

Part I

Executive Member: Councillor Perkins

WELWYN HATFIELD BOROUGH COUNCIL  
DEVELOPMENT MANAGEMENT COMMITTEE – 9 NOVEMBER 2017  
REPORT OF THE EXECUTIVE DIRECTOR (PUBLIC PROTECTION, PLANNING  
AND GOVERNANCE)

6/2017/1751/OUTLINE

22 THE AVENUE, WELWYN, AL6 0PP

OUTLINE PLANNING PERMISSION FOR THE ERECTION OF UP TO 12  
DWELLINGS WITH ALL MATTERS EXCEPT ACCESS RESERVED TO INCLUDE  
DEMOLITION OF EXISTING DWELLING AND INDUSTRIAL BUILDING.

APPLICANT: Mr B Gray

AGENT: Mr C J Watts

(Welwyn West)

**1 Site Description**

- 1.1 The application site is located and accessed via The Avenue along an access track that leads past the former site of No 20 The Avenue, which now consists of three detached dwellings.
- 1.2 The site consists of two separate pieces of land, one of which is occupied by a detached dwelling, No. 22 The Avenue and the other part being occupied by a single storey building and hardstanding used for the storage of vehicle associated with the car sales use of this part of the site. The building is relatively long and thin running across the site, and single storey. It is of blockwork construction under a corrugated metal, mono pitched roof. However, it would appear that the car use being undertaken on this part of the site is unlawful. Previous applications at this site have described that building as a barn that has been used as a workshop. The site's lawful state is one predominately that is open, undeveloped and grassed with a small section of hardstanding leading from the access to the front of the building.
- 1.3 The site is adjacent to the A1(M) motorway which acts as the step change in the character of the area, with this part of The Avenue characterised by a variety of dwelling types and sizes on both sides of The Avenue in a linear form of development. Those properties are predominately detached with mature landscaped grounds and varying setbacks from The Avenue. There is evidence of backland development within the locality, most noticeably at The Crest and Roundwood Drive.

## **2     The Proposal**

- 2.1     This application seeks outline planning permission for the demolition of the existing dwelling and erection of up to 12 dwellings. The only matter for consideration at this stage is the access. The access would be gained from the Avenue via the existing vehicular access road that leads to a number of dwellings including, No. 22 The Avenue, which is part of the application site and proposed to be demolished. Additionally an existing industrial building on the site would also be demolished as part of the proposals.
- 2.2     Whilst scale and layout are not matters for consideration at this stage, the application description refers to 'up to 12 dwellings' and is accompanied by three alternative potential layout plans for either 8, 10 or 12 dwellings.
- 2.3     The proposed residential units on all three indicative layouts would follow a linear pattern with the properties facing towards the A1(M). The plan for 8 dwellings proposes 8 link detached dwellings (3 or 4 bed), the plan for 10 dwellings proposes 10 semi detached properties (3 or 4 bed) and the plan for 12 dwellings shows there would be eight (3 or 4 bed) properties with a block of four maisonettes. The proposed internal vehicular access road that would serve the properties would be to the front of those proposed dwellings and alongside the embankment to the A1 (M) with a turning head terminating this internal road.
- 2.4     An acoustic bank 2m in height with close boarded fence of 1.8m high is proposed which would run adjacent to the A1(M) embankment and extend the bund that has been previously constructed in part.

## **3     Reason for Committee Consideration**

- 3.1     This application is presented to the Development Management Committee because the development is a departure from the District Plan.
- 3.2     Cllr Cragg has also called the application in on the grounds that;  
  
*'It is in Green Belt land and outside the local plan'*

## **4     Planning History**

- 4.1     N6/1993/0235/OP: Outline application for demolition of outbuildings and erection of three detached dwellings and garage, and widening of access driveway. Refused
- 4.2     N6/2002/0718/FP: Erection of three detached dwellings. Refused
- 4.3     N6/2003/1516/FP: Conversion, alterations and extension to existing garage/stable block to form new two storey residential dwelling. Withdrawn.
- 4.4     N6/2006/0190/FP: Demolition of existing dwellings and outbuildings and erection of three detached dwellings, noise attenuation mound and associated landscaping and parking areas. Refused.

- 4.5 N6/2006/1640/FP: Demolition of existing dwellings and outbuildings and erection of two detached bungalows, noise attenuation mound and associated landscaping and parking areas. Refused
- 4.6 N6/2011/1234/FP: Demolition of existing barn and erection of 3 detached over 55s bungalows and erection of bund and acoustic fence
- 4.7 N6/2012/0443/FP: Demolition of existing barn and erection of bungalow.
- 4.8 N6/2014/0791/FP: Change of use of existing building to a single residential dwelling (Class C3) refused.

## **5 Planning Policy**

- 5.1 National Planning Policy Framework 2012
- 5.2 Welwyn Hatfield District Plan 2005
- 5.3 Draft Local Plan Proposed Submission 2016
- 5.4 Supplementary Design Guidance, February 2005
- 5.5 Supplementary Planning Guidance, Parking Standards, January 2004
- 5.6 Interim Policy for Car Parking Standards and Garage Sizes, August 2014
- 5.7 Supplementary Planning Guidance Planning Obligations

## **6 Site Designation**

- 6.1 The site lies within Green Belt as designated in the Welwyn Hatfield District Plan 2005.

## **7 Representations Received**

- 7.1 The application was advertised by means of site notice, press notice and neighbour notification letters. 15 letters of objection have been received from 18, 20A, 23, 24, 25, 26, 29, 30, 30B, 31, 36 The Avenue, 1, 4 Roundwood Close, 28, 2B Danesbury Lane, 2 The Crest and from North Herts District Council together with one letter of comment. Their comments may be summarised as:

- The proposal for 12 dwellings is far too many;
- The density would have an adverse effect on traffic along the Avenue;
- A smaller development would be in keeping with the proportion of plot sizes to other properties along The Avenue;
- Concerns with vehicle noise and noise pollution during construction;
- Concerns with the width of The Avenue and increase in number of vehicles using this;
- The area has exclusively detached dwellings;
- Semi detached houses and flats were not in keeping with the area;

- The development goes into woodland at the rear of the site;
- The development is on Green Belt land;
- Concerns with additional cars utilising the driveway which could cause congestion at the junction;
- Concerns with refuse trucks and refuse bins which do not go up this section of The Avenue;
- Concerns with potential power cuts as part of electricity works;
- The Avenue is a private road and funds fall short of the maintenance of the road;
- The road is narrow and 2 vehicles cannot pass;
- Concerns with the loss of established trees on site and will help absorb pollution and noise from the A1(M);
- The development could increase the safety risk to all users of the road; and
- Concerns with visitor parking from the proposed development as there are no parking areas on the proposed development;

7.2 North Herts District Council notes that the indicative plan indicates a form and layout of development uncharacteristic with the low density development of nearby plots in The Avenue.

