
Appeal Decision

Site visit made on 23 March 2021

by Stuart Willis BA Hons MSc PGCE MRTPI

an Inspector appointed by the Secretary of State

Decision date: 30 March 2021

Appeal Ref: APP/P0119/W/20/3263965

Land at The Rosary, Cattybrook Road North, Mangotsfield BS16 9NN

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for outline planning permission.
 - The appeal is made by Mr F Francis of Top to Bottom Ltd against South Gloucestershire Council.
 - The application Ref P20/08205/O, is dated 5 May 2020.
 - The development proposed is erection of 9 no. dwellings with access and layout to be determined, all other matters reserved.
-

Decision

1. The appeal is dismissed, and planning permission is refused.

Preliminary Matters

2. Outline planning permission is sought with all matters reserved except access and layout. I have had regard to the details on the submitted plans for these matters but have regarded all other elements as illustrative. I have determined the appeal on this basis.
3. I have taken the description of development from the appeal form, as it has been stated that the description had been altered from that given on the application form.
4. The appellant lodged an appeal against non-determination after the expiry of the statutory period without the Council having issued a decision. The Council in their submissions stated that had they determined the application they would have refused it for reasons relating to accessibility to services, biodiversity, flooding and highway safety.
5. The appellant has had the opportunity to respond to all these matters in their final comments. Therefore, they would not be prejudiced by my taking these into account and forming the main issues.
6. The appellant's submissions included an ecological and highways rebuttal¹. It is unclear whether these were before the Council prior to the appeal being submitted. Even if they were not, they were submitted at the outset of the appeal and therefore parties have had the opportunity to comment. Against this backdrop, no injustice would be caused to any appeal party or third party

¹ Ethos Environmental Planning 21st October 2020 and Technical Note in Response to Highway Officer's Initial Consultation Response

by my taking this information into account. I have considered the appeal on that basis.

Main Issues

7. The main issues of the appeal are:

- Whether the appeal site would be a suitable location for housing, with particular regard to accessibility to services and reliance on private motor vehicles;

The effect of the proposed development on;

- Biodiversity;
- Highway safety;
- The character and appearance of the area; and
- Flooding, with particular regard to foul and surface water disposal.

Reasons

Whether Suitable Location

8. The site is located within the Emersons Green East brief site (EGE). Public Rights of Way (PROW) and the Bristol and Bath Railway Path (BBRP) run past and near to the site. These provide pedestrian and cycling routes to reach services and facilities. Some of these are within or not significantly beyond the distances set out in Policy PSP11 of the Places Plan² and there are existing houses and new ones being constructed nearby. Nevertheless, some of the services and facilities are beyond the specified distances.
9. PROW LPU/37/30 runs in front of the appeal site and would be the shortest route to a bus stop. However, this would require users to cross fields where there is no formalised and clearly visible route to reach facilities and public transport links. Much of the route would not have an even or hard surface. Moreover, the route does not have any lighting and requires users to use a stile and gates.
10. PROW LPU/36/30 runs through the new residential development to the rear of the site and provides a further route to access facilities. This has, in part, been hard surfaced with some street lighting near and is overlooked by properties. Notwithstanding this, the route would also involve large areas of the PROW which, at the time of my site visit, were not hard surfaced or lit and again involved crossing fields, over stiles and was narrow in parts. There is no detailed evidence before me of what, if any, further improvements are to be made to this PROW as part of the development behind the site or when these improvements would be made. This route would also utilise an element of the hard surfaced BBRP. Nonetheless, the BBRP does not have any lighting along this section.
11. Cattybrook Road North is hard surfaced. However, as with other often longer routes along the BBRP or the Dramway to access services and facilities, these would be largely without lighting. The road also has no designated pedestrian footway and is narrow and winding in places.

