
Appeal Decision

Site visit made on 18 April 2017

by Gareth W Thomas BSc(Hons) MSc(Dist) PGDip MRTPI

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

Decision date: 4th May 2017

Appeal Ref: APP/F0114/W/17/3166854

Land off Upper Court, Radstock BA3 3BY

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against the failure to give notice within the prescribed period of a decision on an application for planning permission.
 - The appeal is made by Mr Jack Broadway of Oval Estates Bath (LTD) against Bath & North East Somerset Council.
 - The application Ref 16/04424/FUL is dated 1 September 2016.
 - The development proposed is for 3 x 3 bedroom dwellings.
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Decision

1. The appeal is allowed and planning permission is granted for 3 x 3 bedroom dwellings on land off Upper Court, Radstock BA3 3BY in accordance with the terms of the application, Ref 16/04424/FUL dated 1 September 2016, subject to the following conditions:
 - (1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
 - (2) The development hereby permitted shall be carried out in accordance with the following approved plans: UCSA 001; UCSA 002; UCSA 003; UCSA 004; UCSA 005, and; UCSA 006 6th sept 2016.
 - (3) No development shall take place until samples of all external facing materials have been submitted to and approved by the local planning authority in writing. The relevant works shall be carried out in accordance with the approved sample details.
 - (4) No development shall take place until details have been submitted to and approved in writing by the local planning authority of the specification of the cycle/path and its connection points between Upper Court and the path at the site's southernmost point as shown on Drawing reference UCSA001. The cycle/path shall be completed in accordance with the approved specification before the last dwelling on site is occupied and thereafter retained for such purposes.
 - (5) No development shall commence until details of both hard and soft landscape works have been submitted to and approved in writing by the local planning authority. These details shall include:
 - i) earthworks showing existing and proposed finished levels or contours;
 - ii) means of enclosure and retaining structures;
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iii) boundary treatments;

The landscaping works shall be carried out in accordance with the approved details before any part of the development is first occupied in accordance with the agreed implementation programme.

- (6) The garages hereby approved shall be retained for the garaging of private motor vehicles associated with the dwellings and ancillary domestic storage and for no other purpose.
- (7) The areas allocated for parking and turning on the submitted plan shall be kept clear of obstruction and shall not be used other than for the parking of vehicles in connection with the development hereby permitted.
- (8) Each dwelling shall not be occupied until it is served by a properly bound and compacted footpath and carriageway to at least base course level between the dwelling and the existing adopted highway.
- (9) No development shall commence, except ground investigations and remediation, until infiltration testing and soakaway design in accordance with Building Regulations Part H, section 3 (3.30) have been undertaken to verify that soakaways will be suitable for the development. If the infiltration tests results demonstrate that soakaways are not appropriate, details of an alternative method of surface water drainage shall be submitted to and approved in writing by the Local Planning Authority. Surface water drainage shall be installed in accordance with the agreed scheme prior to the occupation of any dwelling on site.

Main Issues

- 2. The main issues are whether the proposed development would prejudice the provision of open space associated with the Waterside Valley cycle path network and the effect of the proposal on the character and appearance of the area.

Reasons

Open Space

- 3. The appeal site comprises part of a larger area that was granted planning permission in 2008 (Council Ref 05/01926/FUL) for the redevelopment of St Peter's Factory and Jewson sites, comprising 107 dwellings, commercial development, open space, landscaping and associated infrastructure. From what I could see at my site visit, this development is nearing completion and has become an established neighbourhood. The 2008 permission was subject to a section 106 Obligation under the Town & Country Planning Act 1990 dated 18 February 2008 (the Agreement). This related to a number of matters, including two issues of direct relevance to this appeal, namely, the provision of Public Open Space (POS) and the provision of Public Access Land (PAL).
- 4. The Council's second putative reason for refusal relates to the loss of the site designated as green open space for the Waterside Valley cycle path network and the lack of compensatory measures forming part of the appeal proposal.

