



Appeal Decision

Site visit made on 12 July 2019

by P D Sedgwick BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20 August 2019

Appeal Ref: APP/F0114/W/19/3227311

The Beacon, Richmond Place, Beacon Hill, Bath, BA1 5QA

- 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 Mr Roger Fenton against the decision of Bath and North East Somerset Council.
 - The application Ref 17/05242/FUL, dated 26 October 2017, was refused by notice dated 25 October 2018.
 - The development proposed is described as 'the demolition of the existing three-storey dwelling, followed by the erection of a new three-storey dwelling. No change of use'.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are the effect of the proposed development upon:
 - the character and appearance of the City of Bath World Heritage Site and the Bath Conservation Area and the setting of listed buildings within it; and,
 - whether the proposed development would have an adverse effect on local biodiversity.

Reasons

Character and appearance

3. I have dealt with the effect of the proposed development on the City of Bath World Heritage Site (WHS), Bath Conservation Area (CA) and the setting of listed buildings in one section below because, at a city-wide level, they are interrelated. However, where there is the potential for the proposed development to effect more localised areas, I have dealt with the issues in specific paragraphs, albeit under this same general heading.
4. The proposal site is located on Beacon Hill where the sides of the Avon Valley rise towards a plateau. The valley side is wooded and falls within the WHS and CA, which contain numerous listed buildings. Beacon Hill and other wooded slopes around the city are identified as being important to the character and setting of the WHS, in the City of Bath World Heritage Site Setting Supplementary Planning Guidance (2013) (SPG).
5. The proposed house would replace an existing 2 storey hipped roofed house which is set in against the slope. From Richmond Place, the street that lies

behind the house, the existing house looks like a bungalow, because only its first floor and roof are visible. It is described by the Council's Conservation Officer as having a neutral impact upon the character of the area. The proposed house comprises three overlapping cubes cantilevered out from the slope. They are off set from each other and approximately face south with extensive glazing on the south elevations.

6. Section 66 (1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 states the need to have special regard to the desirability of preserving listed buildings and any features of special architectural or historic interest they possess, and Section 72 (1) requires special attention to be paid to the desirability of preserving or enhancing the character or appearance of a conservation area.
7. Moreover, paragraphs 193 and 194 of the National Planning Policy Framework (the Framework) require that when considering the impact of a proposed development on the significance of designated heritage assets, (including listed buildings, conservation areas, and world heritage sites) great weight should be given to the asset's conservation. The more significant the asset, the greater the weight should be. World heritage Sites are identified as being assets of the highest significance. Paragraph 190 makes it clear that the particular significance of any heritage asset that may be affected by a proposal includes development affecting the setting of a heritage asset.
8. Policy B4 of the Bath and North East Somerset Core Strategy (2013) (CS) has a strong presumption against development that would result in harm to the Outstanding Universal Value of the World Heritage Site, its authenticity or integrity. Policies D2, D5 and HE1 of the Bath and North East Somerset Placemaking Plan (2017) (PMP) supports innovative design which contributes positively and does not harm local character and distinctiveness, or the special architectural or historic interest of listed buildings, and preserves or enhances those elements that contribute to the special character or appearance of a conservation area.
9. According to the SPG, the aspects of significance of the WHS, set out in the statement of outstanding universal value (SOUV), are its Roman remains and its Georgian architecture. Situated in a hollow in the hills and built with a landscape aesthetic has created a strong garden city feel. Bath's special landscape is described as a superb wooded skyline with fine views across the Avon Valley, which inspired architects to develop high quality architecture of crescents and terraces with many street views channelled towards woodlands.
10. The Council is concerned that the proposed development would be visually prominent, particularly in the winter and at night-time, and thus harm the setting of the WHS, the character and appearance of the CA and the setting of listed buildings within it. The Council has not identified which listed buildings would be affected. However, I presume, given the large number of listed buildings across the City, it is referring to the city-wide setting generally and specifically to the setting of listed buildings comprised of a Georgian Terrace opposite the site on Richmond Place.
11. I visited the site and several viewpoints around the City in July. These included Powlett Road, Clevelend Bridge, The Paragon, the Kennet and Avon Canal Tow Path near Hampton Row and Bathwick Meadow. The existing house was not

visible from any of these viewpoints due to extensive woodland screening, despite the removal of several trees from the site.

