

## Decision Notice and Statement of Reasons

Site visit made on 5 September 2024

**By Jennifer Wallace BA(Hons) MRTPI**

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

**Decision date: 9 October 2024**

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**Application Reference: S62A/2024/0048**

**Site address: 1 Wheatfield Road, Harpenden AL5 2NY**

- 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 13 June 2024 is made by Mr Colin Franzmann and was validated on 6 August 2024.
  - The development proposed is demolition of existing 4 bedroom house and outbuildings. Construction of replacement 4 bedroom house and double garage.
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### Decision

1. Planning permission is refused for the development described above, for the following reasons:
  - 1) It has not been robustly demonstrated that the existing dwelling is no longer fit for purpose, contrary to Harpenden Neighbourhood Plan<sup>1</sup> Policies H2 and SS1.
  - 2) There is no mechanism to secure the proposed dwelling as self build, thereby ensuring it would be exempt from the requirement to deliver biodiversity net gain. There is insufficient information to demonstrate that the proposal would be capable of delivering appropriate biodiversity net gains. This is contrary to Harpenden Neighbourhood Plan Policy ESD13, the National Planning Policy Framework 2023 relating to net gains for biodiversity, and Schedule 7A of the Town and Country Planning Act 1990.

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<sup>1</sup> Harpenden Neighbourhood Plan 2018 – 2033 (Made 20 February 2019) Final Version for Referendum (November 2018)

# 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 13 August 2024 which allowed for responses by 11 September 2024. Responses were received from the parties listed in Appendix 1. St Albans City and District Council submitted an officer report which summarises some of these documents and sets out that the Council has no objection to the proposed development. I have taken account of all written representations in reaching my decision.
4. I carried out an unaccompanied site visit on 5 September 2024 which enabled me to view the site, the surrounding area and the nearby roads.
5. 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 December 2023.

## Main Issues

6. Having regard to the application, the consultation responses and the Council's report, together with what I saw on site, the main issues for this application are:
  - whether the location and principle of the development is acceptable, having regard to the development strategy in the development plan;
  - biodiversity net gain;
  - the effect of the proposed development on the character and appearance of the area;
  - the effect of the proposed development on protected species; and
  - living conditions of the occupiers of surrounding properties and future occupiers of the proposed dwelling.

## Reasons

### *Location and Principle of Development*

7. The application site lies within Harpenden which is identified as a Town in Policy 2 of the St Albans District Local Plan Review<sup>2</sup> (LPR). Policy 4 of the LPR and Policy SS1 of the Harpenden Neighbourhood Plan (HNP) taken

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<sup>2</sup> The St Albans District Local Plan Review 1994 (Adopted 30 November 1994) Saved and Deleted Policies Version (July 2020)

together seek to direct development to within the built up area provided it is otherwise consistent with the development plan.

8. The application proposes the demolition of the existing detached dwelling and its replacement with a new dwelling. In such circumstances, HNP Policy H2 requires it to be robustly demonstrated that the existing property is no longer fit for purpose, which is defined as being if the property is in a state of disrepair.
9. The applicant has confirmed that the existing dwelling is not fit for their purposes due to its age, design and position on the site. This does not equate to the property being in a state of disrepair. There is no substantive evidence that the windows and insulation on the existing property are so poor as to bring it into disrepair. I did not observe anything at my site visit that would lead me to conclude the property was no longer fit for purpose.
10. The application site is a suitable location for development as set out in LPR Policy 4. However, the proposal would not be supported by HNP Policy H2 and consequently would also fail to accord with HNP Policy SS1. I therefore conclude that the principle of the proposal would be contrary to the development plan when read as a whole.

#### *Biodiversity Net Gain*

11. Under the statutory framework for biodiversity net gain (BNG) every grant of planning permission is deemed to have been granted, unless exempted, subject to the condition that the biodiversity gain objective is met.
12. The application form states that the proposal would be self build. This is one of the exemptions set out in the Biodiversity Gain Requirements (Exemptions) Regulations 2024 SI 2024/No.47 (the regulations). However, the regulations also provide that "self-build or custom housebuilding" has the same meaning as in section 1(A1) of the Self-build and Custom Housebuilding Act 2015. In order for the proposed dwelling to benefit from the exemption, it would be necessary to ensure compliance with that definition.
13. This is not a matter that could be secured by condition. Such a condition would not be reasonable or enforceable as it would require the person who built the house to occupy it. Compliance with the definition of self build or custom housebuilding could only be achieved through the use of a planning obligation. There is no such obligation before me. As such, there is no mechanism to prevent the dwelling from coming forward as a market dwelling.
14. The Planning Practice Guidance<sup>3</sup> confirms that when determining a planning application, biodiversity net gain will often be a material consideration, and it should be considered, where relevant, whether the biodiversity gain condition is capable of being discharged successfully. To this end, there are minimum national information requirements in relation to BNG which applicants must provide. As the applicant sought exemption, this

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<sup>3</sup> Biodiversity net gain Paragraph: 002 Reference ID: 74-002-20240214

information has not been provided. I therefore could not be satisfied that were the proposal to be brought forward as a market dwelling, it would be capable of complying with the biodiversity gain condition.

