



Appeal Decision

Site visit made on 25 July 2023

by S Lo LLB M.SRA

an Inspector appointed by the Secretary of State

Decision date: 4th March 2024

Appeal Ref: APP/C1950/W/23/3316609

Land to the rear of 23 & 25 Station Road, Digswell, Welwyn, AL6 0DU

- 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 Stay New Homes Ltd against the decision of Welwyn Hatfield Council.
 - The application Ref 6/2022/0142/FULL is dated 19 January 2022.
 - The development proposed is the demolition of two vacant commercial units and erection of two apartments, incorporating a retail unit at ground floor level, and four semi-detached dwellings with residential/private parking, cycle store, refuse store, private and communal amenities.
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Decision

1. The appeal is dismissed.

Procedural matters

2. Following the determination of the application by the Council, a new local plan was adopted on 12 October 2023, which superseded the Welwyn Hatfield District Plan 2005. As the Welwyn Hatfield Local Plan 2023 is now the Statutory Development Plan for the Borough, I have determined the appeal on this basis. The main parties had the opportunity to comment on this change in circumstances during the appeal process.
3. The appeal is against the failure of the Council to give notice within the prescribed period of a decision on an application for planning permission. As such, there is no decision notice. However, the Council has submitted a written statement, which, had they made the decision, recommended that planning permission should be granted subject to conditions. In reaching this view, they found that the scheme would have been in accordance with development plan policies. I have had regard to the Council's Statement and their recommendation, insofar that it provides clarity in terms of the reasons the Council would have considered had it been able to do so. I have also had regard to further submissions by the parties throughout the appeal process.

Background

4. Consultees and third parties have raised concerns regarding the provision of parking for the proposed dwellings, local businesses, customers and residential dwellings. Similarly, the Council considered that the proposed development would not be able to provide full car parking provision within the site which is indicative of a poor design and overdevelopment of the site, but that this could be overcome using conditions.

5. Further clarity was sought regarding the parking stress at the appeal site, with particular regard to the parking spaces available to visitors, existing residential dwellings at the appeal site and the proposed new dwellings. Furthermore, information was requested as to how any parking shortfall would be sufficiently mitigated by the proposed conditions. With regard to the Block Plan (467/20/FUL/PL1001 Rev_), clarification was also sought regarding the labels attached to the parking spaces, as they were not included within the legend.
6. In response, the appellant submitted a revised drawing of the Block Plan (467/20/FUL/PL1001 Rev A) for consideration. This added a new legend to indicate which parking spaces had been allocated for retail and visitor parking. However, it also changed the designation of several parking spaces. The previous version of the plan allocated six spaces for visitors and seven for retail. The new version of the plan (Rev A) allocated one space for visitors and twelve for retail. It is unclear why both versions of the plan are dated "December 21".
7. Accordingly, there is a lack of clarity regarding which version of the plan was submitted and publicised as part of the application process. Notably, the Council has referred to the new drawing in their statement, however, the original drawing was submitted as part of this appeal.
8. It is only appropriate to take amended plans into account if it can be evidenced that no party would be disadvantaged by this. In *Holborn Studios Ltd v The Council of the London Borough of Hackney* [2017] EWHC 2823, it was held that there are two tests to determine whether or not revised plans should be taken into consideration. In relation to the substantive test, I find that the designation of car parking spaces has been significantly altered, which would result in a fundamental change to the number of spaces available for both visitors and residents. In relation to the procedural test, there is a significant risk that the revised plan would cause unlawful procedural unfairness to consultees and third parties involved in the appeal, as it would deprive them of the opportunity to make representations on the changes proposed, given their nature and extent.
9. Although the Council referred to the new Block Plan during their written statement and subsequent documents, it is unclear whether consultees and third parties have been made adequately conscious of these revisions. On the basis of the evidence before me, I cannot be sure that they would not be disadvantaged by this alteration, such that my acceptance of the revised plan could be considered fair. Thus, mindful of the Inspectorate's published guidance¹ which indicates that the appeal process should not be used to evolve a scheme, and in accordance with the principles in *Holborn Studios Ltd*, I shall come to my decision on the original form of the Block Plan (Rev _) and will not take the new version (Rev A) into account.

