

Appeal Decision

Site visit made on 3 May 2017

by Rory Cridland LLB (Hons), Solicitor

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

Decision date: 31 May 2017

Appeal Ref: APP/Y3940/W/16/3164145

Peacock Grove, adjacent to Brook Drive, Corsham, Bath, SN13 9AZ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by RST Corsham Ltd against the decision of Wiltshire Council.
 - The application Ref 15/11544/OUT, dated 19 November 2015, was refused by notice dated 26 October 2016.
 - The development proposed is for the erection of up to 31 dwellings following the demolition of 6 no. existing dwellings, and associated access.
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Decision

1. The appeal is allowed and planning permission is granted for the erection of up to 31 dwellings following the demolition of 6 no. existing dwellings, and associated access at Peacock Grove, adjacent to Brook Drive, Corsham, Bath, SN13 9AZ in accordance with the terms of the application, Ref 15/11544/OUT, dated 19 November 2015, subject to the conditions set out in the attached Schedule.

Preliminary matters

2. The description of development above differs to that on the application form in so far as it reduces the number of dwellings proposed to 31. The parties have confirmed that this has been agreed and, accordingly, it is this revised description that I have used in determining this appeal.
3. The application was submitted in outline, with matters relating to appearance, layout and scale reserved. However, matters relating to landscaping were withdrawn. Accordingly, I have dealt with the appeal on that basis, treating all plans as illustrative, except where they deal with matters of access.

Main Issues

4. The main issues are the effect of the propped development on:
 - (i) the character and appearance of the surrounding area; and
 - (ii) biodiversity.

Reasons

Character and appearance

5. The appeal site is located to the rear of Brook Drive/Broadmead, between the residential development and the nearby Great Western Railway line which runs along its northern boundary. To the east, the site adjoins a wooded area of
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- public open space known as 'the Batters'. Core Policy 51 of the Wiltshire Core Strategy (CS) restricts development which has a harmful impact upon the landscape and seeks to ensure that new development protects, conserves and where possible enhances landscape character.
6. The scheme would involve the demolition of 6 existing dwellings and the creation of a residential development comprising 31 new units consisting of a mixture of detached, semi-detached and terraced dwellings. Due to the residential character of the area to the south of the site, the proposed scheme would not be out of character with its surroundings when considered as part of the wider landscape.
 7. Furthermore, the applicant has submitted a Landscape and Visual Impact Assessment (LVIA) which concludes that the visual impact on the users of the Batters would be minor. I agree with that assessment. While I acknowledge that the site acts as a green wedge linking the open countryside and town centre, its limited visibility from this area significantly limits any adverse impacts. Furthermore, the proposal would retain the most significant landscape buffers to the west and south and it is accepted by the Council that the scheme's visual impact would be most pronounced from surrounding private land. As such, it would have little impact on important public views.
 8. While I note the Council's concerns regarding the localised impact, with the implementation of a successful mitigation strategy, such as that set out in the LVIA (Para 5.2), I am satisfied that any visual degradation of the local landscape character would be unlikely. On balance, I consider the overall impact on the character of the landscape would be low and accordingly find no conflict with CS Core Policy 51.
 9. The Council has also raised concerns regarding the proposed quantum of development, considering the number of dwellings proposed as likely to result in a scheme which appeared cramped and overdeveloped. I disagree with that assessment. The site is sufficiently large to accommodate the proposed number of dwellings as well as any associated infrastructure without materially compromising the character and appearance of the locality or the amenity of future occupiers.
 10. Furthermore, in reducing the number of dwellings considerably from that originally applied for, the proposal significantly increases the space available and ensures that the number proposed is proportionate to the site's constraints. As such, I am satisfied that, subject to further consideration of the reserved matters, the proposal would not fail to achieve a high standard of design and would make a positive contribution to the landscape setting. As such, I find no conflict with CS Core Policy 57 which seeks to ensure that new development achieves a high standard of design.
 11. Consequently, I find that the proposal would not be harmful to the character and appearance of the surrounding area and, as such, would not be in conflict with CS Core Policies 51 & 57 both of which seek to prevent such harm.

Biodiversity

12. The site forms part of the foraging and commuting area for a number of bat species which are protected under European Legislation and is located in the Bath and Bradford on Avon Bats Special Area of Conservation (SAC). The

Council accepts that, subject to appropriate mitigation and management, the proposal would not compromise the integrity of the SAC. Furthermore, the Council's ecologist is satisfied that its impact on non-SAC species has been reduced as far as possible through the mitigation measures proposed. I have seen nothing which would lead me to reach a different conclusion.

