

## 6. APPEALS UPDATE

### A. LODGED

4/00871/18/FUL      Simco Homes Ltd  
DEMOLITION OF EXISTING DWELLING AND CONTRUCTION  
OF THREE DWELLINGS  
AMBERLEY, HEMP LANE, WIGGINTON, TRING, HP23 6HF  
[View online application](#)

4/02770/18/FHA      Mr & Mrs Dix  
FIRST FLOOR SIDE EXTENSION WITH REAR DORMER  
WINDOW  
18 HUNTERS CLOSE, BOVINGDON, HEMEL HEMPSTEAD,  
HP3 0NF  
[View online application](#)

### B. WITHDRAWN

None

### C. FORTHCOMING INQUIRIES

None

### D. FORTHCOMING HEARINGS

None

### E. DISMISSED

4/01095/18/FUL      Margro Properties Ltd  
DEMOLITION OF EXISTING BUNGALOW AND  
CONSTRUCTION OF 2 NEW SEMI-DETACHED DWELLINGS  
AND 7 TERRACED DWELLINGS WITH NEW ACCESS ROAD  
TO TERRACES (AMENDED SCHEME)

50 - 53 CHESHAM ROAD, BOVINGDON, HEMEL HEMPSTEAD,  
HP3 0EA

[View online application](#)

#### Decision

1. Appeal A is allowed and planning permission is granted for the 'Demolition of existing bungalow at 50 Chesham Road. Construction of 2No new semi-detached properties at 50 Chesham Road. Construction of 7No new terraced properties in the land to the rear of 50-53 Chesham Road. New access road to terraces at 50 - 53 Chesham Road, Bovingdon, HP3 0EA in accordance with the terms of the application, Ref 4/01779/17/FUL, dated 5 July 2017, subject to the conditions in the attached schedule.

2. Appeal B is dismissed.

#### Preliminary Matters

3. As identified above, there are two appeals on this site. The application that is the subject of Appeal B was submitted to overcome the Council's concerns in relation to the application that is the subject of Appeal A. The of dwellings would be the same but despite the description of development on the application form being the same, the layout and form of development in Appeal B would be different. I have considered each proposal on its individual merits. However, to avoid duplication, I have dealt with the two schemes together except where otherwise indicated.

4. I have taken the address for Appeal B from the appeal form rather than the application form. The address on the second application form was different to the first so I have altered this in the interests of consistency. In doing this, I am satisfied that the interests of the main parties have not been compromised.

5. During the course of Appeal A, the revised National Planning Policy Framework (the Framework) has been published. Both main parties were given an opportunity to comment on any relevant implications for the appeal, and any comments received have been taken into account.

#### Application for costs

6. An application for costs in relation to both appeals was made by Margro Properties Limited against Dacorum Borough Council. This application is the subject of a separate Decision.

#### Main Issues

7. The main issues common for both appeals are the effect of the proposal on:

- i) The living conditions of the occupants of neighbouring properties; and
- ii) The character and appearance of the area.

8. However, a further main issue concerning Appeal A only is:

- iii) The effect of the proposal on highway safety.

#### Reasons

##### Living conditions

9. Both proposals would introduce new houses to the rear of the properties which front onto Chesham Road. Although elevated views would be provided from first floor windows, the majority of the housing would be centrally located within the site and would look over the central parking court and turning area. In this respect, the hardstanding would act as a buffer between the proposed dwellings and the houses that would be retained, namely Nos 51, 52 and 53 Chesham Road.

10. However, in Appeal A, plots A and B would be located closer to the side boundaries of Nos 49 and 54 Chesham Road and therefore provide the opportunity to overlook these adjacent gardens. I note in the evidence that I have before me that Appeal A was amended during the consideration of the application. This would have the result of ensuring that the first floor bedroom windows would face into the site and not

perpendicular to the shared side boundaries. In doing this, the proposal would protect the privacy levels of the adjacent houses.

11. Despite this amendment, the layout for Appeal B would be materially different. Although it splits the terrace of 7 houses into two smaller terraces of 3 and 4 houses, other than the most southerly house, the first floor windows dwellings face towards the houses which front Chesham Road. As a consequence, the end of terrace house that would be located adjacent to the north eastern side boundary of the appeal site would be afforded unhindered and elevated views into the adjoining garden of No 54. Due to this level of overlooking, Appeal B would give rise to a significant and demonstrable loss of privacy for the occupants of this property.

12. The location of this house and its relationship with No 54 would not be dissimilar to that of 31 Apple Cottages. However, the house would be closer to this adjacent building. Consequently, the proposed dwelling would enable closer views of the rear garden and the window to window distance would be less. Accordingly, the level of overlooking would be greater than that caused by the existing neighbour.

13. In contrast, the separation distances would be sufficient to ensure that the gable end of the houses adjacent to the north eastern boundary in both appeals would be located away from the living accommodation provided by No 54. Furthermore, due to the length of No 54's garden, the majority of the space would remain open. As a consequence, although the buildings would be very noticeable from the neighbouring garden, in the same way that 31 Apple Cottages is, the proposals would not have an overbearing effect on No 54. Furthermore, the size of the garden of No 49 would ensure a suitable buffer between the proposals. Consequently, the proposals would also not be overbearing when viewed from that property.