## **8 Consultations Received**

8.1 The following have responded advising that they have no objections to the proposal:

- Highways England;
- Thames Water;
- Natural England;
- Hertfordshire County Council Planning Obligations;
- Herts Constabulary;
- Hertfordshire County Council Minerals and waste;
- Welwyn Hatfield Borough Council Client Services; and
- Hertfordshire Country Council Transport Programmes and Strategy.

7.2 Welwyn Hatfield Borough Council Environmental Health have raised concerns with the proposal and outline a lack of information has been provided with regard to noise and air quality. Additionally no surface water drainage has been provided.

7.3 Hertfordshire Fire & Rescue Service object to the development and outline there does not appear to be adequate to comply with British standards. Additionally the new section of the access road does not meet the required dimensions.

7.4 Lead Local Flood Authority object to the development due to a lack of a satisfactory surface water drainage assessment has been submitted and therefore the flood risks are unknown.

7.5 CPRE Hertfordshire object to the development and outline that they do not considered that a case has been made which outweighs the damage to the openness of the Green Belt.

7.6 The following have not responded:

- Welwyn Hatfield Borough Council Landscapes and Ecology Department;
- Welwyn Hatfield Borough Council Housing;
- NHS;
- HCC Public Health Department;
- East & North Herts Clinical Commissioning
- Herts Sports Partnership;
- NHS England GP Premises Office;
- Hertfordshire County Council Adult Care Services;
- Welwyn Hatfield Access Group;
- Hertfordshire County Council Social Services;
- Herts Playing Fields Association;
- Environment Agency;
- Affinity Water Ltd;
- Hertfordshire Ecology; and
- Herts & Middlesex Wildlife Trust.

## **9 Town / Parish Council Representations**

9.1 Welwyn Parish Council have a major objection to the development and state:-

*‘We believe that this is inappropriate development in the Green Belt and has previously been dismissed for development on appeal. We note that this piece of land was not considered in the new draft district plan’.*

## **10 Analysis**

10.1 The main planning issues to be considered in the determination of this application are:

- 1. The principle of development (NPPF, GBSP1, R1, H2, RA4 and RA10 of the District Plan and Policy SADM 1 and SADM 34 of the Emerging Plan)**
  - i) *Background***
  - ii) *Windfall Housing***
  - iii) *Whether the proposal would be inappropriate development in the Green Belt***
  - iv) *The effect on the visual amenities of the Green Belt***
  - v) *If the proposal is inappropriate development and if there is any other harm, if it would be clearly outweighed by other considerations***
- 2. The layout and overall design of the development and its impact to the character of the area (D1 to D10, SDG and NPPF)**
- 3. Impact to Neighbours and Living Conditions**

4. Highway Safety and Parking Provision (M14, D1, SPG and Council's Interim Policy for Car Parking and Garage Sizes)
5. Other Considerations
  - i) *Trees and Landscaping*
  - ii) *Protected Species*
  - iii) *Refuse*
  - iv) *Air Quality*
  - v) *Contaminated land*
  - vi) *Drainage and Flooding*
  - vii) *Lifetime Homes*

## 1. The Principle of Development

### *i) Background*

- 10.2 Part of the application site is occupied by an old single storey barn which is currently being used for car sales with hardstanding on the remaining part of the site which is being used as car storage for vehicles. The applicant outlines that that building is a lawful industrial/commercial building. However, the Council's records show no planning history referring to that building being granted planning permission or having a certificate of lawfulness to being used as a commercial building or indeed car sales. The Council have photographs of the site from 2014, which show the barn vacant and the land surrounding it being predominately grassed with a small section of hardstanding leading to that building from the access road.
- 10.3 Additionally in 2012 officer reports outline that the building has previously been used as a workshop and for light industry. Accordingly the car sales being undertaken from this building together with the hardstanding would appear to be unlawful. Officers consider that the site's lawful use would be from that shown in 2014 which is a redundant barn building surrounded by a grassed area of land and a small access road leading to the front of that building.
- 10.4 Accordingly whilst the applicant outlines that the site is previously developed land, the use as car sales is an unlawful use of the site and its lawful use would be one that is predominately open and undeveloped containing a single dwelling and single storey building.

### *ii) Windfall Housing*

- 10.5 Policies SD1 and H2 the Welwyn Hatfield District Plan 2005, when taken together, direct new residential development towards existing towns and settlements that are well-served with transport and facilities and are outside the Green Belt. Additionally Policy R1 directs development to land previously developed.
- 10.6 The site is in Green Belt and includes the dwelling of No. 22 The Avenue and its residential curtilage, together with an area of hardstanding on the land adjoining the property which includes a detached building. The National Planning Policy Framework (the Framework) defines previously developed

land as; *'Land which is or was occupied by a permanent structure, including the curtilage of the developed land, (although it should not be assumed that the whole of the curtilage should be developed) and any associated fixed surface infrastructure'*. This has a number of exclusions although, residential land in the Green Belt does not fall within any of those. Therefore the application site falls within the definition of being previously developed land, although a large proportion of the site is open and undeveloped.

10.7 The proposed development comes forward as windfall development where Policy H2 of the Welwyn Hatfield District Plan relates specifically to applications for windfall housing development and states that all proposals of this type will be assessed for potential suitability against the following criteria:

- (i) The availability of previously-developed sites and/or buildings;
- (ii) The location and accessibility of the site to services and facilities by transport modes other than the car;
- (iii) The capacity of existing and potential infrastructure to absorb further development;
- (iv) The ability to build new communities to support infrastructure and provide demand for services and facilities; and
- (v) The physical and environmental constraints on development of land.