Main Issues

10. Taking into account the above background and the evidence from the parties, I consider the main issues are:

¹ Section 16: Procedural Guide: Planning appeals – England; The Planning Inspectorate; 11 January 2024

- the effect of the proposed parking arrangement on highway safety;
- the effect of the proposed development on the character and appearance of the surrounding area; and
- the effect of the proposed development on the living conditions of neighbouring occupiers and future occupiers, with particular regard to outlook, privacy and amenity space.

Reasons

Parking Conditions

11. The appeal site is comprised of a parade of shops, car parking area and three existing residential dwellings². The shopping parade is fully occupied, however, some of the commercial units were vacant at the date of my site visit. It is unknown whether the existing residential dwellings are vacant, however, the evidence before me is that they still have a valid planning use. The appeal site contains a large area to the rear that is being used as a car park. At the time of my site visit during a weekday afternoon, I observed that the parking area was in a moderate level of use. Several bus stops and Welwyn North Train Station are within reasonable proximity to the site.
12. During my site visit, I observed that several forms of parking restriction were in place in the streets around the appeal site, including double yellow lines, a short stay 1-hour parking area, and a designated resident permit holders only zone. No restrictions were observed in the parking area to the rear of the appeal site. In light of this, due to the prevalence of parking restrictions and subsequently limited on-street parking opportunities available around the appeal site, it is evident that there is a high level of local demand and competition for unrestricted car parking spaces.
13. Visitors to the shopping parade are likely to use the temporary parking area available along Woodside Road or the parking area to the rear of the appeal site, given the parking restrictions in the area. As existing residents at the appeal site would require a long term parking arrangement, it is likely they would use the rear parking area instead of the designated resident permit holders only zone, as this is unrestricted and it is more convenient for them.
14. Policy SADM2 of the Welwyn Hatfield Local Plan 2023 outlines the requirements for development proposals. These proposals must include satisfactory and suitable levels of parking, following the criteria in SADM12 of the Welwyn Hatfield Local Plan 2023 and the Council's parking standards. The policy also takes into consideration the accessibility of public transport, cycling, and walking options. Policy SADM12 states that the type and quantum of vehicle and cycle parking provided within development proposals will be informed by the standards set in the Council's parking standards, while taking into account considerations such as the location and accessibility of public transport,

² 2 x 2 bedroom apartments (3 and 5 Woodside Road) and 1 x 3 bedroom dwelling (25A Station Road).

services and facilities; the degree of parking demand likely required and the need to promote sustainable forms of transport.

15. The Welwyn Parking Standards Supplementary Planning Guidance 2004 (SPG 2004) sets maximum standards for car parking, which may be reduced in areas where more sustainable modes of transport are available. The standard set for residential development is to achieve an average of 1.5 off-street parking spaces per dwelling. The precise number of spaces required is contingent upon the number of bedrooms and the location of the dwelling. However, the use of maximum standards does not align with the National Planning Policy Framework (NPPF). Section 9 states that they should only be set where there is a clear and compelling justification that they are necessary.
16. In order to align with the NPPF, the Council has since adopted the Interim Policy for Car Parking Standards and Garage Sizes (2014), which states that higher or lower car parking standards can be considered acceptable on a case-by-case basis, depending on the relevant circumstances. With this flexibility, the onus is on developers to demonstrate that the level of car parking provision is appropriate. Nonetheless SPG 2004, still provides useful guidelines regarding appropriate car parking standards.
17. With reference to SPG 2004, the expectation is that the proposed development should provide 11.5 car parking spaces for the new dwellings. The Block Plan³ indicates that 10 car parking spaces are available, which represents a minor shortfall. Additionally, for the existing dwellings, the SPG 2004 suggests 5.25 car parking spaces should be retained for their use. However, the proposal has not been accompanied by any details of allocated parking for these existing dwellings within the appeal site. In fact, no spaces have been allocated for their use at all, which would result in a significant shortfall. It is unclear why this is the case, as there are no proposals within this application to remove these existing dwellings or convert them for use for other purposes.
18. Instead, the available car parking spaces within the appeal site would be limited to retail, visitors and occupiers of the proposed new dwellings. As the proposed development has made no parking provision for existing residential dwellings, those occupiers would likely seek to use the parking spaces which are currently allocated for visitors or retail users. It would be impractical for them to use the short stay parking. It would also be inconvenient for them to use the designated resident permit holders only zone, due to the narrow width of the road and prevalence of existing driveways which would be blocked.
19. By occupying at least 5 of the 13 possible spaces available, this would significantly reduce the number of spaces that can be used by visitors and retail businesses. This would have the effect of displacing the available spaces, which would affect residents, visitors and shoppers. This would not demonstrate appropriate levels of car parking provision. Even if I were to take the revised Block Plan into account, this would only alter the allocation of spaces between visitors and retail uses. It would not address the shortfall in spaces available for existing dwellings. While there is a limited amount of on-

