



Appeal Decision

Site visit made on 3 February 2021

by Neil Pope BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 1 March 2021

Appeal Ref: APP/F0114/W/20/3260800

Land north east of Deadmill Lane, Lower Swainswick, Bath, BA1 8NE.

- 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 Millen against the decision of Bath & North East Somerset Council (the LPA).
 - The application Ref. 20/00491/OUT, dated 4/2/20, was refused by notice dated 9/4/20.
 - The development proposed is the construction of 18 affordable dwellings.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. Matters relating to appearance, landscaping and scale have been reserved for subsequent consideration.
3. The appeal site lies within the Bristol and Bath Green Belt (GB) and the Bath World Heritage Site (WHS). It is adjacent to the Cotswold Area of Outstanding Natural Beauty (AONB) and the Bath Conservation Area (CA).
4. Prior to the LPA's determination of the application a revised layout plan was submitted and additional details were provided in respect of highway matters. As part of the appeal, the appellant has submitted further revised highway details, including plan ref. DMLB005 Rev2. Amongst other things, these revisions include the deletion of proposed pedestrian crossings, a new footpath link from the appeal site to the existing footway at the rear of Nos. 17-20 Ferndale Road and alterations to proposed footpaths within the site.
5. Guidance¹ issued by the Planning Inspectorate states that the appeal process should not be used to evolve a scheme and it is important that what is considered by the Inspector is essentially what was considered by the local planning authority, and on which interested people's views were sought. The LPA has commented on the further revisions to the layout and highway works, and it could be argued that some of these amount to minor amendments.
6. However, no consultation appears to have taken place with local residents, including the occupiers of 17-20 Ferndale Road. These neighbours would be affected by the proposed footpath link and, in all likelihood, others would want to comment on the proposed deletion of the pedestrian crossings. Mindful of the 'Wheatcroft Principles'², if I was to take the revised highway details / layout

¹ 'Procedural Guidance – Planning Appeals – England'.

² Bernard Wheatcroft Ltd v Secretary of State for the Environment [JPL 1982 p.37].

into account it would deprive those who should have been consulted on the changes of the opportunity of such consultation. I have therefore determined the appeal on the basis of the details and plans that were before the Council when it determined the application in 2020.

7. As part of the appeal, the appellant has submitted a Unilateral Undertaking (UU) under the provisions of section 106 of the Town and Country Planning Act 1990 (as amended). Amongst other things, the UU includes provision for all of the proposed dwellings to be affordable³, financial obligations towards targeted recruitment and training and fire hydrants, as well as separate provisions for open space and a sustainable urban drainage scheme.
8. An application for costs was made by the LPA against the appellant. This application is the subject of a separate Decision.

Main Issues

9. The three main issues are: firstly, whether the proposal would be inappropriate development within the GB, having regard to the provisions of the development plan and the National Planning Policy Framework (the Framework); secondly, the effect upon the WHS, including the landscape setting of Bath, the effect upon the settings of the AONB and the CA, as well as the setting / significance of the non-designated heritage asset know as Dead Mill and; thirdly, the likely effect upon highway safety along the local road network.

Reasons

Planning Policy

10. The development plan includes the Bath and North East Somerset Core Strategy (CS) adopted in 2014 and the Bath and North East Somerset Placemaking Plan (PP) adopted in 2017. My attention has been drawn to numerous policies. The most important ones to the determination of this appeal are: CS policies B4 (World Heritage Site and its Setting), CP6 (environmental quality), CP8 (GB), RA4 (rural exception sites) and; PP plan policies NE2 (landscape), NE2A (landscape settings of settlements), HE1 (historic environment), D2 (local character) and ST7 (transport).
11. My attention has also been drawn to the Council's Local Plan 2016-2036 Options Consultation that was published in 2018 (eLP). Amongst other things, this includes emerging policy DM3, which relates to Rural Exception Sites (RES). This plan is at an early stage and has only limited weight.
12. In determining the appeal, I have also had regard to the Statement of Outstanding Universal Value (SOUV) of the WHS and the Council's Larkhall Character Statement and Development Principles (LCS) 1998. The LCS was the subject of stakeholder engagement and can be given moderate weight.

Inappropriate Development

13. Within the Framework, the construction of new buildings is inappropriate development in the GB unless it meets one of a number of specified exceptions. These include limited affordable housing for local community needs under policies set out in the development plan, including policies for RES.

³ 50% would be Affordable Rent Housing and 50% would be Shared Housing.