10.8 The provisions of Policy SADM1 of the emerging Local Plan are also relevant. That Policy states that planning permission for residential development on unallocated sites will be granted provided that:

- i. the site is previously developed, or is a small infill site within a town or excluded village. In the Green Belt, Policy SADM 34 will apply;*
- ii. The development will be accessible to a range of services and facilities by transport modes other than the car;*
- iii. There will be sufficient infrastructure capacity, either existing or proposed, to support the proposed level of development;*
- iv. Proposals would not undermine the delivery of allocated sites or the overall strategy of the Plan; and*
- v. Proposals would not result in disproportionate growth taking into account the position of a settlement within the settlement hierarchy.*

10.9 The site is located a considerable distance from the nearest bus stop and local amenities – 0.65km and 1.2km respectively –and the first 600m of that walk would be along a private road with no footpaths. The site is poorly connected to alternative means of transport and the future occupants would have to be heavily reliant on the car. Additionally a large proportion of the site is open and undeveloped land and given the site's location in Green Belt, this is a constraint on development of this site. Therefore whilst there are no objections to the remaining criteria of policy H2, namely iii), and iv) the proposal fails to comply with Policy H2. Additionally the proposal would also fail to comply with criteria i) and ii) of Policy SADM 1.

10.10 With regard to Policy SADM 34, Development within the Green Belt, of the emerging Local Plan this is assessed below.

*ii) Whether the proposal would be inappropriate development in the Green Belt*

- 10.11 The site is located within the Metropolitan Green Belt as defined by Policy GBSP1 of the District Plan. As set out in part 9 of the National Planning Policy Framework (the Framework) the Government sets out its strategy to development in the Green Belt. Under Paragraph 89 of the Framework, the construction of new buildings should be regarded as inappropriate in Green Belt, other than in the case of specified exceptions. Policy SADM 34, which echoes Green Belt advice in the Framework is also applicable.
- 10.12 Whilst one of the exceptions includes a replacement building, the proposed development is for up to 12 residential units and therefore would not be a replacement building, contrary to the Framework. Additionally Policy RA4 of the District Plan refers to replacement dwellings although this policy, like the Framework, only allows the replacement on a one for one basis. Accordingly, the proposal because it is effectively seeking 12 dwellings for one, is also contrary to Policy RA4 of the District Plan.
- 10.13 Another of the exceptions listed in paragraph 89 refers to previously developed land. That criteria outlines that *'limited infilling or the partial or complete redevelopment of previously developed sites (brownfield land), whether redundant or in continuing use (excluding temporary buildings) which would not have a greater impact on the openness of the Green Belt and the purpose of including land within it than the existing development'*.
- 10.14 In this instance, whilst the site includes a dwelling and detached building, which is defined as previously developed land, there is a large proportion of the site that is open and undeveloped.
- 10.15 Nevertheless, paragraph 79 of the Framework outlines that *'the government attaches great importance to Green Belts. 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'*
- 10.16 There is no definition of openness in the Framework, but in the Green Belt context, it is generally held to refer to freedom from, or the absence of development.
- 10.17 With regard to the purposes of the Green Belt, paragraph 80 states that the Green Belt serves five purposes which are:
- To check unrestricted sprawl of large built up areas
  - To prevent neighbouring towns merging into one another
  - To assist in safeguarding the countryside from encroachment; and
  - To preserve the setting and special character of historic towns; and
  - To assist in urban regeneration, by encouraging the recycling of derelict and other urban land.



- 10.18 The site consists of an existing building which is a detached chalet bungalow and a single storey building. Whilst layout is a reserved matter, three indicative site plans have been provided which show possible layouts of the proposed houses. Whilst the plans are not definitive, the applicant is clearly seeking to establish the parameters of the number of units that would be considered acceptable and have submitted three plans to demonstrate the likely layout of up to 12 dwellings on this site. Therefore, whilst an outline application, these plans should be taken into consideration when assessing this proposal.
- 10.19 The indicative plans all show that the proposed dwellings would occupy a significantly greater site area, extending across the full width of the site, compared to the existing dwelling and building. Therefore the proposal would clearly have a greater impact on the openness of the Green Belt and its purpose, to safeguard the countryside from encroachment. Whilst the proposal would not impact on the other purposes of the Green Belt, as the purpose of this site in Green Belt is to safeguard the countryside from encroachment, the proposed development would not benefit from this exception in paragraph 89 in respect of the redevelopment of previously developed land, or indeed that addressing a replacement building. Accordingly the proposed development would materially impact on the openness of the Green Belt and the purposes of the Green Belt, adding further substantial harm to that identified above.
- 10.20 Whilst public views of the site are limited due to the vegetation along the road, this does not provide a case for permitting a reduction in openness of the Green Belt.
- 10.21 With regard to the proposed hardstanding and access route serving the individual dwellings, this would be an engineering operation. Paragraph 90 of the National Planning Policy Framework (the Framework) advises in bullet point two, that an engineering operation is not inappropriate in Green Belt provided it preserves the openness of the Green Belt and does not conflict with the purposes of including land in Green Belt.
- 10.22 The proposed access driveway is shown to extend alongside the embankment with the A1 (M). Whilst preserving the openness of the Green Belt as a result that the development would not be above ground, it would have an urbanising effect and would extend development onto land that is open and undeveloped, contrasting with the wider rural character of the area, which is considered inappropriate in the Green Belt.
- 10.23 No details of the proposed extension to the bund alongside the A1 (M) and 1.8m fence on top of that bund have been provided. However, that development would not fall within either paragraph 89 or 90 of the Framework and would be inappropriate development. No details have been provided as this application is outline, however given its location along the boundary of the site with the A1 (M) together with the tree cover along this part of the site, through appropriate design and landscaping, this could mitigate the harm of this part of the development to the Green Belt.

- 10.24 Accordingly the proposed development is not considered to fall within any of the exceptions identified in Paragraphs 89 and 90 of the Framework and is inappropriate development in the Green Belt, which by definition would result in harm and should not be approved except in very special circumstances. That view is supported by the applicant who outlines that the development is considered inappropriate development in Green Belt by definition. As outlined at paragraph 88 of the Framework, local planning authorities should ensure that substantial weight is given to any harm to the Green Belt.
- 10.25 The key issue therefore is whether very special circumstances exist to outweigh the harm caused, by reason of inappropriateness and any other harm, is clearly outweighed by other considerations.

