



Appeal Decision

Site visit made on 28 May 2019

by Helen O'Connor LLB MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25 July 2019

Appeal Ref: APP/D0121/W/19/3221990

Land off Station Close, Congresbury BS49 5EE

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for outline planning permission.
 - The appeal is made by Mr Martin Richards of Richards Developments against North Somerset Council.
 - The application Ref 18/P/2532/OUT, is dated 26 February 2018.
 - The development proposed is residential development of up to 13 no. dwellings and associated infrastructure with access for approval and appearance, landscaping, layout and scale reserved for subsequent approval.
-

Decision

1. The appeal is allowed and outline planning permission is granted for residential development of up to 13 no. dwellings and associated infrastructure with access for approval and appearance, landscaping, layout and scale reserved for subsequent approval at Land off Station Close, Congresbury BS49 5EE in accordance with the terms of the application, Ref 18/P/2532/OUT, dated 26 February 2018 subject to the conditions set out in the attached Schedule.

Application for costs

2. An application for costs was made by Mr Martin Richards of Richards Developments against North Somerset Council. This application is the subject of a separate Decision.

Procedural Matters

3. Notwithstanding the description of development on the application form for up to 19 dwellings, the application plans and description were amended and subjected to further consultation prior to the submission of the appeal. Therefore, I have used the description of development used in the appeal form.
4. The application is made in outline with access to be determined with landscaping, scale, layout and appearance reserved for subsequent approval. Accordingly, save for where the plans deal with matters of access, the layout shown on the submitted plans is for illustrative purposes only.
5. The Council submitted a statement after the submission of the appeal against non-determination which sets out their approach had they been in a position to determine the application. It outlines that there are few areas of substantive dispute between the parties and therefore, they would have been minded to

approve the development subject to planning conditions and an obligation. This has informed the main issues considered below.

6. Since the submission of the appeal, the examination of the emerging Congresbury Neighbourhood Development Plan 2018-2036 (NP) has taken place and the independent examiner's report was issued on 10 June 2019. Both parties have had the opportunity to comment on the NP and so no injustice will result by my consideration of it in this decision.

Main Issue

7. The main issues are whether the site offers an acceptable location for the proposed development having regard to local and national policies, and the effect of the proposal on the North Somerset and Mendip Bats Special Area of Conservation.

Reasons

Location of development

8. The appeal site is a rectangular grassed area located outside, and approximately 300 metres west of the settlement boundary for Congresbury, a settlement identified as a service village in the North Somerset Council Core Strategy, January 2017 (CS). The proposal would involve the erection of up to 13 dwellings behind an existing restaurant premises fronting the A370. The site is located between a camping area to the west, and an area of modern housing to the east, and would be accessed off Station Close.
9. The development plan sets out the settlement strategy for the district with policy CS14 of the CS directing development to Weston-Super-Mare and other principal towns in the first instance. Thereafter, policy CS32 allows for new residential development within or adjoining the settlement boundaries of service villages subject to specified criteria. As the site is approximately 300 metres from the settlement boundary, the site does not adjoin it, and therefore constitutes countryside for the purposes of the CS. Policy CS33 strictly controls residential development in the countryside, and the proposal would not fall within any of the specific exceptions.
10. Accordingly, the proposal would conflict with policies CS14, CS32 and CS33 of the CS which form part of the settlement strategy for residential development in the district.

Special Area of Conservation (SAC)

11. The site lies within an identified consultation zone due to its proximity to the North Somerset and Mendip Bats Special Area of Conservation, a habitat recognised under the Conservation of Habitats and Species Regulations 2017 as being of international importance for horseshoe bats and their habitat. The appeal site is relatively undeveloped, is generally unlit and contains boundary hedgerows which make this a suitable habitat to support bats. Although, the Bat Survey prepared by Clarkson and Woods, Ecological Consultants found there were no bat roosts within the site, it did reveal moderate levels of bat activity across a range of bats species, including horseshoe bats.

