

## Decision Notice and Statement of Reasons

Site visit made on 22 July 2024

**By C Shearing BA MA MRTPI**

**A person appointed by the Secretary of State**

**Decision date: 15 August 2024**

---

**Application Reference: S62A/2024/0046**

**Site address: 9A/9B Rosebury Avenue, Harpenden AL5 2QT**

- The application is made under section 62A of the Town and Country Planning Act 1990.
  - The site is located within the administrative area of St Albans City and District Council.
  - The application dated 29 May 2024 is made by Mrs Bowman and was validated on 3 July 2024.
  - The development proposed is demolition of existing dwellings and construction of a replacement five bedroom house including attic accommodation and soft landscaping.
- 

### Decision

1. Planning permission is refused for the development described above, for the following reasons:
  - 1) The proposal would result in the loss of a unit of residential accommodation contrary to Policy 10 of the St Albans District Local Plan Review 1994: Saved and Deleted Policies Version (July 2020) and the objectives of the National Planning Policy Framework 2023 to boost the supply of homes.
  - 2) It has not been satisfactorily demonstrated that the proposal would deliver appropriate biodiversity net gains or that it would be an exempt development. This conflicts with Policy ESD13 of the Harpenden Neighbourhood Plan 2018, the National Planning Policy Framework 2023 relating to net gains for biodiversity, as well as Schedule 7A of the Town and Country Planning Act 1990.

### Statement of Reasons

#### Procedural matters

2. The application was made under Section 62A of the Town and Country Planning Act 1990, which allows for applications to be made directly to the

Planning Inspectorate where a Council has been designated by the Secretary of State. St Albans City and District Council have been designated for non major applications since 6 March 2024.

3. Consultation was undertaken on 16 July 2024 which allowed for responses by 8 August 2024. Responses were received from the parties listed in Appendix 1. A number of interested parties and local residents also submitted responses. St Albans City and District Council submitted an officer report which summarises these documents and sets out the Council's objection to the proposed development.
4. I carried out an unaccompanied site visit on 22 July 2024 which enabled me to view the site, the surrounding area and the nearby roads.
5. I have taken account of all written representations in reaching my decision.
6. On 30 July 2024 the Government published a consultation on proposed reforms to the National Planning Policy Framework (the Framework) and other changes to the planning system. The policies which are most relevant to this decision are not subject to any fundamental changes and in reaching my decision I have had regard to the Framework published in 2023.

### **Main Issues**

7. Having regard to the application, the consultation responses, comments from interested parties, the Council's report, together with what I saw on site, the main issues for this application are the effects on:
  - The Council's housing supply;
  - Designated heritage assets, in particular the Harpenden Conservation Area and setting of adjoining locally listed buildings;
  - Trees;
  - Living conditions of occupants of the adjoining properties and future occupants of the development;
  - Access, Parking and Sustainability, and;
  - Biodiversity.

### **Reasons**

#### *Housing Supply*

8. The application site is located within the built up area of Harpenden, which is identified as a Town within the St Albans District Local Plan Review<sup>1</sup> (the LPR) and an area where there is a presumption in favour of housing where it would be consistent with other policies in the Local Plan. The site is close to services and facilities on Luton Road and is a short distance from Harpenden Town Centre. There are also a number of public transport links nearby including bus services and Harpenden Station. As such the site is suitably located for housing.

---

<sup>1</sup> The St Albans District Local Plan Review 1994 (Adopted 30 November 1994) Saved and Deleted Policies Version (July 2020)

9. The existing building provides two units of accommodation, one on each floor, with separate entrances at each side of the building. The proposal would see the replacement of the building with a single house and would therefore entail a net loss of one unit of accommodation.
10. Policy 10 of the LPR sets out that proposals which would result in the net loss of dwellings through demolition, or the loss of part or all of a dwelling by a change of use will normally be resisted. It sets out circumstances where exceptions may be made, however there is not evidence to suggest any of those listed apply to this application. In addition, the Council have highlighted that there is a greater identified need for units of the existing size than for a five bedroom dwelling.
11. The applicant refers to other developments on Rosebury Avenue where it is alleged that a reduction in units has occurred and the Council have responded accordingly. In particular, the Council state that no.11 pre-dated the current Framework and the Council's current position on housing supply, and No.1 Rosebury Avenue entailed a net increase of one residential unit. As such, the circumstances surrounding those decisions are different to this application.
12. In conclusion on this main issue, the proposal would result in the loss of a residential unit and would conflict with Policy 10 of the LPR and the objective of the Framework to boost the supply of homes.

