



Appeal Decision

Site visit made on 28 September 2020

by David Wyborn BSc(Hons) MPhil MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21 October 2020

Appeal Ref: APP/V3310/W/20/3251955

**Land at Steart Farm and Steart Triangle, Wedmore Road, Cheddar
BS27 3ED**

- 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 Sainsbury's Supermarkets Ltd against the decision of Sedgemoor District Council.
 - The application Ref 17/18/00034, dated 19 April 2018, was refused by notice dated 4 March 2020.
 - The development proposed is an outline application for residential development and associated infrastructure with existing farm buildings to be demolished (all matters reserved except for access).
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Decision

1. The appeal is allowed and planning permission is granted for an outline application for residential development and associated infrastructure with existing farm buildings to be demolished (all matters reserved except for access) at Land at Steart Farm and Steart Triangle, Wedmore Road, Cheddar BS27 3ED in accordance with the terms of the application Ref 17/18/00034, dated 19 April 2018, and subject to the conditions set out in the attached schedule.

Procedural Matters

2. The application has been submitted in outline with access for consideration at this stage and matters of appearance, landscaping, layout and scale reserved for future consideration. I note that as part of the processing of the application a revised Parameters Plan was submitted and I have had regard to this plan as an indication of the areas for development on the site.
3. A signed and dated planning agreement, between the appellant and the Council, has been submitted under Section 106 of the Town and Country Planning Act 1990 in respect of a number of obligations. I will return to this matter later.

Main Issue

4. The main issue is whether there is a reasonable prospect that the site would be used for employment purposes, having particular regard to the policies of the development plan, and if not, whether the residential use of the site would be acceptable.

Reasons

5. The larger part of the appeal site consists of an area of open agricultural land, with a grouping of agricultural buildings near the road, and is located between the Cheddar Business Park and the road that connects Wedmore Road and Lower New Road. A smaller part of the appeal site lies on the other side of the road, forming part of the "Steart Triangle". Within this smaller part of the site there is a dwelling in the southern corner and the remaining part of this section of the appeal site is in agricultural use.
6. The Cheddar Neighbourhood Plan 2011-2027 (the CNP) was made in October 2018 and forms part of the development plan for the area. The majority of the larger section of the application site (the land but excluding the agricultural buildings) is identified in the CNP under Policy EE3 for the expansion of the adjoining industrial area at Cheddar Business Park. The proposed residential use of this part of the site would, therefore, be in conflict with this policy.
7. After the CNP came into force, the Sedgemoor Local Plan 2011-2032 (the Local Plan) was adopted in February 2019. Policy D16 of the Local Plan concerns safeguarding existing employment land and buildings, however, the policy contains a process to consider the change of use of existing employment sites and buildings to non-employment uses. The policy allows such a change to be supported where it can be demonstrated that there is no likelihood of a viable employment use. The supporting text refers to appropriate marketing to seek to demonstrate these matters and that a reasonable period of marketing would be about 18 months.
8. This approach is supported by the policy advice in Paragraph 120 of the National Planning Policy Framework (the Framework). In summary, this sets out that planning decisions need to reflect changes in the demand for land. In particular, where the local planning authority consider that there to be no reasonable prospect of an application coming forward for the use allocated in a plan, applications for alternative uses should be supported where the proposed use would contribute to meeting an unmet need for development in the area.
9. Further guidance supporting this Framework policy is included in the Planning Practice Guidance (the Guidance) and this sets out the evidence that can be used to help determine whether land should be reallocated for a more deliverable use¹.
10. The proposal has been accompanied by a Marketing Report which has been updated in April 2020. The information indicates that the site has been marketed by professional agents since August 2018. The main enquiries have regarded proposed residential development of the site with no substantive interest that has been followed up by prospective users for commercial use. I consider, examining these submissions as a whole, that the site has been appropriately marketed for a reasonable period and this evidence weighs in favour of the conclusion that there is little prospect of the site being developed for business use.
11. The information also indicates that the site was also unsuccessfully marketed during 2015/2016 and the permission for a superstore, granted in 2012, has

¹ Paragraph: 001 Reference ID: 66-001-20190722

now lapsed with the proposed occupier taking premises in the centre of Cheddar.

