

WELWYN HATFIELD BOROUGH COUNCIL – DEVELOPMENT MANAGEMENT
DELEGATED REPORT

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| APPLICATION No: | S6/2012/1263/S73B |
| APPLICATION Site: | Land Rear of 59 Station Road |

NOTATION:

This site is located within the specified settlement of Cuffley as outlined in the Welwyn Hatfield District Plan 2005.

DESCRIPTION OF SITE:

The site is located to the rear of a Tesco store north of Station Road and west of Tolmers Road. The site formerly comprised a car park and beer garden to the former public house (public house now occupied by Tesco). The site is accessed from Tolmers Road and is surrounded to the north, east and west by residential accommodation ranging from single storey bungalows two three storey flats. Land levels increase from south to north with the western elevation at a slightly lower level (area of former car park) than the eastern. The site has been unused since the opening of the Tesco store. Site boundaries are predominantly defined with close boarded or shiplap fencing between 1.8m and 2m in height. Mature trees to the rear of properties within Tolmers Gardens provide additional screening to the north of the site.

DESCRIPTION OF PROPOSAL:

This application seeks permission for a variation of condition 2 of planning permission reference S6/2010/1052/FP which granted consent for *“erection of 5 x 2 bedroom and 4 x 1 bedroom flats with associated access and parking”*.

PLANNING HISTORY:

S6/2012/0608/DS – Discharge of conditions 3 (Landscaping), 4 (Materials) and 10 (Parking Layout) from planning permission S6/2010/1052/FP (conditions 3 and 10 discharged 13/06/2012 condition 4 remains outstanding)

S6/2011/1652/DS – Discharge of condition, 3 (landscaping), 4 (materials), 5 (refuse and recycling store), 6 (cycle store), 7 (external lighting), 8 (details of green roof), 9 (green roof maintenance plan), 10 (parking layout), 11 (visibility splays) from planning permission S6/2010/1052/FP (conditions 5,6,7,8,9,10,11 Discharged 24/10/2011 conditions 3, 4 and 10 remain outstanding)

S6/2010/1052/FP - Erection of 5 x 2 bedroom and 4 x 1 bedroom flats with associated access and parking (Granted 02/08/2010)

S6/2010/0271/FP - Erection of 5x2 Bedroom and 4x1 Bedroom Flats with Associated Access and Parking (Refused 13/04/2010)

S6/2009/2247/FP - Erection of 5x2 Bedroom and 4x1 Bedroom Flats with Associated Access and Parking (Refused 04/12/2009)

S6/2009/0871/PA - Residential development (9 flats)

S6/2008/0618/OP - Outline planning application for erection of nine residential units and access (Granted)

S6/2003/1317/FP - Erection of 2, three bed dwellings (Granted)

No other history relevant to this application

SUMMARY OF DEVELOPMENT PLAN POLICIES:

National Planning Policy Framework 2012

East of England Plan 2008

SS1: Achieving Sustainable Development

ENV3: Biodiversity & Earth Heritage

ENV7: Quality in the Built Environment

WAT4: Flood Risk Management

T14: Parking

Welwyn Hatfield District Plan 2005

SD1: Sustainable Development

GBSP2: Towns and Specified Settlements

R1: Maximising the Use of Previously Developed Land

R3: Energy Efficiency

R9: Water Supply and Disposal

R10: Water Conservation Measures

R19: Noise and Vibration Control

H2: Location of Windfall Development

H6: Densities

H10: Lifetime Homes

M14: Parking Standards for New Developments

D1: Quality of Design

D2: Character and Context

D3: Continuity and Enclosure

D6: Legibility

D7: Safety by Design

D8: Landscaping

D9: Access and Design for People with Disabilities

Welwyn Hatfield District Plan, Supplementary Design Guidance, February 2005

Welwyn Hatfield District Plan, Supplementary Planning Guidance, Parking Standards, January 2004

CONSULTATIONS

Hertfordshire County Council Transport Programmes & Strategy Department – Do not wish to restrict the grant of permission

Welwyn Hatfield Borough Council Landscaping – No response (consultation expired 18/07/2012)

Welwyn Hatfield Borough Council Environmental Health – No response (consultation expired 18/07/2012)

Welwyn Hatfield Borough Council Contract Services – No sizes have been provided for the waste/recycling storage area

Thames Water – No response (consultation expired 18/07/2012)

TOWN/PARISH COUNCIL COMMENTS

Northaw and Cuffley Parish Council – No comment (consultation expired 18/07/2012)

REPRESENTATIONS

The application was advertised by site notice and neighbour notification letters. One representation was received from the occupier of No.1 Tolmers Gardens objecting to the proposal on the grounds that it would appear dominant; would block direct light to windows and would result in overlooking.