#### *Heritage Assets*

13. The site is located within the Harpenden Conservation Area (HCA) and I have had special regard to sections 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990. The two neighbouring buildings, nos. 7 and 11 are also locally listed.
14. The Conservation Area Character Statement for Harpenden 2008 (the CACSH) acknowledges the area's spacious gardens and the presence of infill houses of various dates and a variety of styles. It describes that some of them make use of decorative features from older houses, but that the most successful ones include a number where this is eschewed and they stand on their own merits as representing the building style of a later stage of development in the area. This is particularly relevant to the application site, where the existing building is understood to have been an infill development between the more historic buildings of nos.9 and 11. More modern properties exist directly opposite and further to the south along Rosebury Avenue, which comprise a variety of materials and brick tones and front boundary treatments. It is apparent therefore, that the variation in building styles contributes positively to the character and appearance of this part of the HCA. The houses on the street nonetheless share characteristics of consistent front building lines and off street parking areas alongside soft landscaping, which give a regularity to the street scene and a semi-rural character.
15. The historic locally listed houses either side of the application site comprise red brick elevations and are taller in height with rooms in the roofspace.

They include a series of projecting bays and decorative gables and details to their front elevations. Their setting includes the surrounding residential properties described above and they are appreciated in views from the road where they are seen alongside the existing building on the application site.

16. The existing building on the application site displays a traditional 1970s design with a projecting two storey element to the front elevation with a gable feature, as well as a flat roofed garage addition with enclosed balcony above. Its materials include a combination of pale brick tones with sections of brown horizontal cladding. The building is of little architectural merit or historic interest, but nonetheless contributes to the variety of styles which has developed in the area over time, which is acknowledged within the CACSH. I note the comments of support for the application which find the existing building to be an eyesore. However, based on the information before me I have no strong reason to find it to detract from the significance of the conservation area. It sits comfortably within its surroundings and makes a neutral contribution to the character and appearance of the conservation area.
17. The proposed replacement building would have a traditional appearance and include detailing on the front elevation similar to those on the neighbouring properties including a gable feature and decorative door and window details. Facing bricks would be red tones and the windows to the front elevation would be timber sashes, reflecting the palette of materials on the buildings to either side. By contrast, the materials on the back of the building would be more contemporary including aluminium windows and metal roofing to the single storey element. Despite narrowing the variety in architectural styles on the road, overall the replacement building would preserve the character and appearance of the conservation area.
18. The proposal would also provide a brick wall to part of the front boundary and provide some consistency with others on this side of the road, which would be a modest enhancement to both the HCA and the setting in which the locally listed buildings are appreciated. While the replacement building would be set lower than the existing it is not apparent that this would constitute an enhancement given the varied building heights and gradients of the land on this side of the road.
19. In conclusion on this main issue, the proposal would preserve and in part enhance the character and appearance of the HCA. For the same reasons it would preserve the setting of the adjacent locally listed buildings and how they are appreciated. The proposal would comply with policies 69, 70 and 85 of the LPR as well as policies ESD1 and ESD2 of the Harpenden Neighbourhood Plan 2018 (the HNP) which together require a high standard of design which has regard to its setting and local heritage. The proposal would also comply with the design and heritage objectives of the Framework.

#### *Trees*

20. Trees in conservation areas are protected under the provisions of the Town and Country Planning Act 1990. The proposal includes the removal of three

trees from the rear garden which form part of the landscaping which separates the private outdoor spaces of no.9A and 9B. These have been found to be category C and U trees of no particular merit with issues including poor form and a thin crown. Due to their height and positioning, these trees have little visibility from the surrounding area and as a result of these factors together, they have little amenity value. For these reasons their removal is acceptable.

