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## Appeal Decision

Site visit made on 22 November 2016

**by David Murray BA (Hons) DMS MRTPI**

**an Inspector appointed by the Secretary of State for Communities and Local Government**

**Decision date: 22 December 2016**

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**Appeal Ref: APP/F0114/W/16/3153519**  
**40 Bloomfield Park, Bath, BA2 2BX.**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
  - The appeal is made by Juniper Homes (South West) Ltd. against the decision of Bath & North East Somerset Council.
  - The application Ref. 15/04347/FUL, dated 25 September 2015, was refused by notice dated 26 May 2016.
  - The development proposed is the demolition of the existing detached house and garage and the construction of eight apartments with associated parking and landscaping.
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### Decision

1. The appeal is dismissed.

### Main Issue

2. The main issue is the effect of the proposal on the character and appearance of the site and its surroundings in the Bath Conservation Area particularly with regard to the effect on the existing mature trees on the site.
3. The Bloomfield Park Residents Association raises many other objections to the proposed development which I will consider under the heading of 'other matters' below.

### Reasons

#### *Background*

4. The appeal site lies in a mainly residential area and comprises a detached two storey house with stone elevations. The site frontage is relatively large and there is a belt of mature trees between the house and the road of Bloomfield Park from where access is obtained to a single detached garage. There are other mature trees around the site which lies in the Bath Conservation Area and World Heritage Site. The trees on site are not covered by a Tree Preservation Order but are protected by their location in the Conservation Area.
  5. The proposal is to demolish the existing house and erect a new building with four levels of accommodation and a 'lower ground floor' area of parking which would be partly located within the base of the building and partly under a raised terrace. An enlarged access would be formed to the side of the building which would lead to the lower parking area.
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*Policy context*

6. The development plan for the area includes the Council's Core Strategy adopted in 2014 and saved policies in the Bath and North East Somerset Local Plan adopted in 2007. The Council is also preparing a Placemaking Plan - Part 1 District Wide Strategy and Policies which was published as a pre-submission draft in December 2015 however, as this plan still appears to be at an early stage of the plan-making process, I agree with the Council that little weight can be applied to its provisions at the moment.

*The effect on trees*

7. The Council's concern about the effect on the trees relates to both the direct impact where trees will need to be felled or substantially trimmed back to accommodate the proposed building and access and also the subsequent pressure from the occupiers of the new flats to have the trees felled/reduced to allow more light into their properties and because of the proximity and spread of the trees over the site.
8. An Arboricultural Impact Assessment prepared by an arboricultural consultant was submitted with the application. This includes an assessment of the quality of the trees; a tree protection fencing proposal; and an Arboricultural Method Statement. I have had regard to this evidence in considering the proposal. In overall terms, the assessment judges none of the trees to be of 'high' quality; three trees (T2, T5, T8 and T18) are said to be of 'moderate' quality; and the remaining trees to be of 'low' quality. None of the trees are classed as 'poor' quality'.
9. The assessment concentrates on tree protection methods but it is clear that a number of trees would need to be felled to make the wider access and facilitate the footprint of the building and the raised terrace. In the main the trees affected are low quality but T18 is of moderate quality. Although some additional tree planting is shown on the proposed layout, the trees for felling still contribute positively in their own right and as part of the collective group to the character and appearance of the site and its wider setting in the conservation area. The loss of the trees would therefore cause some harm although the effect of this may be reduced in the longer term by the results of new planting.
10. I note the difference in technical arboricultural judgements made on behalf of the main parties on the possible effect of building operations on the root system of the trees and the reference made to four trial pits in the vicinity of the trees. I also noted at the site visit that a larger trial pit appeared to have been dug under the northern edge of the tree canopy. Judging between these expert appraisals on the basis of written evidence is not straightforward, however, given the scale of building operations envisaged and applying the precautionary principle, I am not satisfied that the evidence submitted clearly demonstrates that the proposals will not have a direct effect on the future well-being of the trees that are judged to be of moderate or low quality, even if the tree protection measures are implemented accordingly.
11. Even if I were to judge in the appellant's team's favour on this latter issue, the Council's concerns about the effect on trees also relate to the likely pressure from subsequent occupiers to have the retained trees cut back. I noted the height and the extent of the crown spread of the frontage trees at the site visit

and the extent of the root protection area shown in the Assessment. The internal layout of the building shows that three of the flats would have the principal windows for the living/dining area looking south directly into the trees which would be relatively close (3-5m away) and the top of the tallest trees is much higher than the proposed building as shown in the submitted Daylight Report (April 2016). Even though these rooms may have adequate daylighting in technical terms, in my view the juxtaposition of the trees with the flats would be likely to restrict sunshine into these flats and the general aspect looking out of the bay windows. Overall, I share the Council's concerns that the close relationship of the south facing new flats to the extensive belt of trees, particularly T5, T8 and T13, would be likely to result in pressure from the subsequent occupiers to have the trees reduced in extent.

