



## Appeal Decision

Site Visit made on 10 February 2021

**by Nick Davies BSc Hons BTP MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 03 March 2021**

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**Appeal Ref: APP/F0114/W/20/3248964**

**Land Between City Farm and Cotswold View, The Hollow, Southdown, Bath BA2 1JN**

- 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 Nick Warfield (Freemantle Capital Partners (Hollow) Ltd) against the decision of Bath and North East Somerset Council.
  - The application Ref 19/00786/FUL, dated 22 February 2019, was refused by notice dated 20 December 2019.
  - The development proposed is erection of 9(no.) dwellings with associated access, parking, drainage and landscaping.
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### Decision

1. The appeal is dismissed.

### Preliminary Matter

2. The Council's decision notice refers to a Soft Landscape Plan numbered 1380-02-P5. The evidence indicates, however, that the drawing considered by the Council when making its decision was numbered 1380-02-P4, so that is the drawing that I have also considered.

### Main Issues

3. The main issues are:
  - a) Whether the development would conserve the Outstanding Universal Value of the City of Bath World Heritage Site;
  - b) The effect of the development on the character and appearance of the surrounding area; and,
  - c) The effect of the development on the biodiversity value of the Twerton Farm Site of Nature Conservation Interest.

### Reasons

*The City of Bath World Heritage Site (the WHS)*

4. The WHS is a designated heritage asset of the highest significance. One of its attributes of Outstanding Universal Value (OUV) is the green setting of the city in a hollow in the hills. The City of Bath World Heritage Site Setting Supplementary Planning Document (2013) (the SPD) explains that views to the green undeveloped landscape of farmland and open spaces, and to trees and woodland within the WHS, and in its setting, are integral parts of its OUV. Map 5 of the SPD shows that the appeal site lies within one of the areas that are

identified as green hillsides forming prominent features of the landscape setting of the WHS. Therefore, the wider undeveloped hillside, of which the appeal site is part, is recognised as making a positive contribution to the OUV of the WHS.

5. Paragraph 184 of the National Planning Policy Framework (the Framework) advises that heritage assets are an irreplaceable resource, and should be conserved in a manner appropriate to their significance. Policy B4 of the Bath and North East Somerset Core Strategy (2014) (the Core Strategy) places a strong presumption against development that would result in harm to the OUV of the WHS. This is reinforced by Policy HE1 of the Bath and North East Somerset Placemaking Plan (2017) (the Placemaking Plan).
6. Both parties have drawn my attention to a previous appeal decision<sup>1</sup> relating to the site. That decision related to a proposal for 20 dwellings on a larger site, and the Inspector concluded that *"the loss of this part of the important green hillside to development would undermine the contribution it makes to the landscape setting and character of the city and the overall integrity of its OUV"*. In view of its peripheral location in respect of the wider green hillside, the comparatively small size of the site, and the lack of impact in some views, the Inspector concluded that the harm to the heritage asset would be less than substantial.
7. The appeal scheme relates to a significantly smaller site, and the proposed houses would all be located close to the existing road frontage, in two terraces. The car-parking area would protrude further into the space behind the houses, but substantial landscaping is proposed to screen this area from long distance views. The proposed development would be on approximately half of the area covered by the previous scheme, so significantly less of the green hillside would be lost to development.
8. In views from the higher parts of the city, including Rosslyn Road, the Cotswold Way footpath at Penn Hill, and Lansdown Burial Ground, the importance of the wider green hillside to the landscape setting of the WHS is evident. In these views, the parcel of land that includes the appeal site appears slightly detached from the larger fields to the west, due to its enclosure by housing on two sides, the City Farm buildings to the southwest and a hedgerow to the northwest. The close association of the southern part of this parcel with the existing urban development in Cotswold View and The Hollow is also apparent from these viewpoints.
9. The single row of houses proposed under the appeal scheme would extend the existing built edge of development into the undeveloped land to the north of The Hollow. However, the presence of existing housing spreading further northwards on both sides, means that the development would not appear as an uncharacteristic intrusion of development into the open land. The houses in The Hollow, opposite the appeal site, are already visible from the viewpoints to the north. Consequently, the visual impact of the proposed row of opposing houses fronting the road would be barely discernible in the wider landscape, particularly in the longer term, as the landscaping to screen the car-parking area matured.
10. At the time of my visit, bright sunshine reflecting from the windows in the surrounding housing demonstrated the importance of the wider green hillside

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<sup>1</sup> Appeal Ref: APP/F0114/W/16/3150680

as a pool of darkness within the built-up area at night. Apart from windows in the rear elevations of the houses, the development would not introduce any major sources of lighting onto the hillside. Even taking into account the need to design out crime, a combination of landscaping and a suitable lighting scheme for the car-parking area could ensure that there was no significant impact on the wider night-time landscape. Indeed, the row of houses could act as a screen to wider views of the existing street lighting and traffic headlights in The Hollow. Overall, therefore, the impact of the development on the pool of darkness would be negligible.