12. The appellant's landscape and visual impact assessment (LVIA) includes photomontages of the existing and proposed house at different times of the year. Whilst I note the Council's concerns regarding the LVIA methodology, in my view the information provided is adequate to assess the visual impact of the proposed development. The LVIA demonstrates that when trees are in leaf the proposed dwelling would be completely screened. When trees are bare it would be largely screened, with views limited to glimpses through branches. From longer views, such as from Alexandra Park and Bathwick Meadows, any glimpses would be against a backdrop of houses above it on Richmond Place which dominate the skyline.
13. The appellant's plans include a superimposed outline of the existing house over that of the proposed house. The proposed house would be slightly wider and taller than the existing house and its roof would sit at a slightly higher level. It would protrude out from the slope but align with it. The replacement of a hipped roof with a square roof profile would alter its form and add to the building's mass. These changes are significant in terms of the differences in design of the two buildings and their shape. However, they would not significantly add to the size and visual impact of the proposed development compared to the existing house because of the distance between the site and important viewpoints. The proposal would not create an overly prominent and dominant building on the hillside as suggested by the Council.
14. There would be larger glazed areas than on the existing house, but the configuration of the building with overlapping structures and recessed windows combined with the filtering effect of trees would result in no significant increase in the potential for light reflection during the day or light spill at night over that which already exists.
15. The Council suggests that the woodland surrounding the site is in a critical condition and that some trees may have a life expectancy of less than 20 years. It contends that the steep slope would make replanting and woodland management difficult and that the loss of trees would expose the site and thus increase the visual impact of the proposal to an unacceptable degree.
16. I have to consider the proposal primarily against the existing landscape setting. Nevertheless, I understand that trees to the south of the site are protected by a group tree preservation order (TPO) and therefore could only be removed with the Council's permission. Whilst the site is steep, I agree with the appellant's arboricultural consultant that this need not prevent the appellant's proposed planting scheme, or woodland management of the area in general, from being effective. Given the importance of the woodland area to the setting of the WHS, it seems to me that the maintenance and preservation of it is a matter for the Council to address. Overall, I am not convinced from the evidence before me that the proposal would cause any harm to the woodland area or that it could not be maintained in the future and continue to screen the site.
17. Furthermore, even if the surrounding trees were to die or be removed or managed in a way that reduced the existing screening, in my view the building's visual impact would not be significantly greater than that of the existing house. Therefore, its impact on the WHS and its setting, and the wider

CA, in this respect, would be similarly neutral as the existing house and thus would preserve their character and appearance.

18. Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires that I have special regard to preserving listed buildings or their setting or any features of special architectural or historic interest.
19. The site is at the bottom of Richmond Green, a triangle of land that runs between Beacon Road, Richmond Place and a footpath that joins the two and runs along the back of the wooded slope. The site is lower than the terraced houses on Richmond Place and due to its location, at the bottom end of the Green and behind the footpath, it appears separate and isolated from the housing above it. The closest house, 57 Richmond Place, is set back behind a stone wall and appears detached from the rest of the terrace, although it is connected to the neighbouring house by buildings to the side and rear of its frontage.
20. The rest of the terrace rises away from the site behind the Green. The houses' immediate setting is defined by their front boundaries which are a mix of hedges, walls and railings. The Green in front provides part of their wider setting. The proposal site does not contribute to it, although it provides a backdrop to views from the terrace and Green. I have already noted that the proposed house would be seen from longer views to the south, with houses on Richmond Place glimpsed above and behind it during the winter months and early Spring. From these distant views Richmond Place is only partially visible and the buildings too far away to distinguish the features that contribute to their significance, or their proper setting. As such, I do not consider that the site contributes to their setting from this view. Overall, in my view the proposed development would have no impact on the setting of listed buildings.
21. The Council is concerned that the proposed development would have a negative and over dominating impact on the street scene within the CA. The key characteristics that contribute to the significance of the CA in this location are the Georgian Terrace and Richmond Green as described above.
22. Approaching the site along Richmond Place from below, intervening trees and a bend in the road prevent views of the existing house other than at close quarters. Similarly, approaching the site from above, along Richmond Place, trees on the Green and along the adjacent footpath, and the site's position lower down the slope, prevent views of the existing house until very close to it. From these close views the house is only prominent because most housing is on the opposite side of the road and there is woodland either side of it. The break it provides along the treeline allows glimpses across to a wooded ridge on the other side of the Avon Valley. Otherwise the site and existing house are peripheral and contribute nothing to the significance of the CA.
23. The proposed dwelling would be larger than the existing one. From the street the observable differences would be the modest increase in height and the replacement of the hipped roof with a square roof. However, the building is designed with a varied form to avoid a dominant appearance and to maintain views from Richmond Place across the Avon Valley. This is achieved by offsetting and cantilevering the different levels so that the roof is stepped, and the highest part is set back furthest from the road. Despite the modest increase in height, I do not consider that the proposed dwelling would be anymore dominating than the existing house. Furthermore, replacing the

existing house, which is of no architectural merit and does not reflect the character of the area, with a modern well-designed house would add visual interest to the street scene rather than causing any harm. I therefore conclude that the proposal would at least preserve the character and appearance of the CA.

24. Overall, I conclude on this main issue that the proposed development would have a neutral effect that would not harm the setting of the WHS or any listed buildings and would preserve the character and appearance of the CA. It would not have an adverse impact on the Beacon Hill woodland area which provides part of the setting of the WHS and CA and, as such, is of landscape, historic and cultural value. As such, there would be no conflict with CS Policy B4 and PMP Policies D2, D5 and HE1, and National Policy in the Framework. Policy D4 of the PMP, referred to in the reason for refusal, deals with streets and spaces and is not relevant to the proposal.

