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## Appeal Decision

Site visit made on 7 June 2023

**by O S Woodward BA (Hons) MA MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 19 July 2023**

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**Appeal Ref: APP/P1940/W/22/3300083**

**Land to the rear of 76 and 78 Church Lane, Sarratt WD3 6HL**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
  - The appeal is made by Clovercourt (Sarratt) Ltd against the decision of Three Rivers District Council.
  - The application Ref 21/2896/OUT, dated 6 January 2022, was refused by notice dated 8 April 2022.
  - The development proposed is the development of up to 20 residential dwellings (Use Class C3) with new access to Church Lane and pedestrian link to existing public footpath.
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### Decision

1. The appeal is and planning permission is granted for the development of up to 20 residential dwellings (Use Class C3) with new access to Church Lane and pedestrian link to existing public footpath at Land to the rear of 76 and 78 Church Lane, Sarratt WD3 6HL, in accordance with the terms of the application Ref 21/2896/OUT, dated 6 January 2022, subject to the conditions set out in the Annex.

### Preliminary Matters

2. I have incorporated a reference to the proposed pedestrian link to an existing public footpath into the description of development because this provides a more comprehensive summary of the proposal than the description used on the application form.
3. The appeal is for outline planning permission with access applied for in full and all other matters reserved. An indicative site layout drawing has been provided. I have had regard to this as appropriate whilst reflecting its illustrative nature. It does not, therefore, form part of the formal drawing set for the appeal. Access has been applied for in full but the details of the proposed vehicular and pedestrian access are shown on a drawing which also includes the proposed layout, which is only applied for in outline. I deal with this as appropriate throughout my Decision.
4. The Development Plan for the area includes the Development Management Policies Local Development Document, adopted July 2013 (the DMP) and the Core Strategy, adopted October 2011 (the CS). The emerging Local Plan is still in the early stages of consultation and is likely to be the subject of modification, perhaps significantly. It therefore carries very limited weight.

5. The fifth reason for refusal is in relation to drainage. However, the appellant has since submitted additional information in relation to drainage and the Council has appointed a specialist consultant to review the drainage strategy. The Council considers that the drainage strategy would be acceptable, subject to control of the detail by condition, and it did not pursue this reason for refusal.
6. The third reason for refusal is, in part, because of the lack of a s106 Planning Obligation to secure the proposed affordable housing. The fourth reason for refusal is in relation to the failure to conserve, enhance or restore biodiversity in the absence of a completed s106 Planning Obligation to secure compensation for the proposed loss of biodiversity on the appeal site. The final s106 Planning Obligation, dated 6 December 2022 (the s106) responds to these concerns. The s106 secures:
  - all the proposed homes to be affordable housing, including six social rent and two shared ownership homes with the remaining mix to be confirmed;
  - a Biodiversity Net Gain (BNG) contribution of £27,000 towards the creation or enhancement of an area of grassland and its future management for 25 years in a location nearby to the appeal site; and,
  - a monitoring fee of £5,000 towards the Council's costs of monitoring compliance with the s106.
7. I am satisfied that the provisions of the s106 would meet the tests set out in Regulation 122 of the CIL Regulations 2010 (as amended) and the tests at Paragraph 57 of the National Planning Policy Framework (the Framework), and I have taken them into account. The fourth reason for refusal is not therefore a main issue for the appeal. The third reason for refusal also relates to the proposed affordable housing mix and this remains a main issue. I return to matters of weight and detail of the s106 throughout my Decision as appropriate.

## **Main Issues**

8. The main issues are:
  - the effect of the proposed development on the character and appearance of the area, including whether or not the proposal would conserve or enhance the landscape and scenic beauty of the Chilterns Area of Outstanding Natural Beauty (the AONB);
  - whether or not the proposal makes adequate provision for affordable housing;
  - whether or not the proposal would be inappropriate development in the Green Belt and, if so, whether or not the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations so as to amount to the very special circumstances necessary to justify it.

## **Reasons**

### *Character and Appearance*

9. The appeal site is accessed from a thin slither of land between existing housing fronting Church Lane before opening up into a wider area, behind the existing properties, which is currently open land. The existing development is linear along Church Lane, in a varied mix of detached, semi-detached and terrace dwellings and a mix of plot sizes.

