the relationship between the rear gardens of Nos 33 & 53 and unit 8. I acknowledge that some overlooking of these gardens from neighbouring properties already exists, however, this overlooking would be greatest nearest to the rear elevation of the houses and there is limited overlooking of the rearmost part of the rear gardens. This is the part of the gardens that would be most affected by the proposal.
34. The position of windows relative to rear boundaries and the presence of outbuildings means that I am less concerned regarding the effect on the privacy of the occupiers of other nearby properties including Nos 32 & 52. I am therefore satisfied that the proposal would not have a material adverse effect on the living conditions of the occupiers of these properties having regard to privacy.
35. Taking the above matters into consideration, the proposal would result in a material adverse effect on the living conditions of the occupiers of 33 & 53 North Cottages having regard to privacy. It is therefore contrary to Policy 70 of the LPR and relevant paragraphs of the Framework. These policies seek, amongst other things, to ensure that new dwellings provide a tolerable level of privacy to existing residential occupiers including in private gardens.

Other Considerations

36. I have already considered the other considerations put forward in support of the proposal when carrying out the heritage balance. These comprise the social and economic benefits of the provision of 9 dwellings at a time when the Council acknowledges that it cannot demonstrate a five year supply and ecological and biodiversity benefits. I attached significant weight to the social benefits of the housing, moderate weight to the economic benefits and limited weight to the ecological and biodiversity benefits.

Green Belt Balance

37. Paragraph 152 of the Framework states that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. Paragraph 153 states that substantial weight should be given to any harm to the Green Belt and very special circumstances will not exist unless the potential harm to the Green Belt by reason of inappropriateness and any other harm, is clearly outweighed by other considerations.
38. The proposal is inappropriate development in the Green Belt, and it would conflict with one of the Green Belt purposes. It would also result in harm to the character and appearance of the area, harm to the significance of NHPG and harm to the living conditions of nearby occupiers having regard to privacy. I attach great weight to the harm to NHPG as required by the Framework and significant weight to the harm to the character and appearance of the area and

to the living conditions of the occupiers of 33 & 53 North Cottages having regard to privacy.

39. As stated, there would be some benefits arising from the proposal. However, I find that the other considerations in this case do not clearly outweigh the harm that I have identified. Consequently, the very special circumstances necessary to justify the proposal do not exist.

Other Matters

40. I note that the Council no longer wishes to defend its reason for refusal relating to fire safety, though local residents have remaining concerns regarding this issue and in particular whether the access road width required by the Fire and Rescue Service (FRS) can be achieved on site. A number of measurements of the access road were taken at the site visit and on the basis of what I saw on site, I do have some concerns as to whether it meets the minimum width requirements of the FRS at its narrowest point. At the hearing the appellant stated that if access for a fire rescue appliance was not possible, then as an alternative a sprinkler system could be installed on site. However, I have seen no details of this or of any evidence to demonstrate that this arrangement would be acceptable to the FRS. Nevertheless, as I am dismissing the appeal on the basis of my findings in relation to the main issues, there is no need for me to reach a finding in relation to this issue as it would not alter the outcome of the appeal.
41. The appellant states that the Council cannot demonstrate a five year housing land supply and that the latest figures show a supply of 2.2 years. This figure has not been disputed by the Council. However, notwithstanding this agreed shortfall, at the hearing the appellant accepted that noting paragraph 11d(i) and footnote 7 of the Framework, if I were to find harm to the Green Belt and/or harm to heritage assets once other considerations and public benefits were taken into account, then the presumption set out in paragraph 11d(ii) would not apply. Accordingly, paragraph 11d(ii) does not apply in this case.
42. My attention has been drawn by the appellant to an appeal decision relating to residential development in the Green Belt³. I have been provided with a copy of the decision and I note that it relates to whether or not the proposal is for limited infilling in a village and not to the redevelopment of PDL, as is the case here. The two cases are not therefore directly comparable, and I therefore attach limited weight to this appeal decision. In any event, I must assess the proposal before me on its own merits.
43. In reaching my decision I note that interested parties have raised a number of other concerns regarding the proposal, some of which relate to their living conditions. However, as I am dismissing the appeal based on my findings in relation to the main issues, I have not considered the other concerns raised as they would not change my decision.

Conclusion

44. For the above reasons and having regard to all matters raised, I conclude that the appeal should be dismissed.

³ APP/P0240/W/20/3262804

Beverley Wilders

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Mr Neil Osborn – DLP Planning Ltd

Mr Jake Farmer – DLP Planning Ltd

Mr Lalji Vekaria – Salona Architects

Mr Chris Braine – Weddle Landscape Design

Dr Michael Shapland – UCL/Archaeology South-East

FOR THE LOCAL PLANNING AUTHORITY:

Mr Phillip Hughes – PHD Chartered Town Planners Ltd

INTERESTED PARTIES:

Councillor Nuala Webb – District Councillor

Councillor Matt Fisher – District Councillor, Parish Councillor & Local Resident

Councillor Keith Loud – Parish Councillor

Daniel Tolmie – NCMC Director and Local Resident

Paul Jacquemin – NCMC Director and Local Resident