



Appeal Decisions

Hearing Held on 12 March 2019

Site visit made on 12 March 2019

by L Fleming BSc (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 02 April 2019

Appeal Ref: APP/C1950/W/18/3202272

22 The Avenue, Welwyn, Hertfordshire AL6 0PP

- 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 Mr Barry Gray against the decision of Welwyn Hatfield Borough Council.
 - The application Ref 6/2017/1751/OUTLINE, dated 7 August 2017, was refused by notice dated 10 November 2017.
 - The development proposed is outline use of existing access road to serve up to 12 No dwellings with improvement proposed within the site to provide suitable internal road and turning area.
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Appeal Ref: APP/C1950/W/18/3215410

22 The Avenue, Welwyn, Hertfordshire AL6 0PP

- 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 Mr Barry Gray against the decision of Welwyn Hatfield Borough Council.
 - The application Ref 6/2018/0650/FULL, dated 26 February 2018, was refused by notice dated 31 August 2018.
 - The development proposed is erection of 4 No link detached dwellings; retention of existing dwelling at No 22; car parking and provision of new internal access road and turning area; served off existing access road onto The Avenue.
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Decisions

Appeal A: APP/C1950/W/18/3202272

1. The appeal is dismissed.

Appeal B: APP/C1950/W/18/3215410

2. The appeal is dismissed.

Procedural Matters

3. As set out above there are two appeals on this site. Whilst I have considered each proposal on its own merits, to avoid duplication I have dealt with the two schemes together, except where otherwise indicated.
4. Appeal A, is an outline application with all detailed matters reserved apart from the access. Whilst indicative layouts showing eight, ten or twelve dwellings where submitted, the description as consulted upon and determined by the

Council clearly states up to twelve dwellings. Thus, to avoid prejudicing any interested party I have determined Appeal A on the basis of a scheme including up to 12 dwellings. Appeal B is a full application seeking to erect four new dwellings.

5. Since the Council made its decision, a duly executed unilateral undertaking (UU) has been submitted with Appeal A. This commits to financial contributions towards libraries, youth services, fire safety and the equivalent to up to 30% affordable housing. It is contested whether the scheme should provide for affordable housing. However, I have determined Appeal A on the basis that all contributions proposed in the UU meet the relevant tests and I have therefore taken them into account in my overall planning balance.
6. The Council's decision notices both refer to draft policies of the emerging Welwyn Hatfield Borough Local Plan Proposed Submission Draft (August 2016) (ELP). Even though the Council have provided evidence which shows the extent of unresolved objections to those draft Policies is limited, those Policies are not adopted and there is no clear indication as to when they would be. I have therefore afforded them only moderate weight. In any event when read alongside the National Planning Policy Framework (the Framework) or the saved Policies of the Welwyn Hatfield Local Plan (2005) (LP), the relevant Policies of the ELP are not so materially different such that even if I would have afforded full weight to them it would not have significantly influenced the outcome of the appeal either way.

Background and Main Issues

7. The appeal site consists of two parcels of land side by side within the Green Belt elevated from The Avenue close to the A1(M). The first (the first parcel) is a dwelling and its residential curtilage. The second (the second parcel) mainly comprises a modest single storey building positioned relatively centrally in a reasonably sized plot surrounded by part concrete hardstanding and crushed stone surfacing.
8. At the time of my site visit, the second parcel was almost filled with parked cars. Both parties agree the single storey building is in a lawful commercial use. However, its specific commercial use and the lawful use of the land which surrounds it is contested. It is common ground that the car storage enterprise on the second parcel involves a material change in use. However, an application for a temporary planning permission for such was refused by the Council in March 2019¹.
9. I have noted the comments about activities that may or may not have been taking place on the appeal site over a number of years. However, it is not my place in determining an appeal under Section 78 of the Act, to determine the lawful use of the appeal site. The application forms clearly state the existing use of the land not in residential use is as a commercial workshop with open storage and parking. I have determined both appeals on this basis.
10. It is also agreed that only a part of the appeal site would be regarded as previously developed and as such the construction of the new buildings proposed in both appeals would therefore be inappropriate development in the

¹ Council Reference 6/2019/0136/FULL

Green Belt within the terms of paragraph 145 of the Framework. The main issues for both appeals A and B are therefore:

- i. the effect of the proposed development on the openness of the Green Belt;
- ii. the effect of the proposal on the character and appearance of the area
- iii. whether any harm by reason of inappropriateness, openness and any other harm, is clearly outweighed by other considerations so as to amount to the very special circumstances necessary to justify the development.