10. Significant built form does not extend westwards behind the properties other than gardens and associated outbuildings and an area of equestrian land. However, there is a definitive boundary which runs along a footpath along the far north west boundary of the appeal site and also to the rear of the rear gardens and associated outbuildings and equestrian land. Beyond this boundary is an open field that is not a garden and does not contain ancillary structures or buildings. This field has a more countryside character and appearance compared to the ancillary domestic and partially developed character and appearance to the appeal site, rear gardens and equestrian area as described above.
11. There is a large existing house located in this rearwards area to the south west of the appeal site, but this is behind a small patch of woodland and does not visually link to the appeal site or the other garden and other mostly open land to the north east.
12. It is proposed to erect up to 20 homes, all within the rear, open part of the appeal site. The existing access would be altered and hard surfaced to provide vehicular access to the site. Layout is reserved but is likely to be similar in form to as depicted on the illustrative site layout, with homes lining a central 'spine road' and at the top of a turning head to the rear of the site. The proposal would inevitably result in a change in character and appearance to the appeal site, urbanising the site. It would also introduce relatively significant built form to the rear of the existing homes that face onto Church Lane.
13. However, the proposed encroachment of built form would be confined to the rearwards area that is currently domestic, rather than rural, in character and appearance. The proposed built form would not breach the rear boundary created by the mixture of hedges and trees and the footpath to the rear, or the wooded area to the west. In addition, this part of the village of Sarratt forms a 'U' shape running along The Green and then Dawes Lane. This, in combination with the wood to the west, creates a largely self-contained area. In addition, relatively thick boundary vegetation is proposed and the detail of this could be controlled at reserved matters stage. The urbanisation that would be caused by the proposal would therefore be relatively visually contained.
14. The proposed access would be relatively narrow but this is largely the same as existing and the narrowness would help to limit the views of the proposed homes from Church Lane, limiting their visual effect. The proposed homes would have smaller plot sizes and gardens than is prevalent along Church Lane but there is already a variety of house sizes, types and plot sizes along the Lane. Parking forecourts are proposed but this is a common feature to existing homes along Church Lane and is in accordance with the prevailing character and appearance in that respect, although I acknowledge that they would further urbanise the appeal site.
15. The appeal site lies adjacent to the AONB, to the north west. The AONB is characterised by a mixture of woodland, copses, pastures, fields, farms and villages. The proposal would not directly affect any of these characteristics. It would introduce an urbanising form of development to a currently largely open site but this would be largely visually separated from the immediately adjoining part of the AONB by the proposed boundary treatment, and from the wider AONB by the existing woodland and the rest of Sarratt village. In addition, the existing properties along Church Lane and their associated gardens and

outbuildings have already introduced domestic influences to the setting of this part of the AONB.

16. Overall, the proposal would cause harm to the character and appearance of the area because of its urbanising influence on a currently open site and the introduction of smaller plot sizes out of keeping with the prevailing, if varied, character of this part of the village. However, the harm would be limited because of the relatively visually contained location and that the proposed built form would be within the domestic rather than rural character area. For the same reason, the proposal would harm the landscape and scenic beauty of the AONB, but only to a limited degree.
17. The proposal therefore fails to comply with Policies CP1 and CP12 of the CS and Appendix 2 of the DMP which require high quality design. It fails to comply with Policy DM1 of the DMP which requires new residential development to protect the character of existing areas of housing from backland development and Policy DM7 of the DMP which seeks to protect the special landscape and scenic landscape character of the AONB. It also fails to comply with Paragraph 176 of the Framework, which seeks to conserve and enhance the landscape and scenic beauty in AONBs.

