

WELWYN HATFIELD BOROUGH COUNCIL  
PLANNING CONTROL COMMITTEE – 16 JUNE 2011  
REPORT OF THE DIRECTOR (STRATEGY AND DEVELOPMENT)

S6/2011/0413/FP

LAND ADJACENT TO FLATS AT 37- 48 LAMBS CLOSE, CUFFLEY, HERTS

ERECTION OF 1 PAIR SEMI DETACHED DWELLINGS WITH ASSOCIATED PARKING FOLLOWING THE CHANGE OF USE OF THE LAND FROM PARKING, INCLUDING THE DEMOLITION OF EXISTING GARAGES (WITH THE EXCEPTION OF THE REAR WALLS) AND REMOVAL OF EXISTING HARDSTANDING

APPLICANT: Mr Ismail

(Northaw & Cuffley)

**1 Site Description**

- 1.1 The application site is located at the southern end of an existing cul-de-sac development of flats accessed from Lambs Close. The application site is accessed via a private shared driveway with these adjoining flats.
- 1.2 The shape of the application site is almost rectangular with a site area of approximately 0.065 hectares. The entrance to the site is in the northeast corner of the application site through a pair of existing metal gates. On the east boundary of the application site is a ditch and railway embankment. The north boundary of the application adjoins a communal garden area with the existing flats. On this northern boundary of the application site are 11 derelict brick garages. These garages were originally flat roofed but for most only the brick walls now remain following fire damage.
- 1.3 The west boundary of the application site adjoins the rear boundaries of the residential properties at Nos. 29 & 31 Theobalds Road. This boundary has a close boarded fence approximately 1.8m high. Close to this boundary fence, and in the rear gardens of the dwellings in Theobalds Road, are two large mature oak trees protected by Tree Preservation Order TPO 209.
- 1.4 The southern boundary of the application site adjoins the rear gardens Nos.1 & 3 Theobalds Close. This boundary has a similar existing close boarded fence.
- 1.5 The application site is reasonably level and has previously provided parking to the adjoining flats in Lambs Close. The application site is not currently used for parking.

**2 The Proposal**

- 2.1 The application seeks full planning permission for a change of use of the land from parking and the erection of a pair of two storey semi-detached dwellings.

- 2.2 The proposed dwellings would have a maximum depth of approximately 16.5m. The maximum width of each dwelling would be 5.5m. The maximum height of the roof is 8.75m.
- 2.3 The walls are to be finished in facing brickwork under a pitch roof of interlocking tiles. The windows are to be in UPVC with stone effect cills and headers.
- 2.4 The properties have 3 bedrooms with 2 parking spaces to the front. A bin store is proposed close to the application site entrance.
- 2.5 A schedule of tree works is included in the application for two protected oak trees, but it is stated by the applicant that this will be subject to a separate tree application.

### **3 Relevant Planning History**

#### Application Site:

- 3.1 S6/2010/2466/FP Erection of 2 semi-detached dwellings following clearance of existing site - withdrawn 08/02/2011
- 3.2 S6/2006/1446/FP Demolition of existing garages and erection of three 2-bedroom terraced dwellings – Refused 21/12/06 and dismissed at appeal
- 3.3 S6/2005/0042/FP Demolition of existing garages and erection of 4 no. two bedroom terraced dwellings – Refused 02/11/05 and dismissed at appeal.
- 3.4 S6/2003/1572/FP Demolition of 11 garages and the erection of six 2 bed flats – Withdrawn 27/05/03
- 3.5 S6/2002/1261/FP Demolition of 11 garages and erection of seven 2 bedroom flats – Refused 21/02/02 and dismissed at appeal.
- 3.6 S6/1997/0656/FP New parking layout and replacement of existing garages – granted 26/09/97.
- 3.7 S6/1990/0986/FP New Addition of new Mansard roof, staircase, and lift to blocks A,B,C & D and the provision of 4 x 1 bedroom flats to blocks A,B & C only, with associated car parking - Refused 15/03/91 and allowed at appeal.
- 3.8 E/2210-64 Erection of 48 flats and garages

#### Tree Preservation Order Applications for adjoining protected trees (TPO 209):

- 3.9 S6/2010/3152/TP Reduce by 15% and removal of deadwood of two Oaks covered by TPO209 – Refused 10/03/11
- 3.10 S6/2006/1115/TP Work to oak tree (T2) protected by tpo 209 – Granted 10/10/09.

