

WELWYN HATFIELD BOROUGH COUNCIL – DEVELOPMENT MANAGEMENT
DELEGATED REPORT

APPLICATION No:	S6/2012/0720/CA
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NOTATION:

The site lies within the Old Hatfield Conservation Area as designated in the Welwyn Hatfield District Plan 2005.

DESCRIPTION OF SITE:

The site comprises two areas of land which are shown linked by the virtue of the red line by a highway (Church Lane). One parcel of land comprises a car parking area – gravel surfaced with levels rising from a westerly to easterly direction. To the north-east of this parcel of land is the other area, which rises from approximately the south-east to the north-west.

This parcel of land comprises four concrete garages, garden area and numbers 17-23 Church Street.

DESCRIPTION OF PROPOSAL:

The application seeks conservation area consent for the demolition of the dwellings at the junction with Church Lane and Church Street and the garages sited on Church Lane.

PLANNING HISTORY:

S6/2012/0719/MA - Demolition of 17-23 Church Street and garages. Erection of 7 x two bed houses, 1 x two bed flat and 2 x one bed flat on 17-23 Church Street with associated parking and landscaping; 1 x three bed house and 1 x one bed flat on car park adjacent Georges Gate and 38 car parking spaces and associated landscaping – under consideration

S6/2005/0431/FP - Erection of 12 garages and reconfiguration of car parking layout - A(G) 03/06/2005

S6/1979/0645/DC - 51 houses and flats in 2 and 3 storeys with landscaping and 59 car parking spaces - A(G) 29/11/1979

SUMMARY OF POLICIES:

National Planning Policy Framework

East of England Plan 2008 Policies:

SS1: Achieving Sustainable Development

ENV6: The Historic Environment

Hertfordshire Structure Plan Review 1991 – 2011:
None

SD1: Sustainable Development
GBSP2: Towns and Specified Settlements

CONSULTATIONS:

Comments received relevant to this application:

HBRC – note that a bat roost will be destroyed and that mitigation measures are proposed. Note that the report does not specifically address the 3 derogation tests, however conditions are recommended.

English Heritage – recommend that the application is determined in accordance with national and local policy guidance.

TOWN/PARISH COUNCIL COMMENTS:

Hatfield Town Council generally support the proposal. They do not raise any comment in respect to this proposal for demolition of the buildings.

REPRESENTATIONS:

The application was advertised by neighbour letters, press and site notice. Four letters of representation were received. Only one comment received to the two applications (refer S6/2012/0719/MA) has relevance to this conservation consent application. The comment may be summarised as:

- Existing buildings are of poor architectural merit

DISCUSSION:

The main issues are:

1. Whether the demolition of the buildings may be supported subject to appropriate development being provided on the site
2. Other material planning considerations

1. Chapter 12 of the National Planning Policy Framework (NPPF) addresses the historic environment. Paragraph 128 requires applications to describe the significance of any heritage asset affected by a proposal and their contribution to the setting of the area. Within paragraph 132, the NPPF states that '*when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation.*' This is expanded further within paragraph 133 where it states that if a development will lead to the total loss of significance of a designated heritage asset, local planning authorities (Local Planning Authority) should refuse consent.

In addition, paragraph 136 requires LPAs to not permit the loss of whole or part of a heritage asset without taking all reasonable steps to ensure the new development will proceed after the loss has occurred.

It is therefore necessary for a determination to be made firstly, as to whether the development proposed for demolition is considered to be significant in relation to its heritage and secondly whether there is a proposed development that will enhance and make a positive contribution to the asset.

The garages, as described within the Heritage Statement are concrete panelled dating from, probably, the 1960s. The design and materials are such that they are not considered to be a heritage asset.

The lean-to porch is of materials that match the dwelling and roof pitch. It would appear that this is a later addition to the dwelling. The dwelling itself would appear to date from the Victorian era and in itself, is not listed. The addition is not considered to be a significant heritage asset and its removal would not have a detrimental impact on the heritage asset i.e. the conservation area.

Lastly, the dwellings are proposed for demolition. These are finished in a pebbledash render with metal crittall type casement windows. The roof is finished in asbestos/fibre cement tiles. The dwellings are not individually listed. It would appear from historical maps that the dwellings were originally constructed around 1925-1930, according to the Statement. Their position within the streetscene at the corner of Church Street and Church Lane, together with the rising ground levels from both directions, results in the dwellings being quite prominent. However, in themselves, the buildings have little architectural merit and do not reflect the character of the area or positively contribute to the conservation area. Therefore their demolition would not result in the loss of a significant asset.

In relation to development that will enhance and make a positive contribution to the asset, this application is submitted alongside a proposal for replacement residential dwellings. It is only relevant to consider those that would be sited within zone 1 (i.e. 17-23 Church Street area). The proposal comprises the provision of a terrace of new town houses and flats which are shown to be in traditional red brick design. The supporting statement details that the main terrace will front onto Church Lane, creating a longer built frontage than at present but the objective is to create the appearance of a terrace of traditional workers cottages. Vehicular access would be provided within the block to the rear of the dwellings to a rear courtyard parking area. The design of the dwellings is considered to be appropriate for the area and would positively contribute to the streetscene and conservation area. It is therefore considered, that subject to the development for the houses under application S6/2012/0719/MA being approved that this development is considered appropriate to demolish.

