

## Decision Notice and Statement of Reasons

Site visits made on 5 September and 4 October 2024

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

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

**Decision date: 22 October 2024**

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**Application Reference: S62A/2024/0054**

**Site address: 38 Briar Road, St. Albans AL4 9TL**

- 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 21 June 2024 is made by Mrs Yesim Mehmet and was validated on 29 August 2024.
  - The development proposed is part demolition of existing two storey extension to 38 Briar Road St Albans and creation of new building plot adjacent. Creation of new 3 bedroom two storey dwelling and new pedestrian crossover.
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### Decision

1. Planning permission is refused for the development described above, for the following reasons:
  - 1) The proposed dwelling, due to its materials, asymmetrical design and irregular pattern of fenestration would appear as an incongruous feature in the street, poorly related to the surrounding development. It would therefore be contrary to St Albans District Local Plan Review Policies 69 and 70, and Sandridge Parish Neighbourhood Plan Policy D4 which require new housing to have regard to the character of its surroundings, the frontage of nearby properties and for materials in new development to normally relate to and be compatible with adjoining buildings.
  - 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 Sandridge Parish Neighbourhood Plan Policy E1, the National Planning Policy Framework relating to net gains for biodiversity, and 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 5 September 2024 which allowed for responses by 4 October 2024. Responses were received from the parties listed in Appendix 1. A number of interested parties and local residents also submitted responses.
4. 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.
5. I carried out two unaccompanied site visits, the first on 5 September and then for a second time on 4 October 2024, which enabled me to view the site, the surrounding area and the nearby roads and public rights of way.
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 December 2023.

## Main Issues

7. Having regard to the application, the consultation responses, comments from interested parties and the Council's report, together with what I saw on site, the main issues for this application are:
  - the effect of the proposed development on the character and appearance of the area;
  - biodiversity net gain;
  - the effect of the proposed development on highway safety; and
  - the effect of the proposed development on the living conditions of the occupiers of surrounding properties and future occupiers of the proposed dwelling.

## Reasons

8. The application site lies within St Albans which is identified as a Town in Policy 2 of the St Albans District Local Plan Review<sup>1</sup> (LPR). LPR Policy 4 seeks to direct development to within the built up area provided it is

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

otherwise consistent with the development plan. In principle, the site is therefore in a suitable location for residential development.

### *Character and Appearance*

9. The surrounding area is characterised by predominantly terraced or semi-detached dwellings with a mix of pitched and hipped roofs, albeit there are occasional detached dwellings. Many of these properties have been altered with porches, rear and side extensions. Despite this, there remains a generally strong pattern of fenestration to the dwellings. The buildings do not have a uniform relationship to the road along either Briar Road or Ardens Way. There is a cohesive character to the area arising from the common basic forms of the dwellings and similarities in materials which predominantly consist of red-brown brick.
10. The proposed dwelling would occupy a prominent position in the street due to its position on the junction of Briar Road and Ardens Way. While it would be some distance from the properties on Ardens Way, it would clearly sit forward of them and be prominent in views along the street. It would have an asymmetric form with a steeply pitched catslide roof to the Ardens Way elevation. This roof would have three separate lengths and a dormer window to one side. There would be a gable to the elevation facing onto Briar Road, and a hipped roof to the adjacent property at 44 Ardens Way. There would not appear to be any over riding design principle directing the appearance of the proposed dwelling.
11. Fenestration to the dwelling would be irregular. To the Ardens Way elevation, windows would be of different proportions and occupying different positions on the dwelling. Although the rear elevation would not be readily visible from the street due to its position adjacent to the side elevation of 38 Briar Road, it too would have an irregular fenestration pattern. Although there would be more regularity to the side elevations, they would not add any coherence to the overall pattern of fenestration.
12. The plans indicate the use of grey brick and oak cladding. The design and access statement indicates that the building would be constructed from grey/brown facing brick. It is not clear from the plans where the distinction between the two colours would be made. While it may be that cladding could be integrated into the materials palette of the area, grey brick would be a stark contrast with the prevailing materials used on surrounding buildings. This would not be mitigated by the use of lighter pebble dash and render in the surrounding area. I observed the building finished in grey at 42 Briar Road. However, this property is sited at the end of the street and set considerably back from the frontage. It is not readily visible along Briar Road. While there are views from Ardens Way, they are not prominent and do not materially alter the prevailing appearance of the area.
13. The prevalence of red-brown bricks in the surrounding area mean that this would make the proposed dwelling appear particularly prominent and incongruous. It would appear as a poorly integrated addition to the area.

14. Briar Road slopes downwards towards the site and the dwellings on the opposite side of Ardens Way are also set at a higher level. The proposed dwelling would be lower than Ardens Way, in common with the existing property at no.38. This would therefore not affect the character and appearance of the area, subject to a condition securing the details of the finished floor level. Soft landscaping makes a positive contribution to the character and appearance of Briar Road and Ardens Way. Soft landscaping is shown to the boundary of the proposed dwelling to Ardens Way and further details could be secured by condition. However, these factors would not outweigh the harms I have identified above.
15. For the reasons given above, the proposed dwelling would not have an acceptable effect on the character and appearance of the area. It would fail to accord with LPR Policies 69 and 70, and Sandridge Parish Neighbourhood Plan<sup>2</sup> (SPNP) Policy D4 which taken together and insofar as they relate to this main issue, require new housing to have regard to the character of its surroundings, the frontage of nearby properties and for materials in new development to normally relate to and be compatible with adjoining buildings. It would also be contrary to the advice in the Framework which seeks to achieve well designed places.