### Adjoining Land of Lambs Close Development:

- 3.11 S6/2005/1560/FP Erection of 4 two bedroom and 1 three bedroom terraced dwellings following demolition of existing garages- refused 10/02/06 and allowed at appeal.
- 3.12 S6/2005/0043/FP Demolition of existing garages and erection of 6 no. two bedroom terraced dwellings – Refused 10/03/05
- 3.13 S6/2002/1260/FP Demolition of 33 garages and erection of thirteen 2 bedroom flats – Refused 21/10/02
- 3.14 S6/1998/0272FP Part cosmetic mansard and part full mansard incorporating 3 No. flats (amendments to planning permission S6/0986/90/FP) – Granted 08/06/98
- 3.15 S6/1995/561/FP Amendment to existing consents S6/0703/94/FP and S6/0665/94/FP (Provision of 8 No. studio flats to provide 4, 2 bedroom flats and 2 studio flats) – Granted 01/09/95.
- 3.16 S6/1994/703/FP Provision of new mansard roof, staircase and lift to block C, and provision of 8 studio flats with car parking. (Amendment to S6/0986/90/FP) – Granted 24/11/94
- 3.17 S6/1994/665/FP Provision of new mansard roof, staircase and lift to block B, and provision of 8 studio flats with car parking. (Amendment to S6/0986/90/FP) – Granted 24/11/94
- 3.18 S6/1992/583/FP Addition of new mansard roof, staircase and lift to Block A and the provision of 8 studio flats with associated car parking - revisions to Planning Permission S6/0986/90/FP – Granted 29/10/92
- 3.19 S6/1990/987/FP Addition of new Mansard roof, staircase, and lift to each block and the provision of 4 x 1 bedroom flats to blocks A, B, C, with associated car parking – Refused 15/3/97
- 3.20 S6/1990/986/FP Addition of new Mansard roof, staircase, and lift to blocks A,B,C & D and the provision of 4 x 1 bedroom flats to blocks A,B & C only, with associated car parking – refused 15/03/91 and allowed at appeal.
- 3.21 S6/1990/142/FP Addition of new Mansard roof, staircase and lift to each of the four existing blocks, comprising of four 1 bedroom flats per block, provision of 28 car parking spaces, demolition of some garages – Refused 27/04/90 and appealed.

## **4 Planning Policy**

### 4.1 National Planning Policy:

PPS1: Delivering Sustainable Development

PPS3: Housing

PPS9: Biodiversity and Geological Conservation

PPG13: Transport

PPG 24: Planning and Noise

## PPS 25: Development and Flood Risk

### 4.2 East of England Plan 2008:

SS1: Achieving Sustainable Development

ENV7: Quality in the Built Environment

T14: Parking

ENG1: Carbon Dioxide Emissions and Energy Performance

### 4.3 Welwyn Hatfield District Plan 2005:

SD1 Sustainable Development

GBSP2 - Towns and specified settlements

R1 – Maximising the Use of Previously Developed Land

R3 – Energy Efficiency

R7 – Protection of Ground and Surface Water

R11 – Biodiversity and Development

R17 – Trees, Woodlands and Hedgerows

R19 - Noise and Vibration Pollution

M14 - Parking standards for new developments

D1 - Quality of design

D2 - Character and context

D8 – Landscaping

D9 – Access and Design for People with Disabilities

H2- Location of Windfall Residential Development

H6 - Densities

### 4.4 Supplementary Design Guidance, February 2005

### 4.5 Supplementary Planning Guidance, Parking Standards, January 2004

## **5 Constraints**

- 5.1 The site lies within the excluded settlement of Cuffley as designated in the Welwyn Hatfield District Plan 2005.

## **6 Representations Received**

- 6.1 This application has been advertised by site notice and neighbour notification letter. 4 individual letters of objection have been received from residents in Lambs Close. A further 54 signed letters of objection have been received from residents in Lambs Close. Further letters of objection has been received from 1 Theobalds Close, 54 Station Road & from the Greentree Estates Limited who state they are the freehold owners of the flats in Lambs Close. The Lambs Close Leaseholders Association has also sent a letter through their planning consultant and solicitor in addition to evidence submitted on 20/05/11. The objections can be summarised as follows:

- The loss of 33 on-site (off street) garages and 7 on site car parking spaces following the permission given for application S6/2005/1560/FP has already resulted in the loss parking for the flats in Lambs Close.
- The use of the application site for car parking is controlled through planning conditions contained within planning permissions for the

mansard roof developments to the flats in the 1990s. Planning permission S6/1997/0656/FP was implemented and 12 out of the 23 garages were demolished and turned into 13 car parking spaces. In addition the 11 existing garages were retained and refurbished. This application would be a breach of this planning condition.

- The car parking on the application site (originally 23 garages for the 1960's flats) formed part of total parking for the 48 original flats. The application site also provides some of the allocated parking for the new flats contained within the mansard roofs (23 flats). The loss of this parking will create an unacceptable shortfall of the parking allocated to these existing flats and will make life miserable for residents. It will also cause congestion, compromise highway safety and reduce storage for flats.
- There are now a total of 71 flats in the Lambs Close development. 45 on-street parking spaces subject to a parking permit scheme (11am-1pm Monday to Friday) and 37 on-site parking spaces available to 79 existing properties (71 flats and 8 maisonettes in Station Road). 24 of the existing 37 on-site parking spaces are on the application site and will be lost. The loss of these parking spaces will leave just 58 parking spaces.
- According to the Welwyn Hatfield Parking Standards there should be a total of 105.5 car parking spaces to serve the 71 flats in Lambs Close. Since there are only 82 parking spaces in Lambs Close there is an existing shortage of 23.5 spaces [105.5-82].
- The loss of 24 on-site car parking spaces means that existing and future residents of 71 flats would be left with a car parking provision of just 0.74 parking space per dwelling and only 13 on-site parking spaces remaining.
- Lack of formalised parking results in verges and communal areas being turned up, destroying amenity and a potential hazard for emergency vehicles.
- The proposed development will appear overbearing and result in a loss of privacy to No.1 Theobalds Close and also significantly affect the outlook of this neighbour.
- The proposed development will overlook the existing dwellings in Lambs Close and Theobalds Road, including the communal gardens of the adjoining flats.
- The impact of the proposal on the protected trees and their loss would detract from the character and amenity of the area.