² South Gloucestershire Local Plan: Policies, Sites and Places Plan

12. While I saw some of these routes were being used when I visited the site, their characteristics would discourage the likelihood of them being practical and attractive routes, at times of darkness and of adverse weather conditions or for those that are mobility impaired. These circumstances do not lend themselves to safe or convenient use by pedestrians or cyclists.
13. While with the distances involved it may be technically possible to access services and facilities by foot or bicycle, it would be unrealistic due to the characteristics of the surrounding PROWs, road network and the BBRP. This would result in there being a lack of quality routes and sustainable transport choices available to enable future residents to conveniently access services and facilities. Therefore, occupiers of the dwellings would be heavily reliant on the use of motor vehicles.
14. Although street lighting has been suggested by the Council's Transport Officer, no details of any scheme are before me. As this related to only part of the potential routes, the details do not demonstrate that such a scheme would overcome the above concerns.
15. Consequently, the appeal site would not be a suitable location for housing with regard to accessibility to services and reliance on private motor vehicles. It would be contrary to Policy PSP11 of the Places Plan and Policy CS1 of the South Gloucestershire Local Plan Core Strategy (Core Strategy). These, in part, seek to ensure appropriate, safe, accessible, convenient, and attractive access is provided for all mode trips arising to and from a proposal.
16. It would also fail to accord with the National Planning Policy Framework (Framework) where it states that development should offer a genuine choice of transport modes.

Biodiversity

17. The Planning Practice Guidance indicates that an ecological survey will be necessary in advance of a planning application if the type and location of development are such that the impact on biodiversity may be significant and existing information is lacking or inadequate.
18. There were various species of bat recorded during surveys at the site and a section of scattered trees within the site would be removed. The trees were assessed to have low potential for foraging habitat for bats with key features being the hedgerows and cycle path. However, the details before me do not identify or clarify the potential of the trees to be removed for roosting.
19. Without this evidence it is simply not known whether protected species, in this case bats, are present. The provision of bat boxes is proposed. Notwithstanding this, without further details regarding roosting it is not known what mitigation measures would be appropriate. There is a further question concerning the implementation of any such measures. Given this degree of uncertainty, the use of conditions would not be reasonable in this case.
20. There are no ponds within the appeal site and visits have been made in the years following the 2018 survey to some of these. The appellant's ecological rebuttal indicates little change in the status of the ponds and that the area to be developed is more than 100m from the nearest pond. As a result of these factors and given the scale and nature of the proposed development I consider additional newt survey work is not necessary and it is unlikely that a licence

would be required. Mitigation and method statements could be controlled by way of condition were the appeal to be allowed.

21. The site is identified as a site of nature conservation interest (SNCI) in the EGE, designated for its diverse acid to calcareous and marshy grassland. The ecological assessments with the scheme identified that the majority of high-quality habitat is located north of the site, outside the development proposals. Habitats on the site itself were said to be of low value for wildlife. Moreover, the scheme proposes the retention and enhancement of buffer zones between the development site and the retained hedgerows.
22. Notwithstanding this, the absence of sufficient information regarding bat roosting potential at the site means I cannot rule out potentially significant harm to biodiversity. As such, the proposal would be contrary to Policy PSP19 of the Places Plan and Policy CS9 of the Core Strategy, where they require proposals to avoid or minimise harm and impacts on biodiversity, species and habitats. Moreover, the scheme would be contrary to the Framework where it states if significant harm to biodiversity resulting from a development cannot be avoided, adequately mitigated, or, as a last resort, compensated for, then planning permission should be refused.