³ (467/20/FUL/PL1001 Rev_)

street parking available in the nearby area, this would not be functionally equivalent to a dedicated parking space. Equally, while the Welwyn North Station car park is a comparatively short distance from the appeal site, it would not be an attractive proposition as it is a pay and display car park. This additional cost is likely to deter users, thereby contributing to the parking issues in the area.

20. I recognise that lower standards of car parking can be acceptable on a case-by-case basis. However, the total omission of the existing dwellings from the allocation of car parking spaces for the proposed development would have a significant impact on parking conditions. The effect of this would lead to the displacement of parking, which would result in ongoing issues as drivers seek to find alternative car parking spaces in an area where there is already limited provision. There is also a significant risk that drivers may park illegally during busy periods, using whatever available spaces they can find, resulting in cars being parked in hazardous or inappropriate locations. Accordingly, the evidence before me is that the proposed car parking arrangement would be inappropriate and have a detrimental effect on highway safety. This is because there is a lack of parking options and the continuing parking limitations near the train station.
21. I recognise that the Council reached the conclusion that the proposal would not be able to provide full car parking provision within the site, but that this could potentially be overcome through the use of robust conditions. In relation to the shortfall, the Council has suggested two conditions. Condition 11 requires on-site access road (shared surface), car parking spaces and turning areas to be implemented in accordance with the proposed site plan 467/20/FUL/PL1002 Rev.B. However, the only version of this plan submitted to me is indicated as 'Rev __', which if I were to accept, would be contrary to the principles of Holborn Studios as identified above. Even if I were to amend the condition to instead refer to 'Rev __', it would not address the shortfall in spaces available for existing dwellings, as none have been allocated.
22. Condition 12 seeks to require full details of a car parking management and enforcement plan. This plan aims to mitigate the negative impact of unsafe parking at the appeal site, but would not be able to control on-street parking which would be subject to restrictions and controls enforced by the public authorities. Thus, the management and enforcement plan would not be able to address the primary issue of inadequate parking, which is the root cause of the harm. It has also been suggested by the parties that a condition could be used to restrict the end use of commercial units to avoid high car dependency and the provision of barriers/signage/annotation to prevent indiscriminate car parking. However, these conditions would not suitably address the overall shortfall in parking spaces. Thus, I am not persuaded that such conditions would be enforceable, precise and reasonable in all other respects.
23. In relation to the three tandem parking spaces adjacent to the shopping parade as indicated on the Block Plan, I am not persuaded that they would be suitable for use by customers, as they are not easily accessible and can become blocked by other vehicles. While these spaces might instead be used by

employees, it would divert customers further afield to the surrounding streets where there is already a high level of parking stress.

24. Notwithstanding my consideration of the effect of parking on local highway safety, I am not persuaded that the addition of six new dwellings will have a significant effect on traffic congestion in the area. Details have been submitted through a swept path analysis which demonstrates how delivery vehicles would enter and leave the site without causing disruption to traffic flow. There is no compelling evidence before me that there would be any obvious disruption to the flow of traffic to the site when undertaking deliveries, given that a separate unloading area in the area has been provided and that deliveries are infrequent and short lived.
25. I have considered the fact that in comparison with a larger retail area, the shopping parade could not be expected to provide comparatively high levels of parking. However, relative to the size of the parade, the provision of parking is still inadequate.
26. The availability of other forms of public transport, such as bus stops and the train station, does not effectively replace the need for parking spaces for existing residents in the area. Not all journeys would be possible by these methods without significant inconvenience.
27. In conclusion, the proposed parking arrangements would be inadequate and would have an unacceptable effect on highway safety. It would not provide satisfactory and suitable levels of parking, contrary to Policies SADM2 and SADM12 of the Welwyn Hatfield Local Plan 2023. It would fail to provide appropriate levels of parking, contrary to the Interim Policy for Car Parking Standards and Garage Sizes (2014) and the guidance set out in the Welwyn Parking Standards Supplementary Planning Guidance (2004). It would have an unacceptable impact on highway safety, contrary to Section 9 of the NPPF.

