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## Appeal Decision

Site visit made on 27 March 2024

by J Downs BA(Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23<sup>rd</sup> September 2024

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Appeal Ref: APP/B1930/W/23/3325998

Land Adjacent 55 Bucknalls Drive, Bricket Wood, Hertfordshire AL2 3XJ

- 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 Mr Raymond Rice of Peter Rice Developments Ltd & Raymond Rice Developments Ltd against the decision of St Albans City Council.
  - The application Ref is 5/2022/1516.
  - The development proposed is erection of 12 bungalows. To include 8 detached bungalows and 4 semi-detached bungalows. Access road, parking, refuse provision and landscaping scheme. Provision of access to public footpath.
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### Decision

1. The appeal is dismissed.

### Preliminary Matters

2. Amended plans were submitted as part of the appeal proposal. Drawing number BD/22/PL01 Revision C and BD/22/PL02 Revision C are annotated as adding a hedge to the buffer zone. I also note they show access gates to the woodland buffer. Drawing number BD/22/PL13 also shows these access points and indicates a distinction between an **'amenity area'** and **'biodiversity buffer'**.
3. The Procedural Guide: Planning Appeals – England is clear that what is considered at appeal is essentially the same scheme that was considered by the Council and interested parties. Nonetheless, I have considered the amended plans in light of the principles established by the Courts in *Holborn Studios Ltd*<sup>1</sup>. While the amendments would constitute a limited alteration to the proposal, it may cause prejudice to those interested parties who expressed views with respect to the effect of the proposal on the Bricket Wood Common Site of Special Scientific Interest (SSSI). I have therefore determined the appeal on the basis of the plans originally considered by the Council.
4. A completed planning obligation, dated 2 February 2024 pursuant to Section 106 of the Town and Country Planning Act 1990 (as amended) has been submitted. I will return to this in due course.

### Main Issues

5. The main issues are:
  - whether the proposal would be inappropriate development in the Green Belt for the purposes of the development plan and the National Planning Policy Framework (the Framework);

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<sup>1</sup> *Holborn Studios Ltd v The Council of the London Borough of Hackney* [2017] EWCH 2823 (Admin)

- the effect of the proposed development on the purposes and openness of the Green Belt;
- the effect of the proposed development on the Bricket Wood Common Site of Special Scientific Interest (SSSI) and Bricket Wood Building Research Establishment Local Wildlife Site (LWS);
- whether the proposed development would provide a safe and suitable access;
- the effect of the proposed development on the character and appearance of the area;
- whether or not the contributions sought are reasonable and necessary to make the development acceptable; and
- whether any harm by reason of inappropriateness, and any other harm, would be clearly outweighed by other considerations, so as to amount to the very special circumstances required to justify the proposal.

### Reasons

6. Bucknalls Drive is a linear road characterised by dwellings facing onto it, with further dwellings which lie behind those properties accessed along generally more narrow carriageways. The appeal site is an undeveloped area of land which is adjacent to residential properties on Bucknalls Drive, Hampsted Close and Moran Close. It would be accessed via a private road which serves a small number of residential properties which lie behind the dwellings that front directly onto the highway.
7. The appeal site also lies adjacent to Bricket Wood Common, a SSSI and the BRE Local Wildlife site. The Building Research Establishment (BRE) site is a 26 hectare employment site that lies to the south of the appeal site, but is separated from it by woodland, some of which is protected by a woodland Tree Preservation Order (TPO).

### *Green Belt*

8. The site is located within the Metropolitan Green Belt. Saved Policy 1 of the District Local Plan Review (1994) (LP) confirms that development within the Green Belt will not be given permission unless it is for one of a list of exceptions or in very special circumstances. This is not entirely consistent with the exceptions set out in the Framework, which confirms at paragraph 154 that new buildings are inappropriate in the Green Belt unless it is one of the exceptions listed. Paragraph 154 e) of the Framework sets out that limited infilling in villages is one such exception. The parties accept that assessment of this is a matter of planning judgement<sup>2</sup> and that none of the terms are defined in the Framework.
9. Although the site is immediately adjacent to the built form of the settlement, and that built form extends along two of the boundaries, it does not lie within it. This is as a result of its open undeveloped nature, its position to the rear of the residential properties on Hampsted Close and Moran Close, its limited relationship to the private road and its close connection to the surrounding woodland arising from the woods around two sides of the site. There is no

