
Appeal Decision

Site visit made on 8 March 2024

by S Rawle BA (Hons) Dip TP Solicitor

an Inspector appointed by the Secretary of State

Decision date: 11 April 2024

Appeal Ref: APP/B1930/W/23/3331897

Old Apiary Site, Hatching Green, Harpenden, Hertfordshire AL5 2JS

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by Merchant Taylor Construction against the decision of St Albans City Council.
 - The application Ref is 5/2023/0273.
 - The development proposed is nine bungalows with associated hard and soft landscaping, provision of new access road within the site.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. Although the appeal is in respect of nine bungalows, I observed on my site visit that five have already been completed following partial implementation of a separate planning permission. I have determined the appeal on that basis.

Main Issues

3. The main issues are:
 - Whether the proposal would be inappropriate development in the Green Belt having regard to the National Planning Policy Framework (the Framework) and any relevant development plan policies;
 - the effect of the proposed development on the openness of the Green Belt;
 - whether the proposed development would preserve or enhance the character or appearance of the Harpenden Conservation Area;
 - whether the proposed development would preserve the setting of the Grade II listed building known as 1 Thatched Cottages and the locally listed buildings known as 4 and 5 Thatched Cottages; and
 - if the proposal is inappropriate development, whether the resulting harm and any other harm, is clearly outweighed by the other considerations so as to amount to the very special circumstances required to justify the development.

Reasons

Inappropriate Development

4. The Framework identifies that the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open. It goes on to state that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances.
5. Although many years old, Policy 1 of the St Albans District Plan adopted on 30 November 1994 (StADP) is not inconsistent with the Framework as it sets out that except in very special circumstances development outside certain defined settlements and for certain purposes will not be permitted.
6. The Framework further establishes that the construction of new buildings in the Green Belt should be regarded as inappropriate, subject to a number of exceptions as set out in paragraph 154. In terms of exceptions, I give far greater weight to those included in the more up to date Framework than those in the StADP.
7. The appellant accepts that the proposal would not comply with the exception under paragraph 154(g) which deals with limited infilling or the partial or complete redevelopment of previously developed land which would not have a greater impact on the openness of the Green Belt than the existing development. I agree.
8. Although ultimately the appellant accepts that the proposal would amount to inappropriate development in the Green Belt, they also indicate that if the four additional bungalows were considered in isolation and Hatching Green was regarded as a village in its own right, there would be a very strong case that the proposal would comply with paragraph 154(e) and be considered limited infilling in a village. However, the appeal proposal is for 9 bungalows and includes the five dwellings permitted under a separate planning permission. The terms limited and infilling are not defined in the Framework, but it is generally accepted that infilling involves the development of a relatively small gap between existing buildings. It follows that the proposed development does not amount to limited infilling. As a result, the appellant is unable to rely on any of the exceptions set out in the Framework.
9. The proposal would amount to the construction of new buildings in the Green Belt and consequently would be inappropriate development, which paragraph 152 of the Framework states is, by definition, harmful to the Green Belt and consequently I give substantial weight to that harm. Given that there are no exceptions available the proposed development would conflict with Policy 1 of StADP. The proposal would also be at odds with the relevant Green Belt policies of the Framework as set out above.

Openness

10. Openness is an essential characteristic of the Green Belt that has spatial as well as visual aspects. As outlined above, planning permission for five bungalows has been partially implemented. Once fully implemented this would involve removal of the previous buildings on the appeal site and the introduction of a wildlife area in the eastern part of the appeal site where the additional

bungalows are now proposed. Once implemented in accordance with the planning permission this area would appear as an open spacious area.

11. I observed at the site visit that this part of the appeal site has been largely cleared although it has the appearance of a building site, with felled trees, piles of rubble, pallets and containers. Nevertheless, even in its current state, this part of the appeal appears predominantly open.
12. Spatially, the introduction of four additional bungalows and the associated floor space and volume would be significant. Also, by occupying space that is either currently or is proposed to be undeveloped, the proposed development would harmfully reduce the openness of the site.
13. The proposal would also result in the further sub-division of the appeal site resulting in the introduction of boundary treatment, a significant new driveway to provide access to plots 8 and 9 and separate car parking areas to serve each additional bungalow. The proposal would also result in the introduction of additional domestic paraphernalia, which could include garden furniture and practical equipment such as refuse bins. The introduction of these associated items would harmfully reduce the openness of the site and therefore would not preserve the openness of the Green Belt.
14. Visually, I accept that the proposed landscaping scheme would help to the limit some public views from Hatching Green. However, views of the proposed additional bungalows would be possible through the gap created by the proposed access at the eastern end of the appeal site. Moreover, views would also be possible from the rear facing windows of several houses located along the eastern boundary of the appeal site. I therefore do not agree that the nature of the site and its surroundings and the scale of the proposal would ensure that from a visual perspective the proposal would have a very modest impact on openness.
15. I also do not agree that certain factors including that the appeal site comprises previously developed land, the former buildings were concentrated in this part of the site and that the five completed bungalows are located in a previously more open part of the site, or that there are not detailed plans for the proposed wildlife area and so it will not provide any meaningful ecological enhancements, diminishes the impact the proposal would have on openness either spatially or visually.
16. The fundamental aim of the Green Belt policy is to prevent urban sprawl by keeping land permanently open and this proposal would fail to do so. Overall, there would be considerable harm to openness to which I give substantial weight.

