



Appeal Decision

Site visit made on 3 February 2020

by Adrian Hunter BA(Hons) BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19th May 2020

Appeal Ref: APP/F0114/W/19/3240981

25 Upper East Hayes, Walcot, Bath BA1 6LP

- 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 Rathbourne LTD against the decision of Bath & North East Somerset Council.
 - The application Ref 19/00230/FUL, dated 18 January 2019, was refused by notice dated 28 August 2019.
 - The development proposed is for the demolition of existing dwelling and erection of 2 No. dwellings, new vehicular and pedestrian access, landscaping and associated works.
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Decision

1. The appeal is allowed and planning permission is granted for the demolition of existing dwelling and erection of 2 No. dwellings, new vehicular and pedestrian access, landscaping and associated works on land at 25 Upper Hayes, Walcot, Bath BA1 6LP in accordance with the terms of the application, Ref 19/00230/FUL, dated 18 January 2019 and the plans submitted with it, subject to the conditions set out in the schedule at the end of this letter.

Preliminary Matters

2. I note the appeal submission by the appellant was accompanied by a revised plan showing an amendment to the location of a pedestrian entrance. However, this change does not appear to have been accepted by the Council. Whilst the change could be considered to be relatively minor, I also note that this has not been subject to any consultation. Therefore, for clarity and the avoidance of doubt, I have determined the appeal on the plans, as were before the Council when the planning application was determined.

Application for costs

3. An application for costs was made by Rathbourne Ltd against Bath and North East Somerset Council. This application is the subject of a separate Decision.

Main issues

4. The main issues are
 - Whether the proposed development would harm the character or appearance of the Bath Conservation Area and its significance as a designated heritage asset, in particular with regards to the spacing and layout of the development on site and the impact upon the existing boundary wall;

- The effect of the proposed development upon the living conditions of nearby residents, with particular regard to overlooking, loss of privacy and overbearing; and
- Whether the proposed development would have an unacceptable impact upon highway safety, in particular with regards to accessing the proposed car parking spaces and the provision of a Construction Traffic Management Plan.

Reasons

Effect upon the Conservation Area

5. The appeal site comprises a single storey detached dwelling and associated garden area. It lies within the Bath Conservation Area. Upper East Hayes is a steeply rising road, with the appeal site occupying a prominent location at the corner of this road. The site benefits from wide ranging views across the City. The Bath Conservation Area covers an extensive section of this historic city, and its significance lies, in part, in the way the diverse range of buildings and spaces it contains reflects the evolution and growth in the city over many years. This part of the Conservation Area is defined by a mix of developments that cover a range of ages and architectural styles. Uniformity in the area is created by the predominant use of bath stone. Within the surrounding area, streets are often narrow, with buildings designed and built to respond to the steep slope. Surrounding development is generally dense, with a strong urban feel, that is reinforced by existing boundary walls.
6. The proposed development would involve the demolition of the existing dwelling and the erection of two detached dwellings. One dwelling would be erected in a similar position to the existing dwelling, with the other erected within the existing garden. On-site parking would be provided, along with improvement works to the existing boundary walls. In terms of materials, the proposed dwellings would be constructed predominately from bath stone, with a zinc roof, which would give the roof a dark grey appearance.
7. The proposed development would not be significantly higher than surrounding developments. Whilst the proposal would increase the amount of built form on the site, the design includes a garden area between the two dwellings. This would provide both space around, and separation between the two buildings. The corner location, shape of the appeal site and position of the new dwellings, means that gaps would be maintained between the buildings, allowing views through and across the site, towards the properties further up the hill to the north. On the basis of the proposed design approach, I therefore do not consider that the proposed development would constitute an over development of the site. I find that the resulting appearance in the townscape would not be cramped and that the layout would respect the existing spacing and density that exists in the general area.
8. The proposal would result in the widening of the existing gap in the front boundary wall, which currently provides access to the existing garage on site. A new opening would also be created in the more modern element of the structure. The boundary wall is similar to others in the wider area and, along with these, makes a positive contribution to the character and appearance of the area. The proposal would retain the remaining elements of the boundary wall, which would be repaired. Due to the corner position of the plot and the