DISCUSSION:

The main issues are:

1. Whether the proposed amendments are acceptable in relation to adopted district plan policies
2. Other material considerations

1. Whether the proposed amendments are acceptable in relation to adopted district plan policies

This application seeks an amendment to condition 2 of S6/2010/1052/FP, which relates to the approved plans. The Killian and Pretty review in 2008 recommended that: “*Government should take steps to allow a more proportionate approach to minor material changes in development proposals after permission has been granted*”. This recommendation arose from concerns that in some cases new planning applications were being required where relatively small changes that were more than ‘non material’ were being sought.

The recommendation was that an existing process under Section 73 of the Town and Country Planning Act 1990 to allow changes to the conditions applying to existing permissions should be streamlined. Section 73 allows applicants to apply to vary one or more conditions attached to a planning permission. This results in a new permission with one or more conditions from an extant permission varied or removed. Where a condition is attached which lists consented plans (condition 2) applicants can apply to substitute new plans, in effect achieving an amendment to the original scheme. In determining an application under this section, officers have to have regard to the development plan and all other material considerations but the principle of development should not be re-assessed since that is not an issue in relation to the variation of the condition.

There is no statutory definition of a minor material change but guidance given states that:

“A minor material amendment is one whose scale and nature results in a development which is not substantially different from the one which has been approved”.

The judgement on “materiality” in any particular case is one of fact and degree, also taking into account the likely impacts of the amendment

Character and appearance

The main difference between the current proposal and the extant permission relates to the site boundary, as identified by the red line on the site Location Plan. Following

a survey of the site, inaccuracies were identified in the dimensions shown on the drawings approved under planning permission S6/2010/1052/FP. The site was found to be narrower than indicated on the approved Site Plan and Block Plan. As a result the development could not be implemented in accordance with the approved drawings. This application seeks to substitute the approved plans listed in condition 2 of planning permission S6/2010/1052/FP with amended plans.

The amended plans accurately show the site boundaries. In order to maintain the same degree of separation between the new buildings and the site boundary to the north, it is proposed to reduce the width of the front and rear block by approximately 750mm. It is also proposed to set back the rear extension of the front block by an additional 300mm from the site boundary to the south. These alterations have resulted in some minor changes to the external appearance of the development and the internal layout of the buildings. The approved section shows a maximum height of the front block of 8.4m which was unachievable when taking into account the correct thickness of the separating floors between apartments and the slope of the roof. This has been overcome by a combination of lowering the ground level of the front block and a slight change in the pitch of the roof slope. The highest part of the building would remain 8.4m above the existing ground level. Other amendments proposed include:

- Removal of sections of cedar panelling from the south elevation of the front block and north elevation of the rear block
- A small reduction in the size of some windows and the width of some cedar panels
- Two windows have been removed from the west elevation of the rear block
- Within the north elevation of the rear extension to the front block, the position of two windows and two Juliet balconies have been swapped around to reflect a change in the internal layout of two flats.
- Minor alterations to the layout of planting beds and block paving
- Change in the pitch of the roof to comply with the maximum height

The need for the proposed amendments has arisen from unexpected changes in site conditions. The proposed amendments would result in a reduction in the footprint of both the front and rear block. The highest part of the building would remain 8.4m above the existing ground level and the scale of the development is similar in relation to the original approval. In terms of visual amenity, the proposed alterations would not harm the quality of the design in or the character of the area. Overall, the proposed amendments are considered to be non material and would not result in a substantial departure from what was originally approved.

Neighbour amenity

One representation was received from the occupier of No.1 Tolmers Gardens objecting to the proposal on the grounds that it would appear dominant; would block direct light to windows and would result in overlooking. The occupier of No.1 Tolmers Gardens also objected to planning application S6/2010/1052/FP on similar grounds. These objections were fully considered in determining the extant planning permission.

The proposed height, massing and bulk of the development would be almost identical to the extant permission and would not have any significant detrimental impact on neighbouring occupiers in terms of the impact on access to daylight/sunlight, privacy or overbearing impact. To take account of the amendment to the site boundary, the

footprint of the front block has been reduced so that the northern elevation would be set back a further 750mm from the rear elevation of No.1 Tolmers Gardens. This would ensure that the same degree of separation is maintained between the front block and the site boundary to the north as shown on the extant permission. The height of the front block would not exceed the approved 8400mm and the slight change in the pitch of the roof would be so minimal as to not significantly impact on the amenity of neighbouring occupiers. The footprint of the rear block has also been reduced to ensure that separation distance between from the site boundaries are maintained as approved under the extant permission.

Within the north elevation of the rear extension to the front block, the position of two windows and two Juliet balconies have been swapped around to reflect a change in the internal layout of two flats. Two windows have been removed from the west facing elevation of the rear block. No additional windows are proposed and the new arrangement would not result in any additional overlooking to neighbouring properties.