*iii) Effect on the Visual Amenity of the Green Belt*

- 10.26 With regards to the visual amenity of the Green Belt, the Framework at paragraph 81 seeks to retain and enhance landscapes, visual amenity and biodiversity. The site is located within the landscape character area of 'Danesbury Settled Slopes' with key characteristics which includes scattered residential settlement in large garden plots. The site is largely undeveloped and contributes to the setting and open character of the immediate area. Existing residential plots within the immediate area are large in size with large garden areas. The proposed number of dwellings proposed which are shown on the indicative map would be significantly smaller than plots located within the immediate vicinity and it is considered it would fail to respect and relate to the character and context of the area contrary to Policies RA10 and D2. Those policies seek to ensure that development maintains and enhances the local landscape character of the area and respects and relates to the character and context of the area in which it is proposed.
- 10.27 In addition to the harm identified above, there would be further harm to the visual amenities of the Green Belt. However, it is considered that the weight that can be attributed to this would be moderate harm.

*iv) Very Special Circumstances*

- 10.28 Paragraph 87 of the NPPF outlines that as with previous Green Belt policy, inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. Paragraph 88 outlines that '*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*'.
- 10.29 It is accepted in case law that there is no prescribed list of what might constitute very special circumstances. It may be that a single aspect of a proposal may itself be a very special circumstance (VSC) sufficient to justify development or it may be that a number of circumstances may cumulatively amount to very special circumstances. As Lord Justice Pill said in *South Bucks District Council v Secretary of State for Transport, Local Government and the Regions* [2003] EWCA Civ 687, [2003] All ER (D) 250 (May): "It is of the essence of very special circumstances that the applicant establishing

them is in a very special category.” However, by their nature the existence of very special circumstances must relate to a particular site.

10.30 The applicant has put forward considerations which they consider very special and outweigh the harm. These include;

1. That the development of this site for up to 12 dwelling would help the Council meet its objectively assessed housing needs, which at present it has not been able to meet;
2. The adopted 2005 District Plan is out of date and not aligned with the NPPF, particularly in terms of meeting current and projected housing needs and the Council's 5 year housing supply requirements. The proposed replacement Local Plan is not yet in place and has yet to be considered at a Hearing;
3. That granting planning permission would not set a precedent and would not require the revising of the current or the proposed Green Belt boundary from where it sits currently;
4. The site is previously developed land and brownfield in use and character. The detached dwelling could be extended further without planning permission and have a large ancillary building in its curtilage. The site also contains a large commercial industrial building with a large parking area. The proposed development would remove those uses from the site and would improve the local environment for the surrounding residents.
5. There would not be a requirement to revise the Green Belt boundary. The site is bordered by trees and the A1(M). The current development proposed would appear as a sensible and natural continuation of the line of existing dwellings on both side of the access road. The site is surrounded by substantial built developments, some of which have been granted planning permission in 2010, even though those new detached dwellings on land at 18 and 20 The Avenue are also in the Green Belt, a major motorway, the A1(M) and other roads and built developments on The Avenue and in The Crest to the rear.
6. The site is surrounded by trees and the A1(M) and is not visible from any public view point other than the front of 20-16 The Avenue. The development would therefore not cause harm to the openness of the Green Belt. In similar circumstances in the Green Belt around Cheltenham an appeal Inspector came to a similar view in relation to a land located site in that Green Belt which was surrounded by roads and other dwellings.
7. That the site does not fulfil the fundamental aim, or any of the stated purposes in the NPPF and 2005 District Plan of designating Green Belts.
8. That the development of the site for a reasonably scaled and appropriate residential scheme would not harm the openness, visual amenities and rural character of the Green Belt to the contrary its development would be

in keeping with the character and scale of development in the surrounding area;

- 10.31 These are considered in turn and an assessment will be made as to how much weight can be attributed to them as very special circumstances in the determination of this application.

1. Assessed Housing Need

- 10.32 The applicant puts forward the argument that the Council are not in a position to meet their objectively assessed housing need and the proposal would help to address this. It is acknowledged that the emerging Local Plan's housing target is not as high as the objectively assessed housing need due to the constraints of the borough (such as infrastructure and Green Belt). Nevertheless, the Council has a 5 year housing supply against the housing target set out in the emerging Local Plan and is in a position to meet this housing target. Accordingly, whilst the proposal would bring about an increase of housing provision which clearly is a benefit to the proposal, this also has to be weighed against the constraints of the site, in that the land is Green Belt. Note should be given to the recent Supreme Court judgement (Suffolk Coastal DC v Hopkins Homes Ltd) which held that a Local Plan policy to protect the countryside from development (such as those covering development in the Green Belt) is not a policy for the supply of housing and therefore is not out of date and should be accorded full weight.

- 10.33 Accordingly, whilst the provision of housing is a benefit, it does not outweigh the harm identified to the Green Belt, which is a constraint of the land which carries substantial weight.

2. Out of Date Local Plan

- 10.34 As referred to above, the Framework explains that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. The Framework goes on to state that the construction of new buildings is inappropriate in the Green Belt, subject to certain exceptions. One exception allows for the replacement of a building provided the new building is in the same use and not materially larger than the one it replaces. This approach is reflected in the current District Plan 2005 that lists a limited number of development types that will be given permission in the Green Belt and is fully in alignment with the Framework. Additionally, emerging policy SADM 34 is in alignment and echoes Green Belt policy within the Framework which has also been used to assess this application.

- 10.35 Accordingly the proposed development has been assessed against policy which is up to date and reflects policy within the Framework.

3. Revision of the Green Belt boundary and permission would not set a precedent

- 10.36 Paragraph 83 of the Framework outlines that alterations to the Green Belt boundaries should only be altered in exceptional circumstances and through

the Local Plan process only and not ad-hoc planning permissions. Therefore, if permission was granted for this development, there would be no immediate revision of the Green Belt boundaries.

10.37 The proposal is clearly inappropriate development where there do not appear to be any very special circumstances to warrant an approval. Accordingly, an approval would set a precedent whereby other owners of sites in Green Belt would be submitting applications in the Green Belt for inappropriate development.