Character and Appearance

28. The appeal site features a shopping parade and commercial units, which are separated by an access road which leads to a large area of open land consisting of a gravel car park and grassed area. The shopping parade consists of a large, angled building which is attractively designed, with an elongated tiled roof and wooden gables. The commercial units are of a more modern design, being single storey and constructed of brick and tiles.
29. The area features a mixture of predominantly two-storey homes and buildings on different sized plots. The buildings are set back from the road and typically have consistent building lines with some front landscaping. The architectural style in the area is diverse, with newer housing having a slightly higher density and displaying various styles, materials, and forms. Nonetheless, many of the properties in the area incorporate a local derivative neo-vernacular design.
30. The proposed commercial unit and apartments would be larger and taller than the existing building but would be positioned in line with the natural building line and adjacent shopping parade. As a two storey building, the height would be comparable to other properties in the area. The existing building is also not

architecturally significant, as it is a single storey structure made of bricks and tiles. Accordingly, the proposed changes to this building would not result in harm to character of the area.

31. In relation to the proposed dwellings to the rear of the site, they would be visible to the public from Station Road, Woodside Road and any visitors using the car park. However, their prominence in the street scene would be reduced due to their location behind the frontage buildings. These proposed dwellings would have a modern appearance compared to neighbouring properties. However, they would still maintain the architectural style of the surrounding area by being two stories tall and featuring gable roofs. In the context of the diverse architectural style of the local area, the visual effect of the proposed development would not have a negative effect on the area's character.
32. Concerns have been raised by third parties about flytipping at the back of the site. However, this is a matter for third parties to raise with the relevant enforcement authorities and therefore does not form part of my assessment of this appeal.
33. In terms of landscaping, the proposed development would result in the loss of the rear grassed area and associated trees. While this area may have amenity value for the local community, there is no evidence before me that this area of land is in public ownership and there is no proof that it has been designated as such. Accordingly, while the space is locally valued as informal amenity space by providing visual relief to the built form in the area, it is privately owned and thus the loss of this land for use by the public is not a planning consideration. Nonetheless, the proposal suggests planting trees, hedging, and shrubs as part of the landscaping plan. This would help to offset the loss of the grassed area and removal of existing trees. I am therefore satisfied that any harm by way of a loss of existing vegetation could potentially be offset in this manner.
34. The proposed development would increase the number of housing units and the new dwellings would also have smaller gardens compared to adjacent dwellings. However, there are other similar density dwellings in the general area, such that this comparatively compact form of development would not have a significant negative impact on the overall area.
35. In conclusion, the proposed development would not harm the character and appearance of the surrounding area. It would relate well to the surroundings and local distinctiveness, in compliance with Policy SP9 of the Welwyn Hatfield Local Plan 2023. Additionally, the proposed development would function well and add to the overall quality of the area in accordance with section 12 (Achieving Well-Designed Places) of the NPPF.
36. The Council's Statement also refers to their Supplementary Design Guidance. However, my attention has not been drawn to any wording in these documents that relates to this main issue. Accordingly, it is not clear whether there is anything specific which is relevant to the proposed development. In any event, given my findings above and the available evidence, I am satisfied that the proposed development would not harm the quality of design in the locality.

