

**WELWYN HATFIELD BOROUGH COUNCIL – DEVELOPMENT MANAGEMENT
DELEGATED REPORT**

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| APPLICATION No: | S6/2012/2681/S73B |
| APPLICATION Site: | 101 Brookmans Avenue, Brookmans Park |

NOTATION:

The site lies within the settlement of Brookmans Park as designated in the Welwyn Hatfield District Plan 2005.

DESCRIPTION OF SITE:

The application site is currently part of the rear garden area to a detached property (no 101) on the corner of Brookmans Avenue and Golf Club Road. The application site forms a roughly rectangular piece of land. The site is accessed via Golf Club Road, which is a privately own road providing vehicular access only to a golf club, school and a small number of properties. The Council's records show Golf Club Road to be a public right of way. To the south, east and west of the application site the surrounding area comprises linear development of mostly, individually designed detached properties. To the north of the application site the surrounding land falls within the Metropolitan Green Belt.

DESCRIPTION OF PROPOSAL:

The application applies to extend the time limit condition of extant planning application S6/2010/0236/FP.

The proposed development would involve the subdivision of number 101's plot and the erection of a detached two-storey house.

The proposed plot would approximately measure 18m in width by 45m in depth and be roughly rectangular. The proposed dwelling would be set back from the front boundary of the plot by roughly 8.5m. The dwelling would approximately measure 11.6m in width by 12.4m in depth. The proposal's roof would have a ridged design to the front and a double hipped design to the rear. To the centre of the front elevation the proposal would have a gable projection. The dwelling would be mostly rendered with a plain tiled roof and Georgian design, which would reflect the appearance of number 101.

PLANNING HISTORY:

S6/2010/0236/FP – Erection of five bed detached dwelling – Approved 17 May 2010.

SUMMARY OF POLICIES:

National Planning Policy Framework

Circular 03/09: Costs Awards in Appeals and Other Planning Proceedings

Hertfordshire Structure Plan Review 1991 – 2011:

None.

Welwyn Hatfield District Plan 2005:

SD1: Sustainable Development

GBSP2: Towns and specified settlements

H2: Location of windfall Residential Development

R3: Energy Efficiency

R5: Waste Management

RA25: Public Rights of Way

M14: Parking standards for new developments

D1: Quality of design

D2: Character and context

D5: Design for movement

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 (Planning Policy and Transportation) – No objection subject to conditions.

Welwyn Hatfield Tree & Landscape – No objection subject to conditions

Consultation responses from previously approved application:

Hertfordshire County Council (Public Rights of Way Service) – No objection informative details provided.

Welwyn Hatfield Contract Services – Comments noted that refuse and recycling should be presented at the boundary with Golf Club Road.

The Environment Agency – The application was assessed as having a low environmental risk. Therefore comments were not provided as it is for the LPA to carry out a further assessment.

Thames Water – No objection. An informative was suggested regarding surface water drainage.

NORTH MYMMS PARISH COUNCIL COMMENTS:

No comment.

REPRESENTATIONS:

None, period expired 1 February 2013.

DISCUSSION:

The main issues are:

1. Whether the Extension to the Time Limit is Acceptable
2. Other Material Considerations

1. Whether the Extension to the Time Limit is Acceptable:

This application is for an extension to the time limit of planning application reference S6/2010/0236/FP for the erection of a new dwelling following demolition of the existing.

The previous application is still relevant apart from any changes identified below in regards to:

- Changes to the surroundings context of the application site or the application site itself
- New planning history
- Changes to planning policy under which the proposal was approved which would result in the proposal needing to be reassessed against different criteria

There have been no significant changes to the application site, surrounding context or planning history which would impact on the implementation of this proposal in regards to raising new issues which would justify the need of a fresh planning application. No letters of representation have been received from neighbours or Parish Council.

There has been a shift in planning policy since the previous approval in that the all planning policy guidance notes and statement (except for PPS10: Planning for Sustainable Waste Management) have been superseded by the National planning policy Framework. The East of England Plan 2008 has also been abolished.

Annex 1 of the NPPF 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 this 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 this case the policies are generally consistent with the requirements of the NPPF.

2. Other Material Considerations

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.

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 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)

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.

An informative in regards to the protection of bats which might currently be present in the building to be demolished was attached to the last permission as it was considered reasonable at the time that this was brought to the attention of the relevant parties due to the close proximity of woodland behind.

Since the time this last permission was granted, there is now a clearer statutory responsibility for the Local Planning Authority in regards to its duty in regards to EPS.

No new evidence has been received since the last application was determined that there is any greater likelihood there are any EPS on the existing site. It is therefore still reasonable that no EPS are present and so an EPS offence is likely not to occur. It is therefore not necessary to consider the Conservation Regulations 2010 further. The use of the same informative would still be reasonable.

CONCLUSION: The proposals comply with the relevant national policies and guidance and policies within 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: Standard Time Limit
2. C.13.1: Development in accordance with approved plans/details 9317/P/010 A & 9317/P/011 B received and dated 22 March 2010.

Pre Development

3. C.5.1: Material to be submitted and agreed
4. C.4.1: Scheme of landscaping to be submitted and agreed (points b, f, g and h)

Post Development

5. C.4.2: Implementation of landscape planting
6. C.4.5: Retention and protection of trees and shrubs for the duration of development
7. C.7.9: Obscure glazing to first floor north facing flank window of dwelling
8. Permitted Development Rights withdrawn

The following Classes of Schedule 2 Part 1 of the Town and Country Planning (General Permitted Development Order) 1995 (or any order revoking or re-enacting that Order with or without modification) are withdrawn in respect of the development hereby permitted:-

Part 1

Class A - enlargement improvement or other alteration to the dwellings

Class B - enlargement consisting of an addition to the roofs

Class C - alteration to the roofs

No development of any of the above classes shall be constructed or placed on any part of the land the subject of this permission.

REASON: To enable the Local Planning Authority to fully consider the effects of development normally permitted by that order in the interests of residential and visual amenity in accordance with Policies D1 and D2 of the Welwyn Hatfield District Plan 2005.

9. C.8.18: Concurrent with the use of the access, visibility splay of 2.4m x 43m shall be provided and permanently maintained in each direction which there shall be no obstruction to visibility between 600m and 2m above carriageway level.

REASON: To provide adequate visibility for drivers entering or leaving the site in the interest of highway safety and free and safe flow of traffic in accordance with National Planning Policy Framework

10. C.8.9: Parking area to be laid out and surfaced with an approved scheme

11. All areas for parking and storage and delivery of materials associated with the construction of this development shall be provided within the site on land which is not public highway and the use of such areas must not interfere with the use of the public highway.

REASON: To ensure that the spaces are provided prior to the occupation of the units in the interests of highway safety in accordance with National Planning Policy Framework.

SUMMARY OF REASONS FOR THE GRANT OF PERMISSION:

The proposal has been considered against the National Planning Policy Framework and Development Plan policies SD1, GBSP2, H2, R3, R5, RA25, M14, D1, D2, D5, D7, D9, D8 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. The decision has also been made taking into account, where practicable and appropriate the requirements of paragraphs 186-187 of the National Planning Policy Framework and 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: None.

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