10.38 As outlined in paragraph 79 of the Framework, the Government attaches great importance to Green Belts. 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. Therefore there is a strong presumption against inappropriate development and it should only be approved except in very special circumstances.

#### 4. Improvements to the Local Environment

10.39 Whilst the site is previously developed land a large proportion is open and undeveloped. Paragraph 89 of the Framework only allows development on such land where it would maintain the openness and the purposes of including land in the Green Belt in safeguarding the countryside from encroachment. As referred to above, the proposal would materially impact on both of these causing substantial harm to the Green Belt.

10.40 Although the immediate area would benefit by the removal of the building on this site, that building is small with a low ridge height. This would be an improvement to the site so far as the immediate vicinity is concerned, but its removal would not make an otherwise unacceptable development acceptable. Additionally, whilst the development would result in the removal of the existing car sales use and hardstanding associated with that use, this is unlawful development where the Council have an outstanding enforcement case against its removal and therefore this provides no weight in the determination of this application.

10.41 Additionally, the applicant makes reference to the ability to extend the existing residential property or to erect an ancillary building in the garden. In this instance, no such certificate of lawfulness application has been submitted and it is unknown the extent that would be increased. However, this would include only an increase in size of built form to that part of the application site, and not the remaining part of the application site. In any event, it is clear from this proposal that there is no intention to increase the size of the existing dwelling, given the applicant proposes to demolish it. Therefore this provides no weight in favour of this proposal.

#### 5. Sensible site for Housing Development adjacent to other houses

10.42 The applicant outlines that there would not be a requirement to revise the Green Belt boundary, however as referred to above, the Green Belt boundaries should only be altered through the preparation or review of the

Local Plan. In this instance, the Council are currently within examination of our emerging plan where Green Belt boundaries have already been proposed. No alterations have been proposed to the Green Belt in this location. Although clearly, this is a strategic issue that will be tested at the forthcoming examination of that plan.

- 10.43 The applicant outlines that this would be a sensible continuation of built development in this location. However, the immediate vicinity of the application site is separated from the main settlement of Oaklands and Mardley Heath by the A1 (M) motorway and has open countryside to the north and west, which is designated as Green Belt. The A1 (M) forms a strong, logical and clearly defined and defensible boundary for the Green Belt in this part of the District. Development surrounding the site and extending further north and west largely comprises of large residential properties spread out in a relatively scattered pattern that has no obvious urban edge. Green Belt boundaries based upon site boundaries, rather than the A1 (M) would be weaker and not logical due to land surrounding it being largely developed.
- 10.44 The District Plan advises that the important role of the Green Belt in the district is preventing towns and settlements from merging into one another, preserving the countryside and concentrating development into its urban areas. As outlined in a previous Inspector's appeal decision at this site that Inspector referred to the site as; - *'The site is not isolated from the main area of Green Belt, although it is located towards the inner boundary. This is where the greater pressure for development exists and so it is where the purpose of the Green Belt in safeguarding the countryside from encroachment is vital'*.
- 10.45 Therefore, although Green Belts often contain areas of attractive landscape, the quality of the landscape at the application site is not intrinsic. However this is not relevant to the inclusion of land within a Green Belt or its continued protection. In this instance, the application site helps the Green Belt in this part of the Borough to maintain its openness and to assist in safeguarding the countryside from encroachment. Additionally any built development at this site, because of its scale the perception of the reduction of gap would be on the north side of the A1 (M) and would be clearly visible.
- 10.46 Therefore the site is designated as Green Belt and whilst the site was promoted for housing throughout the consultation of the emerging Local Plan, the site has not been considered suitable for allocation. Therefore the development of this site would not be a sensible continuation of development and this attracts no weight.
- 10.47 The applicant refers to planning permission which has been granted for dwellings at Nos. 18 and 20 The Avenue. The fact that other units have been approved in close proximity to the application site is no justification for further approvals. Applications should be considered on their own merits. Nevertheless, it is noted that the proposal at No. 18 was for a replacement dwelling and was not materially larger than the dwelling on the site. It was found to represent appropriate development. With regard to No. 20, this was for the erection of a replacement dwelling and two new dwellings. Whilst it

was found to be inappropriate development, it was considered that there were very special circumstances to warrant an approval of this application and that the proposed development would not have a detrimental impact on the openness of this part of the Green Belt and would not be harmful to the visual interest of its surroundings and spatial pattern of development within the area, circumstances that do not apply to the application site in this case.

## 6. No Harm to Green Belt

10.48 The applicant outlines that the site is well screened and therefore limits the impact on the openness. However openness is not about whether a development can be seen. It is about its physical presence. In this instance, as referred to above, the extent of development would be significantly more than what is currently on the site, in particular to the north of the existing industrial building where that site is lawfully meant to be open and undeveloped. Accordingly, whilst the site is screened, this does not overcome the harm identified.

10.49 The applicant has also submitted an appeal for a site at Cheltenham. However no details of that proposal have been submitted and this provides no weight to this scheme. Nevertheless that appeal decision refers to the appeal site as being a 'landlocked site' where in terms of achieving the purposes it is totally ineffective. The Inspector found that development upon it would not cause harm to the openness of the Green Belt.

10.50 This application site would appear to be different to that appeal site. This site is not landlocked with open fields to the north and west. The A1(M) to the east acts as a boundary to land within the Green Belt. The purposes of the Green Belt are set out and as referred to above, the site has the purpose to safeguard the Green Belt from inappropriate development. It has been found that the proposed development cause harm to both the openness and the purposes of the Green Belt. Accordingly that appeal decision provides no weight to this application.

## 7. The fundamental aim of the Green Belt

10.51 As referred to above, paragraph 79 outlines that the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open'. Additionally the Green Belt serves five purposes as stated above.

10.52 The extent to which the use of land fulfils these objectives is however not itself a material factor in the inclusion of land within a Green Belt, or in its continued protection. For example, although Green Belts often contain areas of attractive landscape, the quality of the landscape is not relevant to the inclusion of land within a Green Belt or its continued protection. The purposes of including land in Green Belts are of paramount importance to their continued protection, and should take precedence over the land use objectives.

10.53 At present the site contains one house and has a lawful use for a small industrial unit. Replacement by up to 12 residential units would have a

significant impact on the openness of the Green Belt. Additionally whilst the site is in open Green Belt and is not isolated from the main area of Green Belt, although located towards the inner boundary, this is where the greater pressure for development exists and so it is where the purpose of the Green Belt, in safeguarding the countryside from encroachment is vital.