#### *Affordable Housing*

18. Policy CP4 of the CS states that affordable housing should be provided with an overall provision of 45% of the total housing and a split of 70% social rented and 30% intermediate units. Planning Practice Guidance (PPG) is that 25% of affordable housing provision should be First Homes<sup>1</sup> and that within the remaining 75%, social rented units should be at the same percentage as set out in the Development Plan<sup>2</sup>. Therefore, as applied to Policy CP4, the expected affordable housing split is 25% First Homes, 70% social rented and 5% intermediate.
19. The s106 secures all the proposed up to 20 homes to be affordable. Six would be social rented, two would be First Homes and one would be intermediate. The remaining homes, likely 11 units, would also be affordable but in a yet to be determined split in the control of the appellant. Therefore, at least 30% of the homes would be social rented. This is approximately the same as the 31.5% that would be the result if 45% of the total units were affordable and 70% of those were social rented. At least 10% of the total affordable homes would be First Homes. This is the equivalent of 22.2% if 45% of the total units were affordable ie 9 units.
20. Overall, the proposed affordable mix would not meet the requirements of PPG in relation to First Homes both because only 10% of the proposed homes would be First Homes and because even under an 'equivalent' calculation based on 45% affordable provision, the offer still falls short of the 25% required. The final split of social rented and intermediate units could also fail to meet the 70/30 split set out in Policy CP4. However, the mix is explicitly labelled as a 'guide' in Policy CP4 and can therefore reasonably be expected to change, based on the particular circumstances of each proposal. The overall affordable offer is strong, with all of the proposed units to be affordable housing and with a reasonable mix of First Homes, social rented and intermediate units already

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<sup>1</sup> Paragraph: 012 Reference ID: 70-012-20210524

<sup>2</sup> Paragraph: 015 Reference ID: 70-015-20210524

secured by the s106. The proposal therefore makes adequate provision for affordable housing and complies with Policy CP4 of the CS. It does not comply with PPG, but I place limited weight on this conflict in the context of the 100% affordable housing offer.

### *Green Belt*

21. It is proposed to construct up to 20 dwellings on the appeal site. New buildings are inappropriate development in the Green Belt unless they fall under a number of exceptions set out in Paragraph 149 of the Framework. Part f) of the paragraph is for limited affordable housing for local community needs under policies set out in the Development Plan. All the proposed homes would be affordable housing, as secured through the s106. No direct link is provided to local tenants in the s106 but a Nominations Agreement would need to be entered into and the s106 secures that this retains all nomination rights with the Council. It would therefore be within the control of the Council to secure the affordable housing for local community needs.
22. Policy CP4 of the CS states that there is an identified and pressing need for affordable housing in the District. The reasoned justification, at Paragraph 5.30, finds that, to completely satisfy affordable housing requirements, all future housing in the District to 2021 would need to be affordable. In addition, the Sarratt Housing Needs Assessment finds, at Paragraph 10, a need for 122 social rented and 48 intermediate affordable units within Sarratt in the Plan period of 2020 to 2046 and acknowledges that it is unlikely this need can be satisfied through conventional housing delivery and that exception sites might be required.
23. I do not have data on the most up-to-date situation but, given that the Council cannot demonstrate a five year supply of housing land, it is clear that delivery since the adoption of the CS would not have fully met this high level of need. I am therefore satisfied that the proposal would be for affordable housing for local community needs under policies set out in the Development Plan. No definition is provided in the Framework of 'limited' in relation to this exception. 20 homes are proposed and I view this as a relatively limited provision.
24. The proposal is therefore not inappropriate development in the Green Belt and complies with Policy CP11 of the CS, which has a general presumption against inappropriate development in the Green Belt. The proposal would fail to comply with Policy DM2 of the DMP which does not list the same exceptions to inappropriate development as set out at Paragraph 149 of the Framework. However, the DMP is inconsistent with the Framework and was adopted in 2013, significantly before the current version of the Framework which is therefore more up-to-date. I therefore place very limited weight on this conflict.

### **Other Matters**

25. Several letters of objection have been submitted, including from the Sarratt Parish Council and the Chiltern Society. The letters of objection raise various concerns in addition to those addressed above, in particular: harm to biodiversity; increase in traffic and harm to the free-flow of traffic on Church Lane; highway safety in particular because of the lack of pavements on Church Lane and sightlines from the proposed access; harm to archaeology; excessive scale for the village; impact on local infrastructure eg schools; an approval

would make it more likely that further future proposals along the road might come forward; and, there are alternative sites on brownfield land that are more appropriate.