13. Nevertheless, the Council does raise concerns regarding the loss and fragmentation of woodland areas as a result of the river crossing and access road and its impact on local habitat. Furthermore, it raises concerns regarding the loss of grassland habitat and its effect on neutral and calcareous communities. However, I have seen no robust evidence which would indicate that the limited loss of these habitats and the associated impact on local populations would be such that it would have any material impact. Similarly, I have been provided with no detailed information which would indicate that it would have any material impact on local bird populations.
14. Accordingly, I find no conflict with Core Policy 50 which, amongst other things, seeks to avoid or reduce disturbance of sensitive wildlife and habitats, enhance biodiversity and protect local sites.

Other Matters

15. The Council has identified a need for infrastructure and affordable housing contributions ("the Contributions") in accordance with CS Policies CP3 & CP43. On the evidence before me, it appears that the need for the contributions sought by the Council arises from the development and satisfies the 3 tests in Regulation 122(2) of the CIL Regulations 2010.
16. A Unilateral Undertaking has been submitted by the appellant in the course of this appeal which makes provision for the delivery of 30% affordable housing and secures the necessary infrastructure contributions. I am therefore satisfied that the development makes adequate provision in respect of the Contributions and would not be in conflict with Policies CP3 or CP43.
17. The Council has also referred in its written evidence to Core Policies 1 & 2, albeit briefly. While I note that the application site falls outside the defined development boundary, these policies do not form part of the Council's reasons for refusal and were not provided as part of their written evidence. As such, I have not considered them in my determination of this appeal.
18. In reaching my decision I have had regard to the considerable number of objections received from local residents and those of Corsham Town Council both at application stage and as part of this appeal. In respect of the concerns raised regarding the development's impact on the character and appearance of the surrounding area, biodiversity and the necessary infrastructure contributions, these have been taken into account in reaching my conclusions above. Those which relate to highways infrastructure, flooding, its impact on local services and residential amenity were considered by the Council at application stage and were found not to be so great that they would justify a refusal of planning permission. Based on the evidence before me, I have seen nothing which would lead me to reach a different conclusion.
19. Similarly, I have seen nothing which would indicate that there would be an increased level of danger to pedestrians or that the development would result in an increase in anti-social behaviour. Furthermore, while I note that many

residents believe that there is no need for further development in the area, a lack of established need does not, in itself, provide sufficient grounds to justify a refusal of planning permission for a development that is otherwise in accordance with the development plan.

20. I have also noted the references to the Corsham Neighbourhood Plan. However, that plan is at a very early stage and carries very limited weight in the determination of this appeal.

Conditions

21. I have had regard to the planning conditions suggested by the Council and agreed by the appellant in the submitted Statement of Common Ground. In addition to the standard commencement condition and those which relate to the submission of reserved matters, a condition requiring the development to be carried out in accordance with the approved plans is necessary in order to provide certainty. Those which relate to ecology are necessary in order to ensure adequate protection, mitigation and compensation for protected species, priority species and priority habitats.
22. Those which relate to surface and foul water drainage are necessary in order to protect the site from flooding and in the interests of health. Likewise, those which relate to contamination are necessary in order to minimise the risks to future users (although these have been modified accordingly). Conditions requiring the submission of details of acoustic measures, a construction method statement and restricting the hours during which activity on site may take place are necessary in order to protect the amenity of neighbouring and future occupiers.
23. I also consider a condition in respect of energy performance to be appropriate in the interests of sustainable development. Those which relate to the access, roadways, junctions, visibility splays and other such features are necessary in the interests of highway safety and to ensure that the roads are laid out and constructed in a satisfactory manner.
24. However, I do not consider conditions which relate to landscaping or the appearance of the buildings are necessary as they can be adequately dealt with as part of the reserved matters.
25. A number of these conditions need to be discharged before work commences on site as these relate to matters which need to be resolved on a fully coordinated basis

Conclusion

26. For the reasons set out above, I conclude that the appeal should be allowed.

Rory Cridland

INSPECTOR

SCHEDULE

Conditions

- 1) The development hereby permitted shall take place not later than 2 years from the date of approval of the last of the reserved matters to be approved.
- 2) Details of the access, appearance, landscaping, layout, and scale [remove as appropriate depending on what is being reserved], (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development takes place and the development shall be carried out as approved.
- 3) An application for the approval of all of the reserved matters shall be made to the Local Planning Authority before the expiration of three years from the date of this permission.
- 4) The development hereby permitted shall be carried out in accordance with the following approved plans:

1003_Red Line Plan - Site Location Plan

FMW1379 - GA02 rev A - Horizontal and Vertical 2.4m x 27m Visibility Splays

GOLD19349-15B - Parameters Plan

GOLD19349-14A - Buffer Planting Proposals

FMW1379-GA01 rev C - Proposed General Arrangement Option 2
- 5) No development shall commence on site until details of the estate roads, footways, footpaths, verges, junctions, street lighting, sewers, drains, retaining walls, service routes, surface water outfall, vehicle overhang margins, embankments, visibility splays, accesses, carriageway gradients, drive gradients, car parking and street furniture, including the timetable for provision of such works, have been submitted to and approved in writing by the Local Planning Authority. The development shall not be first occupied until the estate roads, footways, footpaths, verges, junctions, street lighting, sewers, drains, retaining walls, service routes, surface water outfall, vehicle overhang margins, embankments, visibility splays, accesses, carriageway gradients, drive gradients, car parking and street furniture have all been constructed and laid out in accordance with the approved details.
- 6) No works shall commence on site until the access to Brook Drive has been provided in full accordance with the details contained in drawing FMW1379-GA01 rev C (Proposed General Arrangement Option 2). No dwellings reliant upon access from Ladbroke Lane shall be first occupied until the access has been provided in full accordance with the details contained in drawing FMW1379 - GA02 rev A (Horizontal And Vertical 2.4m x 27m Visibility Splays).

The areas shall be maintained for those purposes at all times thereafter.
- 7) Applications for reserved matters shall be supported by a ground stability assessment and lighting modelling in order to demonstrate that detailed proposals meet the requirements of the submitted Parameters Plan, Lighting Strategy, Ecology and Landscape Strategy, and Appropriate Assessment.

All details of landscaping submitted for approval as part of any reserved matters application shall be in accordance with the mitigation measures set out in the Appropriate Assessment, including advanced planting of the northern buffer area and restoration of woodland habitats following construction of the road and bridge.

- 8) Prior to commencement of development (including demolition, ground works, vegetation clearance), a Construction Environmental Management Plan (CEMP) shall be submitted to and approved in writing by the Local Planning Authority. The CEMP shall include, but not necessarily be limited to, the following:
- a) Risk assessment of potentially damaging construction activities including those highlighted in the Appropriate Assessment;
 - b) Identification of construction excluding zones including the ecological buffers shown on the parameters plan;
 - c) Detailed construction methods to be employed to avoid or reduce impacts during construction;
 - d) Use of protective fences, exclusion barriers and warning signs, including advanced installation and maintenance during the construction period;
 - e) Details of reptile mitigation measures including translocation, habitat manipulation / clearance and receptor areas;
 - f) Measures to avoid damage or destruction of nesting birds;
 - g) Details of an appointed Ecological Clerk of Works; and
 - h) Ongoing monitoring, including compliance checks by a competent person(s) during construction and immediately post-completion of construction works.

The approved CEMP shall be adhered to and implemented throughout the construction period strictly in accordance with the approved details.

A report prepared by the appointed Ecological Clerk of Works certifying that the required mitigation measures identified in the CEMP have been completed to their satisfaction, and detailing the results of site supervision and any necessary remedial works undertaken or required, shall be submitted to the Local Planning Authority for approval within 3 months of the date of substantial completion of the development or at the end of the next available planting season, whichever is the sooner. Any approved remedial works shall subsequently be carried out under the strict supervision of a professional ecologist following that approval.

- 9) Prior to commencement of development, a Landscape and Ecological Management Plan (LEMP) shall be submitted to, and approved in writing by, the Local Planning Authority. The approved LEMP shall include, but not necessarily be limited to, the following information:
- a) Full specification of habitats to be created, including locally native species of local provenance and locally characteristic species ;

- b) Description and evaluation of features to be managed; including location shown on a site map;
- c) Landscape and ecological trends and constraints on site that might influence management;
- d) Aims and objectives of management;
- e) Appropriate management options for achieving aims and objectives;
- f) Prescriptions for management actions;
- g) Preparation of a work schedule (including an annual work plan capable of being rolled forward);
- h) Details of the body or organisation responsible for implementation of the plan;
- i) Ongoing bat and habitat monitoring and remedial measures;
- j) Timeframe for reviewing the plan;

The LEMP shall also include details of the legal and funding mechanism(s) by which the long-term implementation of the plan will be secured by the developer with the management body responsible for its delivery. The plan shall also set out (where the results from monitoring show that the conservation aims and objectives of the LEMP are not being met) how contingencies and/or remedial action will be identified, agreed and implemented. The LEMP shall be implemented in full in accordance with the approved details.