12. Furthermore, the evidence indicates that the Steart Farm part of the appeal site was previously allocated for 'Industrial, Warehouse and Business use' in the Sedgemoor District Local Plan 1991-2011 (Policy E3) which was adopted in 2004. The evidence indicates that the employment allocation was not saved when the former Sedgemoor Core Strategy 2006-2027 was adopted in 2011, although the site remained within the settlement boundary. Consequently, the site has been available in land use terms to be developed for employment purposes, if desired, since at least 2004.
13. It is also relevant that the Inspectors who separately examined the Neighbourhood Plan and the Local Plan both commented on the future use of the land following representations. The Examiner for the Neighbourhood Plan was satisfied with the designation and considered that the site was a good one for providing business park employment opportunities. However, at the Local Plan inquiry the case was made by the Council that the land was not needed for employment purposes, with land allocated for employment use elsewhere in Cheddar, and that the site had been identified as suitable for housing in the Strategic Housing Land Availability Assessment and could contribute to the 5 year housing land supply. The Local Plan Inspector was satisfied that the future use of the land should be considered through the development management process.
14. I have carefully considered the submissions, in particular from Cheddar Parish Council, and the arguments for the retention of the allocated use on this site. I do not underestimate the time and effort that the community has taken to progress and bring into force the CNP. While the designation of the site for employment use may be desirable in land use terms, I do not have before me robust and comprehensive evidence that there is substantive interest from any prospective developer or user which would lead to the site being used for employment purposes within a reasonable time period. The CNP was adopted only recently, however, the allocation of the site for employment purposes has been part of an earlier plan and the employment use of the site has not come to fruition.
15. Taking all these matters together, I am satisfied that the evidence and supporting information leads to the conclusion that there is not a reasonable prospect of an application coming forward for the employment use allocated in the CNP. The other allocations of employment land in the CNP mean that this is not the only site that could deliver employment opportunities during the CNP plan period. With all the background and history of the allocation of this site for employment purposes, and the Local Plan compliant period of marketing that has taken place, it would not be premature to allow the use of the site for other purposes. The residential scheme would therefore not conflict with Policy D16 of the Local Plan because it has been demonstrated there is no likelihood of a viable employment use of the land.

Habitats Regulations Assessment

16. The site is located within a Site of Special Scientific Interest Risk Zone (Drinking Water Safeguard Zone) and within a Band A of the Bat Consultation Zone for Greater Horseshoe Bats of the North Somerset and Mendip Bats Special Area of Conservation. The proposal has been accompanied by an

Ecological Appraisal and a Bat Activity Technical Note. The evidence indicates that bat activity surveys were undertaken in 2012 and in 2018 and Greater and Lesser Horseshoe bats were recorded. It appears that the Greater Horseshoe bats are continuing to use a route across the northern part of the site, possibly feeding along the hedgerows including those bordering the Steart Triangle area. The information indicates that potentially there could be a significant effect on Lesser Horseshoe bats due to loss of foraging habitat.

17. The proposal includes a series of mitigation measures including a revised Parameters Plan that seeks to retain existing habitats/landscape features wherever possible and includes key bat flight corridors, green corridors and buffer zones with the aim of strengthening the foraging and commuting network for bats. Furthermore, there is intended to be an area of replacement habitat, not all the site will be built on and the Steart Triangle part of the site would not now have housing.
18. I have had regard to the in combination effects with other housing proposals in the area, including the 9 dwellings on the adjoining site at Steart Bushes. The County Council Ecologist and Natural England, after taking into account all the information, including the intended layout and mitigation measures which can be secured as part of the proposal, raised no objection to the scheme. Based on all the information, I agree with this assessment.
19. I am required to undertake an Appropriate Assessment in accordance with the Conservation of Habitats and Species Regulations 2017. I am satisfied that with the mitigation secured by planning agreement and conditions that the proposal as detailed would not adversely affect the integrity of the site with its use by bats or designated habitat sites elsewhere. The proposal would, therefore, comply with Policies D20, D21 and D23 of the Local Plan which seeks, amongst other things, that development proposals should contribute to maintaining and where appropriate enhancing biodiversity.