14. The proposals would introduce vehicular movements on land beyond the main Chesham Road frontage. However, the turning areas are centrally located in both proposals with driveways for 2 cars abutting the side boundaries. Due to the contained nature of the vehicular movements and small number of cars close to the side boundaries as well as their proximity from the adjacent houses, I am satisfied that exhaust fumes would not compromise existing living conditions.

15. For the reasons identified above, I conclude that Appeal B would harm the living conditions for the occupants of No 54 Chesham Road with particular regard to privacy. It would therefore not accord with Policy CS12 of the Core Strategy 2006 – 2031 (2013) (CS) which seeks development which avoids loss of privacy to surrounding properties.

16. Conversely, I find that Appeal A would not harm the living conditions for the occupants of neighbouring properties. Consequently, it would accord with Policy CS12 of the CS for the reasons given above.

Character and appearance

17. In both appeals, the site would be established by the amalgamation of the rear gardens which currently serve Nos 50 – 53 Chesham Road. The gardens would represent a large parcel of land albeit land that would be located beyond the Chesham Road frontage. Despite this, when stood within the rear gardens that make up the appeal site, the houses located within Apple Cottages can be readily seen. Many of these houses either back on to or present their gable end to the rear gardens of the houses in Chesham Road. The presence of the houses is therefore an established and defining part of the character and appearance of the area. 18. The proposals would introduce development beyond the Chesham Road frontage. However, the houses would be of a comparable bulk and mass with the houses in Apple Cottages and would be experienced in the context of this existing development. As a consequence, the proposals would be complementary to Apple Cottages and would not appear as an incongruous addition to the rear of the principal houses that front Chesham Road.

19. Both appeal proposals would also introduce a central access road with a turning

head and parking area to serve the proposed dwellings. This would result in a marked change to the appearance of the site and would introduce a significant amount of hardstanding. However, it is apparent from the submitted evidence that thought has been given to landscaping through the planting of new trees and hedges, and use of hard surfacing materials. I am therefore satisfied that subject to a landscaping scheme, which could be secured by way of a suitably worded condition, the proposal would not be dominated by the turning area and car parking spaces.

20. I therefore conclude that both Appeal A and Appeal B would not harm the character and appearance of the surrounding area. Consequently, the proposal would accord with Policies CS11 and CS12 of the CS. Taken together, these policies seek, amongst other things, development which respects adjoining properties in terms of layout, site coverage, landscaping and amenity space and which avoid large areas dominated by car parking.

#### Highway safety

21. Appeal A would provide parking spaces to the front of proposed plots 50a and 50b but they would not allow a vehicle to turn on the site. Although No 51 allows vehicles to run on site and enter the highway in a forward gear, I observed on my site visit that many houses that front onto Chesham Road have access points which do not allow for the turning of vehicles. In this respect, the appeal proposal would be comparable with many of its neighbouring properties.

22. Chesham Road is relatively straight and I have not been provided with any evidence that suggests that the existing access arrangements of those houses without turning areas have caused highway safety concerns. Although highway safety has been raised as a concern by many interested parties, there is nothing substantive in the evidence before me that indicates that the proposed access arrangement would harm highway safety. Furthermore, I note that the Highway Authority raised no objection to the proposal in relation to highway safety.

23. The proposal would provide 2 car parking spaces for each dwelling and 1 additional space adjacent to the turning area. I note the concerns from neighbouring properties in relation to the limited amount of visitor parking but I have no substantive evidence to support these concerns and therefore give this matter very limited weight.

24. Based on the evidence that I have before me, I conclude that the proposal would not harm highway safety. Consequently, the proposal would accord with Policy CS12 of the CS which requires development to provide a safe and satisfactory means of access for all users. Other Matters and Conditions

25. The proposals would increase the number of people living in the area but no evidence has been put before me to suggest that the infrastructure of the area could not sustain this or that the development in some way should mitigate against any impact. Without evidence to substantiate this comment, I give this matter very limited weight in my assessment. Furthermore, the courts have taken the view that planning is concerned with land use in the public interest, so that the protection of purely private interests, such as the impact of a development on the value of a neighbouring property, could not be a material consideration. I also have no evidence before me to substantiate concerns in relation to drainage and consequently give very limited weight to these concerns.

26. The site may be close to the Green Belt but it is not in the Green Belt. This therefore has no bearing on the proposals. Finally, although construction traffic may result in some disturbance, this would be temporary and I am satisfied that the appeal site is large enough to be managed in a manner that would limit any effects to an acceptable level.

27. Given my findings in relation to Appeal A, conditions are necessary in the interests of clarity and precision to establish the time limit for the implementation of development as well as the approved drawing numbers. To ensure a suitable external appearance for the proposed dwellings, a condition is also necessary in relation to material samples.