Biodiversity

25. The site is partly within an area designated as a Site of Nature Conservation Interest. The Bath and Bradford upon Avon Bats Special Area of Conservation (SAC) is 2.6 kilometres distant. According to the Council there is bat activity near the proposal site, including horseshoe bats which are associated with the SAC and are a European protected species.
26. Bats are a protected species, protected principally under the Conservation of Habitats and Species Regulations (2010) ('The Regulations'). Policies NE3 and NE5 of the PMP do not permit development that would adversely affect protected species or their habitats and requires development to contribute to ecological networks through habitat protection respectively. Furthermore, the Framework sets out that when considering planning applications, local planning authorities should aim to conserve and enhance biodiversity. Where significant harm resulting from a proposal cannot be avoided, cannot be adequately mitigated, or as a last resort cannot be compensated for, then permission should normally be refused.
27. Paragraphs 98 and 99 of Government Circular: Biodiversity and Geological Conservation – Statutory Obligations and Their Impact Within the Planning System (Circular 06/2005) state that it is essential that the presence of protected species and the extent to which they may be affected by a proposal is established before planning permission is granted.
28. The appellant carried out a bat assessment as part of a wider ecology survey of the site. Foraging potential was assessed as poor, but it was acknowledged that bats would probably commute across the site. It also concluded that the existing house had no potential as a bat roost because there were no crevasses or gaps externally and the roof was in good condition. An open porch was considered as having potential as a roost, but there was no evidence of bats and it was considered that the inside light and adjacent streetlight reduced any likelihood of it being used as a roost. Overall the survey concluded that baseline conditions were unlikely to significantly change as a result of the proposed development and there would therefore be no harm to biodiversity.
29. The Bat Survey for Professional Guidance – Good Practice Guidelines (3rd Edition) and Natural England's standing advice recommend that a bat survey should include an initial internal and external survey and that its conclusions

should form the basis of an assessment of whether more detailed survey work is necessary. The Council's ecologist asserts that despite additional information provided in subsequent surveys, the information relating to internal voids within the building is inadequate. This is because it is not clear which areas of the roof were accessed, whether any internal roof spaces were not accessed, and whether an outbuilding would be impacted by the proposal.

30. The Council's Ecologist also requested emergence surveys to verify the report's conclusions. She also considered it necessary for an assessment of the potential impact on bats arising from light spill from the proposed house, because of the increased glazing and windows being closer to the nearby tree canopy. In the Council's opinion it is necessary to carry out a Habitats Regulations Assessment of the risk of a "likely significant effect" on the SAC or bats important to its designation as a SAC or the habitats on which they depend, or to screen out the risk of such an effect. In its view such an assessment is not possible without more detailed survey data.
31. I have had regard to the guidance in Circular 06/2005, the Good Practice Guidance and Natural England's standing advice. Whilst I note that survey requirements should be proportionate to the scale of development and likely significance of impacts, in my view the Council were right to request emergence surveys. These would provide a more accurate assessment of whether bats commute, forage and use the site, which species use the area and whether buildings or trees are used as a roost. Without this information it is not possible with an acceptable degree of certainty to assess whether there is a need to protect species under the provisions of the Wildlife and Conservation Act 1981, or whether an assessment is required under the European Habitat Regulations. Without such evidence it is unlikely that Natural England would be able to issue a bat license for mitigation if there would be harm, or to establish whether that harm would be unavoidable. Consequently, it would be unable to discharge its obligations under the habitat regulations. As such, the proposal would conflict with PMP Policies NE3 and NE5 and National policy in the Framework. Policy B4 of the CS and NE2 of the PMP, referred to in the reasons for refusal deal with the impact of the proposal on the WHS and landscape and are not relevant to this issue.

Other Matters

32. I have had regard to residents' concerns relating to the effect of the proposal from other views within the City, materials to be used in construction, the effect of the proposal on natural light to the nearby road and footpath, construction traffic, privacy and the potential for the design to create a precedent. However, these do not add to my reasons for dismissing the appeal.
33. A design review panel assessed the proposal and made recommendations which were incorporated into the design. The Panel comprised architects including a conservation specialist, a chartered landscape architect and a chartered natural resource consultant/arboriculturalist. The Panel supported the design considering it an enhancement compared to the existing house and an appropriate response to the CA which would not have an adverse impact of the WHS or the surrounding woodland. However, it noted some deficiencies in the LVIA. Whilst, I have had regard to the Panel's assessment, I have come to my own conclusions regarding the effect of the proposal.

Conclusion

34. I have concluded that the proposal would have a neutral effect which would not harm the character and appearance of the CA, the setting of the WHS and the setting of nearby listed buildings. However, my conclusion with regard to the potentially harmful environmental impacts of the proposal on a protected species, and the lack of a mitigation strategy, represents a significant and overriding objection which must be decisive. For this reason, I conclude that the proposal would not be consistent with the principles of sustainable development as it conflicts with the policies of the development plan and the Framework when taken as a whole. Therefore, and having regard to all other matters raised, I conclude that the appeal should be dismissed.

P D Sedgwick

INSPECTOR