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<sup>2</sup> Julian Wood v SSCLG, Gravesham Borough Council [2015] EWCA Civ 195

longer any evidence at the site of any historic use as a garden or of there being structures on the site. Furthermore, this open relationship to the woods to two sides of the site mean that the proposal would not constitute infill development. This is commonly understood to involve development between existing development. This proposal would not be the case and here and would extend beyond the current built form.

10. The long standing presence of the commercial and industrial properties beyond the site do not alter my assessment as the woods provide a substantial separation and the presence of those buildings is not readily discernible from within the site.
11. I acknowledge different conclusions were reached in the other appeal decisions<sup>3</sup> the appellant has directed me to, and in the recent decision by the Council to the north of 55 Bucknalls Drive<sup>4</sup>. However, each decision must be taken on its own merits, and a different finding in another location for a different development does not alter my assessment of this site, its relationship to the settlement and surrounding countryside, or my conclusion in respect of infill development.
12. Even if I were to accept that twelve dwellings would constitute limited in the context of Bricket Wood and the findings I have been directed to in the Station Road appeal<sup>5</sup>, it does not alter my conclusion in respect of infill development. The exception set out in paragraph 154 e) of the Framework would therefore not be complied with.
13. I have been directed to a previous appeal decision<sup>6</sup> on the site which was dismissed. It therefore does not represent a fallback position against which this proposal could be assessed. Furthermore, that appeal was in outline with appearance and scale reserved for later consideration. There is therefore no basis on which to assume that two storey development would have been found acceptable.
14. The appeal proposal would constitute inappropriate development in the Green Belt. It would be contrary to LP Policy 1 and would not meet any of the exceptions set out in paragraph 154 of the Framework. Paragraph 153 of the Framework confirms that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances.

#### *Purpose and Openness*

15. The fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open; the essential characteristics of Green Belts are their openness and their permanence. Openness is the absence of development and the Planning Practice Guidance confirms this can have spatial as well as visual aspects.
16. Paragraph 143 of the Framework sets out the five purposes of the Green Belt, namely to check the unrestricted sprawl of large built-up areas; to prevent neighbouring towns merging into one another; to assist in safeguarding the

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<sup>3</sup> APP/B1930/W/21/3275907 allowed 5 April 2022; APP/A0665/W/20/3247387 allowed 19 August 2020; APP/B1930/W/20/3249093 allowed 2 October 2020; and APP/J3720/W/16/3167715 allowed 25 May 2017.

<sup>4</sup> 5/2023/0603 permitted 23 October 2023

<sup>5</sup> APP/B1930/W/20/3249093 allowed 2 October 2020

<sup>6</sup> APP/B1930/W/15/3009684 dismissed 11 August 2015

countryside from encroachment; to preserve the setting and special character of historic towns; and to assist in urban regeneration, by encouraging the recycling of derelict and other urban land.

17. The appeal proposal is for 12 dwellings, along with associated infrastructure such as roads and boundary treatments. It is also likely that, were the appeal allowed, there would be the domestic paraphernalia typically found in residential areas. This would result in an inevitable loss of both spatial and visual openness to the Green Belt given the presently undeveloped nature of the site. However, this harm would be limited, given the contained nature of the site in the context of the surrounding woodland.
18. In terms of openness, there would be no benefits from the development which would permanently and irreversibly reduce both spatial and visual openness.
19. The proposed development would result in a degree of urban sprawl as the built form of the settlement would be extended. For the same reason, there would also be encroachment into the countryside. There would also be a further diminishing of the gap separating St Albans from Watford. The proposal would therefore result in harm to the purposes of the Green Belt. This harm would also be limited in its impact, given the relatively small scale of the development and the high degree of enclosure provided by Bricket Wood Common.
20. The purposes of the Green Belt are long established and well understood when properly read as a whole. While the harms I have identified to the openness and purposes of the Green Belt would be localised and limited, they would nonetheless be harms. In accordance with the advice in paragraph 153 of the Framework, I attach substantial weight to these harms.

