

WELWYN HATFIELD COUNCIL – DEVELOPMENT CONTROL
DELEGATED REPORT

APPLICATION No:	S6/2012/0479/FP
APPLICATION Site:	33 Kentish Lane

NOTATION:

The site lies wholly within the Metropolitan Green Belt as defined in the Welwyn Hatfield District Plan and Proposals Map.

DESCRIPTION OF SITE:

The application site is located on the north west side of Kentish Lane and consists of a two storey detached dwelling and garage set within a spacious plot. The surrounding area and street scene are semi-rural in character consisting of large detached dwellings of individual design set within generously proportioned and spacious plots which form ribbon development to the east of Brookmans Park. To the south east of the site on the opposite side of Kentish Lane is open farmland bound by hedgerows and trees.

The site measures approximately 60m depth x 14m width and the front of the dwelling is set back approximately 25m from the front site boundary with Kentish Lane. The dwelling is finished in white painted render and features a gambrel roof design with eaves extending to ground floor level at the front and rear of the property. A single garage with a flat roof is attached to the north east side of the property. A driveway to the front of the garage provides off street parking. The remainder of the front garden is soft landscaping with large trees along the flank site boundaries.

DESCRIPTION OF PROPOSAL:

This application seeks full planning permission for erection of new dwelling following demolition of existing. The proposed dwelling would be arranged over three floors and would benefit from four bedrooms. The footprint of the proposed dwelling would be irregular in shape measuring approximately 18.5m in depth by 12.2m in width. The main roof of the dwelling would be hipped in design with a large flat crown. The height of the proposed ridgeline would be approximately 8.9m. Externally it is proposed to clad the walls in York stone at ground floor level with red facing brick is proposed at first floor level. Stone quoins are located on the corners of the brickwork to the front elevation. The proposed single storey rear element would be finished in a smooth render painted white. To the rear of the property there will be dark grey powder coated aluminium framed doors leading onto a patio area. All other fenestration would be timber framed.

PLANNING HISTORY:

S6/2010/0479/FP – Formation of a hardstanding (Refused 01/06/2010)

SUMMARY OF DEVELOPMENT PLAN POLICIES:

National Planning Policy:

National Planning Policy Framework, March 2012

East of England Plan 2008:

SS1 Achieving Sustainable Development

ENV3 Biodiversity & Earth Heritage

ENV7 Quality in the Built Environment

T14 Parking

Welwyn Hatfield District Plan 2005:

GBSP1 Definition of Green Belt

SD1 Sustainable Development

R3 Energy Efficiency

RA4 Replacement Dwelling in the Green Belt

RA10 Landscape Regions and Character Areas

RA11 Biodiversity and development

D1 Quality of Design

D2 Character and Context

D8 Landscaping

R17 Trees, Woodland and Hedgerows

Welwyn Hatfield District Plan, Supplementary Design Guidance, February 2005

Welwyn Hatfield District Plan, Supplementary Planning Guidance, Parking

Standards, January 2004

CONSULTATIONS

Welwyn Hatfield Borough Council Landscape Department – No response

Herts Biological Records Centre – There are bat records in the area and the house is located within a well-treed environment, providing foraging and flight-line habitats. There is currently an empty (otherwise unconverted) roofspace and the front and back upper storey appears externally covered with hanging tiles. All of these indicate there is a considerable potential for bats to be present and obviously affected if the property is to be demolished. I therefore advise that an inspection survey for bats should be undertaken to assess the position. This should be undertaken before the application is fully approved otherwise the provisions of the Habitats Directive would not have been followed. Further surveys may be necessary depending on the results, although if bats are not an issue the application may be determined accordingly.

Hertfordshire Middlesex Wildlife Trust – The dwelling proposed for demolition is located within a fairly wooded area and adjacent to the Local Wildlife Site ref 79/030 (Grasslands S. of Mymsfield). The site and surroundings provide opportunities for roosting and foraging bats. Demolition of the existing building may result in the loss of a bat roost and harm to individual bats. This would be against wildlife protection law.

TOWN/PARISH COUNCIL COMMENTS

North Mymms Parish Council – No response (consultation expired on 19/04/12)

REPRESENTATIONS

The application was advertised by site notice and neighbour notification letters. No representations were received.

DISCUSSION:

The main issues are:

1. Impact on the Green Belt
2. Quality of Design and Impact on the Character of the Area
3. Impact on the Residential Amenity of Neighbouring Properties
4. Other Material Considerations

1. Impact on the Green Belt

The general policies controlling development in the countryside apply with equal force in Green Belts but there is, in addition, a general presumption against inappropriate development within them. As with previous Green Belt policy, the National Planning Policy Framework (NPPF) states that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. 'Very special circumstances' will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations.