11. The development would, therefore, have a very limited impact on the contribution that the wider hillside makes to the setting of the WHS. However, it would result in a small reduction in its overall extent. The Heritage Statement submitted with the application concluded that this would result in a slight to moderate adverse significance of effect on the OUV of the WHS. Consequently, the proposals would result in less than substantial harm to the heritage asset. In view of the small scale of the development, the existing urban influence on this part of the site, and the very limited visual impact, I find that this harm would be at the lowest end of the scale.
12. Nevertheless, paragraph 194 of the Framework says that any harm to the significance of a designated heritage asset requires clear and convincing justification. Consequently, unless the limited harm to the OUV of the WHS is outweighed by public benefits, the development would be contrary to the aims of the Framework to conserve the historic environment. It would also conflict with Policy B4 of the Core Strategy and Policy HE1 of the Placemaking Plan.

*Character and appearance of the surrounding area*

13. The Hollow is characterised, largely, by two-storey semi-detached houses, set back from the road on a formal building line, behind front gardens that are enclosed by stone walls. The gaps between the buildings are not readily apparent in oblique views up the hill, so the pairs of houses appear to coalesce into a continuous built form. The roof lines are stepped due to the hillside location, and the street scene is softened by the presence of grass verges and street trees. Whilst not part of a protected townscape, the area has a distinctive local character, derived from the traditional form and domestic scale of the buildings and their formal layout.
14. The houses opposite, and to either side of the site, are semi-detached, but stepped terraced housing also contributes to the existing character of the locality. The two terraces at 17 – 19 and 20 – 22 The Hollow form a constituent part of the street scene, and are of similar form and scale to the proposed houses. There are also terraced elements in Cotswold View, the comparatively recent development immediately to the northeast of the site. From here, the rear elevations of the proposed terraces would be seen in juxtaposition with the very similar terrace comprising 2 – 5 Cotswold View. Terraced housing would not, therefore, be out of keeping with the local context.
15. The traditional form and two-storey scale of the terraces would conform with the general character of the surrounding buildings. Furthermore, they would be set back from The Hollow behind a planted verge, with front gardens contained by a natural rubble stone wall, following the distinctive pattern of the street. As a result of the steep slope, the mass of the terraces would be broken up by the stepped nature of the roofs. In views up and down the road, this stepped

roofscape would be similar to the pattern of the semi-detached houses opposite. The development would, therefore, assimilate readily into its established residential setting.

16. The design and materials of the development arises from discussions with Council Officers, which aimed to achieve an appropriate response to the transitional nature of the site between the established urban environment and the open hillside beyond. The resultant mix of clay double roman roof tiles, vertical timber boarding and reconstituted stone would successfully achieve this. Reconstituted stone is widely used in the surrounding development, and, whilst timber boarding would be a new introduction, it would soften what may otherwise appear a harsh contrast between the built form of the terraces and their green hillside setting.
17. The development would therefore provide an appropriate response to the site context. It would be in keeping with the general form, scale, and pattern of the immediate built environment, whilst utilising materials that recognise its location on the edge of a large area of greenspace. As a result, there would be no harm to the character and appearance of the surrounding area. Consequently, the proposal would accord with Policies CP6 of the Core Strategy and D2 of the Placemaking Plan, which seek to ensure that the distinctive quality, character and diversity of Bath's environmental assets are protected, and that development contributes positively to local character and distinctiveness.

*Biodiversity value of the Twerton Farm Site of Nature Conservation Interest (the SNCI)*