#### *Biodiversity Net Gain*

16. 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.
17. 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.
18. 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.
19. The Planning Practice Guidance<sup>3</sup> confirms that when determining a planning application, BNG 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 information has not been

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<sup>2</sup> Sandridge Parish Neighbourhood Plan 2019 – 2036 Made 14 July 2021

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

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.

20. 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 SPNP Policy E1, 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 at least a 10% net gain for biodiversity.

#### *Highway Safety*

21. The proposed dwelling would have two off-street parking spaces, accessed via the existing vehicular access from Briar Road. Two parking spaces would also be retained for the existing dwelling at no.38. A number of the surrounding properties have access to off-street parking, and on-street parking can be readily accommodated within the street. While it may be that some people park poorly, including causing damage to the verges, this would not merit the refusal of the application.
22. While there would be an increase in traffic generation from the provision of an additional dwelling, this would have a neutral effect on the operation of the surrounding road network from the limited number of additional trips that would be generated. It may be that drivers use the surrounding streets to avoid congestion, however there is no substantive evidence before me to demonstrate this is having a severe effect on the road network.
23. The vehicular access is close to the junction of Briar Road and Ardens Way. Traffic speeds are likely to be low given the residential nature of the street and the fact Briar Road is not a through road beyond the application site. At my site visit I observed utility cabinets on the grass verge. These would not have an adverse effect on the visibility of drivers emerging from the site.
24. No cycle parking is shown on the plans. However sufficient private amenity space is proposed that future occupiers of the property would be able to provide secure cycle parking to meet their needs. Provision of electric vehicle charging is controlled by building regulations and there is no need for this to be duplicated.
25. I have no reason to conclude that the proposal would have an adverse effect on highway safety. The proposal would therefore not conflict with SPNP Policy D4 which requires new development to provide a minimum of two spaces.

#### *Living Conditions of Future and Surrounding Occupiers*

26. The proposal involves the demolition of the side extension to 38 Briar Road. The Council has referred to LPR Policy 10 which seeks to resist the loss of residential accommodation through either a net loss of dwellings through demolition or the loss of all or part of a dwelling by change of use. The proposed development does not fall within the remit of the policy as it involves the loss of part of a dwelling by demolition.

27. In any event, were the proposal to fall within the remit of the policy, it would comply with it as no.38 will continue to function as a viable dwelling unit. There would be three bedrooms, albeit one would be small. Appropriate living accommodation and private amenity space would be provided.
28. The outlook from the kitchen window of the proposed dwelling would be poor given its proximity to the side elevation of no.38. This would be mitigated by the provision of windows to serve the dining area. Furthermore, there would be a substantial glazed opening facing onto the garden. On balance, there would be acceptable living conditions within the living space. The proposed dwelling would provide appropriate internal living space and make acceptable provision for private amenity space.
29. The proposed dwelling would occupy a similar footprint to no.38. As a result, it would not result in any loss of outlook or light to no.38. Nor would it result in an increase in the sense of enclosure to 44 Ardens Way given the layout of the area.
30. There would be a perceived increase in the sense of overlooking to the neighbouring properties from the erection of an additional dwelling. However, there would not be a new relationship of overlooking as the proposed dwelling would replace an existing extension and would be arranged in the same way as the existing properties. It would look to the side elevation of 44 Ardens Way but would be at sufficient distance from the high level window so as to prevent a loss of privacy. Its separation from 36 Briar Road by Ardens Way would mean there would not be a material increase in the sense of overlooking that would arise from the dormer window to the front elevation of the proposed dwelling. The windows facing to the side elevation of no.38 are shown as being obscure glazed and would face onto a blank elevation.
31. The proposed development would therefore provide acceptable living conditions for future occupiers of the proposed dwelling and the altered dwelling at no.38. 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 SPNP Policy D4 with respect to living conditions.

### **Other Matters**

32. The proposed development includes a bedroom at ground floor. This room could also be used as a home office if preferred. I have no reason to think appropriate services and utilities would not be available to future occupiers. It would appear that the proposed development would not meet the optional requirement M4(2): Category 2-Accessible and adaptable buildings. However, respecting the levels of surrounding development and the relationship of the site to the road level would create challenges in this location which would be unlikely to be found elsewhere. As such, this would not merit the refusal of the proposal in its own right, and the requirements of SPNP Policy D4 are complied with when read as a whole.

33. Solar panels and air source heat pumps are proposed. The constraints of the site are such that some of the further measures as proposed in SPNP Policy D6 may be difficult to secure. I also note that the building regulations have become more demanding since the SPNP was made. I therefore consider SPNP Policy D6 has been adequately addressed.
34. Concerns have been raised about the potential for further applications on other land within the applicant's ownership. That would be a matter to be addressed were any subsequent application submitted and would not affect my assessment of this proposal.

### **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 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.
37. The proposal would provide an additional dwelling. While the Council has not quantified the shortfall in housing supply, as there is a shortfall, I attach moderate weight to the provision of a single dwelling. There would be economic benefits associated with the scheme during the construction and occupation phases. However, these would be limited as the proposal is for a single dwelling.
38. There would be acceptable living conditions for future occupiers of the proposed dwelling and there would be an acceptable effect on the living conditions of neighboring occupiers. There would be a limited increase in traffic generation which would have an acceptable effect on the operation of the surrounding highway network. Appropriate provision for off-street parking would be provided. However, these are to be expected of any well designed development and consequently would not be benefits of the proposal.
39. The proposal would not add to the overall quality of the area or be sympathetic to local character. Given the importance the Framework places on achieving well-designed places, I attach significant weight to this harm. 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 also attach significant weight to this.
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. 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 – Local Planning Authority

St Albans City and District Council – Waste and Recycling

St Albans City and District Council - Environmental Compliance

Hertfordshire County Council – Highways

Hertfordshire County Council – Ecology