26. I have taken all of these factors into consideration. The Highways Authority has confirmed the visibility at the access would be acceptable as would be the increase in traffic, and that the lack of footpaths on Church Lane would be successfully mitigated by providing a link to the existing footpath to the village to the rear of the site, as is proposed. I acknowledge that this alternative footpath would likely become muddy in rainy conditions but it provides a genuine alternative to Church Lane in most circumstances. Hertfordshire Ecology has confirmed that the proposal would have an acceptable effect on biodiversity, subject to control of details by conditions and a contribution for BNG to be secured. I acknowledge that even with these protective and compensatory measures there would be a loss to existing biodiversity on the appeal site and I have allowed for this within my planning balance below. These and the other matters are addressed in the Officer's Report, with the Council concluding that there would be no material harm in these regards. I must consider the proposal on its own merits and neither alternative sites for housing nor any future potential applications on other nearby land are before me for consideration.

### **Planning Balance**

27. It is common ground that the Council cannot demonstrate a five year supply of housing land and the proposal is for housing. Therefore, as set out at Paragraph 11d and Footnote 8 of the Framework, the policies which are most important for determining the application are out-of-date. Although I have found some harm to the AONB I have also found this harm to be limited and the proposal is not inappropriate development in the Green Belt. Therefore, there are no clear reasons for refusing the proposal related to areas or assets of particular importance. Consequently, the 'tilted balance' is engaged in accordance with Paragraph 11dii of the Framework.
28. I have found limited harm to the character and appearance of the area. I place moderate weight on this limited harm. I have also found limited harm to the landscape and scenic beauty of the AONB and I place great weight on this harm, limited though it is, as directed by Paragraph 176 of the Framework. There would be further harm from loss of existing biodiversity on the appeal site.
29. The proposal is for a 100% affordable housing scheme in an acceptable mix, even if not fully policy compliant, as set out above. In the context of the lack of a five year supply of housing land and an acknowledged and pressing need for affordable housing, I place substantial positive weight on the proposed provision of up to 20 affordable homes. There would be further economic benefits from the construction of the proposal and then from expenditure by future occupants on local services. The BNG as secured by the s106 would be of moderate positive weight.
30. Overall, it is clear that the benefits of the proposed affordable housing, economic benefits and BNG would outweigh the limited harm to the character and appearance of the area and the landscape and scenic beauty of the AONB and loss of existing biodiversity on the appeal site. This is despite my placing great weight on the harm to the AONB because the harm would be limited



whereas the benefits from the proposed affordable housing would be substantial. The proposal therefore clearly passes the 'tilted balance' test that any adverse impacts would significantly and demonstrably outweigh the benefits, and is in fact weighed in the opposite direction.

### **Conditions**

31. The Council suggested a number of conditions which I have considered and amended in the light of government guidance on the use of conditions in planning permissions.
32. In addition to the standard time limit and reserved matters conditions, a condition specifying the relevant drawings provides certainty. The conditions in relation to Japanese Knotweed, Ecology Management Plan, lighting and Preliminary Ecological Appraisal are necessary to protect and appropriately mitigate the effect of the proposal on biodiversity. The Construction Management Plan condition is necessary to protect the living conditions of neighbouring occupiers and with regard to highway safety and the free-flow of traffic. The drainage and access works conditions are necessary to ensure drainage is appropriately managed and to protect against surface water flooding. The access condition is necessary to ensure that adequate access and car parking is provided to protect highway safety and the free-flow of traffic. The fire hydrants condition is necessary to secure suitable fire hydrant provision with regard to fire safety.
33. The Japanese Knotweed, Ecology Management Plan, Construction Management Plan and Sustainable Drainage System conditions are necessarily worded as pre-commencement conditions, as a later trigger for their submission and/or implementation would limit their effectiveness or the scope of measure which could be used.