Heritage Asset - The Conservation Area

17. The appeal site is located within the Harpenden Conservation Area (HCA), which encompasses Hatching Green. HCA incorporates a large area and consequently has been broken down into a number of identity areas including one for Hatching Green. The area comprises a mix of detached, semi-detached and terraced houses grouped attractively around a small green, including the particularly attractive Thatched Cottages.

18. The significance of this part of the conservation area derives from the enduring historic pattern of development set around the green and the variety and interest in the built form, which provide both aesthetic and historical value.
19. As outlined above, five bungalows have been constructed on the western part of the appeal site whereas the eastern part has been largely cleared although it has the appearance of a building site, with felled trees, piles of rubble, pallets and containers. Given that the development subject of the previous planning permission has commenced, I consider it reasonable to assess the appeal on the basis of the approved scheme, which includes a wildlife area in the eastern part of the site and dense boundary planting of native species along the eastern boundary, adjacent to the properties that abut that common boundary.
20. Notwithstanding that trees have been removed in the north-eastern part of the site, overall, when the planning permission is fully implemented the eastern part of the appeal site would be a green, verdant open area which would create a sense of spaciousness that would make a significant contribution to the character and appearance of the conservation area. Moreover, even if I were determining the appeal based on the current state of the appeal site, it still appears as predominantly open land, which again creates a sense of spaciousness which contributes to the character and appearance of the conservation area.
21. Although I accept that the architectural design and the proposed materials would be compatible with the existing bungalows on the appeal site, the introduction of four houses into the eastern part of the site along with the associated works including a proposed access road to serve plots 8 and 9 would harmfully diminish the sense of spaciousness that helps to define this part of the conservation area. Moreover, the harmful development would be visible from a number of vantage points, including through the access road in the eastern part of the appeal site and from rear facing first floor windows of some properties that are located adjacent to the eastern boundary.
22. Consequently, the proposal would neither preserve or conserve the character or appearance of the Harpenden Conservation Area. The Framework advises that when considering the impact of development on the significance of designated heritage assets, great weight should be given to their conservation. Given the nature of the proposal, I consider the degree of harm to the significance of the conservation area in this case would be less than substantial.
23. I therefore conclude that the proposal would result in less than substantial harm to this designated heritage asset. As a result, the proposal would conflict with Policy 85 of the StADP and Policy ESD2 of the Harpenden Neighbourhood Plan 2018-2033 (HNP) which among other things seek to ensure development makes a positive contribution to local character and appearance and permission will only be granted where a high standard of design is achieved, and the proposal enhances or preserves the appearance of the conservation area. Consistent with the Framework, Policy ESD2 of HNP sets out that where development would result in less than substantial harm to a heritage asset this must be balanced against public benefits which I will undertake later in the decision.