28. Conditions 4 and 5 are necessary in the interests of highways safety and condition 6 is necessary to ensure that the development is served by adequate refuse storage and parking spaces. Conditions 7, 8, 9 and 10 are necessary to ensure that the development is landscaped to a high quality and that existing planting that is to be retained is suitably protected. Conditions 11 and 12 are necessary due to the potential for contamination at the site. Finally, a condition is necessary in relation to an external lighting scheme in the interests of safety. The conditions that require work from the Appellant prior to the commencement of development have been agreed.

29. The Council suggested a condition to remove permitted development rights for the proposed dwellings as well as requiring the demolition of the existing extension that serves No 51 Chesham Road. The reason given was to safeguard the character and appearance of the area and ensure that there is the correct balance between the amount of development and land retained for gardens. The Council also made reference to Policy CS12 of the CS however this policy does not require minimum garden sizes. Although Appendix 3 to the CS suggests that gardens should have an average minimum depth, it also states that a range of garden sizes should be provided for different family compositions, ages and interests. For the reasons identified above, I am satisfied that Appeal A would entirely complement the character and appearance of the area and it would fulfil the aims of Appendix 3. There is therefore no clear justification to remove these national development rights as required by the Framework.

30. The Council also suggested conditions in relation to electric vehicle charging facilities, electronic communication equipment and secure cycle storage facilities. However, these matters are not required by policies within the Development Plan and as such, lack the justification for being imposed. therefore consider that they are not necessary to make an unacceptable development acceptable. Accordingly, I have not imposed them.

#### Conclusion

31. For the reasons identified above, Appeal A is allowed.

32. In relation to Appeal B, the proposal would demonstrably harm the living conditions of the occupants of No 54 Chesham Road and this would result in a conflict with the development plan. That the proposal would not harm the character or appearance of the area neither alters nor outweighs this conclusion and therefore, Appeal B is dismissed.

### **COST AWARDS –PARTIAL COSTS AWARDED AGAINST THE COUNCIL**

#### **Decision**

1. The application for a full award of costs in relation to Appeal A is allowed in the terms set out below.

2. The application for an award of costs in relation to Appeal B is partially allowed in the terms set out below.

#### **Reasons**

3. The Planning Practice Guidance advises that costs may be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.

4. The applicant suggests that in both appeals, the Council have prevented or delayed development which should clearly have been permitted, having regard to the development plan, national policy and other material considerations. It is also suggested that the Council failed to produce evidence to substantiate the reasons for refusal, and that vague, generalised or inaccurate assertions about the impact of the proposal were made and which were unsupported by any objective analysis.

5. As identified in the appeal decisions, Appeal A and Appeal B shared main issues in relation to the character and appearance of the surrounding area and in relation to living conditions. Highway safety was also a main issue for Appeal A although not for Appeal B.

6. The Council have provided a very brief and limited case in relation to both appeals. They have referred to relevant local plan policies and have also provided succinct minutes from the relevant committee meeting. However, the evidence that they have provided to articulate their concerns in relation to the main issues lacks detail. Indeed, the statements of case merely state the concerns of the Council rather than expressing them in a clear way. To my mind the Council has therefore failed to substantiate its reasons for refusal in relation to Appeal A and its concerns about the effect of Appeal B on the character and appearance of the area. Moreover, it has offered only vague and generalised assertions about the proposals' impacts, which are unsupported by objective analysis.

7. Despite this, based on the totality of the evidence before me, and as a consequence of my site visit, I have found harm in relation to the living conditions of the occupants of No 54 Chesham Road and Appeal B failed to succeed in relation to this point alone.

8. However, in relation to all other matters for both appeals, the Council have clearly failed to produce evidence to substantiate their reasons for refusal. Consequently, I find that unreasonable behaviour by the Council resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has been demonstrated. Therefore, in relation to Appeal A a full award of costs is justified and in relation to Appeal B, a partial award of costs is justified.

#### **Costs Order**

9. In relation to Appeal A and in exercise of the powers under section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990 as amended, and all other enabling powers in that behalf, IT IS HEREBY ORDERED that Dacorum Borough Council shall pay to Mr Marcus Grossman, on behalf of Margro Properties Limited, the costs of the appeal proceedings described in the heading of this decision; such costs to be assessed in the Senior Courts Costs Office if not agreed.

10. The applicant is now invited to submit to Dacorum Borough Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

11. In relation to Appeal B and in exercise of the powers under section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990 as amended, and all other enabling powers in that behalf, IT IS HEREBY ORDERED that Dacorum Borough Council shall pay to Mr Marcus Grossman, on behalf of Margro Properties Limited the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in responding to concerns in relation to the effect on the character and appearance of the surrounding area; such costs to be assessed in the Senior Courts Costs Office if not agreed

12. The applicant is now invited to submit to Dacorum Borough Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

4/01390/18/FUL

Mr Sterling

DEMOLITION OF EXISTING GARAGE AND SIDE/REAR EXTENSIONS AND CONSTRUCTION OF TWO-STOREY SIDE EXTENSION AND PART SINGLE, PART TWO-STOREY REAR EXTENSION; CONVERSION FROM SINGLE DWELLING INTO PAIR OF SEMI-DETACHED PROPERTIES (TOTAL 2 UNITS) GREYMANTLE, HEMPSTEAD ROAD, BOVINGDON, HEMEL HEMPSTEAD, HP3 0HF

[View online application](#)

### Decision

1. The appeal is dismissed and planning permission is refused.

#### Preliminary Matter

2. The application was presented to the Council's planning committee on 6 September 2018 at which the Council resolved to refuse planning permission. The subsequent decision was issued on 17 September 2018 but the appeal was lodged on 16 September 2018. The appeal is therefore a result of the Council not giving notice of its decision within the statutory determination period.