The NPPF accepts that within the Green Belt the construction of new buildings should be regarded as inappropriate development. Exceptions to this include buildings for agriculture and forestry; provision of appropriate facilities for outdoor sport and outdoor recreation and for cemeteries, as long as it preserves the openness of the Green Belt and does not conflict with the purposes of including land within it. The replacement of a building is not inappropriate, provided the new building is in the same use and not materially larger than the one it replaces. This advice is reflected in Local Plan Policy RA4(i).

Annex 1 of the National Planning Policy Framework provides guidance on implementation of the new Framework. Paragraphs 211 – 212 advise that for the purposes of decision-taking, the policies in the Local Plan should not be considered out-of-date simply because they were adopted prior to the publication of the Framework. However, the policies contained in the NPPF are material considerations which local planning authorities should take into account from the day of its publication.

Paragraph 214 of the NPPF states that for 12 months from the day of publication, decision-takers may continue to give full weight to relevant Local Plan policies adopted since 2004 even if there is a limited degree of conflict with this Framework. Welwyn Hatfield District Plan was adopted April 2005, therefore, full weight should continue to be given to relevant policies and in particular Policy RA4 Replacement Dwellings in the Green Belt.

Local Plan Policy RA4 accords with the NPPF in setting out the criteria for replacement dwellings in the Green Belt:

Policy RA4 - Replacement of Dwellings in the Green Belt

Permission for replacement dwellings within the Green Belt will not be granted unless all of the following criteria are met:

- (i) The replacement dwelling would not materially exceed the size of the original dwelling in terms of its floorspace, height and volume (existing outbuildings*

(including detached garages) will not contribute to the calculation of the size of the replacement dwelling except in very exceptional circumstances);

(ii) The proposed dwelling would have no greater visual impact in terms of prominence, bulk and design on the character, appearance and pattern of development of the surrounding countryside’.

(iii) The proposed dwelling is designed to reflect the character and distinctiveness of its rural setting and to accord with the design policies elsewhere in the plan and the supplementary design guidance.

It is necessary to establish whether the proposal would represent inappropriate development within the Green Belt, under the terms of the NPPF and Policy RA4. Policy RA4 stipulates that a replacement dwelling should not materially exceed the size of the original dwelling. Notwithstanding this, a replacement dwelling that does not have a greater impact upon the openness of the Green Belt when compared to the existing dwelling, is likely to be acceptable as there would not be further harm. It would be unreasonable to refuse a development that would maintain the status quo. It is therefore necessary to compare the proposed replacement dwelling with the existing dwelling.

Drawings of the existing dwelling have been submitted as part of this full planning application and measurements have been taken from these in calculating the floorspace and footprint figures. The floorspace of the existing dwelling (including the garage) measures approximately 167sqm. The floorspace of the proposed dwelling would measure approximately 409sqm equivalent to a 145 percent increase over-and-above the existing dwelling. In terms of footprint, the existing dwelling measures approximately 100sqm and the proposed 190sqm equivalent to a 90 percent increase over-and-above existing.

A comparison of habitable floorspace is, however, only one tool which can be used in the assessment of whether the proposed dwelling would be materially larger than the existing, as a visual assessment would also be appropriate. The front elevation of the existing dwelling measures approximately 9.4m in width compared to the proposed dwelling which would measure approximately 12.2m in width. In terms of depth, the existing south west facing flank elevation measures approximately 8.1m in depth compared to the proposed dwelling which would measure approximately 18.7m in depth.

The gambrel roof of the existing dwelling has low eaves across the front and rear of the building, extending to ground floor level and measuring approximately 2.8m in height. The replacement dwelling has been designed to appear as a ‘true’ two storey building with additional accommodation within the roof space. The resulting eaves would measure approximately 5.7m in height. In terms of overall height, the crown roof of the replacement dwelling would measure approximately 8.9m in height exceeding the height of the existing dwelling by 0.5m.

Overall, the replacement dwelling would, as a matter of fact and degree, materially exceed the size of the existing dwelling due to the increase in floorspace, footprint, volume, eaves height and ridge height. The proposal is therefore considered to be inappropriate development, which is by definition, substantially harmful to the Green Belt contrary to the provisions of Section 9 ‘Protecting Green Belt Land’ contained in the National Planning Policy Framework, March 2012 and criterion (i) Policy RA4 of the Welwyn Hatfield District Plan 2005.