## **7 Consultations Received**

- 7.1 **Hertfordshire County Council Transportation Planning and Policy** – do not wish to restrict the grant of planning permission subject to planning conditions which require parking to be provided before first occupation and for parking and storage to be only on the application site.

- 7.2 **Landscape Department** – advise that there is no objection to the principle of constructing a building at this distance from oak trees provided the foundations are appropriate to the situation and the root protection area is sufficiently fenced. There are however objections to the layout of the application as the position of the trees and living space of unit 1 will conflict, creating pressure to severely prune the protected trees, and so the application is objected to on arboricultural reasons.
- 7.3 **Thames Water** – advise that public sewers cross or are close to the proposed development and so approval must be sought from Thames Water for works within 3m of the sewer. In regards to surface water drainage it is advised that it is the responsibility of the developer to make the appropriate provision.
- 7.4 **Environment Agency** – advise they have no comments.
- 7.5 **Client Services (refuge collection)** – No issues

## **8 Parish Council Representations**

- 8.1 Northaw and Cuffley Parish Council 'have concerns that a previous parking condition for the current block of flats is not being complied with is and under review. The proposal would appear not to recognise this situation'.

## **9 Discussion**

- 9.1 This application is presented to the Planning Control Committee because the application has been 'called-in' by Councillor Couch for the following reasons:
1. *Car Parking Planning Control and Overspill: The land projected for development comprises a total of 24 car parking spaces that are connected to existing planning control for the flats in Lambs Close. There is an existing car parking shortage of 23.5 spaces in Lambs Close and residents are regularly forced to park in other roads. The loss of the aforementioned 24 car parking spaces would result in a permanent and irreversible car parking shortage of 47.5 spaces for existing and future residents.*
  2. *Overlooking and Privacy: The proposed development overlooks the rear gardens/amenity areas of properties in Theobalds Close, Theobalds Road and Lambs Close. In addition, the development overlooks the internal living areas of the bungalows in Theobalds Close and some of the flats in Lambs Close. Development on the site in question would seriously injure the quality of existing residents' lives since their privacy will not be maintained and this is unacceptable.*
  3. *Tree Preservation Order (No 209): The proposed development is located near to two oak trees which are the subject of a Tree Preservation Order. The proposed building is likely to affect the health and long term maintenance of the trees. In addition the position of the trees and the living space of the new dwellings will be in conflict, creating a pressure on future occupiers to severely prune or remove the trees.*

- 9.2 **The main issues to be considered are:**

### **1. The Principle of Housing Development**

2. **Design**
3. **Highways and Parking Considerations**
4. **Residential Amenity**
5. **Other Matters**

## 1. **The Principle of Housing Development**

9.3 Planning Policy Statement 3 (Housing) PPS3 defines the application site as being previously developed land.

9.4 At a local level, Policy R1 (Maximising the Use of Previously Developed Land) is relevant and states that:

*“In order to make the best use of land in the district, the Council will require development to take place on land which has been previously used or developed. Development will only be permitted on 'greenfield' land where it can be demonstrated that no suitable opportunities exist on previously used or developed land”.*

9.5 Policy H2 (Location of Windfall Residential Development) states that all applications for windfall residential development will be assessed for potential and suitability against a set of five criteria. The five criteria in policy H2 and the consideration of some of these will be elaborated on in the following sections of the report. In addition, the application site is already considered to be previously developed land located in a designated settlement. It is considered, however, that none of the criteria set out in Policy H2 would rule out the principle for using this site for Windfall Residential Development.

9.6 Notwithstanding this, the proposed development still needs to comply with all of the other relevant Development Plan Policies including the change of use of the land from parking. Strong objections have also been raised by the residents in Lambs Close flats about the loss of this parking provision to their flats. This principle matter of existing parking will be considered next.

9.7 The most recent use of the application site is for parking in connection with the adjoining development of flats in Lambs Close. This parking area appears to have been part of the original 1960's development which comprised of 48 two bedroom flats at that time. The only drawing (No.58/61/5) in the Council's records which may show the original parking layout of the site is attached to application file E/2210-64. The planning status of this drawing is, however, unclear as is not marked as an approved planning drawing. This drawing shows possibly the original layout of the Lambs Close development. If this is the case, then the application site was marked out for 24 parking spaces at that time for the original flats at Lambs Close.

9.8 The use of the application site for parking, along with any previous planning applications and appeals, are a material planning consideration as part of the assessment of whether the change of use of this application site from parking to residential is acceptable for the proposed development. These applications and appeals will be considered next.