Living Conditions – neighbouring occupiers and future occupiers

37. The proposed dwellings would meet the minimum requirements set out in the nationally described space standards. Additionally, as the habitable rooms of the dwellings would each have their own window, they would be acceptable in terms of their access to natural light levels.
38. Due to the distance between the proposed dwellings and existing dwellings on Station Road, Woodside Road and Hazel Close, there would not be any significant privacy issues which would negatively affect the amenity of the existing properties. Additionally, the distance and angles of the windows of the proposed dwellings would not result in a significant loss of privacy, given the context of the site within a relatively dense built environment.
39. The plans indicate that a shared amenity space would be available for the apartments, but there is no information on how it would be used or shared between occupants. There is also no information on how it would be enclosed or how privacy would be protected. However, the overall space is sufficiently large, and I am satisfied that any potential issues could be addressed through conditions.
40. In relation to the proposed rear dwellings, the Council also had some concerns regarding the outdoor amenity space. Specifically, the private gardens not matching the site plan, the inclusion of narrow strips of land to the side of the dwellings within calculations, differences in landscaping levels, and the impact on mature trees. While such considerations are indicative of overdevelopment, there is no evidence before me that the gardens would not still be usable for practical purposes. Despite being smaller than neighbouring properties, I consider that the overall space is large enough for domestic purposes and accordingly, I am satisfied that any potential issues could be addressed through conditions.
41. In conclusion, the proposed development would provide acceptable living conditions for neighbouring occupiers and future occupiers, with particular regard to outlook, privacy and amenity space. It would provide a good standard of amenity, in compliance with Policy SADM 11 of the Welwyn Hatfield Local Plan 2023. Additionally, the proposed development would ensure healthy living conditions function well and add to the overall quality of the area in accordance with section 11 (Making effective use of land) of the NPPF.

Other Matters

42. In terms of the commercial unit, the plans indicate that a retail unit will remain on the ground floor, albeit it would be reduced from two commercial units to one. There would not be a significant reduction in the overall amount of retail space available. There is no evidence to suggest that this change would negatively impact the vitality of the shopping parade as a whole.
43. Regarding heritage, there is no evidence before me that the appeal site is subject to any form of preservation order which would affect how it could be redeveloped.
44. The appellant's Arboricultural Impact Assessment and Method Statement notes that 11 Category U trees, 14 Category C trees, and 3 Category B trees/groups (none of which have Tree Preservation Orders) would need to be removed for the development. However, all category A trees would be retained, and comprehensive new planting would be provided. Accordingly, while the

proposal requires the removal of a significant number of trees, they are mainly low C and U category trees. As they are not of high value, there is no evidence before me which indicates that their removal should be prevented.

45. There are concerns that the appellant is intentionally allowing the buildings and the grassed area to fall into a state of disrepair to make it easier to demolish in the future. However, in relation to the grassed area, the evidence before me indicates that this site has a low ecological value. On that basis, I cannot speculate on the previous biodiversity value of the site, which is based on anecdotal evidence from third parties. In relation to the disrepair of buildings, as they are privately owned, this is not a planning consideration.
46. In exercising my function on behalf of a public authority, I have had due regard to the Public Sector Equality Duty contained in the Equality Act 2010 (the 2010 Act). The 2010 Act sets out the relevant protected characteristics which includes disability and age. Since there is the potential for my decision to affect persons with a protected characteristic, I have had due regard to the three equality principles set out in Section 149 of the 2010 Act. Consultees and third parties have referred to the elderly and children on the SEN register who may be negatively affected by the proposed development. Having due regard to this, and to the need to eliminate discrimination and promote equality of opportunity, I have given this consideration limited weight on the basis of the information before me. In any event, I am dismissing the appeal for other reasons.

Planning Balance

47. The Council cannot currently demonstrate a five-year supply of deliverable housing sites. As such, paragraph 11 of the Framework applies. Consequently, permission should be granted unless any adverse impacts would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.
48. The evidence before me is that the Council's most recent Annual Monitoring Report identifies a supply of only 2.58 years, including the relevant 20% buffer. As such, there has been a notable under-delivery of housing which is unlikely to improve in the short-term. These six new dwellings would not greatly increase total supply, but any additional provision would be valuable in the current circumstances. Furthermore, paragraph 70 of the Framework indicates that the development of windfall sites should be supported and great weight given to the benefits of using suitable sites within existing settlements for homes.
49. The support for the proposal in the Framework is countered by the importance of ensuring highway safety. This establishes that development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe. In the final analysis, the total lack of provision of car parking spaces for existing dwellings, leading to a displacement of the proposed provision would have an unacceptable impact on highway safety. Having taken these considerations into account, and given the scale and nature of the development proposed, I find that the benefits would be relatively limited and thus neither outweigh the harm I have identified nor the conflict with the development plan.

50. Therefore, the adverse impacts of the proposal significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole. As a result, the presumption in favour of sustainable development does not apply.

Conclusion

51. The proposed development would conflict with the development plan as a whole and material considerations do not indicate that this decision should be made otherwise than in accordance with it. Therefore, for the reasons set out above, and having had regard to all other matters raised, I conclude that planning permission should be refused and that this appeal should be dismissed.

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INSPECTOR