



Appeal Decision

Site visit made on 19 May 2025

by **C Walker BA (Hons) DipTP MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 10 June 2025

Appeal Ref: APP/B1930/W/25/3361430

Land to the rear of Harpenden Fire Station, Leyton Road, Harpenden, Hertfordshire AL5 2JB

- 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 Hertfordshire County Council against the decision of St Albans City Council.
 - The application Ref is 5/22/2522.
 - The development proposed is for erection of two detached houses, associated landscaping and access.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. It is not clear whether the Council's amended description of development was agreed by the appellant. Therefore, I have used that contained within the application form, which adequately reflects the nature of the proposal. I have omitted reference to the location from the description and included it within the address for clarity.
3. The development plan includes saved policies from the St Albans Local Plan Review 1994 (Plan Review). Whilst the plan is over 30 years old, the National Planning Policy Framework (the Framework) sets out that the policies may still be given weight depending on the degree of accordance with the national guidance. I deal with this matter in my reasoning below.
4. The appellant has submitted an Ecological Appraisal¹ post decision in an attempt to address the Council's concerns regarding insufficient information. This is material to the appeal and therefore I have accepted it. The Council have had the opportunity of providing comments on this.

Main Issues

5. The main issues in determining this appeal are, the effect of the development on:
 - the character and appearance of the area, including the Harpenden Conservation Area, having particular regard to trees, and
 - ecology.

¹ dated February 2025 by ELMAW Consulting

Reasons

Character and appearance

6. The appeal site is located within the Harpenden Conservation Area (CA). The statutory duty set out in Section 72 of the Planning (Listed Buildings and Conservations) Act 1990 (LBCA) requires special attention be paid to the desirability of preserving or enhancing the character or appearance of the CA.
7. In this part of the CA, there are a variety of buildings of varying ages and styles, in a mix of commercial and residential use. No character appraisal document for the CA has been provided by the Council to set out its significance. However, the mature trees, often set amongst green space, including on Harpenden Common to the east, significantly contribute to area's character and appearance. The mature trees located within the large grassed open areas to the east, offer an attractive open setting to the built form. The tree belt set behind the buildings fronting Leyton Road, including those within the appeal site, also provide an attractive green backdrop to the settlement edge and significantly contribute to the verdant character and appearance of the area.
8. The arboricultural report recommends removing 6 individual trees plus a group of 7 trees to facilitate the development. All of these trees are described as mature specimens of between 16m and 19m in height. Whilst none of these are of the highest arboricultural category, they nevertheless collectively contribute to the attractive tree lined backdrop that runs along the settlement edge. The majority of the trees to be removed are located to the north of the site, where there is a clear line of sight from the east via the existing access. The loss of these trees would be highly visible from the here, leaving a gap in the tree belt and eroding the landscape setting of the CA.
9. Replacements trees of the small size proposed, would take very many years to establish and mature to the same level as those to be removed. The landscaping plan is not sufficiently detailed to demonstrate that replacement trees would be planted at the required ratio of 2 to 1, nor that there is sufficient space available to allow these trees to properly establish at all. I am therefore not satisfied that the loss of the mature trees could be adequately mitigated. Given my concerns regarding the lack of space for replacement trees, it is not a matter than can be left to condition.
10. Furthermore, the proposed dwellings are to be sited in close proximity to several of the higher quality mature Douglas trees to be retained. For example, the canopy spread of T17 and T18, both Douglas Firs at around 18m in height, would overhang the proposed built form. At their substantial height, these would present as dominant features, looming over the proposed houses. As a consequence of the highly constrained layout of the development, it is likely that there would be pressure for tree works in the future from occupiers of the dwellings who may fear damage to their properties, be concerned about seasonal debris and shading to their gardens. As the many trees within the site grow, so too will the likely pressure for lopping, topping or felling to manage the effects. Although future occupiers would be aware of the context before taking occupation, this is not a reason to allow a development at the outset that is clearly incompatible due to the presence of established trees.
11. For all of these reasons, I find that the development would have a harmful effect on the character and appearance of the area and would fail to preserve or

enhance the character and appearance of the CA having particular regard to trees. In terms of the National Planning Policy Framework (the Framework), the harm I have identified would be less than substantial. Paragraph 215 of the Framework establishes that in such circumstances any harm should be weighed against the public benefits of the proposal, which is also required by Policy ESD2 of the Harpenden Neighbourhood Plan, 2018-2033 (2018) (Neighbourhood Plan).