### *Biodiversity*

21. The site lies in very close proximity to the SSSI. Natural England (NE) issued standing advice for development close to woodland designated sites which identified impacts which may need to be addressed. The Preliminary Ecological Appraisal (PEA) sets out the reasons it was designated, that the SSSI was approximately 14m from the site and identifies that care will need to be taken so that no damage is done to it. However, the conclusions make no recommendations with respect to the SSSI.
22. The appeal has also been accompanied by an Ecological Impact Assessment (EcIA) which was amended prior to the submission of the appeal, and a further ecology response provided. These confirm that a 5m buffer would be provided between the development and the SSSI. Natural England provided standing advice in response to the application which confirmed that a 15m buffer zone should be provided where possible to buffer the SSSI. There is no rationale in the submitted documentation for why a buffer of considerably less width is considered to be appropriate in this case. I therefore cannot be satisfied that there would not be harm to the SSSI. There is also insufficient evidence before me to allow me to be certain that the benefits of the development would clearly outweigh its likely impact on the features of the site, or to the national network of SSSIs.
23. There is the potential for the SSSI to be affected by airborne pollutants and surface water run off during the construction period. It has been suggested

that this could be addressed by a condition requiring a construction management plan. Such an approach would be consistent with the NE standing advice. However, this would not address the harms I have identified above with respect to the SSSI.

24. The site also lies in very close proximity to the LWS and which comprises ancient woodland. Standing advice from NE and the Forestry Commission confirms that there should be a buffer zone of at least 15m, and does not preclude the need for a wider buffer zone to be provided. There is also no assessment before me justifying the provision of a smaller buffer zone. There is insufficient evidence before me to demonstrate that there would not be unacceptable harm to the LWS, given the importance the Framework places on resisting the loss or deterioration of irreplaceable habitats.
25. It has not been demonstrated that there would not be an adverse effect on the SSSI and LWS arising from the proposed development. The proposal would therefore be contrary to the advice contained in paragraphs 185 and 186 of the Framework. None **of the policies referred to in the Council's second reason for refusal** directly relate to this issue. However I have been referred to LP Policy 106 which confirms that proposals which could adversely affect the Bricket Wood Common SSSI will be refused.

#### *Highway Safety*

26. The Council has identified concerns with the width of the road within the site, specifically at the bend adjacent to Plots 11 and 12 where the carriageway would remain at 4.8m. The appellant has provided additional drawings within their highways evidence showing it would be technically possible for two large vehicles to pass. However, I do not agree with their assessment that such a manoeuvre would **be 'comfortable'**. There would be little space to allow for any misjudgements by drivers, particularly those driving large vehicles.
27. I therefore cannot conclude that the proposed development would provide a safe and suitable access. It would be contrary to LP Policy 34 which requires development to be acceptable with respect to road safety. It would also be contrary to the Framework which requires development to function well, create places that are safe and for adverse effects to be mitigated.
28. LP Policy 39 is primarily concerned with parking standards. The Council has accepted the proposed levels of parking within the development. While this policy does also require proposals to comply with Policy 34 and be acceptable with respect to other considerations not directly related to highway safety, there is either no conflict between the parties or the issues have been considered elsewhere in this decision. I therefore consider this policy is not of direct relevance to this main issue.

#### *Character and appearance*

29. As an undeveloped site, its character would fundamentally be altered were it to be developed. However, as referred to above, the site is enclosed by built development and the surrounding woodland on Brickets Common.
30. The proposal would be broadly consistent with the surrounding pattern of development which includes dwellings to the rear of Bucknalls Drive, regardless of how the site would be accessed.