15. The application therefore fails to demonstrate that it would be exempt development or that the biodiversity gain condition could be met. This is contrary to the requirements of HNP Policy ESD13 which supports the enhancement of biodiversity, Schedule 7A of the Town and Country Planning Act 1990 and with paragraph 180 of the Framework insofar as it requires decisions to contribute to and enhance the natural and local environment by providing net gains for biodiversity.

#### *Character and Appearance*

16. The application site is situated within a residential area characterised by substantial detached dwellings set in spacious plots. A number of dwellings have been subject to alterations and extensions, while others appear to have been rebuilt in their entirety. Consequently, there is no prevailing architectural style or appearance to the surrounding area.
17. The application site is a short distance from the junction of Wheatfield Road and The Uplands. The plot of 28 The Uplands lies perpendicular to the application site with the side boundary of the garden running along Wheatfield Road. This provides considerable separation between the properties such that their varying appearances do not appear discordant.
18. The proposal is for a substantial two storey dwelling with single storey projections to either side. It would be sited centrally within the plot and set a short distance from the site boundaries. This is typical of the positioning of dwellings in the surrounding area. The front elevation would sit substantially forward of that of the existing dwelling. However, the existing dwelling is set further within the plot than the neighbouring property at 1B Wheatfield Road. The proposed dwelling would not project forward of no. 1B and would integrate well into the street scene.
19. The scale and massing of the proposed dwelling would be notably larger than that it would replace. However, it would be consistent with the scale of many of the properties in the surrounding area. The proposed dwelling would have gable and bay window detailing to the front elevation which would reflect design features found in the surrounding area, including the adjacent property at no. 1B. Proposed materials including brick, render and stained timber have been indicated and would be compatible with the surrounding area. The siting of solar panels on the roof and a heat pump above the garage would have an acceptable visual impact.
20. It is proposed to retain the existing tree to the front of the property and root protection measures could be secured by condition. A landscaping plan has been submitted as part of the application showing some additional planting to the front garden including a tree. This would serve to soften the urban form and mitigate the visual impact of car parking. Appropriate provision has been made for bin storage which would be discretely located to the side of the building.

21. The proposal would therefore have an acceptable effect on the character and appearance of the area. It would be in accordance with LPR Policies 69 and 70 which require development to demonstrate an adequately high standard of design with regard to the scale and character of its surroundings, create attractive space of human scale and for materials to normally relate to adjoining buildings. It would also be in accordance with HNP Policies ESD1, ESD2, ESD5, ESD6 and ESD14 which taken together and insofar as they relate to this application, require development to be visually attractive, maintain the character of the area, be of a height, scale and design that is considerate of the surrounding area, not visually dominated by car parking, provide capacity for waste storage and to retain mature trees.

#### *Protected Species*

22. A previous application<sup>4</sup> on the site for the erection of a dwelling was refused due to insufficient information being submitted with respect to bats. This proposal has been accompanied by an Emergence and Activity Bat Survey (EBS). This contains details of four surveys which all observed various species of bat foraging and commuting using the site. Two of the surveys observed bats emerging from the property. The survey sets out mitigation measures in the form of the provision of bat boxes and a sensitive lighting scheme, along with retention of natural features and the potential for enhancement with an additional bat box.
23. I am satisfied that the survey was carried out by an appropriately qualified person. The mitigation measures could be secured by condition. I am therefore satisfied the proposal would make adequate provision to address the effect of the development on protected species. It would therefore be in accordance with LPR Policy 106 which requires ecological factors to be taken into account when considering planning applications and HNP Policy ESD13 which requires the protection and enhancement of urban biodiversity.
24. The EBS confirms that a protected species licence would be required. As I am dismissing the application for other reasons, it is not necessary for me to consider whether or not it is likely that a licence would be granted.

#### *Living Conditions*

25. The Framework at paragraph 135 requires planning decisions to ensure that developments function well and have a high standard of amenity for existing and future users. The proposed dwelling would function well as a dwelling with sufficient space and appropriate outlook provided. LPR Policy 70 and HNP Policy H9 require appropriate private outdoor space to be provided for new dwellings. The proposal would provide private outdoor amenity space in excess of that sought by Design Advice Leaflet No. 1. Appropriate defensible space around the proposed dwelling would be provided.