21. Policy ESD14 of the HNP requires a two-to-one tree replacement ratio and the applicant's tree report states that six new trees are proposed to be planted. While this is not reflected in the proposed soft landscaping scheme, given the size of the garden I am satisfied that this could be rectified by way of a planning condition if the application were otherwise acceptable. It has been shown that other retained trees on the site could be adequately protected throughout the construction process in accordance with the requirements of LPR Policy 74.
22. The proposal would have acceptable effects on trees and would comply with Policy 74 of the LPR which relates to retention of existing landscaping including healthy trees.

#### *Living Conditions*

23. No. 11 Rosebury Avenue adjoins the application site to the north. This is a substantial house which has a single storey extension against the boundary and a number of windows to the upper levels of its side elevation which face towards the application site. Given the existing situation experienced by those windows, the effects of the proposal on the rooms which they serve would be acceptable. The proposed plans show the new upper level side windows would be obscure glazed to prevent any additional overlooking and views from the proposed ground floor window facing no.11 would be heavily restricted by the boundary treatment and adjacent extension.
24. No.9 Rosebury Avenue is to the south of the application site and a detached garage with substantial pitched roof separates that house from the application site. As a consequence, and together with the boundary treatments, intervisibility between the two sites at the ground floor level is heavily restricted. No.9 includes side windows to its upper levels which have outlook over the application site, including some which are understood to serve bedrooms. Given the distance between those windows and the proposed development, and having regard to the orientation and effects of the existing development on the site, the proposal would not cause unacceptable effects on the living conditions experienced by those occupants. Details relating to noise generated by the heat pumps close to the boundary could otherwise be secured by condition.
25. While the proposal would include dormer windows at the main roof level, given the distance of separation to the houses behind on Longcroft Avenue, acceptable living conditions would be maintained. Given its size and outlook from several elevations, the proposed new house would also provide an acceptable standard of accommodation for future occupants.

26. The proposal would have acceptable effects on the living conditions of the occupants of nearby properties and future occupants and would comply with Policy 70 of the LPR as well as the Framework insofar as they relate to living conditions.

#### *Access, Parking and Sustainability*

27. Rosebury Avenue is an unclassified road with a 30mph speed limit. The road has footpaths on both sides and the majority of the properties on the road have off street parking areas. Unrestricted on street parking also exists. The site currently provides off street parking spaces in front of the building for both residential units, served by an existing dropped kerb and crossover.
28. The proposal would be unlikely to result in additional vehicle trips to and from the site and a hard surfaced driveway would provide enough off-street parking to meet the Council's parking standards for a house of the size proposed. The existing crossover would be used and highway safety would be maintained subject to the imposition of a condition relating to visibility at the access.
29. The proposal would be acceptable in terms of the effects of its access and parking, and would comply with Policy 34 of the LPR which relates to highways considerations.
30. With regard to sustainability and energy efficiency, the application demonstrates that renewable energy technology would be incorporated in the design of the building and the proposal would comply with Policy ESD15 of the HNP which requires development to support the making of a low carbon area and sustainable living.

#### *Biodiversity*

31. Under the statutory framework for biodiversity net gain (BNG), subject to some exemptions, every grant of planning permission is deemed to have been granted subject to the condition that the biodiversity net gain objective is met. The applicant considers the proposal to be exempt on the basis it would be self build or custom build development, designed for their own use.
32. Self build and custom build development is one of the development types set out in the regulations<sup>2</sup> to which BNG does not apply. However, it goes on to state that it should consist exclusively of dwellings which are self-build or custom housebuilding as defined in section 1(A1) of the Self-build and Custom Housebuilding Act 2015, which sets out those who should build or complete the house. On the basis of the information submitted with the application, it cannot be established with certainty that this would be the case here or that a planning condition would be sufficient for this purpose.