3. Following the Council's decision on the application that led to this appeal, revisions to the National Planning Policy Framework contained were published in February 2019 (the revised Framework). However, no changes have been made to the content directly relevant to the subject matter of this appeal. Consequently, I consider that no prejudice would occur to any parties as a result of me taking the revised Framework into account in my assessment of the appeal's merits.

#### Application for costs

4. An application for costs was made by Ben Sterling against Dacorum Borough Council. This application is the subject of a separate Decision.

#### Main Issues

5. The main issues are the effect of the proposal on: i) the living conditions of the occupants of the property known as Ivydene, with particular regard to privacy; and ii) highway safety. Reasons

#### Living conditions

6. The side elevation of the appeal building that faces towards Ivydene has two windows located at first floor level. The larger window serves a bathroom and the smaller window serves a bedroom. The proposal would remove the smaller window from the side elevation and retain the larger window which, due to internal alterations, would serve a bedroom.

7. Due to its size and location and due to the use of clear glass, I observed that the bathroom window allows for clear and unhindered views towards Ivydene. In particular, the window provides elevated views into the dining room window as well as clear views of the patio area to the side of the house. The window also enables clear and elevated views of the rear garden. The window therefore demonstrably harms the privacy of the occupants of Ivydene.

8. The smaller window also allows for views towards Ivydene. However, due to the

considerably smaller opening, these are more contained. Consequently, views of the garden are more oblique and are therefore significantly less intrusive than those provided by the larger window.

9. Based on the evidence that I have before me, when the Council was considering the proposal, the bathroom window was glazed with obscure glass. Although the change from obscure to clear glass may have been an act of permitted development, the Appellant has not provided any information in relation to when the work took place.

10. Despite this, regardless of whether or not the clear glass in the opening is lawful, the use of the room served by the window as a bedroom as opposed to a bathroom would be materially different. Mutual privacy in a bathroom is more likely to be a requirement of occupants than in a bedroom. As a consequence, I consider that a bedroom window with clear glass would give rise to a greater level of overlooking than a bathroom window with clear glass.

11. I therefore conclude that the proposal would significantly and demonstrably harm the living conditions for the occupants of Ivydene, with particular regard to privacy.

Consequently, the proposal would fail to accord with Policy CS12 of Dacorum's Local Planning Framework, Core Strategy 2006 – 2031 (2013) (CS) which seeks, amongst other things, development which avoids loss of privacy to surrounding properties.

#### Highway safety

12. The appeal site is currently served by an entry and exit arrangement which enables vehicles to enter and leave the site in a forwards gear. The proposal would utilise these existing access points but would subdivide the front of the site. This would limit the ability for vehicles to turn on the site which may result in them reversing onto the highway.

13. Many houses that front onto Hempstead Road have access points and driveways which prevent the turning of vehicles on the site. In this respect, the appeal proposal would be comparable with its neighbouring properties and I have not been provided with any substantive evidence that suggests that these access points are causing problems for highway safety. The Highway's authority raised no objection to the proposal in relation to highway safety and based on the evidence that I have before me, I have no reason to conclude differently.

14. The proposal would provide 2 car parking spaces for each dwelling which would be less than the maximum parking standards required by the Council. The Council suggest that these maximum standards should be applied as minimum standards but no clear and compelling evidence has been provided to support this assertion.

15. Therefore, based on the evidence that I have before me, I conclude that the proposal would not harm highway safety. Consequently, the proposal would accord with Policy CS12 of the CS which seeks, amongst other things, development which provides a safe and satisfactory means of access for all users.

#### Other Matters

16. An appeal for the erection of 2 new dwellings on land to the rear of the existing dwelling has recently been dismissed<sup>1</sup>. The main parties were given an opportunity to comment on any implications of that decision for this appeal and I have taken the Appellant's response into account. From the evidence that I have before me, I am satisfied that the 2 proposals are not dependent on each other. Accordingly, the appeal decision has had no bearing on my consideration of this proposal.

17. The Appellant also submitted additional information in relation to the housing land supply position of the Council in the form of a delegated officer report on a different site in Dacorum Borough. This report is not dated but it would appear to have been produced within the last 6 months. The Council were invited to comment on this matter but no response was received. Notwithstanding this, the recently published Housing Delivery Test results indicate that the Council has provided more than its required number of houses over the last 3 years.

18. In situations where a Council cannot demonstrate a 5 year supply of deliverable housing sites, paragraph 11 of the Framework is engaged, as explained in Footnote 7. This states that where the most important policies for determining the proposal are out-of-date, planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.