- 10.54 Accordingly, the site fulfils the fundamental aim of Green Belt policy, which the proposal would cause substantial harm to.

8. The development would not harm the openness, visual amenities and rural character of the Green Belt

- 10.55 As referred to above in the Council's assessment, it is considered that the proposal is inappropriate and harms the openness, purposes and visual amenities of the Green Belt. Paragraph 87 outlines that '*As with previous Green Belt policy, inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances*'

Conclusion

- 10.56 It is apparent that the applicant considers the site should have been allocated as a site allocation in the emerging Local Plan. However, this site has been found to be unsuitable for development in the Council's evidence base and was not selected for allocation accordingly. Whilst this will be tested at the forthcoming examination of the Local Plan, this assessment is considered to be sound by the Council.
- 10.57 By their nature the existence of very special circumstances must relate to a particular site. It is considered that the considerations put forward by the applicant do not individually or collectively clearly outweigh the harm identified as a result of the proposed development such as to justify the development on the basis of very special circumstances. Additionally it is not apparent that there are any other considerations.
- 10.58 Accordingly the proposed development, which is inappropriate development and causes harm to the openness, purposes and visual amenities of the Green Belt, where there are no apparent very special circumstances, conflicts with the Framework and policies RA10, H2 and D2 of the District Plan and Policies SADM1 and SADM 34 of the emerging plan.

**2. Impact to Character**

- 10.59 Policies D1 and D2 of the District Plan apply which aim to ensure a high quality of design and to that development respects and relates to the character and context of the locality.
- 10.60 In addition to the above, the Framework sets out the view of the Government in respect of good design, indeed this is noted as forming a key aspect of sustainable development as it can contribute positively to making places better for people. In particular paragraph 64 outlines that '*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’.*

- 10.61 The character of The Avenue consists of varying detached properties on both sides of The Avenue, exhibiting a variety of size, form and architectural styles. The site is in a low density residential area within Green Belt with properties sited on large plots with significant spacing between properties. This results in an open and spacious locality.
- 10.62 This application is in outline where access is the only matter for consideration. Information concerning the scale and appearance of the proposed residential units has not been provided at this stage. Nevertheless, the proposed plans show three indicative layouts which all propose a linear form of properties which would be likely to be either link detached, semi-detached and could include a block of four maisonettes. Therefore whilst layout is not a matter for determination at this outline stage, the indicative layouts are an essential component of this outline proposal indicating how up to 12 residential units could possibly be laid out on site. Although the plans do not express these details to be indicative, approximate or maximums that might be materially changed when the reserved matters were submitted. Nevertheless, as a matter of basic geometry, to arrange up to 12 residential units on the site are unlikely to be designed so as to be materially different from that shown on the drawings. Therefore, an assessment of the acceptability of this indicative layout is necessary.
- 10.63 Whilst the proposed development would form a continuation of built development along The Avenue, the proposed properties and plot sizes shown on all three layouts would be significantly smaller than those found along The Avenue. This would be contrary to the characteristics of the locality and is considered would erode the area’s well established open and spacious character. As a result of the number of properties proposed on the site, which is considerably greater than the scale of the existing properties immediately adjacent to the site, it would subsequently result in development close together with minimal separation distances and limited space to the boundaries of the application site. This would make the development appear cramped in relation to the wider context of the locality and out of character with the more spacious character of its immediate surroundings. It is considered that the proposed number, of up to 12 dwellings, would create a poorly conceived development and would result in a form of development that is out of keeping with the established character of the area.
- 10.64 The Council’s adopted guidance for gardens do not have specific standards, however it outlines that gardens should be functional and useable in terms of their width, depth, shape and orientation. The gardens for the dwellings at would meet the minimum requirement, however the garden sizes are small with a minimal depth which could be argued would not be commensurate with the size of the properties which further contributes to the general intensity and cramped form of development.
- 10.65 The appearance and scale of dwellings is not a matter for consideration and no details have been submitted.

- 10.66 Overall, the proposed number of dwellings is considered to be of a poor quality and would not adequately respect and relate to the overall character of the established area. Accordingly objections are raised with regard to Policies D1 and D2 of the District Plan, the SDG and the Framework.

### **3. Residential Amenity**

- 10.67 With regard to neighbour amenity, this is considered in two parts, firstly the impact on adjoining occupiers and secondly the impact of the scheme on future occupiers of the proposed dwellings.
- 10.68 Whilst layout, scale and appearance are reserved matters, indicative layouts have been provided showing the proposed locations of up to 12 residential units. The proposed development, by virtue of its positioning on a large plot and its indicative layout, is not considered to impact unduly on light or be overbearing to existing adjoining properties. With regard to privacy, windows positions would need to be located in appropriate locations to avoid potential overlooking, however this would be dealt with at the reserved matters stage.
- 10.69 With regard to the impact of the scheme on future occupiers of the proposed dwellings, the proposed indicative layout shows that a reasonable relationship would be able to be provided.
- 10.70 Policy R19 of the District Plan requires proposals to be refused if the development is likely to generate unacceptable noise or vibration from other land uses. The Council has an obligation therefore to ensure that the development proposed does not suffer from a high level of noise, which is considered particularly important as the site is proposed to be predominantly residential.
- 10.71 The site is located immediately to the west of the A1 (M) which carries high levels of traffic and noise is noticeable on the site. A noise report has been prepared. However this report does not relate to the current application and Professional Planning Guidance on Planning and Noise has been produced since this document was written. Accordingly, an assessment of the likely impact of noise to future occupants of this proposed scheme is unable to be provided and the proposal is contrary to Policies D1 and R19 of the District Plan.
- 10.72 Accordingly, an assessment of the effects from the A1 (M) of the proposed development is unable to be provided to ensure that future occupants have reasonable living conditions, contrary to the aims of policies D1 and R19 of the District Plan and the Council's SDG.

### **4. Highway Safety and Parking Provision**

- 10.73 The proposed development would take its vehicle access from The Avenue, via the existing driveway and would include an internal road that would serve the proposed dwellings and turning head whereby all vehicles on the site could enter and exit within a forward gear. Whilst the existing access would be insufficient to serve the level of development proposed, the proposals

include localised improvements to provide a consistent width of 4.1m along its length. Adequate visibility would also be able to be provided on site.