Heritage Assets - Listed and Locally Listed Buildings

24. The eastern boundary of the appeal site is located adjacent to 1, 4 and 5 Thatched Cottages (Nos 1, 4 and 5) a row of attractive period properties. No 1 is a Grade II Listed Building and is a designated heritage asset, whereas Nos 4 and 5 are locally listed and are non-designated heritage assets.
25. No 1 is a late 17 or early 18th century timber framed property with red brick casing. Not surprisingly given its name, it has a thatched roof with two large thatched gabled dormers on its front elevation facing the green. Although Nos 4 and 5 have a roof ridge line higher than No 1, as they are constructed of similar materials, including red brick and thatched roofs the row of cottages present as a particularly attractive group of period properties. Particularly when viewed from the green.
26. However, to the rear there is an attractive wall of varying design, but that part adjacent to the Nos 1 and 4 incorporates flint stone. This feature combined with the attractive upper windows and thatched roof profile at No 1 and the rear red brick projections and attractive thatched roof profile at Nos 4 and 5 ensure that the rear of these properties also present as an attractive coherent grouping when viewed from the appeal site and from the gap created by the new eastern access along Hatching Green. Overall, the historic nature of these buildings located within the core of Hatchings Green positively contribute to their significance.
27. In terms of setting, although undoubtedly the green provides an important setting for the designated heritage asset at No 1 and the non-designated heritage assets at Nos 4 and 5, the appeal site also contributes to the setting of these buildings. These three properties have short rear gardens and historically had been located adjacent to the apiary. Although this previous use had buildings located in the eastern part of the site, these were low level modest structures. Moreover, the land immediately to the rear of the three buildings appears to have been largely undeveloped. As a result, given the front gardens and green to the front elevation and the apiary to the rear, there was a significant sense of spaciousness on either side of these properties which made an important contribution to the significance of these heritage assets.
28. The setting of heritage assets can change and evolve over time. That is the situation here. The apiary buildings have been removed. To my mind the removal of these buildings and the introduction of a wildlife area when implemented would reinforce the sense of spaciousness which as outlined above makes an important contribution to the significance of these heritage assets. Moreover, the opening of the former apiary site for development and the introduction of the wildlife area will also allow more local residents to appreciate the significance of these heritage assets from within the appeal site and through the eastern access road from Hatchings Green.
29. The proposal would introduce four bungalows into the eastern part of the site. Although I appreciate that the bungalows on plots 6 and 7 would be set back from the rear boundaries of Nos 1, 4 and 5 by the access road and existing boundary planting would be retained and maintained, nevertheless the proposed development would significantly diminish the spaciousness to the rear of these properties and would therefore harm their setting which would not be preserved and would materially detract from their significance.

30. The Framework advises that when considering the impact of development on the significance of designated heritage assets, great weight should be given to their conservation. Given the nature of the proposal, I consider the degree of harm to the significance of No 1 would be less than substantial, which the Framework indicates should be weighed against the public benefits of the proposal which as outlined I will return to later in the decision.
31. In considering the effect on the significance of non-designated assets, the Framework advises that a balanced judgement will be required having regard to the scale of any harm. Given the nature of the proposal I consider the proposal would result in significant harm to the significance of Nos 4 and 5 and I will undertake an overall balanced judgement on that basis later in the decision.
32. I therefore conclude that the proposal would result in less than substantial harm to the significance of 1 Thatched Cottages and would result in significant harm to the significance of 4 and 5 Thatched Cottages. Consequently, the proposal would conflict with Policy 86 of StADP which among other things sets out that the Council will have special regard to the desirability of preserving the setting of a listed building.
33. The proposal would also conflict with Policy ESD2 of the HNP which sets out that the design of all development must make a positive contribution to local character and heritage. The policy goes on to indicate that where development would result in less than substantial harm to a heritage asset this must be balanced against public benefits, and I will return to this matter later in the decision. In relation to non-designated assets, Policy ESD2 sets out that proposals that would result in a negative impact without an adequate public benefit will not be supported.

Other Considerations

34. The appellant rightly points out that the existing development plan is significantly out of date. I will deal with housing supply matters below. However, in relation to the main issues, the relevant development plan policies that deal with Green Belt and heritage matters are not incompatible with the Framework. Moreover, I am also mindful of the statutory duty imposed by The Planning (Listed Buildings and Conservation Areas) Act 1990 in relation to conservation areas and listed buildings. As a result, the age of the development plan does not change my view on the harm that the proposal would have on the Green Belt and the significance of heritage assets or in the way I should assess that harm.
35. The appellant has drawn my attention to an appeal decision at Thundersley, Benfleet where one of the factors relied on by the Inspector was the out-of-date local plan. However, the circumstances of that case are materially different as unlike here, the Inspector did not find that the proposal before him would cause harm to a conservation area or to the significance of heritage assets. I also note that he found that the actual degree of Green Belt harm was mitigated by a number of factors including that the loss of openness would be comparatively quite small. Given these material differences I afford this other appeal decision limited weight.
36. The appellant also points out that there is an accepted need for sites within the Green Belt to be released including the appeal site. I accept that there has

been consideration about releasing some land from the Green Belt, including the appeal site, in the St Albans Stage 2 Green Belt Review. However, at this stage it is only recommended for further consideration. To my mind such an exercise would necessarily need to be undertaken in a comprehensive manner so that any release of land would only be undertaken following a thorough consideration of the implications of such an approach so that ultimately an informed decision could be reached.