It will be necessary to ensure that the brickwork on 25 Church Lane following the removal of the attached porch is in keeping with the host dwelling. A condition requiring materials to be submitted is therefore appropriate.

2. Other Material Planning Considerations

Protected Species The presence of protected species is a material consideration, in accordance with the National Planning Policy Framework, 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.

From the information provided within the report it is considered that the proposal would be likely to result in one of the EPS offences described above. As such, it is necessary to consider the three “derogation” tests as defined within the Conservation Regulations 2010. In order for planning permission to be granted, each of the tests must be met.

Is the development being carried out for

- imperative reasons of overriding public interest including those of a social or economic nature? Or;
- reasons relating to human health, public safety or beneficial consequences of primary importance to the environment?
- Is there an alternative solution? and,
- Can the effects of the development be avoided (i.e. mitigated) by the inclusion of conditions?

In accordance with Regulation 61 (2) of the Conservation Regulations 2010, the applicant has submitted an ecological report for consideration. The report identifies that from the surveys undertaken, it is likely that the roof space of flat 23 is used by Brown Long-Eared bats as a summer roost. The demolition of the building would therefore result in an offence under the Regulations being committed.

Herts and Middlesex Wildlife Trust have assessed the application in relation to the second and third derogation test within the regulations. They advise that a licence will be required from Natural England and recommend conditions in relation to mitigation as detailed within the ecological report.

With regards to the first derogation test the application has provided the following information and justification for their proposal:

“The development is being undertaken further to wide and on-going public consultation which followed on from the initial Old Hatfield Charrette. The aim of the charrette was to consider ways to address peoples' concerns and more specifically re-generate Old Hatfield into a vibrant and viable community. These aims are to be achieved through new, higher quality residential development, new commercial and retail premises on a number of sites and with particular attention to design quality.”

Given the enthusiasm of the local community and widespread support combined with the success to date, in letting similar properties, both residential and commercial, it could be argued that the development has both social and economic benefits.

- The existing dwellings which are to be demolished, provide very poor quality accommodation and fall well short of current 'decent' standards.

- The derelict garages are both unsightly and in increasingly poor condition. The garages provide an opportunity for antisocial behaviour and general dumping of rubbish etc. In a similar vein, the existing garden is poorly maintained and is under-utilised by residents.

- Taking location of the site into account, demolition of the existing buildings and reconstruction with higher quality units, will substantially enhance the setting of several key listed buildings. This includes St Etheldredas Church and the Bakers Arms. Other listed properties are highlighted within the heritage report.

- We have looked at a number of alternative configurations and options for the site and believe the current application represents the most sustainable and viable use for the site.

- The Park provides an excellent variety of habitat for a wide number of species and any bats or other wildlife, will be able to find countless alternative sites. If all else fails, mitigation measures could be taken whereby alternative roosts are included within the new development. These might either be within the building cavity or within a roof space."

It is agreed, as discussed above, that the existing development is of poor quality and does not enhance the conservation area. The development, as proposed, would achieve in enhancing the area. There are no reasonable alternatives – converting the buildings and giving them a 'face lift' would be unlikely to succeed in providing a high quality development that would also be sustainable. The protected species that are within the building comprise, what would appear, to be quite a small colony and therefore the overall need and social reasons for allowing the development are considered to outweigh the harm of losing the roof space as a roost for bats. It would be appropriate to condition the application for the mitigation detailed within the ecological report to be provided as part of any future development.

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 Act. 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 policies 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.

CONCLUSION:

The buildings proposed for demolition are not considered to contribute positively to the historical asset being the Old Hatfield conservation area. Their removal, subject to an appropriate development being reprovided on site, would benefit in improving the character of the area. It is necessary to ensure that appropriate conditions are included where repair to existing walls is required. Without appropriate development being approved on the site, it would not be appropriate to allow the demolition of the buildings.

Protected species would be harmed as a result of the development, however it is considered that the applicant has submitted justification for the development that comply with the 3 derogation tests and subject to appropriate conditions for mitigation, the proposal would comply with the Regulations.

RECOMMENDATION: CONSERVATION AREA CONSENT WITH CONDITIONS

1. C.2.2 – Conservation area consent
2. C.13.1 – In accordance with plans
837-030 C & 837-110 G & 837-111 G & 837-112 G & 837-113 D & 837-150 M
& 837-TYPEJ rev D & 837-TYPEI rev E & 837-TYPEG rev F & 837-TYPEJ
rev G & 837-TYPEH1 rev C & 837-070 H & 837-120 J & 837-121 F & 837-122
F & 837-160 H & 837-TYPEK rev F & 837-TYPEL rev A & 837-TYPEL rev B

837-001 E received and dated 11 June 2012
837-055 F received and dated 13 July 2012

SUMMARY OF REASONS FOR THE GRANT OF PERMISSION:

The proposal has been considered against the National Planning Policy Framework, East of England Plan 2008 policies SS1 and ENV6 and development plan policies SD1 and GBSP2 of the Welwyn Hatfield District Plan 2005, in addition to the Human Rights Act 1998, which, at the time of this decision indicate that the proposal should be approved. Material planning considerations do not justify a decision contrary to the development plan (see Officer's report which can be inspected at these offices).

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