19. The case in relation to housing supply has not been proved. However, even if I were to conclude that the Council could not demonstrate a 5 year supply of deliverable housing sites, the benefits that one dwelling would bring, such as the creation of construction jobs, additional local expenditure and the provision of an additional dwelling to increase local supply would be limited. I therefore consider that the adverse impacts on the living conditions for the occupants of Ivydene would significantly and demonstrably outweigh the limited benefits of the proposal.

Conclusion

20. Whilst I have found that the proposal would not harm highway safety, it would significantly and demonstrably harm the living conditions of the occupants of Ivydene, with particular regard to privacy. Accordingly, and for the reasons identified above, the appeal is dismissed and planning permission is refused.

### **COSTS AWARD- partial award of costs against the council**

Decision

1. The application for an award of costs is partially allowed in the terms set out below.

Reasons

2. The Planning Practice Guidance advises that costs may be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.

3. The original application was recommended to the Council's planning committee for approval but subsequently refused for two reasons. The Appellant suggests that the Council refused the application despite having no valid grounds to do so.

4. The Council have provided a brief case in relation to the effect on the adjacent house known as Ivydene. However, it articulates the concern and for the reasons identified in the appeal decision, I too have concerns in relation to the effect of the proposal on the living conditions of the occupants of this property. I am therefore satisfied that in relation to this issue, the Council have not caused the appellant to incur unnecessary or wasted expense in the appeal proposal.

5. In relation to highway safety, the Council determined the application contrary to the advice of their professional advisors. Whilst the Council is not duty bound to follow the advice of its professional officers, if it is to reach an alternative decision, this has to be based on clear evidence to substantiate that reasoning. The Council have not produced any evidence to articulate how the proposal would harm highway safety and I observed on my site visit that the proposal would be comparable to many other examples of access points along the highway.

6. The appellant has therefore been put to unnecessary expense in addressing a refusal reason that the Council has not produced evidence to substantiate. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has been demonstrated and that therefore, a partial award of costs is justified.

Costs Order

7. In exercise of the powers under section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990 as amended, and all other enabling powers in that behalf, IT IS HEREBY ORDERED that Dacorum Borough

Council shall pay to Ben Sterling, the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in responding to the highway safety concerns; such costs to be assessed in the Senior Courts Costs Office if not agreed.

8. The applicant is now invited to submit to Dacorum Borough Council to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

4/02725/17/FUL

Mr Doolan

CONSTRUCTION OF A DETACHED ONE BEDROOMED, TWO STORY DWELLING WITH ASSOCIATED PARKING.

REAR OF 19 DOWLING COURT, HEMEL HEMPSTEAD, HP3 9NF

[View online application](#)

#### Decision

1. The appeal is dismissed.

#### Main Issues

2. The main issues are:

- the effect of the proposed development on the character and appearance of the area; and
- whether or not the proposed development would provide a satisfactory living environment of future occupiers with particular regard to provision of private amenity space.

#### Reasons

##### Character and appearance

3. The appeal site lies at the end of the cul-de-sac of Dowling Court which consists of two storey properties in a linear arrangement along the street. The pattern of development of other properties along the same side of the street and on Deaconsfield Road which lies behind the appeal site is characterised by detached or semi-detached dwellings with long rear gardens.

4. The proposed building would be situated close to the boundary with 21 Dowling Court as well as the boundary to the rear of the site. It would also be located forward of the prevailing building line, close to the boundary at the front of the site, leaving only a small area to the side for parking and private amenity space. Although there are a few examples of other properties in the area with small rear gardens, given the close proximity of the proposed building to three boundaries and the small private amenity space, the proposed building would appear overly large for the size of the plot such that it would appear discordant in an area generally characterised by large rear gardens. 5. While acknowledging that the proposed development would be of a higher density compared to Nos 1, 2 and 3 Deaconsfield Road and 12 to 26 Seaton Road, the appellant maintains that the difference would be marginal. However in terms of character and appearance, the proposed development would lack a front and rear garden, providing only a modest area to the side of the property adjacent to a parking space for private amenity space. The above mentioned dwellings on the other hand, have substantial front and rear gardens which follow the prevailing pattern of development, and give the appearance of being appropriately sized within their plots.

6. For the foregoing reasons the proposed development would be significantly at odds with and thereby harmful to the character and appearance of the area, and would therefore conflict with Policy CS12 of the Core Strategy 2006-2031 and Appendix 3 of

the Dacorum Borough Local Plan 1991-2011 (LP) which among other things require developments to respect adjoining properties in terms of site coverage, scale and amenity space.

Living conditions

7. The appellant acknowledges that the private garden space of the proposed dwelling would be some 4.1m by 7.0m, which would fall substantially short of the recommended average minimum depth of 11.5m, as stated in Appendix 3 of the LP. This Appendix allows smaller private amenity spaces for small starter homes and infill developments, and since the proposed dwelling would be a 1 bedroom property located between existing dwellings, the provision could apply in this case. The proposed development would also be in close proximity to open land, which LP Appendix 3 also states as a criterion for allowing smaller gardens.

8. However the proposed private amenity space would be bound to one side by the 2 storey flank wall of the proposed dwelling, and on 2 sides by the existing fences which are approximately 1.8m high. Given the constrained size of the garden, these boundary conditions would result in a private amenity space that would feel confined and somewhat oppressive, particularly given that it would be smaller than most of the gardens of adjacent properties.