- position of the proposed entrances, the new gaps would only be visible in relatively local views. In longer views, the boundary wall would generally be seen as an otherwise unbroken wall and so, would continue to be a robust feature within views along the street. For these reasons and taking into account the proposed works to improve the overall appearance of the front boundary wall, I find that the proposed works to this structure would not cause any demonstrable harm to the character and appearance of the Conservation Area.
9. My attention has also been drawn to the importance of the existing rear retaining wall on the site and its potential historical qualities. I note that this wall would be improved and retained as part of the development. A suitably worded condition would ensure its retention.
 10. In views across the City, development at the site would be visible. In these views, the key features are the consistent use of similar materials across the buildings, interspersed with mature trees and landscaping. This forms part of the character and appearance of the Conservation Area and contributes to the universal value of the world heritage site. I note that the proposed building would continue the use of bath stone and introduce new landscape planting within the site. On this basis, when seen in longer distance views, the appeal proposal would preserve the character and appearance of the Conservation Area.
 11. To the south-east of the appeal site lies Hayes Mount, which is a Grade II listed building. The property is a three storey building, occupying a prominent position on the corner of Upper East Hayes. The orientation of the building is such that the main elevations face in an easterly and southerly direction, giving wide ranging views across the City. Whilst at some point in time, there may have been a link between the appeal site and the Grade II listed building, I find that this has been eroded in recent times. Of importance to the setting of the listed building is the presence of strong boundary walls. Given my conclusions in relation to the preservation of the existing boundary wall around the frontage of the site, it therefore follows that the proposal would not harm the setting of the adjoining listed building.
 12. For these reasons, I therefore conclude that the proposal would not harm the significance of the Conservation Area nor the outstanding universal value of the world heritage site and in this respect, complies with Policies HE1, D2, D4 and D6 of the Bath and North East Somerset Placemaking Plan 2017 which, amongst other things, seek to ensure that design is of a high quality that responds to, reinforces and contributes to its specific local context, character and distinctiveness, protects trees, conserves or enhances important views, preserves or enhances the character and appearance of the Conservation Area and avoids harm to the outstanding universal value of the world heritage site. The proposed development would not conflict with the aims of the National Planning Policy Framework (The Framework). In coming to this conclusion, I have had regards to my duty under S72(1) of the Town and Country Planning (Listed Building and Conservation Areas) Act 1990 as to the desirability of preserving or enhancing the character or appearance of the Conservation Area.

Living conditions

13. The appeal site is currently occupied by a single storey dwelling, which has a number of windows which face towards neighbouring properties. The building

also benefits from a garden area to the front and side. There is therefore already a degree of overlooking and residential activity from the existing use. The proposal would replace the existing dwelling on the site with two, larger detached properties. This part of Bath is characterised by tight, dense, urban development, where, due to the topography, dwellings are located in close proximity to each other. Whilst the proposal would be likely to increase the level of activity on the site, I do not consider that this would increase to such a level that it would generate significant additional noise or disturbance to nearby residents, to justify withholding planning permission on this ground alone.

14. Plot 2 is to be positioned on the site in a similar location to the existing dwelling on the site, with Plot 1 located on the existing garden area. Both buildings would be higher than the existing building on site but would be no higher than surrounding developments. From the evidence before me, the proposed dwellings would be located a sufficient distance away from neighbouring dwellings to ensure no adverse loss of light to neighbouring properties.
15. Given the steeply sloping nature of the site, there is the potential that the proposal could result in overlooking of neighbouring properties. I note that the proposals include a number of measures, such as obscure glazing and screening walls to minimise and reduce the potential for loss of privacy to neighbouring dwellings. The implementation of these measures can be controlled by an appropriately worded condition.
16. For these reasons, I therefore conclude that the proposed development would not harm the living conditions of surrounding residents, and in this respect, accords with Policy D6 of the Bath and North East Somerset Placemaking Plan (2017) and the Policies within Part 12 of The Framework, which amongst other things, requires that development must provide for appropriate levels of amenity and not cause significant harm to the amenities of existing or proposed occupiers of residential premises by reason of loss of light, increased noise, overlooking, traffic or other disturbance.

Highway Safety

17. Upper East Hayes is a steep and relatively narrow road, with a significant amount of on-street parking. It connects with other streets in the area which are generally of similar characteristics.
18. The proposal would provide four off-road parking spaces for the two dwellings. Each dwelling is provided with a parking turntable to enable vehicles to enter and leave the site in a forward gear. From the evidence it would appear that the level of parking provision is not an issue, however the suitability of accessing these proposed spaces is. The Council are concerned that multiple manoeuvres may be required to access and exit these spaces, which in turn would have a significant effect upon highway safety in the area.
19. I have been provided with a series of sweep path drawings which demonstrate that it is possible for vehicles to enter and exit the parking spaces in a single movement. Whilst these drawings demonstrate that it is possible, I consider that accessing and exiting these spaces would be difficult. The ability to perform these manoeuvres would depend on the presence of surrounding on-street parking and ultimately, the size of the vehicles using the parking spaces. As part of the appeal application, a traffic survey was undertaken. This survey

concluded that there was a maximum of 12 two-way vehicles in any one hour and, that the average speed on the street was around 13mph. I also note that, due to the relatively straight nature of the roads, suitable visibility can be achieved. The presence of other driveways, parked cars and the lack of a footpath on the north western side of the road, reinforces the tight urban nature of the street, and serves to slow down traffic using the roads. Therefore, given the limited traffic in the area and the relatively slow speed of traffic using these streets, there is no compelling evidence to suggest that, should a single manoeuvre not be possible, this would be likely to significantly affect highway safety.

