



Appeal Decision

Site visit made on 2 June 2020

by Janet Wilson BA (Hons) BTP MRTPI DMS

an Inspector appointed by the Secretary of State

Decision date: 10th June 2020

Appeal Ref: APP/F0114/W/19/3243930

The Cottage, Northfields, Lansdown, Bath BA1 5TN

- 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 John Baxter against the decision of Bath & North East Somerset Council.
 - The application Ref 19/01596/FUL, dated 8 April 2019, was refused by notice dated 26 September 2019.
 - The development proposed is described as Demolition of the existing dwellings (comprising The Cottage and The Annex) and the erection of 3 detached dwellings.
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Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by Mr John Baxter against Bath & North East Somerset Council. This application is the subject of a separate Decision.

Main Issues

3. The main issues are the effect of the development on: a) the character and appearance of the area and whether the proposal would preserve or enhance the character of the City of Bath Conservation Area; b) the living conditions of the occupiers of No.7 Northfields with regard to outlook and light; and c) the wildlife and biodiversity value of the site.

Reasons

Character and appearance

4. The site is located within the City of Bath Conservation Area (CA) and the World Heritage Site (WHS) of Bath the significant physical and cultural attributes consist of Roman remains, honey coloured stone buildings, and many Georgian buildings which contribute to a high-quality character.
5. The immediate context of the appeal site is a more diverse urban fabric typified by more recent buildings and a variety of uses. To the north the Royal High School Bath including modern and historic listed buildings many of which are of a substantial size and scale. These are nonetheless set beyond a mature tree screen such that they have a limited visual relationship with the appeal site. To the west is a bungalow which is very modest in scale and beyond that the Sixth form centre of Bath High School occupies a number of Edwardian buildings with

modest linked buildings. To the east are the Club House and courts of the Lansdown Tennis and Squash Club. Housing to the south and west of the site are detached and semi-detached predominantly of two storeys in height and of traditional appearance. Despite this varied pattern the key characteristics that contribute to the significance of the CA in this location are the generally loose knit individual buildings set within generous plots and the hipped roofed buildings along Northfields which are dominated by projecting gabled bay windows against which the appeal proposal would be closely read in the street scene.

6. The building on the appeal site is more recent. It has been altered from its original construction and is screened in parts by mature trees. Even so, the side elevation appears prominent in the street scene due to its position where the road bends round into the access to the Tennis and Squash Club premises.
7. The proposal is to remove all structures on the site and replace them with three houses over four levels, including newly excavated basements. Their height would be significantly taller than the buildings either side and would be consistent across the site whereas the existing building has a taller element to the centre with a range of lower additions either side. The ridge of the new buildings, whilst of equivalent height to the Sixth Form Centre further along Northfields would be only marginally higher than the existing building. It would nonetheless be significantly taller than the adjacent bungalow which is recessed and not visible in the street scene until directly in front of it.
8. The appellant emphasises that the buildings would be set back further into the site than the existing structure. Whilst this is correct it would materially alter the position of the tallest elements of the structure as the front part of the existing house incorporates single storey elements. The juxtaposition of Unit 1 would be significantly more prominent from the approach along Northfields. From this position the side elevation, whilst set roughly in the same position on the ground, would be significantly greater in height than that part of the existing building. The result would be visually harmful to the appearance of the site and would produce a dominant impact in the street scene. The nature and scale of the supplementary planting would be of insufficient magnitude to offset that dominance or act as effective mitigation.
9. Whilst key trees, including the prominent Beech tree would be retained, others would be removed and this would increase the visual prominence of the replacement buildings particularly from the adjacent bungalow. I note that the revised layout plan and the landscape strategy are inconsistent with one another in respect of which trees would be retained and which would not. The replanting scheme is silent on the size of additional planting though if all other aspects of the development had been acceptable this could have been covered by a planning condition.
10. Unit 1 would be repeated across the site with Unit 3 occupying an area of open garden and filling in almost all of the space between the existing building and the squash club. The cumulative effect of the three structures would significantly alter the bulk, massing and dominance of buildings on the site which would have a marked effect on the visual appearance. The structures would also dominate the site in the context of the adjacent bungalow, Northfields and from wider views from the Tennis and Squash Club. Similarly, the proposed development would lack any discernible frontage to Northfields as

the buildings would face into the back of the site with that part of the site facing towards the Tennis and Squash Court enclosed by private gardens delineated by the retention of existing vegetation and timber fencing. This arrangement would be out of character with the prevailing characteristics of buildings on Northfields which have distinct road frontages. The appeal proposal would, as a result, lack the local distinctiveness required by the National Planning Policy Framework (the Framework) and the Development Plan.