37. It would not be appropriate in this case for me to arbitrarily lessen the Green Belt protection that the appeal site currently enjoys based on the possibility that the boundary of the Green Belt may be altered at some time in the future. Further, even if the site was not located within the Green Belt, that would not alter my view on the harm the proposal would have on the significance of the heritage assets as outlined above. As a result, this consideration is only afforded limited weight in the determination of the appeal.
38. I have taken account of the fact that the proposal would result in an appropriate housing mix and would provide housing within the village close to existing amenities and public transport. These combined factors together with the efficient use of the site and the modest economic benefits associated with the proposal during construction and in the longer term to the local economy are afforded moderate weight in the determination of the appeal.
39. I have also taken account of the appellant's view that the proposed development would result in a 10% biodiversity net gain (BNG) which would be secured by an executed unilateral undertaking (UU). The Council has expressed reservations about the value of the appellant's proposed BNG offer as they highlight that they do not have a mechanism to use the financial contribution, concerns about drafting of the UU and the fact the BNG would not be on-site. However, I agree with the appellant that weight can still be attributed to this benefit as any drafting issues do not appear insurmountable and the UU would allow off-setting through a third party. However, bearing in mind that the Framework highlights that opportunities to improve biodiversity in and around developments should be integrated as part of the design, the fact that any gains would be off-site tempers this benefit, and I afford it moderate weight.
40. I turn now to consider housing supply. The Council accept that they can only demonstrate a supply of 1.7 years. This is well below Government expectations. Whilst the proposal would only deliver four new dwellings and this does temper this benefit to a certain extent, the proposal would undoubtedly be valuable in boosting housing stock in circumstances where there is a significant shortfall. I therefore afford the lack of adequate housing supply significant weight in the determination of this appeal.

Planning Balance

41. I have afforded some considerations weight as outlined above, including significant weight to the fact that the proposal would result in the provision of four bungalows in circumstances where there is a significant housing shortfall.
42. However, I have found that the proposal would result in harm to the Green Belt by virtue of its inappropriateness and its impact on openness. As required by the Framework I have afforded that harm substantial weight.

43. Moreover, I have given great weight to the fact that the proposal would cause less than substantial harm to the significance of Harpenden Conservation Area and 1 Thatched Cottages which are designated heritage assets. I have considered the public benefits associated with the proposal which mirror some of the other considerations outlined above, including the fact that the proposal would result in an appropriate housing mix, would result in modest economic benefits during construction and in the longer term to the local economy. However, I afford these matters moderate weight which is insufficient to outweigh the less than substantial harm to the relevant heritage assets.
44. I have also given significant weight to the harm the proposal would have on 4 and 5 Thatched Cottages which are non-designated heritage assets. On balance, other considerations are insufficient to outweigh the significant harm I have identified.
45. I have found that the proposal is inappropriate development in the Green Belt, the resulting harm and any other harm, is clearly not outweighed by the other considerations. Consequently, the very special circumstances necessary to justify the proposed development do not exist. Further, the proposal would harm the significance of both designated and non-designated heritage assets. As a result, the proposal would conflict with the development plan as a whole. I have also found that the relevant development plan policies that relate to Green Belt and heritage matters are not inconsistent with the Framework.
46. As set out above, based on the available evidence the Council accept that they can only demonstrate a supply of 1.7 years. This is well below Government expectations and as a result Paragraph 11(d) of the Framework is relevant. However, for the reasons set out above, the application of policies that protect assets of particular importance (i.e., the Green Belt and designated heritage assets) provide a clear reason for refusing the development proposed. Consequently, the presumption in favour of sustainable development does not apply in this case and this indicates that permission should not be granted.
47. In reaching that view I have taken account of the other appeal decisions that have been brought to my attention, at Colney Heath and as previously mentioned at Thundersley, Benfleet. I have also taken account of the fact that outline planning permission for up to 150 dwellings was granted for a site at Sewell Park. However, the circumstances of these other cases are materially different from the proposal before me. For example, they involve significantly more dwellings than the additional bungalows proposed here. Further, based on the available evidence, none of the other cases were found to harm the significance of heritage assets. As a result, the proposed developments in each case were materially different from the situation here as was their impact on their surroundings. As a result, these other decisions do not alter my overall view, nor do they justify harmful development at the appeal site.

Conclusion

48. The proposal conflicts with the development plan and the material considerations do not indicate that the appeal should be decided other than in accordance with it. The appeal should therefore be dismissed.

S Rawle

INSPECTOR