18. The appeal site is part of the SNCI, which supports semi-improved neutral grassland as an important habitat feature. The Ecological Assessment (the EA) submitted with the application found that roughly half of the appeal site consisted of this habitat, which was assessed to have moderate ecological value. Evidence of the presence of badgers was found scattered across the site, and it was concluded that there was moderate potential for reptiles and foraging/commuting bats to be present. The site was assessed as offering good nesting habitat for a range of birds. The EA noted that the development would involve the removal of all the semi-improved grassland and scrub within the red line boundary, and that there would be a net loss of habitats on the site. There would, therefore, be harm to the biodiversity interest of the SNCI.
19. In these circumstances, national and local policy requires that appropriate mitigation and compensation is provided, to minimise the impacts and provide net gains for biodiversity. The appeal site is confined to the southern part of the wider field, allowing the retention and management of key ecological features in the northern section, such as boundary vegetation, scrub, and damp hollow. Provision of habitat and refuges that would be suitable to support the local population of great crested newt are also proposed in this area. Whilst there is some uncertainty regarding the details of this provision, the evidence, including the comments of the Council's Ecologist, indicates that there is sufficient room within the wider field to accommodate suitable measures to compensate for the impact of the development on the biodiversity interest of the SNCI.
20. The appellant suggests that the necessary details could be agreed, and the compensation secured, through a planning condition. However, the northern

part of the field is outside the appeal site, and is not in the control of the appellant. The Planning Practice Guidance advises that conditions requiring works on land that is not controlled by the applicant, or that requires the consent or authorisation of another person or body, often fail the tests of reasonableness and enforceability<sup>2</sup>.

21. A negatively worded condition could be used to prohibit the development taking place until particular features had been provided. However, the success of the mitigation would be dependent on the retention of existing and proposed features, and their ongoing management. These ongoing responsibilities would not be within the control of the appellant, so the condition would not be enforceable. Consequently, the proposed off-site mitigation and enhancement could not be satisfactorily secured through a planning condition.
22. In the absence of an agreed scheme of mitigation and compensation that could be satisfactorily secured, there would be harm to the biodiversity interest of the SNCI, through the net loss of habitat. Consequently, the proposal would conflict with Policies CP6 of the Core Strategy and NE3 of the Placemaking Plan, which seek to protect and enhance valued habitats. It would also fail to meet the Framework's aim to conserve and enhance the natural environment.

### **Heritage Balance**

23. I have found that the development would result in less than substantial harm to the OUV of the WHS as a designated heritage asset. In accordance with Paragraph 196 of the Framework, this harm should be weighed against the public benefits of the proposal. In this balancing exercise, paragraph 193 requires that great weight should be given to the asset's conservation.
24. The development would provide nine houses, which would contribute towards meeting the aim of Policy B1 of the Core Strategy to deliver 1,150 homes through small-scale intensification within the urban area. Whilst this would be a modest contribution to the overall figure, a large number of such small sites will be necessary to achieve delivery of the overall figure, each of which, by itself, would make a similarly modest contribution. I therefore give significant weight to the contribution that the site would make to the Council's housing strategy.
25. The development would also contribute to the Framework's objective of significantly boosting the supply of homes. Paragraph 68 recognises the important contribution that small and medium sized sites can make to meeting the housing requirement of an area, and says that great weight should be given to the benefits of using suitable sites within existing settlements for homes. The site is located in an existing residential area, with good access to services and facilities so, if appropriate ecological mitigation and compensation could be secured, it is a suitable site for homes.
26. There would be economic benefits through the creation of employment during construction, and through the ongoing spend of future residents in the local shops and attractions. The development would also facilitate the improvement of local infrastructure as it would be liable for payments under the Community Infrastructure Levy. The limited scale of the development means that these benefits only carry moderate weight.

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<sup>2</sup> Paragraph: 009 Reference ID: 21a-009-20140306

27. The Framework requires great weight to be given to both the harm to the OUV of the WHS, and the benefits of developing a suitable site for homes. This results in the relative considerations of harm and benefit being finely balanced. However, I conclude that the public benefits of providing nine houses on a suitable site, in accordance with the housing strategy of the development plan, and the accompanying economic benefits outweigh the very limited harm that I have found to the significance of the WHS.

### **Planning Balance**

28. I have found that the development would not harm the character and appearance of the surrounding area. Furthermore, having applied the heritage balance, I have found that the public benefits of the development would outweigh the very limited harm to the significance of the WHS.

29. However, I have also found that the development would be harmful to the biodiversity interest of the SNCI through a net loss of habitat, placing the proposal in conflict with Policies CP6 of the Core Strategy and NE3 of the Placemaking Plan, as well as the Framework's aim to conserve and enhance the natural environment. Paragraph 175 of the Framework states that if significant harm to biodiversity cannot be adequately mitigated, then planning permission should be refused.

30. In the overall planning balance, the lack of harm to the character and appearance of the area is a neutral factor. Although the public benefits are sufficient to outweigh the very limited harm to the significance of the WHS, they do not outweigh the harm to biodiversity, and the resultant conflict with development plan policies.

### **Conclusion**

31. For the reasons given above I conclude that the appeal should be dismissed.

*Nick Davies*

INSPECTOR