It terms of the effect of the proposal on the openness of the Green Belt and its visual amenity, the NPPF identifies in paragraph 79 that the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open; the essential characteristics of Green Belts are their openness and their permanence. The NPPF does not qualify what is said about replacement buildings by any reference to whether or not such buildings would be readily visible or cause any harm to the appearance of the Green Belt. However, the second criterion of Policy RA4 of the District Plan states that replacements dwellings would not be granted unless the proposed dwelling would have no greater visual impact in terms of prominence, bulk and design on the character, appearance and pattern of development of the surrounding countryside.

Although many of the existing trees within the site would be retained and could be reinforced, it is considered that the replacement dwelling would, nevertheless, be distinctly visible in the street scene and would be even more noticeable in winter when there are fewer leaves. The fact that the dwelling would be screened from certain vantage points does not mean that openness would not be compromised.

The replacement dwelling would be clearly visible from the site frontage with Kentish Lane. In particular, the increase in bulk and massing at a high level would result in more prominent structure than the existing dwelling and a reduction in the openness of its immediate surroundings. The proposed replacement dwelling would have a front elevation that is both wider and taller than the existing dwelling to be demolished. The height of the eaves would increase from approximately 2.8m to 5.7m and the ridge line would increase in width from approximately 2.5m to approximately 6.6m emphasising the additional bulk within the roofspace.

To the substantial harm by reason of inappropriateness must be added the inevitable loss of Green Belt openness that would result from the proposal. The replacement dwelling would have a much larger footprint which would result in the spread of development increasing on the site and a reduction in separation distance from the site boundaries and a reduction in space around the dwelling. The new dwelling would extend approximately 6.5m forward of the existing dwelling and would be double fronted in design with a central projection. The replacement dwelling and would have a greater visual impact in terms of prominence, bulk and massing. The design of the replacement dwelling has details such as stone cladding, quoins detailing and large windows which are grand in character resulting is a far more imposing structure than the existing dwelling which has a simpler design and character. All of these factors would reduce the openness the application site to the detriment of the Green Belt. Therefore, the proposal fails to comply with criterion (ii) of Policy RA4 of the Welwyn Hatfield District Plan 2005 and would be contrary to the National Planning Policy Framework.

Very Special Circumstances: No very special circumstances have been advanced of sufficient weight to set aside Green Belt policies of restraint.

It is acknowledged that other properties within the vicinity of the application site have been extended, some quite significantly. However, the fact that other houses have been extended does not weigh in favour of a proposal that would on its own merits represent inappropriate development.

2. Quality of Design and Impact on the Character of the Area

The National Planning Policy Framework states that good design is a key aspect of sustainable development, is indivisible from good planning, and should contribute positively to making places better for people. Planning decisions should aim to ensure that developments add to the overall quality of the area; respond to local character and history; reflect the identity of local surroundings and materials; are visually attractive as a result of good architecture and appropriate landscaping. Permission should be refused for development of poor design that fails to take the opportunities available for improving the character and quality of an area and the way it functions. Policies D1 and D2 of the Welwyn Hatfield District Plan 2005 respectively require high quality design in all new development and for proposals to respect and relate to the character and context of their location. These policies are expanded upon in the Council's Supplementary Design Guidance (SDG).

In regards to Policy D2, this part of Brookmans Park is characterised by large detached dwellings of individual design set within generously proportioned and spacious plots. As a result, architectural styles and materials vary considerably. The proposed replacement dwelling would be in keeping with the scale of larger dwellings within the area. The dormer windows to the rear would be subservient to the main roof of the dwelling and in proportion with other fenestration. Crown roofs are a feature of many dwellings within immediate vicinity of the application site and therefore represent an acceptable form of development.

Overall, it is considered that the design of the resulting dwelling would adequately respect and relate to the character of the area. The extensions are therefore considered to be in accordance with the National Planning Policy Framework; Policies D1 and D2 of the Welwyn Hatfield District Plan 2005 and Supplementary Design Guidance 2005 (Statement of Council Policy).

3. Impact on the Residential Amenity of Neighbouring Properties

No representations have been received from neighbours and Hatfield Town Council did not comment. The impact of the proposed development on the residential amenity of neighbouring dwellings is considered in terms of the impact on neighbouring properties access to day/sun/sky light, privacy and overbearing impact. Giving consideration to the scale of the proposal, the siting of windows in the adjoining properties, the orientation of the dwellings and boundary screening, it is considered that the proposed extension would not have an unreasonable impact on light amenity or the level of privacy afforded to the neighbouring residencies and would not appear visually overbearing.