5. My attention has been drawn to a previous appeal¹ against a refusal of permission for two 3-bedroom dwellings at this site. At that appeal, the Inspector concluded that the requirements of the Agreement should prevail and the loss of this land as recreational open space should be resisted. There is no dispute between the parties that the land was not designated for POS in the Agreement. There is equally no dispute that sufficient time has now passed that an application could not be made to vary the terms of the Agreement. However it is not the function of this appeal process to ensure compliance with separate legal agreements and as this is a separate matter for the parties, it cannot affect my consideration of this appeal.
6. From my site visit I observed that the route of the cycle path is located at a significantly lower level running in a roughly north-south axis along the valley floor; however, no hardsurfacing has been provided to facilitate this facility. No evidence is submitted by the Council to demonstrate that there are any firm intentions to develop or manage the application site for POS purposes. Neither is there any evidence to suggest that a more pro-active approach will be adopted by the Council to ensure that either the site is effectively managed or the terms of the section 106 Agreement is fully complied with. The Inspector opined in 2014 that public access to the appeal site was achievable and likely to be of benefit to the local community. He also believed that the loss of this site as POS would undermine Local Plan Policy SR.3, a policy no longer forming part of the Council's decision notice.
7. It appears to me that sufficient time has now passed for a re-assessment to be considered. Whilst the details of the section 106 Agreement are not before me, it seems to me that there is little prospect of this site being brought forward for POS purposes in the short term. The site has an unkempt appearance that does little to define the built development in the area or provide an acceptable transition between urban and rural; it has the effect, conversely, of considerably degrading the local neighbourhood. The proposal makes provision for a pedestrian/cycle connection to be made from the existing Upper Court highway network to the path at the bottom of the bank. Saved Bath & North East Somerset Local Plan (LP) Policy SR.9 seeks to ensure that any public accessible routes are not adversely affected by development proposals.
8. The Council has cited a number of planning policies in support of its case. However, none relate specifically to the retention of this site for public open space. Moreover, it has not undertaken any robust assessment of the existing and future community needs for this open space, including carrying out audits of quantitative and qualitative elements associated with the Waterside Valley area and the contribution that this site is currently making towards those elements.
9. Not all open spaces are of equal merit and some may be more appropriate for alternative uses. I would agree with the appellant that the original intention of the land was open space for public access with cycle links - in essence, an attractive landscaped area along the southern boundary of the St Peter's development incorporating a cycle path. In the absence of evidence that demonstrates that the site can perform a function as public open space, there would be no unacceptable harm in respect of loss of amenity space resulting from the proposed development as it would still provide an accessible link to

¹ APP/F0114/A/13/2210493

the route of the cycleway and be effectively landscaped as part of a development. The development would therefore comply with Saved LP Policy SR.9.

Character and appearance

10. The proposed development would see the erection of 3no. dwelling houses and associated garages situated between the Upper Court development and an adjoining office block and elevated above the existing cycleway route. The proposal comprises steeply pitched roofs incorporating bedrooms within the roof with rooflights in the rear elevations facing Upper Court and traditional dormers facing the cycleway. The designs reflect those seen elsewhere in the immediate area and will be faced in stone.
11. The Council asserts that the proposal by reason of its layout, mass, bulk and design would amount to the overdevelopment of the appeal site. Although the mass and bulk of the dwellings would be greater than the terraced dwellings immediately to the west, they are nevertheless comparable with others found on Upper Court and would not look out of place in the context of the development overall. Indeed their position alongside existing commercial developments to the north means that they would result in a more favourable transition between the two development forms to the north and west in terms of scale.
12. Reference is also made by the Council to the potential overbearing effect of the development when viewed from the Waterside Valley cycle way. Whilst the site is elevated above the cycleway, from my site visit, despite the elevated nature of the Upper Court development generally, I did not find this to be over-dominant or over-bearing. From the path at the bottom of the bank, it is the commercial developments that are the dominant built form. From the appellant's evidence, it is clear that the eaves height of the houses are well below the eaves height of the commercial development whilst the step down that would be formed by the garages in the foreground would represent an appropriate urban design response at this location.
13. I have considered the Council's concerns in relation to the size and orientation of the private open space that would be available to future occupiers. However, in both respects, the proposed development would not be dissimilar to neighbouring properties to the west and I find this would be acceptable.
14. Accordingly, I consider that the mass, bulk and scale of the proposed terraced development to comply with Saved LP Policies D2 and D4 and also with Policies D1 to D6, inclusive of the Draft Bath and North East Somerset Placemaking Plan. Amongst other things, these policies combine to ensure that new developments respond positively to local context in terms of character and design, urban form and connectivity and reflect local materials, residential density and proportions. These policies are consistent with the National Planning Policy Framework that seeks to ensure quality of design that responds to local character and distinctiveness.

Conditions

15. The Council has suggested conditions, which I have assessed in accordance with the Planning Practice Guidance. The parties have been given the opportunity to comment on the conditions and such comments have been

taken into consideration in the final conditions. I have attached the standard time period for commencement of development and a requirement for accordance with approved plans to provide certainty and to ensure that the cycle/path is provided. In the interests of character and appearance I have included conditions relating to the prior approval of all external materials and also of a landscaping scheme to include details of boundary treatment and retaining structures in the interests of character and appearance. In the interests of highway safety, conditions are included requiring the hardsurfacing of access roads and paths together with a requirement that the garages are retained for their original intended purposes. Finally a condition requiring prior approval and implementation of a surface water scheme is necessary in the interests of protecting the living conditions of existing and future occupiers of dwellings.

Conclusion

16. In the light of the above reasons and having considered all other matters raised, I conclude that this appeal should be allowed.

Gareth W Thomas

INSPECTOR