Planning Agreement

20. The planning agreement sets out the obligations. These concern the provision of wildlife and open areas including Public Open Space, Local Area for Play/Local Equipped Area for Play and the Landscape and Ecological Management Plan (LEMP), affordable housing contributions and footway access and cycleway links.
21. The play space, open space and green infrastructure obligations, including the LEMP, are necessary to meet the requirements of Policy D34 of the Local Plan and to ensure that the necessary habitat mitigation is secured in accordance with the related policies and the conclusions reached in terms of the Habitats Regulations Assessment.
22. The affordable housing obligations are required to meet the requirements of Policies D5 and D6 of the Local Plan and the agreement sets out the process for the provision at the reserve matters stage.
23. The obligation in respect of the provision of the footway access and cycleway links are important to ensure safe connectivity for future occupiers of the housing to the wider area and its services and facilities.
24. I am satisfied that each of these planning obligations in the planning agreement are individually necessary to make the development acceptable in

planning terms, directly related to the development and fairly and reasonably related in scale and kind to the development. The obligations therefore accord with Regulation 122 of the Community Infrastructure Levy Regulations 2010.

25. While most of the obligations mitigate the impacts of the development and afford limited weight, the affordable housing obligation would help deliver housing in this respect. With the scale of the contribution I attribute this matter moderate weight in support of the scheme.

Other Matters

26. I have carefully considered all the objections to the scheme, including from local residents, Cheddar Parish Council and Axbridge Town Council. In terms of the substantive issue concerning the allocation of the land I have considered this matter above.
27. The Highway Authority has not raised objection to the scheme on access or safety grounds and with the provision of the associated highway works I have found no reason to disagree.
28. Part of the site falls within an area liable to flood, however, this is identified as an area for open space and therefore the Lead Local Flood Authority has not raised objection. Subject to appropriate siting and levels of the housing at the reserved matters stage the properties should not be at risk of flooding.
29. Concerns have been raised regarding the relationship of the properties to the nearby industrial site and the sewage treatment works. With the proposed landscaping around the site as identified on the Parameters Plan, and the proposed condition 7, the occupiers of the housing should be adequately protected from the activities at the adjoining business units. Although the site is on the fringe of the odour consultation zone, the Planning Report explains the odour modelling carried out in 2012 did not indicate any cause for concern and Wessex Water have not objected to the appeal scheme. Consequently, I consider that there is no substantive evidence that the position of the sewage treatment works should adversely affect living conditions of future residents.
30. I have noted the representations regarding a legal dispute in respect of the land at Steart Triangle. However, this is not a matter which leads me to a different conclusion on the main issues. The planning agreement and conditions secure the necessary habitat mitigation and the implications for bat habitats and foraging routes which may affect other land would need to be considered in relation to the potential development of any other site at that time.

Conditions

31. The Council has suggested a number of conditions which I have considered taking account of the advice in the Framework and the Guidance. I have noted the appellant's written agreement to the conditions at the final comments stage and also included the three other conditions recommended.
32. In addition to a condition for the statutory times for an outline proposal, a condition requiring the development to be carried out in accordance with the approved plans is necessary in the interests of certainty.
33. Conditions 3, 4 and 5 are necessary in the interests of flood prevention and appropriate drainage provision. Condition 6 is necessary to ensure that any

contamination of the site is identified and remediated in the interests of the amenities of future residents. Because of the proximity of the business park and road, a condition to ensure that internal and external noise levels meet acceptable standards is necessary to ensure satisfactory living conditions for occupiers of the housing (condition 7).