11. The design and detailing of the dwellings would take a contemporary approach to design using pale brick with dark brick feature elements and grey zinc weathered roof covering and grey windows. Taken in isolation, the design of the proposed dwellings is not inherently objectionable and may work well in an alternative location. However, the policies in the development plan and the Framework are clear that good design also requires that new development responds to and respects its context and the local distinctiveness of the surroundings. Whilst the context is varied Northfields has a strong frontage and I consider that the modern detailing would neither reflect nor complement the existing building form to present a harmonious appearance. For these reasons I find that the cumulative impact of the three dwellings would be inappropriate to the context of this site. They would be cramped on the site and would neither preserve nor enhance the character of the CA with the detailed design paying insufficient regard to the relationship with buildings on Northfields that are important to the sites' context. The harm which would be caused would, in the words of the Framework, be less than substantial and this is a matter to which I will return.
12. The Council and the appellant both describe the existing building as having a neutral impact on the character of the area though they differ in their views as to whether the existing house has any architectural merit. Whilst there does not appear to be any dispute as to the removal of the existing building the appellant emphasises that the house does not reflect the character of the area, and a modern well-designed house would add visual interest to the street scene rather than causing any harm though I disagree for the reasons already stated.
13. Section 72 (1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (The Act) requires special attention to be paid to the desirability of preserving or enhancing the character or appearance of a CA. Moreover, the Framework requires that when considering the impact of development on the significance of designated heritage assets, (in this case the City of Bath CA) great weight should be given to the asset's conservation. World Heritage Sites are identified as being assets of the highest significance though in the context of this application there would be no harm to the setting of the wider WHS and my assessment focuses on the effect on the CA.
14. Taking all these factors together the proposal would not respect the local character and distinctiveness of the immediate area and would fail to accord with the standards of design required by Policy CP6 of the Bath and North East Somerset Core Strategy Part 1 of the Local Plan (2014) (Core Strategy) and Policies D1, D2, D5 and D7 of the Bath and North East Somerset Core Strategy and Placemaking Plan District Wide Strategy and Policies (2017) (Placemaking Plan) and paragraph 127 of the Framework. These collectively seek to ensure that new development is of high-quality design, which respects local character,

integrates with its surroundings and which requires developments to positively respond to the site context in relation to siting, spacing, building lines, form and features.

Living conditions

15. Plans were amended during the life of the application which appear to show the retention of existing vegetation along the boundary with the adjacent bungalow (No.7 Northfields) which in part screens the site from the neighbour and which also shades the garden of No.7. However, the appeal statement of case clarifies that two of the mature trees would in fact be removed and whilst this would increase the light afforded to the neighbours' garden it would also open up the view of the bulk of the new building to that neighbour.
16. The footprint of Unit 1 would be marginally closer to No.7 than The Cottage however there would be a marked difference in the height which would be approximately 40% taller than the existing building and around the same difference in height above the highest part of the bungalow. This combined with the orientation of Unit 1 at a distance of around 11.5 metres to the south east of No.7 would represent a scale of development which would have a material effect on the living conditions of the occupiers of No.7 in relation to their outlook.
17. A cross section drawing has been provided in evidence to demonstrate that the development would not have a significant or harmful effect on light reaching No.7 when measured against the BRE¹ standard and which indicates that the separation distance and heights would not lead to an unacceptable loss of light. Notwithstanding that conclusion I consider that the scale and mass of Unit 1 combined with its position to the south east of the bungalow would have a dominant and overbearing effect on the outlook from No.7. This would be harmful to the living conditions of the occupiers, an effect which would be exacerbated by the loss of mature trees on this boundary.
18. For these reasons the proposal would conflict with Policy D6 of the Placemaking Plan and to the provisions of the Framework which together seek to ensure that existing development achieves appropriate levels of outlook and high standards of amenity for existing occupiers.

Wildlife and biodiversity

19. Members in reaching their decision discussed a range of matters which whilst not recorded verbatim, referred to a loss of green space and harm to ecology> There was also discussion about loss of habitat for wildlife. These are legitimate concerns, Development Plan Policy D5 of the Placemaking plan is specific in that buildings and spaces should be designed to provide new or improved wildlife habitats and features. The officer report makes clear that a bat mitigation scheme had been provided which would incorporate integrated bat roosting features into the fabric of the new buildings and this would address one aspect required by policy. The appellant refers to significant levels of additional hedgerow and ground planting however the plans are unclear as to where that significant planting is intended other than the 9 new deciduous trees which are shown but which would have a limited longer-term contribution given their proximity to the proposed dwellings.

