



Appeal Decision

Site visit made on 7 November 2023

by L Reid BSc (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 26th April 2024

Appeal Ref: APP/C1950/W/23/3316957

Land rear of 5 Bushey Close, Welwyn Garden City, Hertfordshire AL7 3HD

- 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 Ms Jassica Khanom-Metaman against the decision of Welwyn Hatfield Council.
 - The application Ref is 6/2022/2169/FULL.
 - The development proposed is described as "change of use for land at rear/adjacent to 5 Bushey Close, Welwyn Garden City, Hertfordshire, AL7 3HD from amenity to residential garden use. There is no proposed works on this land, just change of use".
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Decision

1. The appeal is allowed and planning permission is granted for the change of use from amenity land to residential garden land at land rear of 5 Bushey Close, Welwyn Garden City, Hertfordshire AL7 3HD in accordance with the terms of the application, Ref 6/2022/2169/FULL, subject to the conditions set out in the schedule attached to this decision.

Procedural Matters

2. Since the appeal was made, the Government revised the National Planning Policy Framework (the Framework). Policies material to this decision have not fundamentally changed. Therefore, I have not sought the main parties' views on this.
3. During the appeal, the Council adopted the Welwyn Hatfield Borough Council Local Plan 2016 – 2036 (the LP). Both main parties were given the opportunity to comment on the implications for this appeal and I have taken the responses into account. The new Local Plan replaces the Welwyn Hatfield District Plan 2005 and my determination of this appeal is made against its policies.
4. My formal decision uses the description of development from the Council's decision notice. Whilst there is no written confirmation that a change to the wording was agreed, it is more concise than that used on the planning application form.
5. A location plan has been submitted which shows how the appeal site would be accessed from 5 Bushey Close. It did not form part of the original application. The plan shows access from the appellant's property but does not fundamentally alter the proposal. No party would be prejudiced by taking the additional plan into consideration.

Main Issue

6. The main issue is the effect of the proposal on the character and appearance of the area.

Reasons

7. The appeal site is part of a recreation ground. It is overgrown and enclosed by bushes and a low-height picket fence. The land is located in a corner, bounded by two sides by rear gardens with access from one of the properties. When viewed from the recreation ground, given the density of trees and vegetation, it is not easily seen. Because of its discrete position, enclosed nature and restricted accessibility, the value of the appeal site as public amenity space is low. It is located behind the trees and has a greater visual association with the residential estate, than with the recreation ground. The appeal site therefore makes a limited contribution to the character and appearance of the area.
8. Gardens directly adjoining the recreation ground are a common characteristic of the immediate area. Whilst the appeal site is large, relative to some of the neighbouring gardens, it is a small part of the recreation ground as a whole. Because of its size and characteristics, the loss of this part of the recreation ground would not be so great as to diminish the overall function and purpose. In my view, it is the trees and vegetation within the recreation ground that act as the buffer between the open space and houses and reinforce the green character.
9. Even if the proposal did result in domestic paraphernalia within the site, it would mostly be screened from public views by the trees and vegetation. The proposal would therefore not be visually intrusive.
10. The Council refers to a 'protected tree belt', raising concerns over the protection of these trees. I have not been advised that these trees are protected as part of a preservation order. Whilst I recognise that these trees have amenity value and make a positive contribution to the character and appearance of the area, there is no substantive evidence before me to indicate that the proposal would cause harm to them.
11. Notwithstanding this, the application does not include details of any proposed boundary treatment. If any additional boundary treatment is erected or planted around the boundary of the appeal site, measures to protect the nearby trees from the new boundary treatment could be secured via planning condition.
12. For these reasons, I find that the proposal would not have a harmful effect on the character and appearance of the area. It would therefore comply with Policies SP 9 and SP 12 of the LP, the Supplementary Design Guidance 2005 and the Framework. These policies and guidance, amongst other things, seek development that responds to the local character and does not compromise green infrastructure.
13. Reference is made to Policy SP 10 which concerns sustainable design and construction, Policy SP 3 which concerns the settlement strategy and green belt, and SP 11 which concerns critical environmental assets. These policies of the LP are not determinative in the context of this appeal.

Other Matters

14. My findings have been made solely on the evidence as put to me by the parties and my observations, specific to the appeal site. This would not undermine the Council's ability to exercise its planning judgement in relation to similar development proposals on other sites. In any event, each case is determined on its own merits.
15. The granting of planning permission relates to the use of the land. It is separate from and does not negate the need for agreement from the relevant landowner(s). Matters relating to land ownership and the sale of the land are civil matters between the parties involved.

Conditions

16. The Council has supplied a list of conditions that it considers would be appropriate. I have considered these in light of the tests within the Framework and Planning Practice Guidance and have made amendments where necessary to improve precision and enforceability. The main parties have been given the opportunity to comment on these conditions.
17. Any subsequent boundary treatment has the potential to cause harm to the trees between the application site and the recreation ground. To safeguard the trees and their contribution to the character and appearance of the area, in this exceptional circumstance, it is necessary to impose a condition that removes permitted development rights for the erection and planting of boundary treatment. Before any new boundary treatment can be installed or planted, these details must be submitted to and approved by the Council and must include an arboricultural method statement and tree protection plan. It would be unreasonable to require this to be a pre-commencement condition as the use of the land could be carried out without the additional boundary treatment.

Conclusion

18. For the reasons given above, the appeal should be allowed.

L Reid

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: Location Plan date 19-07-2022 scale 1:1250 and Location Plan date 19-07-2022 scale 1:1250 with three black arrows.
- 3) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (or any order revoking and re-enacting that Order with or without modification), no fence, gate, wall or other means of enclosure shall be erected, and no hedge shall be planted, on the boundaries of the application site, until full details of those boundary treatments have been submitted to and agreed in writing by the local planning authority. These submitted details shall include:
 - i) a scheme for the protection of those trees which stand beside the boundaries between the application site and the recreation ground in accordance with paragraph 5.5 of British Standard BS 5837 (or in an equivalent British Standard if replaced); and
 - ii) an arboricultural method statement in accordance with paragraphs 5.5 and 6.1 of British Standard BS 5837 (or in an equivalent British Standard if replaced).

The boundary treatments shall be erected in full accordance with the approved details and tree protection measures.

End of Schedule