9. While LP Appendix 3 allows for smaller garden sizes in certain circumstances, the extent of the shortfall in this case would be significant, leading to unsatisfactory living conditions for occupants of the proposed dwelling. While vehicles are unlikely to be parked at the site permanently, the use of the parking space for private amenity space would still result in a garden depth that would fall substantially short of the recommended minimum depth stated in LP Appendix 3.

10. For the reasons given above, the proposed development would not provide a satisfactory living environment of future occupiers with particular regard to provision of private amenity space, and would conflict with Appendix 3 of the LP which seeks garden areas that are functional and compatible with the surrounding area.

11. While CS Policy CS12 deals with adjoining properties in terms of amenity space and other living conditions, it does not mention private amenity space of proposed developments. This Policy is therefore not directly relevant in this regard, such that I have not found the proposals to conflict with it. Other Matters

12. While the main parties accept that the proposed development would not harm the living conditions of neighbouring occupiers with regard to light, outlook and privacy, the lack of harm in this regard is a neutral matter that does not carry weight in favour of the development, and as such has not altered my decision.

Conclusion

13. For all the reasons given above, the appeal is dismissed.

## **F. ALLOWED**

4/01779/17/FUL

Margro Properties Limited  
DEMOLITION OF EXISTING BUNGALOW AND  
CONSTRUCTION OF 2 NEW SEMI-DETACHED DWELLINGS.  
CONSTRUCTION OF 7 NEW TERRACED DWELLINGS ON  
LAND TO THE REAR OF 50-53 CHESHAM ROAD. NEW  
ACCESS ROAD TO TERRACES  
50 - 53 CHESHAM ROAD, BOVINGDON, HEMEL HEMPSTEAD,  
HP3 0EA  
[View online application](#)

## Decision

1. Appeal A is allowed and planning permission is granted for the 'Demolition of existing bungalow at 50 Chesham Road. Construction of 2No new semi-detached properties at 50 Chesham Road. Construction of 7No new terraced properties in the land to the rear of 50-53 Chesham Road. New access road to terraces at 50 - 53 Chesham Road, Bovingdon, HP3 0EA in accordance with the terms of the application, Ref 4/01779/17/FUL, dated 5 July 2017, subject to the conditions in the attached schedule.

2. Appeal B is dismissed.

## Preliminary Matters

3. As identified above, there are two appeals on this site. The application that is the subject of Appeal B was submitted to overcome the Council's concerns in relation to the application that is the subject of Appeal A. The of dwellings would be the same but despite the description of development on the application form being the same, the layout and form of development in Appeal B would be different. I have considered each proposal on its individual merits. However, to avoid duplication, I have dealt with the two schemes together except where otherwise indicated.

4. I have taken the address for Appeal B from the appeal form rather than the application form. The address on the second application form was different to the first so I have altered this in the interests of consistency. In doing this, I am satisfied that the interests of the main parties have not been compromised.

5. During the course of Appeal A, the revised National Planning Policy Framework (the Framework) has been published. Both main parties were given an opportunity to comment on any relevant implications for the appeal, and any comments received have been taken into account.

## Application for costs

6. An application for costs in relation to both appeals was made by Margro Properties Limited against Dacorum Borough Council. This application is the subject of a separate Decision.

## Main Issues

7. The main issues common for both appeals are the effect of the proposal on:

- i) The living conditions of the occupants of neighbouring properties; and
- ii) The character and appearance of the area.

8. However, a further main issue concerning Appeal A only is:

- iii) The effect of the proposal on highway safety.

## Reasons

### Living conditions

9. Both proposals would introduce new houses to the rear of the properties which front onto Chesham Road. Although elevated views would be provided from first floor windows, the majority of the housing would be centrally located within the site and would look over the central parking court and turning area. In this respect, the hardstanding would act as a buffer between the proposed dwellings and the houses that would be retained, namely Nos 51, 52 and 53 Chesham Road.

10. However, in Appeal A, plots A and B would be located closer to the side boundaries of Nos 49 and 54 Chesham Road and therefore provide the opportunity to overlook these adjacent gardens. I note in the evidence that I have before me that Appeal A was amended during the consideration of the application. This would have the result of ensuring that the first floor bedroom windows would face into the site and not perpendicular to the shared side boundaries. In doing this, the proposal would protect the privacy levels of the adjacent houses.

11. Despite this amendment, the layout for Appeal B would be materially different.

Although it splits the terrace of 7 houses into two smaller terraces of 3 and 4 houses, other than the most southerly house, the first floor windows dwellings face towards the houses which front Chesham Road. As a consequence, the end of terrace house that would be located adjacent to the north eastern side boundary of the appeal site would be afforded unhindered and elevated views into the adjoining garden of No 54. Due to this level of overlooking, Appeal B would give rise to a significant and demonstrable loss of privacy for the occupants of this property.

12. The location of this house and its relationship with No 54 would not be dissimilar to that of 31 Apple Cottages. However, the house would be closer to this adjacent building. Consequently, the proposed dwelling would enable closer views of the rear garden and the window to window distance would be less. Accordingly, the level of overlooking would be greater than that caused by the existing neighbour.