31. The proposed close boarded fences to bound the appeal site from the surrounding woodland would be a marked difference. However, given the extent of the surrounding woodland and limited viewpoints mostly along the footpath, the effect on the surrounding landscape and users would be negligible. A hard boundary would also limit the potential for additional access to the surrounding woodland which was a concern in **NE's** standing advice.
32. There would be some loss of trees, however the Council has not disputed the findings of the arboricultural report that three groups of trees, three individual trees and other trees within groups should be removed in any event. Concern has also been expressed at future pressure for works to trees outside the boundary of plots. However, the area of trees to which this relates are protected by a tree preservation order, allowing the Council control over this matter.
33. I have not been directed to any policies in the local plan requiring that a development of this scale provides on-site public open space. SuDS features are increasingly common in development. There is no reason that suitable landscaping around the detention basin and within the development could not be secured by condition. While this may only be reasonable for a limited time, this is typically the case for the landscaping scheme for any new development. Given the site would be visually well contained, changes in landscaping in the public realm and front gardens of the properties over time would not result in harm to the visual or landscape character of the wider area.
34. The proposed development would therefore not cause unacceptable harm to the character and appearance of the area. It would therefore be in accordance with LP Policies 1, 70, and 74 which, insofar as they relate to this appeal, require development to integrate and have regard to the existing landscape. In this respect the LP is consistent with the Framework which expects development to be sympathetic to local character.

#### *Contributions*

35. A planning obligation has been completed by the main parties in conjunction with Hertfordshire County Council which includes a number of obligations to come into effect if planning permission were granted.
36. Regulation 122 of the Community Infrastructure Levy Regulations 2010 (as amended) (CIL Regulations) and paragraph 57 of the Framework set out three tests that planning obligations must meet.
37. I have been provided with a completed Planning Obligation which makes provision for contributions towards library services, special educational needs and disabilities, waste services, youth services and sustainable transport. The contributions sought are broadly consistent with the requirements of the Hertfordshire County Council Guide to Developer Infrastructure Contributions.
38. It is proposed that four of the twelve dwellings would be secured as affordable housing and made available for social rent. All of these would be three bedroom properties and would be delivered no later than the occupation of half of the market dwellings.
39. While the proposal would not be required to meet the biodiversity net gain requirements of the Environment Act 2021, the Framework is clear that

opportunities for securing net gain should be pursued. The planning obligation therefore makes provision for a biodiversity offsetting scheme.

40. The above measures are necessary to make the proposed development acceptable in planning terms. They are directly related to, and would be fairly and reasonably related in scale and kind to, the development proposed. I am therefore satisfied that the planning obligation would meet the requirements of the CIL Regulations and the Framework in respect of these issues.
41. For these reasons, I consider there would be a need to secure the contributions contained within the planning obligation to meet the demands generated by the development. It would therefore be in accordance with LP Policy 143B which requires development to make provision for infrastructure consequences. I give significant weight to the obligation with respect to affordable housing and moderate weight with regard to biodiversity off-setting as these would be benefits of the proposal. The other contributions are necessary to meet the needs generated by the development and as such would be neutral.

*Other considerations*

42. It is not in dispute that the Council cannot demonstrate a deliverable five year supply of housing land. The appellant has set out that supply has declined since 2015 to a supply of only 2 years and that the results of the housing delivery test are also showing decline. The Council has not disputed these figures, or set out in any meaningful fashion how this shortfall is being tackled. The development plan is of some age and the emerging local plan is at an early stage in preparation. While there is the St Stephen Neighbourhood Plan (2019-2036) (NP), this does not contain any allocations. As previously considered, 33% affordable housing is proposed and I have been directed to other decisions where the benefits of affordable housing have weighed in favour of the proposal. In these circumstances, I attach substantial weight to the delivery of an additional 12 dwellings of which 4 would be affordable.
43. Sustainable design features are proposed for the dwellings which would exceed the building regulations and minimise energy demand. It would also provide for access to the public right of way network via the proposed link to public footpath 059. I attach limited weight to these benefits.
44. The Council has not raised any concerns with respect to the design of the proposed scheme in and of itself. I have no reason to disagree with this. Acceptable living conditions would be provided for future occupiers of the proposed dwellings. Sustainable drainage is to be expected of any well designed development. Landscaping is proposed which would be of native species. However these would be expected of any well designed development and would be neutral. Electric vehicle charging points are now required by the Building Regulations. Car parking below standard is proposed. However, the site would provide options for access by means of transport other than the private car. It is not in dispute that the site is in proximity to St Albans Town Centre and to other services and facilities. These would also be neutral factors in my assessment.
45. Neighbouring sites were granted planning permission, however I note these permissions all pre-date the Framework. I therefore cannot be certain that the same policy considerations would apply to those against which I must assess this proposal. I have not been made aware of the outcome of a more recent