¹ Building Research Establishment

20. I acknowledge that representations identify that existing garden planting does not currently produce a species rich habitat and that the trees to be removed are not particularly important for ecological reasons. Even so, the reduction in garden area which would result from the development together with the removal of mature trees mean that the proposal would cause some conflict with Policy D5. Whilst planning conditions could have been worded to secure improvements to achieve planting capable of supporting a more diverse and species rich habitat the extent of that planting would be significantly limited by the extent of the proposed buildings which would by their very nature provide limited opportunities for planting to sustain wildlife rich vegetation.
21. The appellant highlights that the elected members did not identify any particular species which would be specifically or adversely affected. Policy NE3, amongst other things, requires that harm to the nature conservation value of the site should be minimised and that compensatory provision of at least equal value should be provided. The appellant refers to a net gain in the number of roosting opportunities referring to both bats and birds and that these matters could potentially have been dealt with by condition. That may be so, but it would not overcome the significant loss of green space on the site to buildings. In short, the proposal would lead to a much smaller area available for gardens and the opportunity for the creation of new or improved wildlife habitats would be limited by that reduction.
22. Taking all these factors into account the scheme would conflict with Policies D5 and NE3 of the Placemaking Plan and to the principles in the Framework which together seek to ensure that new and improved habitats are created as part of development proposals.

Other Matters

23. I recognise that the decision to refuse planning permission was a Member overturn at Planning Committee. Such circumstances are a normal part of the democratic process particularly where character and appearance matters relate to planning judgement. Although I have had regard to the written comments of the various advisors in this case, they do not lead me to a different finding.
24. The appellant takes issue with the participation of Councillors who were known objectors to the scheme. It is clear via the committee report that the local member objected to the scheme and that Councillors who spoke against the scheme withdrew from voting. This does not indicate, as the appellant suggests, that the decision was reached in an unsound manner. Similarly, the appellant argues that the minutes are not specific on whether the correct balancing exercise took place before reaching a decision. The paperwork makes it clear that this matter was highlighted, and it does not suggest to me that this matter was inappropriately dealt with. In any event I have come to a judgement on the merits of the case.
25. The appellant highlights that specific development plan policies were not noted in the minutes of the planning committee. Members consideration is based on a number of factors including written reports, verbal presentations and the minutes which do not contain a verbatim record of the discussions. I do not find this unusual and note that the policies referred to in the decision notice are referred to in the officer report and that the balancing exercise was also part of that consideration.

26. My attention has been drawn to the extant permission for the subdivision of the existing dwelling which incorporates enlargements to the building, some of which have been implemented (though not the subdivision to two units). A further dwelling is referred to in the Annexe though the Council dispute that the separate occupation of the annexe is legitimate. Whilst the number of units has a bearing on the extent of the benefit that would be derived from the redevelopment of the site in relation to any net gain of units it has little bearing on this appeal in relation to the effect on the CA. Moreover, the Council do not take issue with the number of units proposed rather the extent of the built form by way of site coverage and the bulk massing and scale of the replacement buildings.
27. My attention has also been drawn to case law² in the form of two judgements which relate to the likelihood of a fall-back position being implemented, however the appellant has already implemented part of the planning consent to enlarge the property though has stopped short of the subdivision of the building into two. As such the suggestion that the fall-back position should be material is not persuasive in respect of this appeal.

Planning Balance

28. As referred to above Section 72 of the Act requires that, in reaching a decision on an appeal special attention must be paid to the desirability of preserving or enhancing the character or appearance of the CA. For the reasons given the appeal proposal would not achieve that aim. Paragraph 196 of the Framework states that where less than substantial harm to the significance of a designated heritage asset would occur, that harm should be weighed against the public benefits³ of the proposal.
29. There would be a benefit through the provision of an additional dwelling to the local housing market, there would also be benefits through construction opportunities. The appellant also refers to the benefit to be accrued from a well-designed and accessibly located site which contributes to the social objective of sustainable development however such benefits are fundamental to all development, as stated within the Framework, and do not therefore in themselves present such a notable benefit of the scheme so as to outweigh the harm which I have identified to the CA.

Conclusion

30. Consequently, despite my finding that there would be no unacceptable loss of light to the neighbouring property there would be harm caused to the CA as a result of the proposal even though that harm would be less than substantial. The public benefits outlined would not outweigh that harm and so for the reasons set out and having regard to all other matters raised the appeal is dismissed.

Janet Wilson

INSPECTOR

² Simpson v SSCLG & Medway Council [2011] EWHC 283 (Admin) and Simpson v SSCLG & Medway Council [2011] EWHC 283 (Admin)

³ Public benefits are defined in the Planning Practice Guidance³ as “of a nature or scale to be of benefit to the public at large and should not just be a private benefit”.