34. The submission, approval and compliance with a Construction Management Plan is necessary to protect the wider amenities of the area, having regard to the scale of the development and its location (condition 8). Conditions 9, 10 and 19 are necessary to ensure the protection of bats in the interests of nature conservation. The implementation of a construction environmental management plan is necessary in the interests of nature conservation during the construction phase (condition 18). Conditions 11, 12 and 13 are necessary in the interests of highway safety and condition 20 is necessary in the interests of promoting sustainable transport modes.
35. To record any archaeology it is necessary for a programme of archaeological works to be submitted, agreed and implemented (condition 14). The sourcing of local labour where possible to accord with the requirements of the supporting text to Policy D16 of the Local Plan is necessary in the interests of supporting the local economy (condition 15). Conditions regarding the protection of trees and the maintenance of landscaping to be agreed are necessary in the interests of protecting the character and appearance of the area (conditions 16 and 17).
36. Conditions 6, 8, 14, 15, 16 and 18 are required to be pre-commencement conditions. In the case of contaminated land (6), Construction Management Plan (8), archaeology (14), tree protection (16) and construction environmental management plan (18) these are matters that are required to be agreed and implemented from the outset of any works on site. To ensure local labour (15) is secured and can form part of all aspects of the works, where possible, this needs to form part of the tendering and contract processes and to be effective needs to be in place before any works commence.

Conclusion

37. The proposal would conflict with Policy EE3 of the CNP. However, for the reasons explained, there would be no reasonable prospect that the site would be used for employment purposes and therefore the proposal would comply with the requirements of Policy D16 of the Local Plan. I give substantial weight to the compliance with Policy D16 of the Local Plan and, in the circumstances that I have found, this outweighs the conflict with Policy EE3 of the CNP.
38. The evidence indicates that the site would not be essential to meet the 5 year housing supply requirements across the plan area or the allocated number of housing units for Cheddar. Nevertheless, the site would make a worthwhile contribution to housing supply on land within the defined settlement area. Occupiers of the site would be within walking distance of the centre of a Tier 1 settlement, as defined in the Local Plan, with its services and facilities. In this way, residential development of the site, including affordable housing provision, would meet a general need for housing, be located in an accessible location and would support the wider planning strategy for the area. These are aspects of the proposal which would accord with policies of the development plan.

39. The release of the land from employment use and the acceptable use of the site for housing would also accord with the policy in the Framework and the advice in the Guidance for considering whether land should be reallocated for a more deliverable use. These are material considerations that add substantial weight in favour of the scheme.
40. It therefore follows that I am satisfied that the scheme would comply with the development plan when considered as a whole and other material considerations do not indicate that a decision should be made other than in accordance with the development plan. Accordingly, and taking all other matters into account, I conclude that subject to the specified conditions and the planning agreement, that the appeal should be allowed.

David Wyborn

INSPECTOR

Schedule of Conditions

- 1) Details of the appearance, landscaping, layout, and scale, (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development takes place and the development shall be carried out as approved. Application for approval of the reserved matters shall be made to the local planning authority not later than 3 years from the date of this permission. The development hereby permitted shall take place not later than 2 years from the date of approval of the last of the reserved matters to be approved.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans:
 - Site Location Plan Drg No. A-PL-000 Rev P01,
 - Existing Site Plan Drg No. A-PL-001 Rev P01,
 - Proposed Parameters Plan Drg No. A-PL-102 Rev P07,
 - Access Junction and Road Realignment Plan Drg No. 18024-010 Rev A,
 - Swept Path Analysis Phoenix 2 Duo Recycler Drg No. 18024 - TR001, and
 - Swept Path Analysis FTA Design HG Rigid Vehicle Drg No. 18024 - TR002.
- 3) The finished floor levels (FFL) to be set 600 mm above the 1 in 100 year plus 85% climate change allowance; i.e. to a level of 7.15m AOD.
- 4) The development hereby approved shall not be brought into use until a surface water drainage scheme has been implemented in accordance with details that have been submitted to and approved in writing by the local planning authority. Such scheme shall include measures to prevent the run-off of surface water onto the highway and once approved the scheme shall be implemented in accordance with the approved details and maintained at all times.
- 5) No development approved by this permission shall be occupied or brought into use until a scheme for the future responsibility and maintenance of the surface water drainage system has been submitted to and approved by the Local Planning Authority. The approved drainage works shall be completed and maintained in accordance with the details agreed.
- 6) Development shall not begin until a scheme to deal with any contamination of the site has been submitted to and approved in writing by the local planning authority. Such scheme shall include:-
 - an investigation and assessment to identify the extent of contamination;
 - a remediation plan to address any contamination found
 - measures to be taken to avoid any risk to the public and environment when the site is developed.
 - steps to be taken in the event that any unexpected contamination is found during the course of the development
 - any monitoring necessary to assess effectiveness of the proposed remediation
 - provision of reports as necessary to confirm the outcome of the remediation strategy

The development be carried out in accordance with the approved measures.