14. Neither the Framework nor the development plan define "*limited*" in the context of affordable housing. The supporting text to CS policy RA4 refers to "*small sites*" but this is also not defined. The eLP states that the LPA has interpreted limited affordable housing and small sites to mean sites of 10 dwellings or fewer but recognition should be given that developments larger than 10 units could be appropriate in the case of RES. In this regard, emerging policy DM3 includes provision for sites with a capacity of up to 20 dwellings.
15. I note the LPA's argument that the appeal site is located within the boundary of the City of Bath and is not within a rural parish. It has also argued that this is not a small site. However, the appeal site comprises agricultural land which forms part of the countryside that surrounds Bath. It is land that would not normally be used for housing. Furthermore, neither the Framework nor the development plan make any reference to limited affordable housing or RES having to be within a rural parish. The proposed 18 dwellings on this 0.39 ha rural fringe site could reasonably be deemed to fall within the remit of limited affordable housing and qualify for consideration as a RES under CS policy RA4.
16. CS policy RA4 permits residential development of 100% affordable housing where it meets specified requirements. The Council has informed me that in November 2020, there were 114 general needs applicants on Homesearch that had expressed a first choice preference for Larkhall (including Lambridge). The appellant has also informed me, following a Freedom of Information request, that 134 households within the Lambridge ward require social housing. This is sufficient to demonstrate a local need for affordable housing. This level of need is rather unsurprising in such a desirable area as Bath and where, according to the eLP, CS policy RA4 has yet to deliver any affordable housing.
17. I am not a lawyer, but the UU includes provision for the proposed housing to remain affordable in perpetuity, as well as provision for occupancy criteria to determine the identity of occupiers and the means of enforcing this. Whilst I shall deal with the issue of character as part of the second main issue, scale is a reserved matter and there is no cogent evidence to demonstrate that there is any risk that this would not be in keeping with the form of the site's location. The proposed development would also be well-related to community services and facilities. It would accord with the aims and objectives of CS policy RA4. In so doing, it would not amount to inappropriate development within the GB and would also accord with the provisions of CS policy CP8⁴.

WHS/Landscape Setting of Bath, Settings of the AONB, CA and Dead Mill

18. As set out within the SOUV, the landscape of the City of Bath and its surroundings have been instrumental in the location, form and special character of the WHS. The SOUV of this important designated heritage asset includes the harmonious combination of the City's architecture and landscape, with the surrounding countryside drawn into the City to create a distinctive garden city feel.
19. As I noted during my visit, although the southern portion of the appeal site is overgrown, the unspoilt, green open qualities of this 0.39 ha of land form part of the attractive landscape setting to Bath. It is an integral part of the lower slopes of the hillside and countryside which are adjacent to the northern edge

⁴ The courts have held that where development is found to be not inappropriate it should not be regarded as harmful either to the openness of the GB or to the purposes of including land within the GB.

- of the settlement and provides a pleasing contrast to the rows of houses to the south east. It makes a positive contribution to the significance of the WHS.
20. The proposed buildings, roads (including the proposed access works), other hard surfaced areas, lighting and domestic paraphernalia would markedly change the character and appearance of the appeal site. This would be evident from sections of the surrounding streets, as well as in some important viewpoints⁵ in and around the city. Notwithstanding the intended landscaping and tree planting and proposed sedum roofs, the development would be overtly urban in form and character. It would result in the loss of the unspoilt, green open qualities of the site and erode the pleasing contribution the site makes to the landscape setting of this part of Bath. Whilst the development would form only a small part of some important views, it would be a discordant addition to the landscape and adversely affect the significance of the WHS.
21. In the context of the Framework, the proposal would result in less than substantial harm to the heritage interest of the WHS. If there is a sliding scale of harm within this category the proposal would be towards the lower end. However, this does not amount to a less than substantial planning objection. Great weight should be given to conserving designated heritage assets and the more important the asset, the greater the weight. The harm that I have identified above carries considerable weight in the planning/heritage balance. This must be weighed with the public benefits of the proposal.
22. The proposed affordable dwellings would assist in meeting the housing needs of the local community. During the building phase there would be some limited support for the construction industry and when completed the new homes would result in additional Council Tax receipts. The totality of these social and economic benefits can be given substantial weight. However, this would be insufficient to outweigh the harm to the significance of the WHS that I have identified. The proposal would conflict with the provisions of CS policy B4 and PP policies NE2, NE2A and D2.
23. The proposed development would be immediately adjacent to the CA. This city wide designated heritage asset includes buildings of various sizes and designs, as well as open spaces and some agricultural land. Although limited information has been provided on this matter, it appears to me that the significance of this asset is derived primarily from the contribution made by the very many listed buildings, the archaeology of the city and the historic layout of the buildings and streets, as well as its landscape setting. The unspoilt, green open qualities of the appeal site assist in affording an appreciation and understanding of the historic landscape setting of the city and make a small positive contribution to the significance of the CA.
24. The proposal, by virtue of the buildings, roads and other hard surfaced areas would result in the loss of the unspoilt, green open qualities of the site and would erode the pleasing contribution the site makes to the historic landscape setting of this part of the CA. It would have an adverse effect upon the significance of the CA, which would amount to less than substantial harm. This would be at the lower end of a sliding scale of harm. When weighed with the public benefits of the proposal, permission should be withheld.

⁵ Viewpoint 12(a) – Alexandra Park, as identified in the City of Bath World Heritage Site Setting Supplementary Planning Document 2013, and to a lesser extent, Viewpoints 10 (Little Solsbury Hill) and 17 (Prior Park).