4. Other material considerations

Impact on Trees: There are several established trees within the vicinity of the proposed dwelling. Although these trees have some amenity value, they are not protected by a tree preservation order. Should planning permission be granted, a condition should be attached to ensure retained trees would be protected with fencing compliant with BS5837:2012 Trees in Relation to Construction. It would be reasonable to attach a planning condition requiring a landscaping scheme to be submitted and approved by the Local Planning Authority in order to reduce the visual and environmental impacts of the development. A landscaping scheme would include means of enclosure and boundary treatments, hard surfacing and planting plans.

Sustainable Development: The applicant has completed a sustainability checklist which highlights that the scheme generally responds positively to the topic areas that are required to be considered in accordance with policies SD1 and R3 of the Welwyn Hatfield District Plan 2005 and Supplementary Design Guidance, 2005.

East of England Plan 2008: 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

However, the Government is still committed to the abolition of Regional Spatial Strategies through the Localism Bill. In the meantime, the policies in the East of England Plan are re-established and 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 policies in Regional Spatial Strategies.

The application has been considered against policy(ies) in 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, in light of the above circumstances, has been carefully considered in reaching a decision.

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

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 a 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))

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.

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.

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.

Hertfordshire Biological Records Centre do not have any specific biological data for the application property, however, they do have records of bat roosts within the general area. The area surrounding the application site includes suitable habitat for protected species, and in particular bats, such as mature woodland, fields, grassland, hedgerows, ponds, and ditches. There is, therefore, a reasonable likelihood of bats foraging within the immediate locality of the application site. Bats may be roosting in the roof space of the property and that the proposed development could result in bats being harmed or killed and their roost site being destroyed.

No evidence has been submitted with the application to show that the site has been inspected for bats and an appropriate survey undertaken. The applicant has failed to demonstrate the development complies with the requirements of The Conservation of

CONCLUSION

The replacement dwelling would, as a matter of fact and degree, materially exceed the size of the existing dwelling due to the increase in scale, bulk and mass that would result. The proposal is therefore considered to be inappropriate development, which is by definition, substantially harmful to the Green Belt contrary to the provisions of Section 9 'Protecting Green Belt Land' contained in the National Planning Policy Framework, March 2012; and criterion (i) Policy RA4 of the Welwyn Hatfield District Plan 2005.

To the substantial harm by reason of inappropriateness must be added the inevitable loss of Green Belt openness that would result from the proposal. The replacement dwelling would have a much larger footprint which would result in the spread of development increasing on the site and a reduction in separation distance from the site boundaries and a reduction in space around the dwelling. The replacement dwelling and would have a greater visual impact in terms of prominence, bulk and massing. The design of the replacement dwelling has characteristics and details which are grand in scale resulting is a far more imposing structure than the existing dwelling which has a simpler design and character. All of these factors would reduce the openness the application site to the detriment of the Green Belt contrary to the provisions of Section 9 'Protecting Green Belt Land' contained in the National Planning Policy Framework, March 2012; and criterion (ii) Policy RA4 of the Welwyn Hatfield District Plan 2005.

RECOMMENDATION: REFUSAL AND REASON (S)

SUMMARY OF REASONS FOR THE REFUSAL OF PERMISSION:

1. The proposed development would represent inappropriate development in the Green Belt, due to the proposed replacement dwelling materially exceeding the size of the existing dwelling it is to replace, by reason of the substantial increase in habitable floorspace, volume, footprint, eaves height and ridge height. Furthermore, the proposed development as a result of its prominence, bulk and design would significantly diminish the openness of this part of the Green Belt to the detriment of the character of the area. The proposal is therefore inappropriate development within the Green Belt where the applicant has failed to prove to the satisfaction of the Local Planning Authority, that the harm, by reason of its inappropriateness is outweighed by other considerations contrary to the provisions of Section 9 'Protecting Green Belt Land' contained in the National Planning Policy Framework, March 2012 and Policy RA4 of the Welwyn Hatfield District Plan 2005.
2. The Local Planning Authority considers that the applicant has failed to demonstrate the development complies with the requirements of The Conservation of Habitats and Species Regulations 2010 as no appropriate bat survey has been submitted with the application to confirm whether bats are present in the existing roof of the application property. This is contrary to the requirements Policy SD1 and RA11 of the Welwyn Hatfield District Plan 2005, The Conservation of Habitats and Species Regulations 2010 and The Wildlife and Countryside Act 1981.

INFORMATIVES

None

REFUSED DRAWING NUMBERS

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Signature of author..... Date.....