13. In contrast, the separation distances would be sufficient to ensure that the gable end of the houses adjacent to the north eastern boundary in both appeals would be located away from the living accommodation provided by No 54. Furthermore, due to the length of No 54's garden, the majority of the space would remain open. As a consequence, although the buildings would be very noticeable from the neighbouring garden, in the same way that 31 Apple Cottages is, the proposals would not have an overbearing effect on No 54. Furthermore, the size of the garden of No 49 would ensure a suitable buffer between the proposals. Consequently, the proposals would also not be overbearing when viewed from that property.

14. The proposals would introduce vehicular movements on land beyond the main Chesham Road frontage. However, the turning areas are centrally located in both proposals with driveways for 2 cars abutting the side boundaries. Due to the contained nature of the vehicular movements and small number of cars close to the side boundaries as well as their proximity from the adjacent houses, I am satisfied that exhaust fumes would not compromise existing living conditions.

15. For the reasons identified above, I conclude that Appeal B would harm the living conditions for the occupants of No 54 Chesham Road with particular regard to privacy. It would therefore not accord with Policy CS12 of the Core Strategy 2006 – 2031 (2013) (CS) which seeks development which avoids loss of privacy to surrounding properties.

16. Conversely, I find that Appeal A would not harm the living conditions for the occupants of neighbouring properties. Consequently, it would accord with Policy CS12 of the CS for the reasons given above.

#### Character and appearance

17. In both appeals, the site would be established by the amalgamation of the rear gardens which currently serve Nos 50 – 53 Chesham Road. The gardens would represent a large parcel of land albeit land that would be located beyond the Chesham Road frontage. Despite this, when stood within the rear gardens that make up the appeal site, the houses located within Apple Cottages can be readily seen. Many of these houses either back on to or present their gable end to the rear gardens of the houses in Chesham Road. The presence of the houses is therefore an established and defining part of the character and appearance of the area. 18. The proposals would introduce development beyond the Chesham Road frontage. However, the houses would be of a comparable bulk and mass with the houses in Apple Cottages and would be experienced in the context of this existing development. As a consequence, the proposals would be complementary to Apple Cottages and would not appear as an incongruous addition to the rear of the principal houses that front Chesham Road.

19. Both appeal proposals would also introduce a central access road with a turning head and parking area to serve the proposed dwellings. This would result in a marked change to the appearance of the site and would introduce a significant amount of hardstanding. However, it is apparent from the submitted evidence that thought has been

given to landscaping through the planting of new trees and hedges, and use of hard surfacing materials. I am therefore satisfied that subject to a landscaping scheme, which could be secured by way of a suitably worded condition, the proposal would not be dominated by the turning area and car parking spaces.

20. I therefore conclude that both Appeal A and Appeal B would not harm the character and appearance of the surrounding area. Consequently, the proposal would accord with Policies CS11 and CS12 of the CS. Taken together, these policies seek, amongst other things, development which respects adjoining properties in terms of layout, site coverage, landscaping and amenity space and which avoid large areas dominated by car parking.

#### Highway safety

21. Appeal A would provide parking spaces to the front of proposed plots 50a and 50b but they would not allow a vehicle to turn on the site. Although No 51 allows vehicles to run on site and enter the highway in a forward gear, I observed on my site visit that many houses that front onto Chesham Road have access points which do not allow for the turning of vehicles. In this respect, the appeal proposal would be comparable with many of its neighbouring properties.

22. Chesham Road is relatively straight and I have not been provided with any evidence that suggests that the existing access arrangements of those houses without turning areas have caused highway safety concerns. Although highway safety has been raised as a concern by many interested parties, there is nothing substantive in the evidence before me that indicates that the proposed access arrangement would harm highway safety. Furthermore, I note that the Highway Authority raised no objection to the proposal in relation to highway safety.

23. The proposal would provide 2 car parking spaces for each dwelling and 1 additional space adjacent to the turning area. I note the concerns from neighbouring properties in relation to the limited amount of visitor parking but I have no substantive evidence to support these concerns and therefore give this matter very limited weight.

24. Based on the evidence that I have before me, I conclude that the proposal would not harm highway safety. Consequently, the proposal would accord with Policy CS12 of the CS which requires development to provide a safe and satisfactory means of access for all users. Other Matters and Conditions

25. The proposals would increase the number of people living in the area but no evidence has been put before me to suggest that the infrastructure of the area could not sustain this or that the development in some way should mitigate against any impact. Without evidence to substantiate this comment, I give this matter very limited weight in my assessment. Furthermore, the courts have taken the view that planning is concerned with land use in the public interest, so that the protection of purely private interests, such as the impact of a development on the value of a neighbouring property, could not be a material consideration. I also have no evidence before me to substantiate concerns in relation to drainage and consequently give very limited weight to these concerns.

26. The site may be close to the Green Belt but it is not in the Green Belt. This therefore has no bearing on the proposals. Finally, although construction traffic may result in some disturbance, this would be temporary and I am satisfied that the appeal site is large enough to be managed in a manner that would limit any effects to an acceptable level.