10.74 Whilst Hertfordshire Fire & Rescue Service (HFRS) object to the development their comments are based on an initial scheme submitted for the proposed access which has now been amended to enable greater width to enable vehicles to pass and repass. HCC Transport Programmes and Strategy confirm that the revised scheme is acceptable although no comments at the time of writing this report have been received from HFRS. Any late comments received will be reported at the Committee meeting.

10.75 With regard to parking, given this is an outline application, no details of the size of properties has been provided at this stage. This would be dealt with at the reserved matters. However the applicant has outlined that the level of car parking proposed through garages and external hard standings would meet the Council's adopted car parking standards.

## **5. Other Material Considerations**

### *i) Trees and Landscaping*

10.76 There are no existing trees on the site although the boundary edges have vegetation. No arboricultural information has been supplied with the application. However the indicate layout of the proposed houses would be positioned such that a suitable amount of vegetation around the boundaries of the site can be retained on site. Conditions would need to be attached to any approval to ensure that landscaping was condition.

10.77 Accordingly no objections are raised with regard to policies D1 and D8 of the District Plan which refer to a high quality design and landscaping to be incorporated into new development.

### *ii) Protected Species and Ecology*

10.78 The applicant has undertaken a recent survey of the roofs of both the existing buildings on the application site and that survey is submitted as part of this application. It demonstrates that neither roof has evidence that it has been used by bats.

10.79 The existing site and development is such that there is not a reasonable likelihood of European Protected Species (EPS) being present on site nor would an EPS offence be likely to occur, as defined within the Conservation Regulations. It is therefore not necessary to consider the Conservation Regulations 2010 or (Amendment) Regulations 2012, National Planning Policy Framework (paragraphs 118-119), Natural Environment & Rural Communities (NERC) Act 2006 (section 40), Wildlife and Countryside Act 1981 as well as Circular 06/05.

### *iii) Refuse*

10.80 Bin provision would need to be provided for each residential unit within the plot with a proposed collection point at the entrance of the site, which can be

conditioned. No objections have been raised from Welwyn Hatfield Borough Council Client Services.

*iv) Air Quality*

- 10.81 Given the location of the proposed development which is close to the A1 (M) where air quality is likely to be an issue, no air quality impact assessment has been submitted to enable the Local Planning Authority to be able to assess the impact of this development and ensure that a reasonable standard of air quality is provided for future residents, contrary to Policy R18 of the District Plan.

*v) Contaminated Land*

- 10.82 Policy R2 of the District Plan outlines that development should only be approved on land that is known to be contaminated where it has been adequately proven that the development or land would not pose an unacceptable risk to public health or the environment. Therefore in the event of an approval it is recommended that a condition requesting a contamination report is attached to any permission.

*vi) Drainage*

- 10.83 The Lead Local Flood Authority have objected to the proposed development due to the lack of a satisfactory surface water drainage assessment being submitted. A surface water drainage assessment is vital to ensure that there are no flood risks resulting from the proposed development. That view has also been supported by Environmental Health.
- 10.84 Accordingly the proposed development is contrary to Policy R7 of the District plan and the Framework.

*v) Lifetime Homes*

- 10.85 In accordance with Policy H10, the proposed development would need to ensure that a proportion of the proposed units would be built to lifetime homes standard ensuring the creation of accessible housing for all members of the community. This would be an appropriate proportion in line with Policy H10 and would be conditioned in the event of an approval.

## **1. Planning Obligations**

- 10.86 S106 of the Town and Country Planning Act 1990 (as amended) enables land owners/developers to enter into an obligation with the relevant local planning authority to achieve specified aims which may include:
- (a) restricting the development of the land in any specified way; requiring specific operations to be carried out in, on, under or over land;
  - (b) requiring the land to be used in any specified way, or
  - (c) requiring a sum or sums to be paid to the authority on a specified date or dates periodically.'

10.87 The NPPF sets out that Local Planning Authorities should consider whether otherwise unacceptable development could be made acceptable through the use of conditions or planning obligations. Planning obligations should only be sought where they meet all of the following tests set out in Regulation 122 of the Community Infrastructure Levy Regulations 2010 (as amended):

- Necessary to make the development acceptable in planning terms
- Directly related to the development; and
- Fairly and reasonably related in scale and kind to the development.

10.88 The Council has not adopted a Community Infrastructure Levy and therefore where a planning obligation is proposed for a development, The Community Infrastructure Levy Regulations 2010, which came into effect from 6 April 2010, has introduced regulation 122 which provides limitations on the use of planning obligations.

10.89 Regulation 123 introduces further limitation and these relate to the use of planning obligations for the purposes of infrastructure. Where a local authority has a published list for infrastructure projects, the authority may not seek contributions through a legal agreement through S106 of the 1990 Act. In this case, the authority does not have a published list and therefore it is appropriate to seek contributions through a S106 legal agreement. This would be in accordance with policies M4 and IM2 of the District Plan.

*i) Affordable Housing*

10.90 The proposed development seeks permission for up to 12 residential units and in accordance with the adopted District Plan, the Council would not expect this number of houses to include the provision of affordable housing. However Policy SP 7 of the emerging Local Plan requires that for a proposal of 11 or more new dwellings, 30% of the houses should be affordable. Given the advanced stage of this plan, whilst not adopted this is a material consideration that holds significant weight. Accordingly, it is considered reasonable that 30% affordable housing is sought to meet the needs of local people who cannot afford to occupy dwellings generally available on the open market.

10.91 Welwyn Hatfield housing department have outlined that in relation to the tenure our evidence base outlines that half of the affordable units should be at social rent and half for shared ownership.

10.92 The applicant has not proposed any affordable housing and therefore if a scheme of over 11 units is proposed, the proposal would fail to comply with this emerging policy.

*10.93 ii) Hertfordshire County Council Contributions*

10.94 Confirmation has been received from Hertfordshire County Council that financial contributions are required to fund various Hertfordshire County Council projects in order to mitigate the impacts of the development including:-

Youth Services - £542 (Maximum)

Library Services - £2,146 (Maximum)

Fire hydrants

10.95 *iv) Welwyn Hatfield Contributions*

10.96 WHBC Client Services have found the proposal to be acceptable, subject to S106 contributions being provided to cover the costs of bin provision specifically for up to 12 proposed dwellings, amounting to a maximum of £900. This refuse contribution would not be subject to the pooling system, as this is specific to the proposed development.