12. Overall on this issue I find that the proposal would be likely to result in the loss of trees on site, either directly because of the location of building operations, or indirectly because the close proximity of high trees with the position and extent of the new flats proposed would be likely to result in pressure from the subsequent occupiers of the flats for the trees to be reduced in extent. Such effect would materially harm both the character and the appearance of the Conservation Area and would not preserve or enhance these qualities as required under the statutory test in section 72 of the relevant 1990 Act. This harm means that the proposal does not accord with the requirements of saved policies NE4 and BH6 of the Bath and North East Somerset Local Plan which indicate that existing trees which contribute to the character of the Conservation Area should be protected.

#### *Other matters*

13. The Bloomfield Park Residents Association also raises objection to the development on 11 other grounds not put forward by the Council as the Council considered that these elements of the scheme were broadly acceptable as set out in the extensive report at application stage.
14. In my view despite the stone elevations of the existing house it is clearly of a more contemporary design than the original properties along Broomfield Park and the building does not contribute to the character of the Conservation Area in a positive way. Rather, it has a neutral effect and therefore there is not an objection in principle to its demolition provided that the details of any scheme for replacement development meet the statutory test set out in section 72 of the Act. Having regard to the design, height and massing of the proposed building, I am satisfied that the proposal would enhance the character and appearance of the area and would not be 'out of keeping' as the Association suggests. Further, the development density proposed need not result in a form of inappropriate development when compared to the rest of the Conservation Area.
15. In terms of the height of the building proposed, even with four levels of accommodation, the overall height of the building would be proportional to the adjacent original neighbouring buildings, as shown on the submitted street scene elevation, notwithstanding the more recent single storey 'infill' at No.39. I do not consider that the mass of building proposed would be over-bearing for the site, which appears wider than most others in the neighbourhood, nor would it appear 'squat' in the street scene as alleged by the Association. I am also satisfied that the lower level car park would not appear as an alien feature

or that it has been shown that its use would give rise to material problems of noise.

16. I do have some concerns about the width and scale of the access and entranceway and its appearance in the street scene and a loss of enclosure, but I am satisfied that this element of the design is not fundamental and the impact of the work could reasonably be overcome by amendments and a different arrangement of materials and enclosure, and this change could be required by conditions. I also note that the highway authority do not raise objection to the proposal in terms of the effect on road safety.
17. Finally the Association expresses concern about the lack of provision of a bin store and that some aspects of the design of the building may not meet the requirements of the Building Regulations which may necessitate amendments. However, I am satisfied that these aspects could reasonably be overcome by amendments required by condition and are not fatal to the scheme.
18. Overall, I do not consider that the further objections to the scheme put forward amount to clear and justifiable reasons to refuse consent for demolition and planning permission for the development.

#### *Positive benefits*

19. The appellant's agent lists a number of positive benefits that the proposal would bring including economic benefits in the form of Community Infrastructure Levy payments, increased Council Tax and New Homes Bonus. Further, the appellant stresses the government's intention, as set out in the National Planning Policy Framework (NPPF) to significantly boost the supply of new housing. In the context of the Council's Core Strategy which identifies a provision of about 7,000 new houses in Bath, with a priority towards brownfield land, the appellant says that the proposal will contribute significantly to the target provision of small development on windfall sites.
20. Whilst I realise the overall economic and social benefits of the development, it appears to me that the economic returns mentioned would arise from most other forms of new residential development in the general area, and it has not been argued or demonstrated that the new housing development envisaged in the Core Strategy will not be delivered over the plan period. I therefore find that the weight that can be attached to these benefits in this case is limited.

#### *Planning balance*

21. Bringing together my conclusions on the main issues, I have found that the siting and scale of the proposed building would have a direct affect and also be likely to have a subsequent indirect effect, on the retention of the existing trees on the site. These trees contribute to the attractive character and appearance of the Bloomfield Park part of the Conservation Area and their loss or substantial change would materially harm and would not preserve or enhance the character and appearance of this sensitive area. The statutory test is therefore not met and the proposal would not accord with saved policies BH6 or NE4.
22. In terms of the guidance in the Framework, I agree with the Council that the proposal would result in less than substantial harm to the designated heritage asset of the Conservation Area, as per paragraph 134 of the Framework, and that this harm has to be balanced with the public benefits of the proposal.

Nevertheless, I do not agree that the existing dwelling has a harmful effect on the Conservation Area and I find that its impact is neutral and in any event the visual impact of the building at the moment is substantially screened by the trees over which I have doubt over their retention. Further, I do not agree that the site is 'underperforming' as it is a core principle of the NPPF that the effective use of previously developed land is subject to the caveat that such land should not be of high environmental value. Private residential gardens in built up areas are also excluded in the definition of previously developed land. Taking account of these aspects and the other positive benefits in paragraphs 19 and 20 above, I do not consider that these benefits outweigh the degree of harm that I have identified and to which considerable importance must be given.

23. Overall, I conclude that despite the economic and social benefits that are likely to arise from the new housing development, and accord with these dimensions of sustainable development in the NPPF, these do not outweigh the effect on the existing trees on the site and the environmental harm that I have concluded would result from the proposal. I find that the proposal does not constitute sustainable development in accordance with the NPPF when this is read as a whole and these other considerations do not outweigh the conflict with the development plan.

### **Conclusions**

24. For the reasons given above I conclude that the appeal should be dismissed.

*David Murray*

INSPECTOR