### **Conclusion**

34. For the reasons above, the appeal is allowed.

*O S Woodward*  
INSPECTOR

## **ANNEX: SCHEDULE OF PLANNING CONDITIONS**

- 1) Details of the appearance, landscaping, layout, and scale, (hereinafter called "the reserved matters") shall be submitted to, and approved in writing by, the local planning authority before any development takes place and the development shall be carried out as approved.
- 2) Application(s) for approval of the reserved matters shall be made to the local planning authority not later than 3 years from the date of this permission.
- 3) The development hereby permitted shall take place not later than 2 years from the date of approval of the last of the reserved matters to be approved.
- 4) The development hereby permitted shall be carried out in accordance with the following approved plans: 3090.CHLS.100 Rev A, 101 Rev C, 102, 2675-001 Rev C (in relation to access only), 002 Rev B (in relation to access only).
- 5) Prior to site clearance, a Method Statement outlining measures to prevent and control the spread of Japanese Knotweed during any operations shall have been submitted to, and approved in writing by, the local planning authority. This statement should adhere to the 'Environmental Management Guidance; Harmful Weeds and Invasive, Non-native Plants: Prevent them Spreading (NE & EA, 2015)'. Development shall proceed only in accordance with the approved details.
- 6) No development shall commence until an Ecology Management Plan (EMP) detailing how the development works, ecological enhancements and subsequent management shall be undertaken to achieve the target condition outlined in the Updated Biodiversity Metric Version 3 Assessment, dated 31 January 2022, has been submitted to, and approved in writing by, the local planning authority. The EMP shall thereafter be carried out as approved.
- 7) No development shall commence until a Construction Management Plan (CMP) has been submitted to, and approved in writing by, the local planning authority. Thereafter the construction of the development shall only be carried out in accordance with the approved CMP. The CMP shall include details of:
  - a) construction vehicle numbers, type and routing;
  - b) access arrangements to the site;
  - c) traffic management requirements;
  - d) construction and storage compounds (including areas designated for car parking, loading/unloading and turning areas);
  - e) siting and details of wheel washing facilities;
  - f) cleaning of site entrances, site tracks and the adjacent public highway;
  - g) timing of construction activities (including delivery times and removal of waste); and,
  - h) provision of sufficient on-site parking prior to commencement of construction activities.
- 8) No development shall commence until details of the Sustainable Drainage System, in accordance with the submitted details in the Flood Risk Assessment and Sustainable Drainage Strategy, dated November 2021,



and Sustainable Drainage Strategy Addendum No.1 Report No 21130-fce-XX-XX-RP-D-0002, have been submitted to, and approved in writing by, the local planning authority. The details shall include:

- a) an updated maintenance regime that is appropriate for a nominal 1l/s pumped discharge rate, including for regular inspection, maintenance and servicing of pumps and associated infrastructure for the lifetime of development; and,
- b) information on duty standby, telemetry and emergency responses required to ensure that exceedance flows do not impact off-site.

The drainage system shall thereafter be implemented and maintained in accordance with the approved details.

- 9) Prior to the installation of any lighting on the site, full details and specification of the proposed lighting shall be submitted to, and approved in writing by, the local planning authority. The specification shall include heights of any lighting columns, spillage diagrams and proposed hours of operation. The lighting shall thereafter be implemented only in accordance with the agreed details.
- 10) Prior to first occupation of the development, the proposed access works, internal access road, on-site car parking and turning areas shall be laid out, demarcated, surfaced and drained in accordance with the approved plan and retained thereafter.
- 11) Prior to first occupation of the development, full details of the proposed bird and bat boxes as set out in the Preliminary Ecological Appraisal, dated January 2022, by Ecology.com, including where they will be inserted, shall have been submitted to, and approved in writing by, the local planning authority. They shall be installed in accordance with the approved details prior to the first occupation of the development and maintained thereafter.
- 12) Prior to first occupation of the development, details of the implementation, adoption, maintenance and management of the Sustainable Drainage System as approved under Condition 8 shall have been submitted to, and approved in writing by, the local planning authority. The Sustainable Drainage System shall thereafter be implemented in accordance with the approved details.
- 13) Prior to first occupation of the development, should they be required, detailed proposals for fire hydrants serving the development as incorporated into the provision of the mains water services for the development, whether by means of existing water services or new mains or extension to or diversion of existing services or apparatus, shall be submitted to, and approved in writing by, the local planning authority. The development shall thereafter be implemented in accordance with the approved details.

===== END OF SCHEDULE =====