9.9 In 2002 a planning application was submitted (S6/2002/1261/FP) for this application site for erection of seven 2 bedroom flats. At this time concerns were raised by the Council about the loss of this parking for existing residents in

Lambs Close. This loss of parking was one of the reasons why the application was refused.

- 9.10 This previously refused application was also the subject of a planning appeal where the Planning Inspector noted that:

*'relatively few of the garages are currently used by residents in Lambs Close'.*

- 9.11 Notwithstanding this, the same Planning Inspector concluded that :

*'In my opinion, due to this shortfall, the additional requirement that would result from the proposal would cause overspill parking onto other roads in the area'.*

- 9.12 This concern along with other reasons resulted in the planning appeal being dismissed in December 2003.

- 9.13 A further planning application was received for this site in 2005 for the erection of 4 terraced dwellings (S6/2005/0042/FP). Concerns were raised again by existing residents in Lambs Close about the existing loss of parking, but this was no longer accepted by the Council. The reason for this was that there were no objections by Hertfordshire Transport Planning & Policy to the proposal and that the usage of the site for parking was now limited, with only one of the eleven garages being used for parking. The Officer Report at the time stated:

*'whilst it is recognised that there are issues at certain times of day relating to pressure for on-street parking, it is considered overall that the proposal would not exacerbate existing overspill parking in Lambs Close and other roads in the area and also that the loss of the garages would itself be insufficient a reason to warrant refusal of the application'.*

- 9.14 This application was however refused by the Council due to arboricultural reasons because of the impact on the protected oak trees. This planning application was again subject to another Planning Appeal. The Planning Inspector noted on his site visit in March 2006 that:

*'the site is currently in a semi-derelict condition and occupied by eleven dilapidated lock-up garages'.*

- 9.15 The same Inspector later on in his decision letter also states:

*'The Council has agreed that the use of the appeal land for housing would be acceptable; neither has there been objections raised by the Highway Authority to the use of the narrow an unmade vehicular access. Given the location of the site and lack of objection to the proposed vehicular access from the Highway Authority, I concur with these views. I note the comments of the local residents and whilst I sympathise with that concern, as the land is not in the ownership of the Council or local residents, it is unlikely that the lands can be retained for the purposes of parking'.*

- 9.16 The Planning Inspector in this appeal, however, accepted the Council's concerns about the impact of the development on the protected oak trees and dismissed the appeal solely on arboricultural grounds.



- 9.17 Another planning application was submitted in 2006 for three terraced dwellings and this application was refused by the Council due to only the impact of the proposal on the protected oak trees. At the time of the Officer's site visit a photograph clearly shows that the application site was not only in a dilapidated state, as noted by previous Planning Inspectors, but there is evidence of fly-tipping.
- 9.18 This refused application was again subject to a Planning Appeal and this was dismissed again solely on the impact of the proposed development on the protected oak trees. This Inspector's Decision letter makes no reference to the change of use of the site from parking. In the seven letters of representations received by third parties at the time, which were summarised in the Officer's report, the loss of existing parking is not raised as a concern.
- 9.19 In this planning application, however, the Lambs Close Leaseholders Association have raised strong objections to this proposal due to the loss of existing parking and the impact this will have on the existing residents of Lambs Close. In the representations objecting to the proposed development from the Leaseholders Association a letter has been received from their appointed Planning Consultants and Solicitors why this loss of parking is unacceptable and why the application should be refused.
- 9.20 The letter of objection from the Leaseholder Association's Planning Consultant is critical about the accuracy of the previous Officer's report for application S6/2005/0042/FP. This criticism is over the Officer's interpretation of the previous Planning Inspector's findings with regards to the principle of losing 11 garages, and that their usage cannot be secured in perpetuity for parking purposes by the flats occupiers. This letter of objection goes on to state that because of this error, the Planning Inspector for application S6/2005/0042/FP had:
- 'clearly not been presented with all the findings of The Inspector in 2003 and nor had his attention been drawn to a condition requiring retention of the site in use for parking and garage in perpetuity'.*
- 9.21 Furthermore, it is the view of Leaseholders Association that the Council has misguided the Planning Inspector and this has:
- 'unfortunately influenced all subsequent decisions to date in respect of this land'.*
- 9.22 In summary, it appears that the Leaseholders Association are of the view that the last two planning appeal decisions should not be relied on as part of determining this planning application.
- 9.23 As part of the assessment of this planning application, it is important to assess how much weight should therefore be attached to these last two appeal decisions.
- 9.24 In regards to the first concern about the Council's interpretation of the first Appeal Inspectors findings, it is not accepted that the second Planning Inspector would have solely relied on the Council's own analysis of the evidence. It is entirely reasonable to expect this Planning Inspector to have read his colleagues previous decision letter rather than solely relied on the Council's interpretation. This criticism of the appeal findings by the Leaseholders Association and that this appeal decision should not be relied on is not accepted by Officers.