Reasons

Openness of the Green Belt

11. Paragraph 133 of the Framework states that the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open and that the essential characteristics of Green Belts are their openness and their permanence. Saved Policy GBSP1 of the LP simply states the Green Belt will be maintained as such, thus insofar as is relevant to the appeal it is consistent with the overarching Green Belt protection aims of the Framework.
12. An appeal was dismissed in January 2012² for the demolition of the building on the second parcel of land and the erection of 3 No 'over 55's' detached bungalows and ancillary works. Another appeal was dismissed in April 2013³ for the demolition of the same building and erection of a replacement bungalow.
13. The Inspector found in 2012 that replacing the building with three single storey dwellings, together with ancillary works, would clearly, significantly increase the amount of buildings and other construction works, having a substantial urbanising impact on the site concluding that considerable weight should be attached to the harm resulting from the reduction in the openness of the Green Belt. The Inspector in 2013 found the replacement of the commercial building with a bungalow would through its scale maintain the openness of the area but found even taking account of other considerations those factors were outweighed by the harm caused by inappropriate development in the Green Belt. Since that time, insofar as is relevant to the appeal proposals the aims of national and local policies concerned with Green Belt openness have not materially changed.
14. I have noted Nos 18 to 20 The Avenue, were granted planning permission in 2010 and have recently been built collectively introducing significant built form into this part of the Green Belt. I also note that No 22 and Nos 24 and 26 The Avenue, to the south of the appeal site all benefit from permitted development rights associated with dwellinghouses. I have also noted the three large detached houses at The Crest and the detached dwellings on Roundwood Drive as well as the mobile homes and pitches nearby.
15. However, the Inspector in 2013 also noted Nos 18 to 20 The Avenue and took account of them in the decision. In any event, all these features whilst surrounding the appeal site do not alter the open character of the second

² Appeal Reference APP/C1950/A/11/2161251

³ Appeal Reference APP/C1950/A/12/2185139

parcel of land. Whilst more hardstanding may be present on the appeal site and part of the commercial building may have been removed since the previous appeal decisions, the fact remains that even with these changes, the second parcel of land comprising part of the appeal site, with the exception of the modest commercial building is free from significant structures, as was the case in 2013. Thus, there is no substantive evidence before me to indicate that the physical characteristics of the appeal site have changed in any significant way since the 2012 and 2013 appeal decisions were made.

16. Therefore, whilst I accept the appeal site is well screened and close to the A1(M) with the associated acoustic bund, consistent with the previous Inspectors, I find appeal proposal A would, irrespective of whether it involved 8 or 12 flats or houses, inevitably introduce significant additional built form into the appeal site. Furthermore, with regard to Appeal B, even though No 22 would be retained, four linked detached two storey dwellings extending in a relatively continuous block of built development through the appeal site would also introduce a bulk of buildings on to the appeal site which would be significantly taller and would have a greater site coverage than the existing modest single storey building.
17. Thus, both appeal proposals A and B would erode the openness of this part of the Green Belt, failing to preserve the openness of the Green Belt and as such harming the Green Belt. The proposed developments in both appeals A and B would therefore be in conflict with the Framework and saved Policy GBSP1 of the LP which seeks to maintain the Green Belt and prevent urban sprawl by keeping land permanently open. For the same reasons both appeal proposals A and B would also conflict with ELP Draft Policies SADM1 and SADM34. However, I only attach moderate weight to this conflict.

Character and appearance

18. The Avenue is characterised by mainly detached dwellings of a variety of styles set in spacious plots with spaces between them. This gives the area a spacious, residential character and appearance.
19. I accept the drawings submitted alongside Appeal A are illustrative only and through reserved matters approval a lower number of dwellings or flats could be agreed. However, all indicative layouts show dwellings positioned close together with limited space between them set in relatively small plots when compared with the majority of other properties in the area. Thus, I am not satisfied that the appeal site could accommodate the level of development proposed in Appeal A without resulting in a development which would appear cramped and at odds with the spacious character of the development in the area.
20. Turning my attention to Appeal B. No 22 would be retained and two pairs of linked detached dwellings would be erected next to it. Those dwellings would be linked by garages with bedrooms above them. Furthermore, both pairs would be positioned close together and close to the plot boundaries. Moreover, all of the proposed dwellings would be set in smaller plots than most others in the area. Overall, due to the layout and scale of the buildings proposed appeal proposal B would also have a cramped appearance which would erode the spacious quality of the area.

21. In reaching these conclusions I note the appeal site is relatively well screened. However, the proposal would be visible from the existing surrounding dwellings and would be experienced by any future occupiers. I also note the impact of the A1(M) on the appeal site, however, even so, the prevailing spacious residential character of the area remains.
22. As such I find for the reasons given both appeal proposals A and B would both harm the character and appearance of the area. Thus, appeal proposals A and B would both conflict with saved Policies D1 and D2 of the LP which seek to achieve good design and ensure new development preserves the character of an area. For the same reasons the proposals would also fail to accord with the good design aims of the Council's Supplementary Design Guidance (2005).