- 7) In conjunction with "reserved matters" of appearance, layout, scale and landscaping submitted pursuant to condition 1, the detailed design of mitigation measures shall be submitted to the Local Planning Authority to demonstrate how the scheme will meet the BS8233:2014 and WHO criteria for internal and external noise levels. This shall include details of building design and layout with respect to the adjacent B3151 Lower New Road and Cheddar Business Park, enhanced glazing and ventilation schemes and details of external walls and fences to provide protection to external amenity spaces.
- 8) Prior to the commencement of development, including any site clearance, groundworks or construction within each sub-phase (save such preliminary or minor works that the Local Planning Authority may agree in writing), a Construction Management Plan (CMP) to manage the impacts of construction during the life of the works, shall be submitted to and approved in writing by the Local Planning Authority. For the avoidance of doubt, the CMP shall, amongst other things, include:-
 - a) Measures to regulate the routing of construction traffic;
 - b) The importation of spoil and soil on site;
 - c) The removal /disposal of materials from site, including soil and vegetation;
 - d) The location and covering of stockpiles;
 - e) Details of measures to prevent mud from vehicles leaving the site and must include wheel-washing facilities;
 - f) Control of fugitive dust from earthworks and construction activities; dust suppression
 - g) Noise control plan (which includes control methods)
 - h) A waste disposal policy (stating no burning on site)
 - i) Details of any site construction office, compound and ancillary facility buildings;
 - j) Construction and delivery hours
 - k) Specified on-site parking for vehicles associated with the construction works and the provision made for access thereto
 - l) A point of contact (such as a Construction Liaison Officer/site manager) and details of how complaints will be addressed, including an appropriate phone number.The details so approved and any subsequent amendments shall be complied with in full and monitored by the applicants to ensure continuing compliance during the construction of the development.
- 9) A minimum accessible habitat enhancement area for horseshoe bats of 0.97ha shall be provided, to include a bat corridor with a minimum width of 7 metres (or 10 metres depending on the agreed site layout) around the eastern and northern boundaries of the site to form a bat corridor ('lane'). The replacement habitat shall be of long sward meadow, scrub and include a parallel hedgerow along the edge of the eastern and

northern boundaries of the site. The siting and extent shall be agreed as part of the layout Reserved Matters. Details of the layout, planting schedule and timetable for implementation for the habitat creation / enhancement of this open space shall be submitted to and agreed in writing by the local planning authority prior to work commencing on site. Once approved such details shall be implemented as part of the development and thereafter permanently maintained.

- 10) No dwelling hereby approved shall be occupied until such time as an external lighting strategy for bats has been implemented in accordance with details that have been submitted to and approved in writing by the Local Planning Authority.

The strategy shall:

- a) identify those areas/ features on site that are particularly sensitive for bats and that are likely to cause disturbance along important routes used to access key areas of their territory, for example, for foraging; and
- b) show how and where external lighting, to include street and domestic lighting, will be installed (through the provision lighting contour plans and technical specifications) so that it can be clearly demonstrated that areas to be lit will not disturb or prevent the above species using their territory or having access to their breeding sites and resting places.
- c) specifically, the details of the street lighting, including the type of lighting, between Wedmore Road and the B3151 shall be submitted to and agreed as part of the external lighting strategy.

All external lighting shall be installed in accordance with the specifications and locations set out in the design, and these shall be maintained thereafter in accordance with the design. Under no circumstances should any other external lighting be installed.