12. In this case, the development would help to deliver family housing in a sustainable location and bring about social and economic benefits. However, as a scheme for two dwellings, the contribution would be modest. Paragraph 136 of the Framework Trees sets out the importance of trees in terms of their contribution to the character and quality of urban environments and their ability to help mitigate and adapt to climate change and expects that existing trees are retained wherever possible. Moreover, paragraph 212 of the Framework establishes that great weight should be given to the conservation of a heritage asset. In this context I find the modest public benefits are not sufficient to outweigh the degree of harm identified.
13. In summary, I find that the proposal would fail to meet the requirements of the LBCA as it would fail to preserve the character and appearance of the CA for the reasons set out above. It would not accord with Policies 69, 70, 74, 85 and 106 of the Plan Review. Together these policies seek a high standard of design, having regard to setting and character, and require preservation or enhancement of the CA. Despite the age of the Plan Review, in so far as is relevant to this appeal, these policies remain aligned with the thrust of the Framework and can therefore be given substantial weight.
14. For the same reasons the development would conflict with Policies ESD2, ESD9 and ESD14 of the Neighbourhood Plan. Amongst other things, these policies require developments to be considerate of, and make a positive contribution to, local character and heritage; protect key views including attractive green spaces and important features, including from The Common; and seek to protect and retain mature trees of amenity value requiring necessary replacement at a ratio of at least 2:1 within the site.

Ecology

15. With its numerous trees, grassland and scrub, the appeal site has the potential to offer habitat to a range of wildlife, including nesting birds and roosting bats.
16. The appeal was accompanied by an Ecological Appraisal dated February 2025. This sets out that a sycamore tree, T27, has the potential to support roosting bats and therefore recommends further surveys are undertaken to establish its potential. The Arboricultural Report describes this tree as unsuitable for retention and that it would be removed.
17. Government guidance is clear that planning permission should only be granted where there is sufficient information to assess the effects of development. Since the full impact on bats needs to be considered prior to determination, these surveys cannot be secured by condition. Whilst noting that a Landscape Ecological Management Plan (LEMP) has been submitted, this is dated 2020 and relates to a previously refused application. In any event, a LEMP should not be used to circumnavigate the need for surveys.

18. Whilst I am satisfied other ecological effects could be adequately dealt with through conditions, this does not alter my findings in respect of the risk in respect of bats. The appellant asserts that the development is predicted to result in a biodiversity net gain. However, based on the evidence I am not satisfied that this is the case, so I attach only limited weight to this.
19. Without the survey information up front to help inform the mitigation, I cannot be certain that the effects of the development on ecology, in particular on bats, would be acceptable. It is not clear whether harmful effects can be adequately avoided, mitigated or compensated for, as appropriate. This would be contrary to paragraph 193 of the Framework. Moreover, it also runs counter to Policy ESD13 of the Neighbourhood Plan. Amongst other things, this expects sites to be rigorously assessed for species present on site and sets out that proposals should not cause harm to the habitats of protected species without appropriate mitigation.

Other Matters

20. The adjacent property at 127 Leyton Road is Grade II listed. Section 66(1) of the LBCA requires me, in considering whether to grant planning permission for development which affects a listed building or its setting, to have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses. Having regard to the separation distance and limited intervisibility between the listed building and the appeal site, I am satisfied that the development would not adversely affect the setting of listed building, thus complying with the LBCA.
21. The Council confirm they are unable to demonstrate a five-year supply of deliverable housing sites (5YHLS) in accordance with the Framework. An inability to demonstrate a 5YHLS warrants the application of paragraph 11(d) (i) of the Framework which relates to the presumption in favour of sustainable development. In this case, it means granting permission unless the application of policies in the Framework that protect areas or assets of particular importance provide a strong reason for refusing the development. As I consider the harm to the CA would amount to a strong reason for refusal, the presumption in favour of sustainable development does not apply.

Conclusion

22. For the reasons set out above, I conclude that the proposal conflicts with the development plan and there are no other considerations that outweigh the conflict. Therefore, the appeal is dismissed.

C Walker

INSPECTOR