application<sup>7</sup> made near to the site. I have also been directed to other appeal decisions where very special circumstances<sup>8</sup> have been found. However, a finding of very special circumstances is based on the specific details of a particular proposal in a particular location. Similarly, where an appeal has been dismissed<sup>9</sup>, it **would not automatically be the case that 'less' harm than was demonstrated in that case would justify allowing permission in another location.**

46. While the site has been identified in several evidence base documents and the strategic housing land availability assessment, identifying potential options for the emerging plan, assessment for the purposes of reviewing Green Belt boundaries and plan allocations are somewhat different to that in a s78 appeal. While it may be that Green Belt release will be necessary to meet housing needs in the future, the Framework is clear that this is a matter to be addressed through the plan making process. I therefore attach limited weight to this, and the findings of that document in relation to the site as it contributes to the purposes of the Green Belt.
47. I have sought the views of the parties as to what weight I should give to the consultation draft of the Framework issued in July 2024. The consultation does indicate a direction of travel towards supporting increased housing delivery. It also proposes a new type of development that would be not inappropriate in the Green Belt. However, I cannot be certain that the Framework will be finalised in its current form. Furthermore, the proposal would not comply with all of the requirements with respect to proposals on grey belt land.

#### Other Matters

48. The Council withdrew an emerging plan from examination in 2020. That document is therefore not material to the determination of this appeal. Similarly, previous drafts of the now made St Stephens Parish Neighbourhood Plan would be afforded no weight as they do not form part of the development plan.

#### Green Belt Balance

49. I have found that the proposal would constitute inappropriate development in the Green Belt and would harm its purpose and openness. Paragraph 153 of the Framework states that substantial weight should be given to any harm to the Green Belt. The Framework clarifies that inappropriate development should only be permitted in very special circumstances and that such will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm resulting from the proposal, is clearly outweighed by other considerations. There would also be harm to the Bricket Wood SSSI and LWS and I attach significant and moderate weight to these respectively. I attach limited weight to the harm caused by the proposed access.
50. The provision of an additional twelve dwellings, one third of which would be affordable, would weigh significantly in favour of the proposal. Biodiversity enhancements, via offsetting, would also attract significant weight. Enhancements to the PROW network would also weigh moderately in support of

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<sup>7</sup> 5/2023/0603

<sup>8</sup> APP/B1930/W/20/3265925 & APP/C1950/W/20/3265926 allowed 14 June 2021; APP/M1520/W/20/3246788 allowed 6 August 2020 and 5/2021/0423 granted planning permission 12 January 2022

<sup>9</sup> APP/B1930/W/22/3294152 dismissed 18 August 2022



the proposal. Enhanced energy efficiency would also be a benefit of the scheme although this would be limited.

51. A lack of harm to the character and appearance of the area, highway safety and measures to mitigate the effects of the development secured via the planning obligation would be neutral. It is to be expected that development should be well designed and allow for acceptable living conditions for both future occupiers and surrounding residents.

52. For the reasons given, I find that the other considerations in this case do not clearly outweigh the harms that I have identified. Consequently, the very special circumstances necessary to justify the development do not exist.

### Planning Balance

53. The harm to the Green Belt and the SSSI would result in a conflict with the development plan when read as a whole. My findings in respect of the Green Belt, lack of very special circumstances and the SSSI also means that there are policies in the Framework that provide a clear reason for refusing the development proposed. Therefore, under Paragraph 11d)i of the Framework, the proposal does not benefit from the presumption in favour of sustainable development.

### Conclusion

54. The appeal proposal would conflict with the development plan when read as a whole. There are no material considerations of sufficient weight, including the policies of the Framework, to suggest the decision should be made other than in accordance with the development plan. Therefore, for the reasons given, and having had regard to all other matters raised, I conclude that the appeal should be dismissed.

*J Downs*

INSPECTOR