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## Appeal Decision

Site visit made on 16 July 2019

**by J Moss BSc (Hons) DipTP MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 29 July 2019**

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**Appeal Ref: APP/F0114/W/19/3227748**

**1 Tynning Place, Combe Down, Bath BA2 5HA**

- 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 Combe Down Building and Developments against the decision of Bath & North East Somerset Council.
  - The application Ref 18/04354/FUL, dated 1 October 2018, was refused by notice dated 23 November 2018.
  - The development proposed is the erection of a detached family home following the demolition of garages and car port'.
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### Decision

1. The appeal is dismissed.

### Preliminary Matters

2. There is a discrepancy between the planning application form, the appeal form and the council's decision notice. The name given for the applicant on the application form is not the same as the name given for the appellant on the appeal form. Notwithstanding this, both forms give the same company name, although this is not used by the council on the decision notice. In view of the discrepancy, I have used the company name for the details of the appellant in this case.

### Main Issues

3. The appeal site lies within the Combe Down part of the Bath Conservation Area. The site is also within the Bath World Heritage Site (WHS).
4. Accordingly, the main issues are as follows:
  - Whether or not the proposed development would preserve or enhance the character or appearance of the area and the Bath Conservation Area heritage asset, having regard to the scale of the development proposed, its layout and design; and
  - The effect of the development on protected species.

## Reasons

### *Character and Appearance*

5. The appeal site is within a predominantly residential part of the Bath Conservation Area. This part of the conservation area is characterised by small rows of terraced properties or rows of closely related semi-detached and detached properties. The row of properties opposite the entrance to the appeal site (fronting on to Tynning Road) is typical of this, being fairly simple and uniform in their appearance and sitting close to the edge of the highway. Tynning Road itself is a narrow residential street with narrow footpaths either side of the carriageway.
6. Although the appeal site is viewed within the context of Tynning Road, the site is located within a block of long, thin domestic gardens that serve the row of terrace properties along Tynning Place. Tynning Place is unusual in that the terrace fronts onto a narrow footpath that separates the long narrow gardens from the dwellings and their small front courtyards. Whilst there is some domestic development within the Tynning Place gardens close to the appeal site, this is low level and incidental in its character.
7. To the south of the Tynning Place gardens is a more 'ad hoc' arrangement of dwellings. These properties appear to be historic, although some have been more recently modernised. Whilst this collection of dwellings encroach slightly into the Tynning Place garden block, the domestic appearance of the Tynning Place gardens and their linear character is still retained, particularly when viewed from Tynning Road and at the entrance to the footpath to the front of the Tynning Place terrace.
8. The rows of properties within the area and the largely undeveloped linear gardens, particularly those serving Tynning Place, are the predominate features within this part of the wider conservation area and are important in demonstrating the historical development of the area. In my view, these are defining features of both the character and the appearance of the area surrounding the appeal site and make a positive contribution to the significance of the conservation area in this locality.
9. The appeal site itself is occupied in part by a flat roof carport and domestic garage that are located to the rear of the site. To the front of the garage and carport is a driveway providing access off Tynning Road. The remainder of the appeal site is part of a large, narrow domestic garden that is to the rear of no 1 Tynning Place.
10. Whilst the buildings occupying the appeal site are not typical of those that contribute to the historic context, they are simple, low level buildings that have a subservient domestic character and have assimilated into their setting. Accordingly, they have a neutral effect on the wider conservation area and their loss would not cause harm to its significance. Notwithstanding this, the appeal site as a whole, being part of the linear garden closely related to 1 Tynning Place, makes a positive contribution to the significance of the conservation area, particularly as it assists in retaining the important linear garden form.
11. The proposed development would occupy a significant portion of the linear garden serving 1 Tynning Place and would, therefore, sub-divide the garden

resulting in the loss of its linear form. This would be at odds with the grain of development in the area.