- 9.25 The second issue relates to the question of enforceability of the application site being retained for parking. It is important to note that the Planning Inspector used the word 'unlikely' in his letter (see paragraph 9.15 above). This means the Inspector did not rule out entirely that there could be a process where the parking could be retained.
- 9.26 This matter of whether the application site could be retained for parking has already recently been considered by members of the Planning Control Committee (PCC) earlier this year (17 March) following concerns raised by the Leaseholders Association that a breach of planning control had occurred following the submission of this application.
- 9.27 At that meeting no evidence existed in the Enforcement Officer's view that demonstrated that a breach planning control had taken place, or that any breaches were still enforceable. Furthermore, it was not considered expedient for the Council to take action as there was evidence that the site had not been used for parking for some time. Members resolved not to take further action at this time on this evidence.
- 9.28 Since this meeting the Leaseholders Association have provided further evidence which has been presented in written representations from their Solicitors. In their letter (previously referred to in paragraph 9.19 above) it states that there has been a breach of planning condition to planning applications granted in the 1990's.
- 9.29 Even though this enforcement matter is still subject to an on-going investigation, it is necessary to determine this planning application on the evidence currently available. Furthermore, it is relevant for the purposes of this planning application to assess whether the principle of a change of use from parking is acceptable, even if a breach of planning control has occurred and is enforceable.
- 9.30 Simply, even if a breach of planning control has occurred, this does not preclude the Council in determining this application, if it is considered that the principle of a change of use from parking is acceptable. It does need to be noted, however, that if planning permission is granted and the permission implemented, that would prevent the Council from enforcing any beach of planning control for parking on the application site in the future.
- 9.31 It is in this context that this application has to be assessed. It has also been shown that the last two Planning Inspectors decision letters should be considered as material considerations and not set aside as requested by the Leaseholders Association. To add further weight to support the importance of these two previous appeal decision letters, it is reasonable to say that if the Leaseholders Association did have a concern about a breach of planning control for the parking on the application site, then this should have been raised not only during the course of the application but also in the appeal process at the time. There is no evidence to show that this opportunity was taken, and even if it was, the previous Planning Inspectors have accepted the principle of a change of use from parking.
- 9.32 The previous decisions by the Planning Inspectors are therefore given substantial weight, as these are material planning considerations for the purposes of determining this application.

- 9.33 The historic use of this application site is also relevant in assessing whether there has been any change to the use of the application site since the last two appeals.
- 9.34 In the 2002 planning appeal it was noted by the Inspector that relatively few of the garages were used by residents. By the time of the appeal site visits in 2006 and 2007 the situation had deteriorated further, and this is supported by the applicant's evidence.
- 9.35 The applicant has stated that in 2005 only one tenant used 2 garages in the application site and both were for storage purposes. According to the applicant, in 2006 the application site was now empty and was suffering fly-tipping. In 2008 there was a fire on the application site with extensive damage to the garages. It was in this year that the site was gated by the applicant to protect against fly-tipping and antisocial behaviour.
- 9.36 It is reasonable to consider on this evidence that the application site usage for parking by the existing residents has reduced over time and has not increased since the time of the previous appeal site visits.
- 9.37 This assessment, therefore, adds further weight to the conclusion that the context of the application site which existed at the time of the last two planning appeal decisions has not markedly changed.
- 9.38 It is also noteworthy that the last planning appeal for this application site was determined after the planning appeal was allowed for another development at Lambs Close for new residential development (S6/2005/1560/FP). (This other residential development has been referred to by the Leaseholders Association as having already reduced the parking provision for the existing residents in Lambs Close). The timing of this appeal decision is relevant (S6/2006/1446/FP), as the last planning appeal for the application site was decided by the Planning Inspector when it was already known planning permission had been granted for this other development in an existing parking area. The Planning Inspector, however, only dismissed the appeal for this application site on arboricultural grounds and not because of the loss of parking. This is a material consideration for the purposes of this application as it shows further that the context of the application site has not changed markedly from this time of the last appeal decision.
- 9.39 A detailed analysis of the existing parking arrangements has been provided by the Leaseholders Association in this planning application. Concerns have also been raised by the Leaseholders Association about other developments which have taken place in Lambs Close over the years including the addition of flats in mansard roofs. It is noted, however, that the additional parking which was identified for these developments was not fully implemented leaving a shortfall of around 15 car parking spaces.
- 9.40 The main issue, however, still remains on whether there is evidence from the planning history of this site and its usage to justify resisting its change of use from parking.
- 9.41 Overall, it is considered, even if a breach of planning control is proven in the future for parking, that the principle for a change of use from parking is justified for this site as there is no evidence to suggest that the decisions by the previous

Planning Inspectors were incorrect and that the context of when these decisions were made has not markedly changed over time.

- 9.42 It is also important to note that for the existing residents there still remains the possibility of implementing the parking originally intended for the mansard roof development to provide further parking.
- 9.43 When all these factors are taken into account the principle for a change of use from parking to residential is considered acceptable subject also to compliance with the other remaining planning policies.