Overall, subject to the inclusion of planning conditions, the proposal would not result in significant additional harm to neighbouring occupiers and as such complies with the National Planning Policy Framework, the East of England Plan 2008 and the Welwyn Hatfield District Plan 2005 and the requirements of the Supplementary Design Guidance (Statement of Council Policy).

2. Other Material Considerations

Protect Species: The presence of protected species is a material consideration, in accordance with the Natural Environment & Rural Communities (NERC) Act 2006 (section 40), Wildlife and Countryside Act 1981 as well as Circular 06/05. 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, however the existing site and development is such that there is not a reasonable likelihood of EPS being present on site nor would a EPS offence be likely to occur. It is therefore not necessary to consider the Conservation Regulations 2010 further.

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.

CONCLUSION:

The proposed amendments are considered to be non material and would not result in a substantial departure from what was originally approved. Subject to the inclusion of planning conditions, the amenity of the neighbouring occupiers would be maintained to an acceptable level in accordance with the National Planning Policy Framework, the East of England Plan 2008 and the Welwyn Hatfield District Plan 2005 and the requirements of the Supplementary Design Guidance (Statement of Council Policy).

RECOMMENDATION: APPROVAL WITH CONDITIONS

CONDITIONS:

1. C.2.1 – Time Limit
2. C.13.1 – The development/works shall not be started and completed other than in accordance with the approved plans and details PL346-1 & PL346-2 & PL346-3 & PL346-4 & PL346-5 received and dated 19 June 202

PRE-DEVELOPMENT

3. C.4.1 – Scheme of Landscaping to be Submitted and Agreed (b, e, f, g)
4. C.5.1 – Samples of Materials to be Submitted and Agreed
5. C.7.13 – Bin Stores/Recycling
6. C.8.5 – Secure Cycle Storage
7. C.9.16 – Lighting Details

8. Prior to commencement of the development details of the green roof (including the precise extent and the plant species to be used) shall be submitted to and approved in writing by the Local Planning Authority with the green roof installed in accordance with the approved details prior to the occupation of the development and maintained permanently thereafter.

REASON: To ensure a satisfactory standard of development in the interests of visual amenity in accordance with Policies GBSP2, D1 and D2 of the Welwyn Hatfield District Plan 2005

9. Prior to commencement of the development a management plan and maintenance plan for the future maintenance of the green roof shall be submitted to and approved by the Local Planning Authority in writing. The management and maintenance plan shall not be carried out other than in accordance with the approved details unless otherwise agreed in writing by the Local Planning Authority.

REASON: To ensure a satisfactory standard of development in the interests of visual amenity in accordance with Policies GBSP2, D1 and D2 of the Welwyn Hatfield District Plan 2005

PRE- OCCUPATION

- 10.C.8.9 – No Occupation Until Spaces Laid Out
- 11.C.8.15 – Visibility Splay (Pedestrian)

POST-DEVELOPMENT

- 12.C.4.2 – Implementation of Landscape Planting
- 13.C.7.9 – Fixed and Obscured Glazing (north flank elevation of front block)
- 14.C.8.7 – Gates Over Highway
- 15.C.8.18 – Visibility Splay (Vehicles)

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, T14, WAT4, ENV3 and ENV7 and development plan policies GBSP2, SD1, R1, R3, R9, R19, R19, H2, H6, H10, M14 D1, D2, D3, D6, D7, D8, D9, and Supplementary Design Guidance 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).

INFORMATIVES:

1. INF1 – Other Legislation
2. INF10 – Wheel Washing
3. The Highway Authority requires the alterations to or the construction of the vehicle crossover to be undertaken such that the works are carried out to their specification and by a contractor who is authorised to work in the public highway. The applicant will need to apply to the Mid West Hertfordshire Highways Area Office, 41-45 Broadwater Road, Welwyn Garden City, Herts, AL7 3AX (Tel 01707 356 500) for further information and to determine the necessary procedures.
4. With regard to surface water drainage it is the responsibility of a developer to make proper provision for drainage to ground, water courses or a suitable sewer. In respect of surface water it is recommended that the applicant should ensure that storm flows are attenuated or regulated into the receiving public network through on or off site storage. When it is proposed to connect to a combined public sewer, the site drainage should be separate and combined at the final manhole nearest the boundary. Connections are not permitted for the removal of Ground Water: Where the developer proposes to discharge to a public sewer, prior approval from Thames Water Developer Services will be required (Tel 0845 850 2777). With regard to water supply, this comes within the area covered by the Veolia Water Company, Veolia Water Company, The Hub, Tamblin Way, Hatfield, Herts, AL10 9EZ (Tel 0845 782 3333).

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