12. In addition, the development would result in the loss of a number of mature trees on the site. Whilst I note the appellant's comments with regard to these trees, this is not supported by an assessment that establishes the condition of the trees and, if appropriate, justification for their removal. The trees currently make a positive contribution to the appearance of the area and their loss would cause harm.
13. Although the proposed dwelling would occupy part of the footprint of the existing garages and carport, it would be far more substantial in its scale. Considered together with the proposed detached garage, the proposed development would change the character of the site from that of a garden and subservient outbuilding to a wholly new and separate residential property, resulting in a far more prominent form of development within Tynning Road when compared with the existing.
14. I acknowledge that the development would be in close proximity to the more ad hoc collection of properties to the south of Tynning Place. I also note that reference has been made to approved development that is located within that collection of properties. Whilst I have had regard to these properties and their relationship to the appeal site, to my mind the development would primarily be viewed within the context of Tynning Road, within which the predominant form of development is rows of simple, two storey terraced properties. The proposed detached, dormer property would be incongruous within this context. Its scale and form would visually jar with the traditional terraced properties that it would sit opposite. The proposed use of materials to match those used in other properties in the area would do little to reduce the detrimental impact of the development.
15. My attention has been drawn to recent development within the proximity of the appeal site. As I have not been provided with the details of this, other than the addresses, I give this very little weight.
16. The local plan for the area is the Bath and North East Somerset Local Plan 2011-2029. Within this, the Core Strategy and Placemaking Plan (CSPP) contains policies D1 (General Urban Design Principles), D2 (Local Character and Distinctiveness) and D3 (Urban Fabric), that seek to ensure, amongst other matters, that development positively responds to the site context and makes a positive contribution to the character, distinctiveness and qualities of the area. In particular, policies D2 and D3 require development to be of an appropriate grain, reflecting local character and existing patterns of development. In addition, policy D5 (Building Design) relates specifically to building scale, design and materials, whilst policy HE1 (Historic Environment) emphasises the duty to preserve or enhance the significance of the conservation area and requires that any harm identified is fully justified.
17. With regard to trees, policy NE6 (Trees and Woodland Conservation) of the CSPP seeks to avoid the adverse impact of development on trees and woodland, and secure mitigation where removal is unavoidable. Policy NE5 (Ecological Networks) identifies the importance of trees and the contribution they make to ecological networks.

18. Having regard to design, scale and layout, the proposed development would be at odds with the pattern of development in the area. The development fails to have regard to the predominant historic grain and would be incongruous within its setting, particularly when viewed from Tynning Road. Accordingly, the development would fail to preserve or enhance the character or appearance of the area contrary to policies D1, D2, D3 and HE1 of the CSPP. In addition, the development would not accord with the main aim of policy D5, in terms of the detail of the development. Neither would it accord with the aims of policies NE5 and NE6, by virtue of the unjustified loss of trees that contribute to the green infrastructure and general amenity of the area. For these reasons, the development would also be at odds with the guidance provided in the Planning Practice Guidance on the historic environment (the PPG), Chapter 10 of the National Planning Policy Framework (the Framework) and the Sustainable development principles of the Framework.
19. Having regard to the findings above, I find the harm caused would be less than substantial. In these circumstances, paragraph 196 of the Framework makes it clear that where less than substantial harm to the significance of a designated heritage asset would occur then this has to be weighed against the public benefits of the proposal. I will return to this later in my decision.
20. With regard to the effect of the development on the Bath WHS, I have not been provided with any substantial information regarding the Outstanding Universal Value of the WHS. Notwithstanding this, as I am dismissing the appeal for other reasons I have not considered this matter further.

#### *Protected Species*

21. The Council has suggested that it is very likely that bats are present at the site and are using the garage buildings and trees for roosting. It is also stated that the site is within 350 metres of the Bath and Bradford on Avon Bats Special Conservation Area, suggesting that the appeal site is in an area known to be used by Horseshoe bats for foraging and roosting. Such a suggestion is reasonable, particularly having regard to the size of the open space accommodating the Tynning Place gardens, together with the size of the trees and amount of vegetation within the appeal site and the remainder of the garden serving 1 Tynning Place.
22. The appellant states that there is no evidence of bats or other protected species on the plot and suggests that there will be no loss of ecology from the development, which will include the removal of trees. However, I have not been supplied with a survey undertaken by a qualified Ecologist.
23. Based on the evidence before me, I consider that there is a reasonable likelihood of protected species being present on the site. A survey of the site has not been undertaken to establish the presence or otherwise of protected species, and the extent that they may be affected by the proposed development. Accordingly, and having regard to the guidance provided in Circular 06/2005 on Biodiversity and Geological Conservation, I am unable to determine the likely effect of the proposed development on protected species and whether compliance has been achieved with policy NE3 (Sites, Species and Habitats) of the CSPP, which seeks to ensure that development does not adversely affect internationally or nationally protected species. As a consequence of this, the appeal is dismissed with regard to the effect of the development on protected species.

## **Planning Balance**

24. I have found that the proposed development would cause less than substantial harm to the significance of a designated heritage asset. Against this has to be weighted the public benefits of the proposal.
25. There would be an addition of one dwelling to the area's housing stock with the associated economic and social benefits. In addition, the development would result in the removal of an access gate that causes an obstruction when opened out onto Tynning Road. I also note the letters of support from local people submitted by the appellant.
26. However, the Framework makes clear in paragraph 193 that great weight should be given to the conservation of a heritage asset. In addition to this, there is the matter of protected species and the harm identified in this regard. Accordingly, in this particular case I find that the harm that would occur to the Bath Conservation area and to protected species outweighs the benefits outlined above.

## **Conclusions**

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

*J Moss*

INSPECTOR