## **2. Design**

- 9.44 Local Plan Policies D1 & D2 and the accompanying Supplementary Design are relevant, along with PPS1, PPS3 and ENV7.
- 9.45 Policy D1 requires the standard of design to be of a high quality. The design of the proposed dwellings is considered to be acceptable in architectural terms. The application has submitted proposed external materials for the walls and roof, however, it would be reasonable to have this subject to a planning condition for the submission of materials for approval.
- 9.46 With regards to the proposed site layout, the area provided at the front and rear of the properties is considered sufficiently large enough in terms of space for the size of the proposed dwellings.
- 9.47 In previous planning appeals, the proposal of two storey dwellings was not considered an issue in design terms. Although in this proposal the design is different, there are similarities with the provision of two storey dwellings with parking to the front and gardens to the rear. The principle of two storey dwellings in this application is therefore not unreasonable.
- 9.48 There are concerns, however, in regards to the design of the development and its layout in relationship to the impact these would have on the adjoining two protected oak trees. The reasons for these concerns are considered in more detail below under residential amenity and the consequences of these impacts on the suitability of the proposed layout of the development. Whilst the design and appearance of the proposed development may be acceptable, the site layout has failed to overcome previous concerns raised in earlier planning appeals of the impact of the protected trees on the residential amenity of the future occupiers.
- 9.49 In summary, the design of the proposed development, if considered in isolation of the constraints of the protected trees which they impose, is considered to comply with the requirements of local plan policy D1 in this respect.
- 9.50 Local Plan Policy D2 also requires new development to respect and relate to the existing character of the area. In regards to the last two applications for this site which were subject to planning appeals, no concerns were raised by the Planning Inspector for residential developments which were larger in scale than that currently proposed as more residential units were proposed in these earlier schemes. Furthermore, no objections were also raised by the previous Planning Inspectors on how these previous proposals would relate to the existing pattern of development. This is a material planning consideration for this application, as the proposed development is smaller in scale and is still for 2 storey dwellings.

- 9.51 This proposal would comprise of a pair of semi-detached dwellings which, like the previous proposals for terraced housing, are not considered to be out of keeping in this location, where there are similar existing properties adjoining the application site to the south.
- 9.52 The proposal therefore complies with local plan policy D2 in regards to the proposal respecting the wider pattern of development.

### **3. Highways and Parking Considerations.**

- 9.53 Local Plan Policy M14 and the accompanying Supplementary Planning Guidance (SPG) is relevant. This site is located in Zone 4 where a 3 bedroom property requires a maximum of 2.25 spaces.
- 9.54 The proposed development shows parking provision for 4 spaces and this is considered sufficient.
- 9.55 Subject to a planning condition requiring the approval of a site layout plan showing the provision of 4 parking spaces and their construction, prior to first occupation of the dwelling, the proposal complies with Local Plan Policy M14 and the SPG.
- 9.56 Hertfordshire Transport Planning & Policy have also been consulted and advise that the provision is adequate and there are sufficient spaces for turning to allow vehicles to leave the development in forward gear.
- 9.57 The proposal therefore provides sufficient parking and appropriate turning to space to safeguard highway safety.

### **4. Residential Amenity**

- 9.58 Local Plan Policy D1 is relevant, along with the Supplementary Design Guidance.
- 9.59 In regards to the impact of the proposal on the existing residential amenity of adjoining neighbours, the nearest properties could be impacted is the block of flats at 37-48 Lambs Close, No.31 Theobalds Road and Nos.1 & 3 Theobalds Close.
- 9.60 The potential impact of the proposed development relates to loss of privacy from overlooking, loss of sunlight/daylight and whether the development appears over bearing or over dominant when viewed from adjoining land.
- 9.61 With respect to the adjoining flats, the only side windows are proposed in the development would be a ground floor WC, first floor bathrooms and en-suite. All these can be subject to a planning condition requiring obscure glazing and for windows to be non-opening below 1.8m from finished floor level. No significant loss of privacy would result subject to these planning conditions.
- 9.62 The resultant separation distance from the flats to the new development would also be sufficient to ensure that there would be only limited overshadowing to the communal gardens and that the proposed development would not appear overbearing.
- 9.63 In regards to whether the proposal would appear over dominant, the proposed dwellings would be visible from windows on the south side block of the flats and communal garden. This in itself does not make the development over dominant

and due to the 2 storey height of the dwelling and the separation distance the proposal is not considered to appear over dominant.