12. Recent caselaw¹ requires the decision maker, when considering the effect that a proposal may have on such a European Site, to consider mitigation within an Appropriate Assessment rather than at screening stage. In the absence of mitigation measures and using a precautionary approach, the development would result in the loss of some of the habitat, and the associated artificial lighting would be likely to affect the commuting and foraging routes of bats. As such, there is a risk of a significant effect on the internationally important interest features of the SAC.
13. Section 6 of the Bat Survey, and the Shadow Habitats Regulation Assessment prepared by Clarkson and Woods outline specific mitigation measures to address the impact. These would equally apply to the proposed scheme for 13 dwellings, notwithstanding that they were prepared in relation to the original proposal for 19 dwellings. They include buffer zones to protect the boundary hedgerows particularly along the southern and western boundaries, an ecologically sensitive lighting scheme to retain dark corridors, appropriate native planting to support bat habitat as well as some ecological enhancements.
14. Based on this evidence the development would retain sufficient foraging habitat in line with the methodology set out in the North Somerset and Mendip Bats Special Area of Conservation Guidance on Development Supplementary Planning Document so as to avoid a harmful impact on the SAC. Furthermore, the potential cumulative impact with other development is also addressed by retaining dark corridors that would protect the routes of commuting of bats across the appeal site.
15. Furthermore, in response to consultation under Regulation 63(3) of the Conservation of Habitats and Species Regulations 2017, Natural England have confirmed that the mitigation measures proposed in this case would be sufficient to avoid an adverse impact to the integrity of the SAC and would be appropriately secured through the use of planning conditions, which given their specialist knowledge, attracts considerable weight. I concur with that view and am therefore satisfied that the mitigation measures identified are sufficient to avoid the likely impact of the development on the SAC and be secured.
16. I therefore conclude that it has been demonstrated that the proposed development would not adversely affect the integrity of the SAC and would not cause harm to a protected species. I therefore find that the proposal would accord with policy CS4 of the CS and DM8 of the Development Management Policies, Sites and Policies Plan Part 1, July 2016 (SPP) which, amongst other matters, seek to promote biodiversity and preserve protected species and their habitats.

Other Matters

17. I have had regard to concerns expressed by some local residents in relation to access to play space, traffic and impact upon living conditions. However, the site is reasonably accessible to the facilities in Congresbury. The Highway Authority did not raise an objection to the proposed access and parking arrangements, and as such, there is little substantive evidence to find otherwise. Furthermore, the proposal is in outline whereby the layout would be determined in a separate application. Accordingly, the specific arrangement of

¹ People over Wind and Sweetman v Coillte Teoranta ECLI:EU:C:2018:244

dwelling and their windows would be the subject of further consideration. However, given the need to provide buffer zones for ecological purposes, and the likely separation distances to the adjacent caravan site and houses, this is unlikely to give rise to unacceptable impacts on privacy or through disturbance to nearby residents.

Planning Balance

18. There is no dispute between the parties that the Council is currently unable to demonstrate a five year supply of deliverable housing sites. Paragraph 11d) of the National Planning Policy Framework (the Framework) indicates that in such circumstances the relevant development plan policies should be considered as being out-of-date for the purposes of the presumption in favour of sustainable development. Therefore, it follows that the conflict with policies CS14, CS32 and CS33 of the CS attracts reduced weight.
19. Paragraph 11d) goes on to set out two limbs, the first applies in situations where there are specific policies in the Framework to protect areas or assets of particular importance that provide a clear reason for refusing the development proposed. In light of my reasoning above, the evidence submitted does not suggest that a clear reason for refusal applies in these circumstances. Therefore, the second limb setting out the "tilted balance" applies such that planning permission should be granted unless any adverse impact of doing so would significantly and demonstrably outweigh the benefits of the proposal when assessed against the policies of the Framework as a whole.
20. The location of the site outside of the settlement boundary and its consequent conflict with the development plan amounts to an adverse impact. However, this is mitigated by the relative proximity of the site to the facilities within Congresbury which would result in future residents benefitting from reasonably easy access to schools, local shops and public transport services.
21. Furthermore, the appeal site is allocated for housing within a proposed amended settlement boundary for Congresbury in policy H3 of the emerging NP. Given its advanced stage of preparation and that no objections were received to the inclusion of the appeal site in the plan, it is a consideration of appreciable weight in favour of the proposal.
22. The proposal would provide an additional 13 dwellings to the overall housing supply in line with the housing objectives of the Framework. Given the present shortfall of such sites this attracts considerable weight.
23. The appellant has submitted a Unilateral Undertaking under section 106 of the Town and Country Planning Act 1990 that would ensure that 30% of the dwellings provided would be affordable houses. This would provide the number and tenure split of affordable houses in line with policy CS16 of the CS. Therefore, on the evidence before me, it appears that the need for the obligation arises from the development and satisfies the 3 tests in Regulation 122(2) of the Community Infrastructure Levy Regulations 2010. The proposal would therefore assist in meeting the housing need for people who are unable to access the private housing market and as such, this attracts substantial weight.
24. The proposal would also bring modest economic benefits during the construction period and longer terms benefit to the local economy through the

introduction of new population. Similarly, modest social benefits are likely to arise with the introduction of new residents that would assist with greater cohesion with the existing housing development to the east of the site. These factors attract modest weight.

