



Appeal Decision

Site visit made on 18 December 2019

by Helen O'Connor LLB MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19 December 2019

Appeal Ref: APP/F0114/W/19/3235323
5 Somer Ridge, Midsomer Norton BA3 2FB

- 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 Mr M Edwards against the decision of Bath & North East Somerset Council.
 - The application Ref 19/01666/OUT, dated 8 April 2019, was refused by notice dated 4 July 2019.
 - The development proposed is a detached house and garage.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The application has been made in outline with all matters reserved, and as such the layout and access shown on the submitted site plan is illustrative.

Main Issues

3. The main issues are:
 - Whether the site is suitably located for new housing development, having regard to local and national planning policies;
 - The effect on protected species and their associated habitat, and;
 - The effect on trees.

Reasons

Location of development

4. The appeal site is located to the north of a small cul-de-sac of detached dwellings at the northern edge of Midsomer Norton. The Bath and North East Somerset Core Strategy, July 2014 (CS) and Bath and North East Somerset Placemaking Plan, July 2017 (PP) set out a district wide spatial strategy that seeks to direct residential development to the towns and principal villages of the district. One objective of the strategy is to focus residential development in settlements with a good range of local facilities and restrict housing in the countryside to specified exceptions. A housing development boundary is used to identify those settlements.

5. There is no dispute between the parties that the appeal site lies outside of the housing development boundary and it is not part of the appellant's case that the proposal is essential for a rural worker.
6. In support of the application the appellant indicates that the proposal would reuse previously developed land. Notwithstanding the historic associations of the appeal site, the appellant considers it to now comprise garden area¹ for 5 Somer Ridge. As such, there is nothing before me to show that it falls within the definition of previously developed land set out in the National Planning Policy Framework (the Framework). However, even if this were the case, the Framework indicates that it should not be assumed that the whole of the curtilage should be developed.
7. Moreover, although policy SV1 of the CS prioritises previously developed land focussing in particular on the centres of Midsomer Norton and Radstock, it is not suggested that this extends to areas outside of the housing development boundary within the development plan.
8. It is asserted that circumstances are no different to when consent was granted for the existing dwellings at Somer Ridge. However, based on the limited information provided, the consent for those dwellings is likely to have been granted some years ago and I have not been provided with details of the policy in force at that time. The evidence does not show that there have been no changes to local and national policies in the intervening period. I therefore, give this limited weight.
9. I am referred to an appeal decision² allowing two houses outside the housing development boundary to the south of Somer Ridge. However, I have not been provided with the details of that decision which prevents me from making a meaningful comparison with the present case and therefore, this attracts little weight.
10. Accordingly, I find that the site would not provide a suitable location for housing as it would be contrary to Policies DW1 and SV1 of the CS which, amongst other matters, set out the district wide spatial policy for residential development to towns and principal villages in the Somer Valley. In addition, it would conflict with policy RE4 of the PP, which amongst other matters, seeks to restrict new dwellings outside of the defined housing development boundaries to essential dwellings for rural workers.

Protected Species

11. The appeal site lies on the northern edge of Midsomer Norton adjacent to gardens and open countryside. Although there is residential development to the south of the site, the remaining surrounding area is relatively undeveloped, generally unlit and has hedgerows and trees in close proximity, which combine to make this a suitable habitat to support a range of protected wildlife species.
12. When I visited the site, I observed that it comprised mostly of an open grassed area which appeared to have been planted fairly recently. This is likely to limit the bio-diversity within the site itself. Nevertheless, there was an established hedgerow along the western boundary adjacent to agricultural land which would provide suitable habitat, foraging area or pathway for some species.

¹ Introduction of Appellant's appeal statement

² Reference APP/F0114/W/18/3219501

Furthermore, given her local and specialist knowledge, I have given weight to the Council Ecologist's view³ that the site has potential to support protected birds, bats, badgers and reptiles.

13. It follows that as a result of the physical encroachment of the development, and its associated lighting and activity, there would be a reasonable likelihood of harm to a habitat supporting one or more protected species. However, there is no specific evidence to confirm this, and the scale of the harm is not identified.
14. It further follows that there is little certainty as to whether appropriate safeguards are proposed, or are indeed possible, to adequately mitigate for the likely harm. Notwithstanding that the application is made in outline, this is not a matter that can be appropriately made the subject of a condition, nor left to the reserved matters stage, as in both instances the principle of the development would have already been permitted. To do otherwise would conflict with advice in Circular 06/2005 Biodiversity and Geological Conservation whereby the presence of protected species and the extent that they may be affected should be established before any planning permission is granted.
15. I therefore find that it has not been demonstrated that the proposed development would have no materially harmful effects on a protected species. As such, the proposal would be contrary to policies NE1, NE3, NE5 and D8 of the PP which combine to, amongst other matters, protect green infrastructure and ecological networks as well as prevent adverse impacts to protected species and their habitats, including from artificial lighting.

Trees

16. My observations of the appeal site were that there were no mature trees within the main area of the site but that there was an established hedgerow to the western boundary. As such, although the illustrative plan shows a detached garage in an area that might impinge upon the hedgerow, layout is not fixed at this stage and the size of the appeal site would allow for alternative arrangements for one dwelling and garage which would not necessarily affect the boundary hedgerow. Its size would also allow for additional planting.
17. Accordingly, notwithstanding the absence of a tree survey, it is likely that the amount of proposed development could be accommodated without resulting in unacceptable harm to trees and vegetation on the appeal site. In these circumstances, requiring a tree survey to be submitted at a later stage when the layout would be considered would be reasonable. In this regard, I find no conflict with policy CP7 of the CS or policy NE1 of the PP which primarily seek to maintain the quality of green infrastructure. Neither would the proposal be contrary to policy NE6 of the PP which seeks to avoid any adverse impact on trees and woodlands of wildlife, landscape, historic, amenity, productive or cultural value.

Other Matters

18. I acknowledge that the construction of a new dwelling would make it easier to incorporate heating and ventilation systems that may assist in managing the medical condition of an intended future occupant. Nevertheless, the personal

³ Ecology Consultation Response dated 21 May 2019

circumstances of occupants will change over time whereas the harm from the location of the proposal would be permanent. Neither is it shown that such benefits could not be achieved by other means that would not conflict with the policies of the development plan. As such this matter carries limited weight and would not lead me to a different conclusion.

19. Reference is made to the support of Midsomer Norton Town Council and Gordon Mackay for the proposal, the appellant's intention to install a fence or hedge around the land irrespective of the outcome of the appeal and that advice would be sought concerning the overhead power cables. Be that as it may, these are not matters that would address the concerns I have identified, and therefore are of limited weight.

Planning Balance and Conclusion

20. Planning law requires that applications for planning permission be determined in accordance with the development plan, unless material considerations indicate otherwise⁴. No compelling reasons have been shown to justify my determining the development other than in accordance with the adopted development plan.
21. Therefore, for the reasons given above, I conclude that the appeal should be dismissed.

Helen O'Connor

Inspector

⁴ Section 38(6) Planning and Compulsory Purchase Act 2004 and section 70(2) of the Town and Country Planning Act 1990.