20. Turning to the suitability of the Construction Management Plan (CMP), I note that a draft was submitted to the Council during the course of the appeal application, however the Council still had a number of issues, which had not been resolved at the point the appeal application was determined. It has been put to me that the CMP was submitted as a draft document to establish principles at this stage, with the final plan to be approved through a standard planning condition. I have sympathy with this view and feel that it is unreasonable to expect full details to be agreed at this stage of the process and that a suitably worded condition would be the appropriate mechanism for addressing the issue. I note the concerns expressed by the Council, however I consider that these can be addressed as part of the work required to discharge such a condition. I therefore find that the lack of an amended CMP is not sufficient, on its own, to reasonably withhold the granting of planning permission.
21. Concerns have also been raised in relation to the impact of refuse vehicles and the presence of illegal parking impacting on the vehicular access to the site. Illegally parked cars is however an issue that could affect a much wider area than the appeal site. The highway authority has measures available to it to remove vehicles that are incorrectly or illegally parked. With regards to refuse vehicles, I recognise that on the tight, narrow, steep streets, this may prove problematic and probably causes a level of disruption, however this will not materially increase as a result of the proposal.
22. For the reasons outlined above, I therefore conclude that the proposed development would not have a significant negative effect upon highway safety and, in this regard, complies with Policy ST7 of the Bath and North East Somerset Placemaking Plan (2017) which, amongst other things, seeks to ensure that proposals make safe and satisfactory provision for access by all means of travel.

Other Matters

23. I note the concerns regarding ground stability and potential effects of the foundations of the proposed dwellings. However, the Council has noted that there is no evidence of any risk in this area that would require specific planning control. There is no substantive evidence that there would be any adverse effect on wildlife or drainage within the area as a result of the proposal. Suitably worded conditions can be attached to ensure that measures submitted as part of the appeal application are delivered.
24. Whilst there is potential for some disturbance and inconvenience to be caused during the construction period, this would be for a limited period of time. I

have therefore attributed little weight to it and consider that it can be adequately dealt with through the CMP.

25. Concern have been raised that a grant of planning permission would set a precedent for other similar developments. However, no directly comparable sites to which this might apply have been put forward. Each application and appeal must be determined on its individual merits, and a generalised concern of this nature does not justify withholding permission in this case.
26. Reference has been made to the potential for archaeological remains. There is no substantive evidence with regards to the potential for the development to adversely affect archaeological remains. I also note that the Council's archaeologist raised no issues in this regard.

Conditions

27. The conditions suggested by the Council have been considered in light of the advice contained within the Framework and the National Planning Practice Guidance. A standard implementation condition, along with a requirement to implement the scheme in accordance with the approved plans is necessary. Such a condition would also ensure that the identified mitigation measures to prevent overlooking are implemented. To protect highway safety, it is appropriate to attach conditions to ensure the proposed parking arrangements and visibility splays are provided and retained in accordance with the submitted plans. For the same reason, it is also necessary to attach a condition requiring the surface of the vehicular accesses to be of a bound material to prevent loose gravel entering the public highway. It is necessary to impose a condition to ensure measures to prevent surface water discharge from the site are implemented. To protect the living conditions of local residents and to ensure that the proposal would not have any unacceptable impacts upon highway safety, it is necessary to attach a condition requiring the submission of a Construction Management Plan.
28. To ensure the safeguarding of the character and appearance of the area, a condition is necessary with regards to the provision of external materials and the submission of a landscaping scheme. In the interests of ensuring no harm to matters of biodiversity, it is appropriate to attach a condition to ensure that the mitigation measures identified in the Ecology Report are delivered.
29. To deliver energy and water use efficiency, it is appropriate to attach a condition to ensure the development is carried out in accordance with the submitted sustainability checklist and that details to maximise rainwater harvesting are submitted. To safeguard the character and appearance of the area it is appropriate to attach a condition requiring the retention of the existing upper retaining wall.