- 10) The reserved matters submitted pursuant to Condition 2 shall be accompanied by a suite of acoustic measures in respect of all dwellings adjacent to the Great Western Railway (i.e. unobstructed by other buildings). These measures shall include those detailed in the "Noise and Vibration Assessment Nov 2014 296312-01(01)" para 6.1.3; comprising glazing, appropriate passive ventilation and boundary treatments and shall demonstrate that ingress of external noise can be reduced to a level whereby the Good standard of BS8233 for internal noise criteria can be achieved. The development shall be carried out in accordance with the scheme prior to the first occupation of any affected unit and shall be maintained in accordance with the approved details at all times thereafter.
- 11) The reserved matters and details submitted pursuant to Condition 14 shall be accompanied by a suitable engineering design for the creation of any subterranean surface water attenuation/storage to be provided on site. The said design shall incorporate ground stability information as necessary and ensure that any associated operations can be implemented in such a way as to comprise the extraction of material and shoring up in a vertical section not requiring additional cutting/backfilling. The relevant works shall be carried out in full accordance with the approved details.
- 12) No development shall commence on site until a scheme for the discharge of surface water from the site (including surface water from the access/driveway), incorporating sustainable drainage details (together with any required off-site works to prevent any increased risk of flooding to downstream properties and any required permissions for connections to

private drainage systems/land drainage consents), has been submitted to and approved in writing by the Local Planning Authority. The development shall not be first occupied until surface water drainage, including any off-site works, has been constructed in accordance with the approved scheme.

- 13) No development shall commence on site until a foul water drainage strategy is submitted and approved in writing by the Local Planning Authority in consultation with the relevant sewerage undertaker. The Strategy shall include a drainage scheme providing detailed arrangements for the means of connection to the main sewer network and the capacity improvements required to serve the proposed development, including any phasing. No dwelling shall be first occupied or other building brought into use until the drainage scheme has been completed in full, in accordance with the approved details and to a timetable agreed with the local planning authority
- 14) No development shall commence until an assessment of the risks posed by any contamination shall have been submitted to and approved in writing by the local planning authority. This assessment must be undertaken by a suitably qualified contaminated land practitioner, in accordance with British Standard BS 10175: Investigation of potentially contaminated sites - Code of Practice and the Environment Agency's Model Procedures for the Management of Land Contamination (CLR 11) (or equivalent British Standard and Model Procedures if replaced), and shall assess any contamination on the site, whether or not it originates on the site. The assessment shall include:
 - i. a survey of the extent, scale and nature of contamination;
 - ii. the potential risks to:
 1. human health;
 2. property (existing or proposed) including buildings, crops, livestock, pets, woodland and service lines and pipes;
 3. adjoining land;
 4. ground waters and surface waters;
 5. ecological systems; and
 6. archaeological sites and ancient monuments.
- 15) No development shall take place where (following the risk assessment) land affected by contamination is found which poses risks identified as unacceptable in the risk assessment, until a detailed remediation scheme shall have been submitted to and approved in writing by the local planning authority. The scheme shall include an appraisal of remediation options, identification of the preferred option(s), the proposed remediation objectives and remediation criteria, and a description and programme of the works to be undertaken including the verification plan. The remediation scheme shall be sufficiently detailed and thorough to ensure that upon completion the site will not qualify as contaminated land under Part IIA of the Environmental Protection Act 1990 in relation to its intended use. The approved remediation scheme shall be carried out before the development is occupied.
- 16) Any contamination that is found during the course of construction of the approved development that was not previously identified shall be reported immediately to the local planning authority. Development on the part of the site affected shall be suspended and a risk assessment carried out and submitted to and approved in writing by the local planning authority. Where

unacceptable risks are found remediation and verification schemes shall be submitted to and approved in writing by the local planning authority. These approved schemes shall be carried out before the development is resumed or continued.

- 17) No development shall commence on site (including any works of demolition), until a Construction Method Statement, which shall include the following:

- a) the parking of vehicles of site operatives and visitors;
- b) loading and unloading of plant and materials;
- c) storage of plant and materials used in constructing the development;
- d) the erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate;
- e) wheel washing facilities;
- f) measures to control the emission of dust and dirt during construction;
- g) a scheme for recycling/disposing of waste resulting from demolition and construction works; and
- h) measures for the protection of the natural environment.

has been submitted to, and approved in writing by, the Local Planning Authority. The approved Statement shall be complied with in full throughout the construction period. The development shall not be carried out otherwise than in accordance with the approved construction method statement.

- 18) No construction activity whatsoever, including deliveries, shall take place outside the hours of 0730 and 1800 from Mondays to Fridays. No such activity shall take place at any time on Saturdays, Sundays and Bank or Public Holidays.
- 19) The dwellings hereby approved shall achieve a level of energy performance at or equivalent to Level 4 of the Code for Sustainable Homes. No dwelling shall be occupied until evidence has been issued and submitted to, and approved in writing by, the local planning authority certifying that this level or equivalent has been achieved.