---

<sup>2</sup> Schedule 7A of the Town and Country Planning Act 1990 and the Biodiversity Gain Requirements (Exemptions) Regulations 2024

As such, it cannot be determined that the proposal would be exempt from the statutory BNG requirement. Neither has information been provided to demonstrate that the requirement could be achieved or that a condition to secure it could be discharged successfully.

33. The applicant's Tree Report acknowledges that no signs of protected species were noted. Neither is there any strong reason to believe that bats or other protected species may be present in the existing building or elsewhere on the site. As such a precautionary approach for bats during demolition would be appropriate here if the application were otherwise acceptable.
34. In conclusion on this main issue, the application fails to demonstrate that the proposal could deliver appropriate biodiversity net gains or that it would be an exempt development. As such the proposal would conflict with Schedule 7A of the Town and Country Planning Act 1990, inserted by the Environmental Act 2021, and with the Framework insofar as it requires at paragraph 180 that decisions contribute to and enhance the natural and local environment by providing net gains for biodiversity. HNP Policy ESD13 supports the protection and enhancement of biodiversity, although the local plan does not set a gain requirement. Nonetheless, Planning Practice Guidance acknowledges the statutory provisions are an important material consideration and that in many cases will take precedence over local planning policy.

### **Planning Balance**

35. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise. The Framework is such a material consideration.
36. The Council accept that it cannot demonstrate the appropriate housing land supply and as such the provisions of paragraph 11d) of the Framework apply to the application. This states that planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits.
37. In terms of benefits, the proposed replacement building would provide environmental improvements in terms of heat loss and through incorporating sustainable energy and water features. While this is an important factor, it is not apparent that the proposal would exceed the policy requirement in the HNP set out above. As such this attracts moderate weight. There would also be some economic benefit arising from the construction process although this would be limited by the scale of the development. For the reasons set out above, it has been established that the proposal would deliver a modest enhancement to the conservation area and setting of the locally listed buildings through the new front boundary wall but otherwise its contribution would be neutral. Moderate weight is also given to that enhancement given its scale.

38. It is alleged that the existing building is not fit for purpose, however, there is little evidence to demonstrate this and the building was at least partially occupied at the time of my site visit. As such this does not weigh in favour of the proposal. Where the proposal has been found to be policy compliant in other respects these are neutral matters and do not weigh in favour of the proposal.
39. The adverse impacts have been identified above and relate to the loss of a residential unit and failure to demonstrate the statutory BNG requirement could be met, or that the proposal would be exempt. Both adverse impacts present conflict with the Framework as set out and these harms attract substantial weight.
40. The adverse impacts of granting planning permission would therefore significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole. As a consequence the proposal would not benefit from the presumption in favour of sustainable development.

### **Conclusion**

41. The proposal would conflict with the development plan as a whole and there are no other considerations, including the provisions of the Framework, which outweigh this finding. Consequently, planning permission is refused.

*C Shearing*

Inspector and Appointed Person



## **Informatives:**

- i. In determining this application the Planning Inspectorate, on behalf of the Secretary of State, has worked with the applicant in a positive and proactive manner. In doing so the Planning Inspectorate gave clear advice of the expectation and requirements for the submission of documents and information, ensured consultation responses were published in good time and gave clear deadlines for submissions and responses.
- ii. The decision of the appointed person (acting on behalf of the Secretary of State) on an application under section 62A of the Town and Country Planning Act 1990 ("the Act") is final, which means there is no right to appeal. An application to the High Court under s288(1) of the Town and Country Planning Act 1990 is the only way in which the decision made on an application under Section 62A can be challenged. An application must be made within 6 weeks of the date of the decision
- iii. These notes are provided for guidance only. A person who thinks they may have grounds for challenging this decision is advised to seek legal advice before taking any action. If you require advice on the process for making any challenge you should contact the Administrative Court Office at the Royal Courts of Justice, Strand, London, WC2A 2LL (0207 947 6655) or follow this link: <https://www.gov.uk/courts-tribunals/planning-court>.

## **Appendix 1 - Consultee responses**

St Albans City and District Council

Harpenden Town Council

Hertfordshire County Council- Ecology

Hertfordshire County Council- Highways

Hertfordshire County Council- Landscape Service