- 9.64 Turning to the adjoining dwellinghouses in Theobalds Close and Road, the development would be located at the bottom of these properties gardens. Within the proposed site layout it is No.1 Theobalds Close which could be most impacted, however, the resultant separation distance is still sufficient to ensure the proposal does not either appear overbearing or over dominant from this neighbour's property. Furthermore, as the proposal is north of this neighbour there would be no significant overshadowing or loss of daylight to this existing dwelling. A planning condition can also be used to ensure that any side windows can be obscured and non-opening to protect these neighbour's privacy.
- 9.65 In regards to the properties in Theobalds Road, the separation distance is sufficient to ensure that there will be no undue overlooking from the rear windows of the development to this neighbour. The resultant separation distance would also be substantial so that the proposal would not appear over bearing or over-dominant.
- 9.66 Overall, and subject to the above planning conditions, the proposal would not have an unacceptable impact on the residential amenity of adjoining neighbours and so complies with Local Planning Policy D1 and the SDG.
- 9.67 In regards to the residential amenity of the occupiers of the proposed development, concerns have been raised in previous applications and appeals over the impact of the protected trees on the rear gardens, particularly when the trees are in leaf. This proposal, compared to previous application, has moved the development further away from these protected trees to improve the amount of light to the rear of the properties. Notwithstanding this, there will still be a large part of the garden to the proposed residential unit (Unit 1) on the north side which will be overshadowed.
- 9.68 In the previous planning appeal, the Planning Inspector was concerned that there could be considerable pressure for the removal of these trees from future occupiers even though they were aware of the trees before occupation.
- 9.69 It is accepted that the current proposal is better than the last appeal scheme in that the dwellings are moved further away from these protected trees. This will help reduce the problem of leaves and debris in gutters and improve the light to the rear of the dwellings. Even so, the size of these trees will mean that the outlook of the proposed dwelling to the north will still be restricted and there will be significant overshadowing of the rear garden to this unit when the protected trees are in leaf.
- 9.70 The previous Planning Inspector concluded that the proposal would be contrary to Policies D1 and R17 of the adopted Welwyn Hatfield District Plan 2005 and to the adopted Supplementary Design Guidance. These policies in the Inspectors view aim to ensure a high quality of design, the protection of green heritage and the provision of adequate daylight and sunlight for residents. Substantial weight is given to this previous Inspector's decision letter in regards to this application.
- 9.71 In summary, the proposal is still considered to fail to comply with Local Plan Policies D1 & R17 and accompanying SDG as this proposal has failed to overcome all of the previous Planning Inspectors concerns about the likely future

pressure on the removal of these protected trees from the new occupiers of the development.

## 5. Other Matters

9.72 **Tree Root Protection Area:** In addition to the above concerns about the impact of the proposed development on the future of the protected oak trees, it is also necessary to assess whether there would be an impact through the implementation of the development.

9.73 In the last appeal scheme there were concerns about the 'Root Protection Area' being insufficient due to the proximity of the proposed dwellings to the base of these protected trees. In this application the separation distance has been increased sufficiently to overcome these concerns and so this is no longer considered to be a relevant threat to these trees which could endanger their future. A planning condition approving the tree protection measures and hard landscaping along with the foundation design would ensure that the impact on the roots was sufficiently controlled.

9.74 **Protected Species:** The presence of protected species is a material consideration, in accordance with PPS9 (Biodiversity and Geological Conservation), Natural Environment & Rural Communities (NERC) Act 2006 (section 40), Wildlife and Countryside Act 1981 as well as Circular 06/05.

9.75 Protected species such as great crested newts, otters, dormice and bats benefit from the strictest legal protection. These species are known as European Protected Species ('EPS') and the protection afforded to them derives from the EU Habitats Directive, in addition to the above legislation. Water voles, badgers, reptiles, all wild birds, invertebrates and certain rare plants are protected to a lesser extent under UK domestic law (NERC Act and Wildlife and Countryside Act 1981).

9.76 In the UK the requirements of the EU Habitats Directive is implemented by the Conservation of Habitats and Species Regulations 2010 (the Conservation Regulations 2010). Where a European Protected Species ('EPS') might be affected by a development, it is necessary to have regard to Regulation 9(5) of the Conservation Regulations 2010, which states:

*"a competent authority, in exercising any of their functions, must have regard to the requirements of the Habitats Directive so far as they may be affected by the exercise of those functions."*

9.77 The Conservation Regulations 2010, (Regulation 41) contains the main offences for EPS animals. These comprise:

- "Deliberate capture or killing or injuring of an EPS"
- "Deliberate taking or destroying of EPS eggs"
- "Deliberate disturbance of a EPS" including in particular any disturbance which is likely –
  - (a) to impair their ability –
    - (i) to survive, to breed or reproduce, or to rear or nurture their young, or,
    - (ii) in the case of animals of a hibernating or migratory species, to hibernate or migrate, or

(b) to affect significantly the local distribution or abundance of the species to which they belong

- “Damage or destruction of an EPS breeding site or resting place” (applicable throughout the year).
  - e.g. bat maternity roost (breeding site) or hibernation or summer roost (resting place)
  - e.g. great crested newt pond (breeding site) or logpiles / piles of stones (resting place)
  - e.g. dormice nest (breeding site or resting place (where it hibernates)

9.78 In some circumstances a person is permitted to ‘derogate’ from this protection. The Conservation Regulations 2010 establishes a regime for dealing with such derogations via the licensing regime administered by Natural England. The approval of such a license by Natural England may only be granted if three strict “derogation” tests can be met:

- the activity to be licensed must be for imperative reasons of overriding public interest or for public health and safety;
- there must be no satisfactory alternative; and
- favourable conservation status of the species must be maintained

9.79 Notwithstanding the licensing regime, the Council as Local Planning Authority (LPA) has a statutory duty to have regard to the requirements of the Habitat Directive and therefore should give due weight to the presence of an EPS on a development site. Therefore in deciding to grant permission for a development which could affect an EPS the LPA should:

- a) Consider whether an offence to an EPS is likely to be committed by the development proposal.
- b) If the answer is yes, consider whether the three “derogation” tests will be met.