25. When the aforementioned benefits are considered together, they attract substantial weight in the planning balance. Accordingly, the adverse impacts of the proposal would not significantly and demonstrably outweigh the benefits when assessed against the policies of the Framework when taken as a whole. Together with the advanced stage of the NP, these are considerations of such weight that, notwithstanding the conflict with policies in the CS, a departure from the development plan would be justified in these circumstances.

Conditions

26. The Council have suggested 26 conditions. Conditions relating to the submission and approval of reserved matters and the commencement of development are necessary, as is reference to the approved plans in the interests of certainty.
27. It will be seen from my reasoning above that it is necessary to impose conditions in order to secure the mitigation measures necessary to protect the Special Area of Conservation. Therefore, a condition requiring a Landscape Ecological Management Plan and details of the external lighting scheme are imposed. Whilst the Council suggest two different conditions relating to Construction Environmental Management Plans (CEMP), one CEMP is justified primarily to avoid harm to biodiversity. To avoid further duplication, I have also included a reference to hedgerow and tree protection in the CEMP requirements. In addition, a requirement to cover the hours of construction is included to avoid impact on bat activity and due to the proximity of the development to residents at nearby dwellings and the adjacent camping site.
28. Based on the evidence provided by the submitted ecological survey and bat survey, it is necessary to secure the ecological enhancement measures identified in those reports, and a condition is imposed to secure this. However, on that basis, I have amalgamated several of the suggested conditions relating to an ecological management and enhancement plan and the provision of bird boxes and bat roosts into this condition.
29. In the interests of accessibility and highway safety, there is a need to secure the pedestrian access included as part of the appeal proposal at an appropriate time to serve the intended occupants of the development.
30. To reduce the risk of flooding at the site, the finished floor levels should accord with the findings of the submitted Flood Risk Assessment. For similar reasons, it is reasonable to require a detailed surface water scheme incorporating sustainable drainage principles. I have modified the wording to reduce the length of the suggested condition, and to include the subsequent implementation of the agreed details.
31. Policy CS2 of the CS has a requirement that proposals of 10 dwellings should provide for at least 15% of the predicted energy requirements of the development to be provided by renewable sources. I have amended the suggested condition to require details to be submitted as part of the reserved matters to be approved using wording that more closely accords with policy

- CS2. I have amalgamated this condition with the requirement to demonstrate adherence to the nationally described space standard as expected by policy 42 of the SPP. However, I have omitted the reference to accessible and adaptable housing as I have not seen evidence of the need referred to in the policy.
32. The Council suggest a condition to agree details of the management of communal areas shown on the Ownership Area Plan. However, this is an illustrative plan as the detailed layout of the scheme is not included as part of the appeal proposal. Nevertheless, it is very likely that the final scheme will include communal areas that will require oversight by a management company. It is appropriate that the Council agree that the initial scope and set up of the management company is adequate to safeguard the quality of the local environment and living conditions for future and surrounding residents. I have therefore adjusted the wording of the condition accordingly.
33. I have seen little evidence to substantiate that a requirement for a fire hydrant arises from the proposal. Therefore, I do not consider that a condition to require one would meet the tests set out in paragraph 55 of the Framework, which also advises that conditions should be kept to a minimum. On this basis, the remaining suggested conditions would be more appropriately considered at the reserved matters stage, which depending on the nature of the details provided at that point, may make those suggested unnecessary. Therefore, I do not consider that the conditions suggested in relation to the submission of material samples, provision of parking spaces, provision of cycle storage, further landscaping details and implementation of landscaping details are necessary to make the outline proposal acceptable in planning terms.

Conclusion

34. The proposal would conflict with the settlement strategy policies in the CS. However, there is limited tangible harm that would result given the relative proximity of the site to the service village. Furthermore, the Framework policy and emerging NP policy constitute considerations that justify a departure from the development plan.
35. Accordingly, for the reasons given above I conclude that the appeal should be allowed, and planning permission granted.