25. The proposed development would also be in close proximity to the edge of the AONB. However, there is nothing before me which identifies the special qualities of this designated landscape or to demonstrate that the proposal would have an adverse effect upon the natural beauty of the AONB. No important trees would be lost⁶ or any other features that are likely to contribute to the enjoyment of this nationally important landscape. New tree planting would also form part of the reserved matters. There is nothing of substance to show that the AONB or its setting would be harmed.
26. I understand that Dead Mill is a former flour mill, rebuilt in 1901, but dates back to the 14th century. As I saw during my visit, this imposing old mill building is prominent within the street scene of Deadmill Lane. It is identified as an important local landmark within the LCS, with the more rural character part of its surroundings forming a key part of its setting. The appeal site forms part of this rural character and the contextual setting of this locally important building. The site assists in affording an appreciation and understanding of the historic attributes of this former flour mill. The proposed development and loss of countryside would erode the contextual and historic rural setting of this building. It would detract from an appreciation and understanding of this non-designated heritage asset and harm its significance. However, this harm would be outweighed by the public benefits of the proposal.
27. I conclude on the second main issue that the proposed development would result in unacceptable harm to the WHS, including the landscape setting of Bath, and to the setting / significance of the CA. It would unacceptably erode the environmental quality of the local area and conflict with CS policy CP6.

Highway Safety

28. Vehicular access to the proposed development would be from Deadmill Lane⁷. This new junction would have visibility splays measuring 2.4 metres x 25 metres in each direction. A new footpath would be provided at the southern end of the site and two pedestrian crossings would be provided at the junction of Ferndale Road⁸ and Deadmill Lane. The LPA has advised that the proposed visibility splay would be acceptable in principle. I see no reason to disagree.
29. I note the concerns of the LPA and a number of local residents regarding the suitability of Deadmill Lane to accommodate the likely increase in traffic associated with the development. I also understand that this road and Ferndale Road are also used as 'rat runs' and can be subject to vehicle queuing at peak times. However, the LPA has also informed me that there have been no recorded collisions by the police over the period 1/12/2015 – 20/11/2020. It would therefore appear that in general, traffic moves along these roads at slow speeds and both roads have a good safety record.
30. I note the LPA's concerns regarding the absence of a swept path analysis to demonstrate that a fire appliance would be able to exit the site in a forward gear without overrunning third party land or come into conflict with vehicles and / or vulnerable users of Deadmill Lane. It is also concerned that if a fire appliance encountered another 'large' vehicle drivers could have difficulty safely manoeuvring and some car parking spaces would be in close proximity

⁶ The appellant's Arboricultural Impact Assessment Tree Protection and Landscaping Plan also shows tree protection works to an off-site 'Category B' tree.

⁷ This road is lacking in footways and is subject to a 20 mph speed restriction.

⁸ This road is also subject to a 20 mph speed restriction.

to the proposed access. I also note the concerns regarding footpath links to the site.

31. Whilst these are all important for safeguarding highway safety interests, they are relatively minor matters that could be addressed by way of additional information and / or amended plans. Although access is not a reserved matter, a planning condition could be used to address some of these concerns. I note the provisions of the UU include compliance with the highway officer's advice.
32. The LPA also raised concerns regarding the proposed controlled pedestrian crossings and the failure to demonstrate that appropriate Stopping Site Distances (SSD) could be achieved. On the basis of the information before me, these crossings are important for ensuring road safety interests would not be compromised. However, in the absence of SSD and a Road Safety Audit there is an unacceptable risk of an accident. Whilst the amended plans submitted with the appeal propose the removal of these crossings, for the reason already given, I am unable to take them into account.
33. I conclude on the third main issue that the proposed development would be likely to compromise highway safety interests at the junction of Deadmill Lane and Ferndale Road. The proposal conflicts with the provisions of PP plan ST7.

Other Matters

34. There is nothing of substance to indicate that the proposal would be likely to harm any protected species or important nature conservation interests. As a consequence, the appellant's suggestion of a condition requiring the submission and approval of an Ecological Mitigation and Management Plan prior to the commencement of development would be appropriate.
35. There is no cogent evidence before me to demonstrate that financial obligations would be necessary towards the costs of providing targeted recruitment and training and fire hydrants. There is also nothing to demonstrate that contributions would be necessary for open space or that a sustainable urban drainage scheme could not be secured by way of a planning condition. I am unable therefore to take these obligations into account. However, even if I could, they would not amount to public benefits sufficient to outweigh the totality of the harm that I have identified in respect of the second and third main issues.

Overall Conclusion

36. I have found that the proposal would not amount to inappropriate development within the GB and would provide some public benefits. However, this does not overcome or outweigh the totality of the harm that I have found in respect of the WHS, the CA, the significance of the non-designated heritage asset known as Dead Mill and to highway safety interests. I therefore conclude overall that the proposal would not accord with the Government's objective of achieving sustainable development and the appeal should not succeed.

Neil Pope

Inspector