10.97 In accordance with the Council's Planning Obligations SPD, a monitoring fee of up to a maximum of £179.4 will also be required and payment will be required to be made prior to commencement of the development.

10.98 These requested contributions are considered to be reasonable and to pass the necessary Community Infrastructure Levy 122 tests as the works are considered necessary to make the development acceptable, directly related to the development and fairly and reasonably related in scale and kind to the development.

10.99 *v) Conclusion*

10.100 The applicant has not submitted a S106 agreement and it is considered that it is not possible to secure the legal agreement by way of condition. Given the requested contributions are entirely relevant and proportionate to the impact of the proposed development, it is considered that the Council would be acting unreasonably and failing its sustainability objectives were it to not obtain the contributions. Accordingly, it is considered that the proposal is contrary to Policies IM2 and M4 the District Plan and Policy SP 7 of the emerging Local Plan and the Framework.

## 11 **Conclusion**

11.1 The site is located on land designated as Metropolitan Green Belt, where the proposed development does not fall within any of the relevant criteria of paragraphs 89 or 90 of the Framework and would constitute inappropriate development, causing harm to the openness and purposes of including land in the Green Belt, which is by definition harmful to the Green Belt. Additionally further harm is caused to the visual amenity of the Green Belt. No very special circumstances appear to exist which outweigh the potential harm of the development to the Green Belt.

11.2 The proposed development, by virtue of the number and layout of houses proposed would fail to reflect the spacious character of the locality and would represent an over intensive form of development that would appear cramped and would fail to maintain or enhance the character or appearance of the area.

- 11.3 In addition, there is a lack of information provided to enable an assessment of the proposal with regard to noise and air quality from the A1(M) and Great North Road. Furthermore, the LLFA raise an objection to the lack of an assessment of the flood risks from the proposal.
- 11.4 Furthermore, no completed S106 agreement has been submitted to meet the sustainability aims of the plan.
- 11.5 The proposed development however would be served by suitable parking provision, and would be acceptable with regard to highway safety. Additionally landscaping and vegetation proposed is acceptable and it is considered that it is unlikely that an EPS offence will occur.

## **12 Recommendation**

- 12.1 It is recommended that planning permission be refused for the following reasons
1. The proposed development, which is located on land designated as Metropolitan Green Belt, would constitute inappropriate development, causing harm to the openness and purposes of including land in the Green Belt, which is by definition harmful to the Green Belt. Additionally further harm is caused to the visual amenities of the Green Belt. No very special circumstances appear to exist which outweigh the potential harm of the development to the Green Belt by reason of inappropriateness, and the other harm identified. Accordingly, the proposal fails to comply with the National Planning Policy Framework 2012 and policies H2, RA10 and D2 of the Welwyn Hatfield District Plan 2005, Policies SADM 1 and SADM 34 of the Draft Local Plan Proposed Submission 2016 and the Council's Supplementary Design Guidance.
  2. The number of new dwellings proposed would represent an over intensive form of development that would appear cramped and would be poorly related to the established open and spacious character of the immediate area failing to maintain or enhance its character or appearance. Accordingly the proposed development fails to comply with the National Planning Policy Framework and Policies D1 and D2 of the Welwyn Hatfield District Plan 2005 and the Council's Supplementary Design Guidance.
  3. The site is located immediately to the west of the A1 (M) and the submitted noise impact assessment, which is out of date and does not relate to the current application, does not enable the Local Planning Authority to be able to make a fully informed assessment of whether a reasonable level of amenity would be provided for the future occupants of this proposed development. Additionally no air quality assessment has been submitted to accompany the application to enable the Local Planning Authority to assess whether a reasonable level of amenity would be provided for the future occupants of this proposed development. Accordingly the proposed development is contrary to the National

Planning Policy Framework and Policies R18, R19 and D1 of the Welwyn Hatfield District Plan.

4. No Flood Risk Assessment has been provided to enable the Local Planning Authority to fully assess the flood risks arising from the proposed development and to demonstrate that the development would not increase the flood risk elsewhere. Accordingly the proposed development poses a threat to the quality of both surface and /or groundwater, contrary to Policy R7 of the Welwyn Hatfield District plan and the National Planning Policy Framework
5. The applicant has failed to satisfy the sustainability aims of the plan and to secure the property planning of the area by failing to ensure that the development proposed would provide a sustainable form of development in mitigating the impact on local infrastructure and services which directly relate to the proposal and which is necessary for the grant of planning permission. The applicant has failed to provide a planning obligation under Section 106 of the Town and Country Planning Act 1990 (as amended). The Local Planning Authority considers that it would be inappropriate to secure the required financial and non-financial contributions by any method other than a legal agreement and the proposal is therefore contrary to the National Planning Policy Framework and Policies IM2, M4 and H7 of the Welwyn Hatfield District Plan 2005 and Policy SP 7 of the Draft Local Plan Proposed Submission 2016.

### **Summary of reasons for refusal of permission**

The decision has been made taking into account material planning considerations and where practicable and appropriate the requirements of paragraphs 186-187 of the National Planning Policy Framework (see Officer's report which can be inspected at these offices).

### **REFUSED DRAWING NUMBERS**

<b>Plan Number</b>	<b>Revision Number</b>	<b>Details</b>	<b>Received Date</b>
AT176-01		Site Location Plan	7 August 2017
AT176-02A		Site Access	9 October 2017
AT176-12		Proposed Site Plan	7 August 2017
V461/200	B	Proposed Access	9 October 2017
AT176-10			
AT176-10		Proposed Site Plan	7 August 2017
AT176-11		Proposed Site Plan	7 August 2017

*Sarah Smith, (Planning)*  
Date 19 October 2017





Council Offices, The Campus  
Welwyn Garden City, Herts, AL8 6AE

Title: 22 The Avenue Welwyn

Scale: DNS

Date: 2017

Project: DMC Committee

Drawing Number:  
6/2017/1751/OUTLINE

Drawn: Baras Mast-Ingle

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