Conclusion

30. I conclude, for the reasons outlined above, that the appeal should be allowed subject to the identified conditions.

Adrian Hunter

INSPECTOR

Schedule of Conditions

1. The development hereby permitted shall be begun before the expiration of three years from the date of this permission.
2. The development/works hereby permitted shall only be carried out in accordance with the following approved plans and details:

Drawing 230 01; drawing 230 02; drawing 230 03; drawing 230 04; drawing 230 09; Drawing 10E; drawing 299_PP_01_V5; Location Plan- density; Drawing 05G; Drawing 06G; Drawing 07G; Drawing 08G; Drawing 11D; Drawing 12D and Drawing 13D.
3. No development shall commence until a Construction Management Plan has been submitted to and approved in writing by the Local Planning Authority and, amongst other things, shall include details of deliveries (including storage arrangements and timings), contractor parking, traffic management, working hours, site opening times, wheel wash facilities and site compound arrangements. The development shall thereafter be undertaken in accordance with the approved details.
4. Prior to the commencement of any works on site, details of the provision for the sustainable disposal of surface water within the site, so as to prevent its discharge onto the public highway, shall be submitted to the Local Planning Authority. The development shall thereafter be undertaken in accordance with the approved details.
5. Prior to the commencement of development the applicant will submit written confirmation to the Local Planning Authority from Wessex Water accepting the surface water discharge into their network including point of connection and rate of 4.3 l/s.
6. Prior to the occupation of the dwellings, the vehicular access shall be constructed with a bound and compacted surfacing material (not loose stone or gravel).
7. Prior to the occupation of the development, the covered areas allocated for parking, as indicated on submitted plan reference 05 Revision G, shall be provided and kept clear of obstruction and shall not be used other than for the parking of vehicles in connection with the development hereby permitted.
8. No occupation of the development shall commence until the visibility splays shown on drawing number 05 Revision G has been provided. There shall be no on-site obstruction exceeding 900mm above ground level within the visibility splay. The visibility splay shall be retained permanently thereafter.
9. No construction of the external walls of the development shall commence until a schedule of materials and finishes, and samples of the materials to be used in the construction of the external surfaces, including roofs, have been submitted to and approved in writing by the Local Planning Authority. The development shall thereafter be carried out only in accordance with the approved details.
10. No occupation shall commence until a hard landscape scheme has been submitted and approved in writing by the Local Planning Authority showing

details of existing and proposed walls, fences ground levels, other boundary treatment and surface treatment of the open parts of the site, and a programme for implementation.

11. All hard and soft landscape works shall be carried out in accordance with the approved details. The works shall be carried out prior to the occupation of any part of the development. Any trees or plants indicated on the approved scheme which, within a period of five years from the date of the development being completed, die, are removed or become seriously damaged or diseased shall be replaced during the next planting season with other trees or plants of a species and size to be first approved in writing by the Local Planning Authority. All hard landscape works shall be permanently retained in accordance with the approved details.
12. No occupation of the approved dwellings shall commence until a scheme for rainwater harvesting or other methods of capturing rainwater for use by residents (e.g. Water butts) has been submitted to and approved in writing by the Local Planning Authority. The development shall thereafter be undertaken in accordance with the approved details.
13. In the event that unexpected contamination is found at any time when carrying out the approved development, work must be ceased and it must be reported in writing immediately to the Local Planning Authority. The Local Planning Authority Contaminated Land Department shall be consulted to provide advice regarding any further works required.
14. The development hereby approved shall be carried out only in accordance with the recommendations contained within Section 6.0 of the approved Bat Report dated November 2018 by Ethos Environmental Planning and using precautionary working methods for the avoidance of harm to protected species including nesting birds and reptiles, as follows:
 - Where possible demolition works and removal of vegetation shall be undertaken during autumn and winter between September and March to avoid disturbance to nesting birds
 - A careful visual check for signs of active bird nests, hedgehogs and reptiles shall be made of vegetated areas and the interior and exterior of the building and its roof, and any crevices and concealed spaces, prior to any works affecting these areas,
 - Active nests shall be protected undisturbed until the young have fledged
 - Works to the roof and any areas with concealed spaces or crevices shall be carried out by hand, lifting tiles (not sliding) to remove them, and checking beneath each one
 - If bats or other wildlife are encountered works shall cease and a suitably experienced ecologist / licenced bat worker shall be contacted for advice before proceeding
15. The development hereby approved shall be built in accordance with the details of the Sustainable Construction Checklist submitted to the Local Planning Authority on 21st January 2019.

16. The approved dwellings shall be constructed to meet the national optional Building Regulations requirement for water efficiency of 110 litres per person per day.
17. The existing upper retaining wall on the site shall be retained at all times.