Other considerations

23. I note that both appeals would provide new homes in a location where services and employment can be easily accessed using sustainable transport. I also note new residents would provide customers and employees to the benefit of the local economy and there would be economic benefits associated with construction. Appeal proposal A would also make a significant contribution towards the provision of affordable housing as well as making other contributions set out in the UU.
24. I also note that the Council accepts it cannot demonstrate a five year supply of deliverable housing land. It was found in a recent appeal decision⁴ that the scale of the deliverable land supply at that time fell considerably well short of five years. Thus, with the absence of any substantive evidence contrary I attach significant weight to the benefit of four new homes proposed in Appeal B or up to 12 new homes proposed in Appeal A in helping to address this shortfall.
25. I note that neither North Herts District Council or the Highway Authority objected to either planning application and I have noted the letters in support of both appeals. I note that both appeal proposals would involve the redevelopment of some previously developed land and the appellant has applied to include the appeal site on the Brownfield Land Register. I also note the site is of a relatively untidy appearance and I recognise the local concerns associated with uncertainty and the potential use of the appeal site and any consequential highway or environmental impacts.
26. I have also noted the initial findings of the Local Plan Inspector, the findings of the Council's Green Belt Review (GBR) and the Council's response to these matters. I note the Council is currently searching for additional housing land some of which may need to be taken out of the Green Belt. I have also considered the evidence supporting the promotion of the appeal site for residential development through the emerging local plan. I also note the Council's Strategic Housing Land Availability Assessment (SHLAA) includes the site as having potential for up to 12 dwellings.
27. However, whilst I note that the GBR identifies that Parcel 15 (the wider area of land to which the appeal site sits) has a limited or no contribution to some of the Green Belt purposes, overall it finds that if Parcel 15 was taken out of the Green Belt it would have a moderate to high harm rating to the Green Belt

⁴ Appeal Reference APP/C1950/W/17/3190821

purposes overall. Furthermore, paragraph 136 of the Framework makes clear that Green Belt boundaries should only be altered through the preparation or updating of local plans and without such alterations the fact remains that the appeal site also remains in the Green Belt. Moreover, the SHLAA informs local plan preparation and land supply, a sites inclusion or its estimated development capacity within such does not necessarily indicate planning permission should be granted.

28. I have noted the comments with regard to a residential development scheme the Council considered which was also close to the A1(M) where technical evidence relating to air quality and surface water run-off was not requested unlike the appeal proposals. I also note the comments with regard to the Council's handling of the planning applications overall. Furthermore, I have considered the appeal decision relating to a site in the Green Belt in Cheltenham⁵. However, I have considered both appeal schemes on their planning merits with regard to the bespoke appeal site circumstances which cannot be directly comparable.

Planning Balance and Conclusion

29. For the reasons given I have found that both appeal scheme A and appeal scheme B would amount to inappropriate development within the Green Belt which is by definition harmful to the Green Belt. I have also found both schemes would also harm Green Belt openness. As such I must attach substantial weight to this harm and the proposal should not be approved except in very special circumstances. I have also found both schemes would be harmful to the character and appearance of the area.
30. Thus, whilst I attach significant weight to the benefit of either four or up to 12 additional homes including affordable homes in this location, all other considerations combined in both appeals do not clearly outweigh the harm I have identified to the Green Belt and the character and appearance of the area. Consequently, the very special circumstances necessary to justify the development proposed in either Appeal A or B do not exist.
31. Thus having had regard to all other matters raised, I conclude that on balance appeal proposals A and B would not accord with the development plan, particularly saved Policies GBSP1, H2, RA10, D2 of the LP which seek to among other things ensure good design and that new development does not harm the openness of the Green Belt and is located where it will not lead to environmental or landscape harm. For the same reasons both appeal proposals would also be in conflict with the Green Belt protection aims of the Framework.
32. Thus, for the reason given both Appeal A and Appeal B should be dismissed.

L Fleming

INSPECTOR

⁵ Appeal Reference APP/81605/A/08/2092058

APPEARANCES

FOR THE APPELLANT

Mr C Watts	Planning Consultant
Mr B Gray	Appellant
Mrs T Gray	Appellant

FOR THE COUNCIL

Mr W Myers	Senior Planning Officer
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INTEREST PARTIES

Mr C Storer
Mr L Page
Mr J Beckerman

DOCUMENTS SUBMITTED AT OR AFTER THE EVENT

1. Aerial photographs of the appeal site and dwellings nearby
2. Report to Welwyn Hatfield Borough Council Cabinet Planning and Parking Panel meeting of 6 September 2018 – Green Belt Study Stage 3 and Next Steps
3. Minutes of the Welwyn Hatfield Borough Council Cabinet Planning and Parking Panel meeting of 6 September 2018
4. Email from Hertfordshire County Council to Welwyn Hatfield Borough Council dated 26 September 2017 justifying contributions towards library and youth services
5. Letters of support from Mr C Storer, Mr L Page and Mr J Beckerman
6. Unilateral Undertaking
7. Council Decision notice 6/2019/0136/FULL