- 11) At the approved access there shall be no obstruction to visibility greater than 300 millimetres above adjoining road level within the visibility splays shown on the submitted plan Drg No. 18024-010 Rev A. Such visibility splays shall be constructed prior to the commencement of the development hereby permitted and shall thereafter be maintained at all times. The approved site access arrangements shall be available for use before first occupation and shall be maintained at all times thereafter.
- 12) The proposed estate roads, footways, footpaths, tactile paving, cycleways, bus stops/bus lay-bys, verges, junctions, street lighting, sewers, drains, retaining walls, service routes, surface water outfall, vehicle overhang margins, embankments, visibility splays, accesses, carriageway gradients, drive gradients, car, motorcycle and cycle parking, and street furniture shall be constructed and laid out in accordance with details to be approved by the Local Planning Authority in writing pursuant to condition 1 before their construction begins. For this purpose, plans and sections, indicating as appropriate, the design, layout, levels, gradients, materials and method of construction shall be submitted to the Local Planning Authority.
- 13) The proposed roads, including footpaths and turning spaces where applicable, shall be constructed in such a manner as to ensure that each dwelling before it is occupied shall be served by a properly consolidated

and surfaced footpath and carriageway to at least base course level between the dwelling and existing highway.

- 14) Before the commencement of the development hereby permitted the applicant, or their agents or successors in title, shall have secured the implementation of a programme of archaeological work in accordance with a Written Scheme of Investigation (WSI) which has been submitted to and approved in writing by the Local Planning Authority. The WSI shall include details of the archaeological excavation, the recording of the heritage asset, the analysis of evidence recovered from the site and publication of the results. The development hereby permitted shall be carried out in accordance with the approved scheme.
- 15) Prior to the commencement of each approved phase of development a written commitment to the sourcing of local labour shall be submitted to and approved in writing by the local planning authority. The written commitment, as a minimum, shall set out the following matters: i) The proportion of construction workers whom will be sourced from the local labour pool, which shall be at least 50%; ii) Work experience/apprenticeship opportunities; iii) The proportion of local procurement and sourcing; iv) On-going skills development and training opportunities; v) The steps that will be taken to ensure that the above is implemented; vi) The operator shall maintain a record of i - v above and shall make that information available to the local planning authority at all reasonable times upon request.
- 16) Prior to the commencement of any demolition or commencement of construction activity on site, an arboricultural method statement, tree protection plan and schedule of arboricultural supervision shall be submitted to and approved in writing by the local planning authority. Such statement shall set out the measures to protect the retained hedgerows and trees from mechanical damage, pollution incidents and compaction of roots in accordance with BS5834:2012 during construction. The development shall be carried out in accordance with the approved details at all times.
- 17) The landscape planting scheme required to be approved pursuant to condition 1 shall be implemented in the first available planting season following the first occupation of any of the dwellings hereby permitted and completed within 9 months of the substantial completion of the development unless an alternative timetable is agreed under the LEMP condition and/ or S106 clauses. Any trees/shrubs dead or dying within five years of planting shall be replaced with plants of the same size.
- 18) No development shall take place (including demolition, ground works, vegetation clearance) until a construction environmental management plan (CEMP: Biodiversity) has been submitted to and approved in writing by the Local Planning Authority. The CEMP (Biodiversity) shall include the following:
 - a) Risk assessment of potentially damaging construction activities.
 - b) Identification of "biodiversity protection zones".
 - c) Practical measures (both physical measures and sensitive working practices) to avoid or reduce impacts during construction (may be provided as a set of method statements).

- d) The location and timing of sensitive works to avoid harm to biodiversity features.
- e) The times during construction when specialist ecologists need to be present on site to oversee works.
- f) Responsible persons, lines of communication and written notifications of operations to the Local Planning Authority
- g) The role and responsibilities on site of an ecological clerk of works (ECoW) or similarly competent person and the use of protective fences, exclusion barriers and warning signs.

The approved CEMP shall be adhered to and implemented throughout the construction period strictly in accordance with the approved details.

- 19) Works to the two storey farmhouse shall not in any circumstances commence unless the Local Planning Authority has been provided with either:
 - a) a copy of the licence issued by Natural England pursuant to Regulation 55 of The Conservation of Habitats and Species Regulations 2017 authorising the development to go ahead; or
 - b) a statement in writing from the licensed bat ecologist to the effect that he/she does not consider that the specified development will require a licence.
- 20) No dwelling hereby approved shall be occupied until a detailed Travel Plan has been submitted to and approved in writing by the Local Planning Authority. Once approved the provisions of the Travel Plan shall be implemented in accordance with the approved details and recommended timetable.

End of Schedule