9.80 A LPA failing to do so would be in breach of Regulation 9(5) of the Conservation Regulations 2010 which requires all public bodies to have regard to the requirements of the Habitats Directive in the exercise of their functions.

9.81 There is no evidence in this application that indicates that the proposal is likely to have any impact on protected species.

9.82 **East of England Plan Policies:** On 10th November 2010, The High Court quashed the decision of the Secretary of State for Communities and Local Government to unilaterally revoke Regional Spatial Strategies in England on two grounds:

- That he acted outside his statutory powers in circumventing the need for parliamentary scrutiny of such a fundamental change to the national planning system; and
- He failed to consider the likely environmental effects of revoking Regional Strategies.



- 9.83 Whilst the minister for Communities and Local Government has announced that the judgement "changes very little", it is likely that the Government's proposals to revoke Regional Spatial Strategies will need to be revisited prior to the passage of primary legislation. In the meantime, the policies in the East of England Plan are considered to be re-instated and to form part of the development plan again and are therefore a material consideration which can be taken into account in reaching a decision. However, the Government's intention to abolish Regional Spatial Strategies is also a material consideration that could be considered to reduce the weight to be attached to the policies in Regional Spatial Strategies.
- 9.84 It is recommended that the application be considered against policies (SS1, ENV7, T14) of the East of England Plan, which at the time of this decision forms part of the development plan for the borough but that the weight accorded to these policies is carefully considered in reaching a decision.
- 9.85 **Sustainable Development:** The applicant has submitted a statement assessing the proposals against the sustainability checklist contained within the Supplementary Design Guidance. This states that the proposed design will use energy efficient condensing boilers and water heating, full roof insulation, double glazed windows, individual local temperature controls. These proposed measures are considered for this scale of development to be reasonable.
- 9.86 In relation to the management of water services, the applicant proposes water recycling including water butts, permeable parking areas and water consumption minimisation through water efficient taps, smaller baths etc. These measures for this scale of development are felt to be appropriate.
- 9.87 If planning permission is granted, it is suggested that these measures are secured through planning conditions.
- 9.88 **Sewers:** Thames Water has identified a sewer crossing the site and state approval is require from them for the erection of a building or an extension to a building or underpinning work over the line of or would come within 3 metres of a public sewer. The application has been submitted with details from Thames Water and so the applicant is aware of this sewer.

## **10 Conclusion**

- 10.1 This revised scheme has attempted to overcome the concerns raised by the last Planning Inspectors over the proposed impact of the development on the future retention of the protected trees.
- 10.2 This proposal has reduced the number of residential units from three to two and increased the separation distance from the rear of these new units from the bases of these protected trees.
- 10.3 The changes are sufficient to overcome previous concerns about the impact of the development on the 'Root Protection Area'. The current proposal has also improved the relationship of the new dwellings with the existing trees to an extent that the remaining concern relates only with regard to the new dwelling to the north.
- 10.4 Although it is acknowledged that for some of the year these protected trees are not in leaf, there are a number of months when the overshadowing to the rear garden of the north unit will result in a loss of residential amenity to future occupiers. This would impact on the rear outlook of this particular unit and the

use of the rear outside private amenity space due to the overshadowing from these protected trees. This impact is likely to result in future occupiers of this proposed dwelling requesting the removal of these protected oak trees. The loss of these trees which are an important feature in the wider landscape would harm the visual amenity of the area.

- 10.5 On balance, the inappropriate site layout and potential loss of these protected trees would fail to comply with Local Plan Policies D1 and R17 of the Welwyn Hatfield District Council and the accompanying Supplementary Design Guidance.

## **11 Recommendation**

- 11.1 It is recommended that planning permission be refused for the following reason:

1. The two Oak trees, which are the subject of a Tree Preservation Order (No 209), would significantly impact on the rear garden and outlook of the proposed dwelling to Unit 1 (as identified on drawing D9) due to the loss of sunlight and daylight which would result from their close proximity to this dwelling. This resultant significant impact from loss of daylight and sunlight would be harmful to the residential amenity of this dwelling. This loss of outlook and residential amenity is likely to result in future pressure from occupiers of this dwelling for the removal of these protected trees. The loss of these protected trees would be harmful to the established character and amenity of the locality. The proposal is therefore contrary to Policy D1 & R17 of the Welwyn Hatfield District Plan 2005 and paragraph 3.18 of Supplementary Design Guidance (Statement of Council Policy).

REFUSED DRAWING NOS. Site Location Plan D1 & D2 & D3 & D4 & D5v1.2 & D6v1.2 & D7 & D8 & D9 & D11

P. Jefcoate (Strategy and Development)

Date 25.05.11

Background papers to be listed Appeal Decision Letters APP/C1950/A/07/2035640 & APP/C1950/A/05/1194541 & APP/C1950/A/03/1115192