Helen O'Connor

Inspector

Schedule of conditions (13 conditions)

- 1) Details of the appearance, landscaping, layout, and scale, (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.
- 2) Application for approval of the reserved matters shall be made to the local planning authority not later than 3 years from the date of this permission.
- 3) 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.
- 4) The development hereby permitted shall be carried out in accordance with the following approved plans: Site Location Plan SLP-01 Rev B and Proposed Site Access 1510-62 SK01 but only in respect of those matters not reserved for later approval.
- 5) No development shall take place (including demolition, ground works, vegetation clearance) until a Construction Environmental Management Plan (CEMP) has been submitted to and approved in writing by the Local Planning Authority. The CEMP shall include the following.
 - a) Risk assessment of potentially damaging construction activities.
 - b) Practical measures to avoid or reduce impacts during construction, including temporary fencing (may be provided as a set of method statements or plans) and measures to avoid impacts on nearby designated sites.
 - c) Details of mitigation for protected and notable species to be stated, consistent with the *Bat Survey* and *Ecological Survey* reports (Clarkson and Woods, February 2018).
 - d) The location and timing of sensitive works to avoid harm to biodiversity features.
 - e) Responsible persons and lines of communication.
 - f) The location and design of tree and hedgerow protection fencing
 - g) Hours of construction

The approved CEMP shall be adhered to and implemented throughout the construction period strictly in accordance with the approved details, unless otherwise agreed in writing by the Local Planning Authority.
- 6) No development shall commence until details of a Landscape Ecological Management Plan (LEMP) is submitted to and approved in writing by the Local Planning Authority. This shall include: a location plan, planting schedule and workplan, detailing management objectives, timings and details of management prescriptions. The submitted detail shall also incorporate a monitoring schedule to cover bat activity during construction and in years 1, 3 and 5 post construction together with light levels within retained dark corridors. The approved detail shall thereafter be implemented in full in accordance with the recommendations and mitigation requirements of the LEMP.

- 7) Details of all external lighting shall be provided with the Reserved Matters application including:
 - (i) details of the type and location of the proposed lighting;
 - (ii) existing lux levels affecting the site;
 - (iii) the proposed lux levels that shall ensure that light levels do not exceed 0.5 Lux along the boundary hedgerows and habitats to permit continued foraging and commuting of horseshoe bats across the landscape.; and
 - (iii) lighting contour plans,Any external lighting shall be installed and operated in accordance with the approved details.
- 8) No development shall commence until a 10-year Ecological Management and Enhancement Plan for the site shall be submitted to and approved in writing. This shall refer to the ecological compensation and enhancement measures recommended in Part 6 of the submitted Ecological Survey and Part 6 of the Bat Survey prepared by Clarkson and Woods Ecological Consultants dated February 2018 and provide a location plan, specification for ecological enhancement measures including a bird nesting and bat roosting strategy, management prescriptions for habitat including monitoring and a phasing plan. The compensation and enhancement measures agreed shall be carried out in accordance with the agreed details and phasing plan.
- 9) The proposed footway serving the development from the A370 Weston Road shown on drawing 1510-62 SK01 shall be constructed to a useable standard and finish for pedestrian use prior to the occupation of the first dwelling of the development hereby approved. The final finished surface to the footway shall thereafter be completed prior to the substantial completion of the final dwelling.
- 10) Finished floor levels shall be a minimum of 6.8mAOD.
- 11) No development shall commence until surface water drainage works have been implemented in accordance with details that have first been submitted to and approved in writing by the local planning authority. This shall include the results of an assessment of the potential for disposing of surface water by means of a sustainable drainage system. The system shall be designed such that there is no surcharging for a 1 in 30 year event and no internal property flooding for a 1 in 100 year event + 40% allowance for climate change. The development shall be carried out in accordance with the agreed details.
- 12) The details submitted as part of condition 1 shall include measures to:
 - i) Demonstrate how the proposal uses on-site renewable energy sources or links with available local off-site renewable energy sources to meet a minimum of 15% of the predicted energy use of the dwellings (measured in kilowatt hours - KWh).
 - ii) Incorporate the nationally described space standards.Thereafter, the development shall be carried out in accordance with the details agreed.

- 13) No development above damp-proof course level shall take place until details of the proposed Management Company responsible for any communal areas have been submitted to and approved by the Local Planning Authority in writing. The submitted details shall include the future management and maintenance arrangements, contact details for the appointed administration, the resourcing arrangements and accountability to residents. Thereafter the development shall proceed in accordance with the approved details. The Local Planning Authority shall be informed promptly should there be any changes to the appointed management company or to the details so approved.