27. Given my findings in relation to Appeal A, conditions are necessary in the interests of clarity and precision to establish the time limit for the implementation of development as well as the approved drawing numbers. To ensure a suitable external appearance for the proposed dwellings, a condition is also necessary in relation to material samples.

28. Conditions 4 and 5 are necessary in the interests of highways safety and condition 6 is necessary to ensure that the development is served by adequate refuse storage and parking spaces. Conditions 7, 8, 9 and 10 are necessary to ensure that the development

is landscaped to a high quality and that existing planting that is to be retained is suitably protected. Conditions 11 and 12 are necessary due to the potential for contamination at the site. Finally, a condition is necessary in relation to an external lighting scheme in the interests of safety. The conditions that require work from the Appellant prior to the commencement of development have been agreed.

29. The Council suggested a condition to remove permitted development rights for the proposed dwellings as well as requiring the demolition of the existing extension that serves No 51 Chesham Road. The reason given was to safeguard the character and appearance of the area and ensure that there is the correct balance between the amount of development and land retained for gardens. The Council also made reference to Policy CS12 of the CS however this policy does not require minimum garden sizes. Although Appendix 3 to the CS suggests that gardens should have an average minimum depth, it also states that a range of garden sizes should be provided for different family compositions, ages and interests. For the reasons identified above, I am satisfied that Appeal A would entirely complement the character and appearance of the area and it would fulfil the aims of Appendix 3. There is therefore no clear justification to remove these national development rights as required by the Framework.

30. The Council also suggested conditions in relation to electric vehicle charging facilities, electronic communication equipment and secure cycle storage facilities. However, these matters are not required by policies within the Development Plan and as such, lack the justification for being imposed. therefore consider that they are not necessary to make an unacceptable development acceptable. Accordingly, I have not imposed them.

**Conclusion**

31. For the reasons identified above, Appeal A is allowed.

32. In relation to Appeal B, the proposal would demonstrably harm the living conditions of the occupants of No 54 Chesham Road and this would result in a conflict with the development plan. That the proposal would not harm the character or appearance of the area neither alters nor outweighs this conclusion and therefore, Appeal B is dismissed.

## **COST AWARDS – FULL COSTS AWARDED AGAINST THE COUNCIL**

### **Decision**

1. The application for a full award of costs in relation to Appeal A is allowed in the terms set out below.

2. The application for an award of costs in relation to Appeal B is partially allowed in the terms set out below.

### **Reasons**

3. The Planning Practice Guidance advises that costs may be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.

4. The applicant suggests that in both appeals, the Council have prevented or delayed development which should clearly have been permitted, having regard to the development plan, national policy and other material considerations. It is also suggested that the Council failed to produce evidence to substantiate the reasons for refusal, and that vague, generalised or inaccurate assertions about the impact of the proposal were made and which were unsupported by any objective analysis.

5. As identified in the appeal decisions, Appeal A and Appeal B shared main issues in relation to the character and appearance of the surrounding area and in relation to living

conditions. Highway safety was also a main issue for Appeal A although not for Appeal B.

6. The Council have provided a very brief and limited case in relation to both appeals. They have referred to relevant local plan policies and have also provided succinct minutes from the relevant committee meeting. However, the evidence that they have provided to articulate their concerns in relation to the main issues lacks detail. Indeed, the statements of case merely state the concerns of the Council rather than expressing them in a clear way. To my mind the Council has therefore failed to substantiate its reasons for refusal in relation to Appeal A and its concerns about the effect of Appeal B on the character and appearance of the area. Moreover, it has offered only vague and generalised assertions about the proposals' impacts, which are unsupported by objective analysis.

7. Despite this, based on the totality of the evidence before me, and as a consequence of my site visit, I have found harm in relation to the living conditions of the occupants of No 54 Chesham Road and Appeal B failed to succeed in relation to this point alone.

8. However, in relation to all other matters for both appeals, the Council have clearly failed to produce evidence to substantiate their reasons for refusal. Consequently, I find that unreasonable behaviour by the Council resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has been demonstrated. Therefore, in relation to Appeal A a full award of costs is justified and in relation to Appeal B, a partial award of costs is justified.

#### **Costs Order**

9. In relation to Appeal A and in exercise of the powers under section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990 as amended, and all other enabling powers in that behalf, IT IS HEREBY ORDERED that Dacorum Borough Council shall pay to Mr Marcus Grossman, on behalf of Margro Properties Limited, the costs of the appeal proceedings described in the heading of this decision; such costs to be assessed in the Senior Courts Costs Office if not agreed.

10. The applicant is now invited to submit to Dacorum Borough Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

11. In relation to Appeal B and in exercise of the powers under section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990 as amended, and all other enabling powers in that behalf, IT IS HEREBY ORDERED that Dacorum Borough Council shall pay to Mr Marcus Grossman, on behalf of Margro Properties Limited the costs of the appeal proceedings described in the heading of this decision limited to those costs incurred in responding to concerns in relation to the effect on the character and appearance of the surrounding area; such costs to be assessed in the Senior Courts Costs Office if not agreed

12. The applicant is now invited to submit to Dacorum Borough Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