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<sup>4</sup> 5/23/1225

26. There is an electricity sub-station facing onto Wheatfield Drive adjacent to the application site. The closest part of the proposed dwelling to this would be the single storey garage. The proposed dwelling would be further from this than the minimum of 7m recommended by UK Power Networks in their consultation response, and slightly further than the 10m recommended for dwellings with rooms overlooking the substation. There is no reason to think the footings of the building would not be separate from the substation structures given this separation.
27. The rear elevation of the proposed dwelling would be sited in the same position as that of the existing dwelling. This projects slightly beyond the rear elevation of no. 1B. Given the inset position of the two storey portion of the proposed dwelling and hipped roof of the proposed garage, there would not be an adverse effect on levels of sunlight and daylight to the neighbouring property. The position of the two storey phase of the proposed dwelling would be set away from the boundary and would not result in an increase in the sense of enclosure felt by neighbouring occupiers.
28. The position of the proposed dwelling and its consequent relationship with the neighbouring properties would be acceptable with respect to the requirements of LPR Policy 70 in relation to privacy. There may be an increased perception of overlooking arising from the increase in the extent of glazing at first floor level to the rear elevation. However, the relationship would essentially be the same as that at present and would be typical of that experienced in residential areas. Windows at first floor level in the side elevations are shown as being obscure glazed, and this could be secured by condition. The proposed development would therefore not cause an unacceptable increase in overlooking to neighbouring occupiers.
29. The plans show an air source heat pump located on the rear elevation of the garage and at first floor level above it to the side elevation. Details to ensure that noise from this would not have an adverse effect on the living conditions of occupiers of the adjacent property could be secured by condition. Conditions to control the construction process could be used to mitigate the adverse effects of construction on the living conditions of neighbouring occupiers.
30. The proposed development would therefore provide acceptable living conditions for future occupiers of the proposed dwelling. It would also have an acceptable effect on the living conditions of neighbouring occupiers. The proposal would therefore accord with the requirements of LPR Policy 70 and HNP Policy H9.

### **Other Matters**

31. The proposal would utilise the existing access. A double garage is shown and there would be provision for parking on the drive within the front garden. The surrounding properties have provision for off-street parking and there were no restrictions to parking on the street. The replacement of a four bedroom dwelling with another would be unlikely to generate additional traffic beyond that typical of a dwelling. The proposal would

therefore have a neutral effect on highway safety and there would be no conflict with LPR Policies 34 and 40, the revised parking standard and HNP Policy T11.

32. Surface water would drain to a soakaway and could be secured by condition. No concerns have been raised with regard to the provision of water or foul drainage which are likely to be serving the site at present. While contamination of the site is unlikely given its current use, a condition could be imposed in the event unexpected contamination is found during the development stage.
33. Solar panels and air source heat pumps are proposed. The Justification for Development and Sustainability Statement sets out measures that would be taken in the interests of sustainability, energy efficiency and use of renewable energy. These would be in accordance with the requirements of HNP Policies ESD15 and ESD16 which require development to incorporate renewable energy and efficient design of buildings.

### **Planning Balance**

34. 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.
35. The Council accepts that it cannot demonstrate the appropriate supply of deliverable housing land. As none of the areas or assets identified in Footnote 7 apply to the proposal, paragraph 11d)ii of the Framework applies 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.
36. The proposal would provide a replacement dwelling for the existing so there would be no increase in the supply of housing. It would be of an appropriate design in its location and would provide acceptable living conditions for future occupiers. There would be an acceptable impact on the living conditions of neighbouring occupiers. There would be a neutral effect on traffic generation and highway safety. However, these are all to be expected of any well designed development and consequently would not be benefits of the application.
37. There would be economic benefits associated with the scheme during the construction phase. However these would be limited as the proposal would be for a single dwelling.
38. It has not been demonstrated that the existing dwelling is no longer fit for purpose. The provision of the dwelling as self-build has not been secured and it has not been demonstrated that compliance with the statutory BNG condition could be achieved. I attach moderate weight to the failure to demonstrate that the existing dwelling is not fit for purpose and significant weight to the failure to demonstrate compliance with the statutory BNG requirement.

39. 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**

40. For these reasons, and having regard to all other matters raised, the proposal does not accord with the development plan and therefore I conclude that planning permission should be refused.

*Jennifer Wallace*

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  
Affinity Water Limited  
Environmental Compliance  
Harpenden Town Council  
Hertfordshire County Council – Highways  
Hertfordshire County Council – Ecology  
Hertfordshire County Council – Landscape  
UK Power Networks