Highway Safety

23. There is no lighting or separate pedestrian footway along the road fronting the site. Traffic from the site would also need to cross the BBRP. Nonetheless, given the size of the scheme, traffic generation would not be significant and there are already several properties located off this road. As such, the presence of vehicles at this junction is not unexpected. Furthermore, the proposal would include give way markings to delineate priority at the junction.
24. Along Cattybrook Road North there are places that would allow vehicles to pass and a section in front of the site would also be widened. The internal layout would allow vehicles to turn within the site. The main parties dispute whether the land required to make the junction improvements where Cattybrook Road North meets the B4465 is on highway or third-party land. Comments have been made by the Estate Manager regarding the use of a private access to the site.
25. From the evidence before me there would be some prospect of the actions being performed within the time limit of a negatively-worded (Grampian) condition. Therefore, conditions could be imposed to require the improvements to the junctions to be made prior to the commencement of any other part of the development were the appeal to be allowed. Matters relating to the rights of access are outside the scope of this appeal.
26. As a result, the proposed development would not harm highway safety and would accord with Policy PSP11 of the Places Plan and Policy CS1 of the Core Strategy. These, amongst other things, require developments to take account of safety, provide appropriate access and not have an unacceptable effect on highway safety. It would also comply with the Framework where it states that development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety.

Character and Appearance

27. The ecological buffer area around the proposed properties would largely enclose the scheme. It would be physically and visually separate from the new residential development to the rear. The appeal site is largely open with landscape boundaries. It is clearly visible from the PROW to the front as well as there being glimpsed views along the BBRP.
28. The introduction of housing, hard surfacing and domestic paraphernalia would inevitably alter the appearance of the site. Nevertheless, there is already some built form nearby. The scheme would be seen with a row of terrace properties, a detached dwelling and the outbuildings close by. Therefore, the presence of residential development would not be incongruous. Moreover, domestic paraphernalia relating to the terrace properties was evident along the lane fronting the appeal site where there is limited landscaping to screen them.
29. The terrace dwellings form a cluster of properties of their own style and layout rather than this being a predominant characteristic of the area. As such, while the proposed layout would not replicate the nearby terrace, there is no consistency to the form and layout of the built development.
30. The appearance of the properties and how they relate to the road frontage would be determined as part of a reserved matters submission were the appeal to be allowed. Landscaping details could also be provided and secured at that time to soften the appearance of the internal site layout.
31. Consequently, the proposed development would not be harmful to the character and appearance of the area. It would accord with Policies PSP1 and PSP2 of the Places Plan and Policies CS1 and CS9 of the Core Strategy where they require developments to be informed by, respond to and conserve the context of a site. The scheme would also accord with the Framework where it requires development to be sympathetic to local character.

Flooding

32. The application form indicates that the method for disposal of foul sewage is unknown and that surface water would be disposed of via a sustainable drainage system. Full details of these systems have not been provided. Nevertheless, while the site layout is to be considered at this stage, the proposal seeks outline permission and the appeal site is not said to be within an area at high risk of flooding.
33. There is no convincing case from the evidence before me to indicate that an appropriate drainage scheme would not be possible. Were the appeal to be allowed conditions could be imposed requiring full details of the drainage system to be provided later.
34. Therefore, the proposed development would not result in harm from flooding with regard to foul and surface water drainage. It would accord with Policy CS9 of the Core Strategy and Policies PSP20 and PSP21 of the Places Plan. These, amongst other things, seek to manage the impact of flooding risk and for schemes to incorporate sustainable drainage systems.

Other Matters

35. The appellant does not dispute that the Council have a 5 year supply of housing land. Therefore, the presumption in favour of sustainable development as outlined in paragraph 11d)ii of the Framework is not engaged.
36. Nonetheless, the proposal would accord with the aim of the Framework to significantly boost the supply of housing and any contribution is worthwhile. It would also represent a small and windfall site that the Framework identifies as being able to make an important contribution to housing. There would be economic benefits arising from the construction period and future spend of occupants. The scheme also includes biodiversity enhancements. Given the scale of the proposal I give these benefits moderate weight.
37. My attention has been drawn to a decision by the Council for residential development outside settlement limits (P20/24044/O). This was for considerably more dwellings than this appeal and therefore would have made a far greater contribution to housing supply and the local economy. It also included affordable housing whereas this scheme does not. While the site was outside the specified walking distances to certain services and facilities, the scheme secured benefits in terms of improvements to bus stops, services and crossing points. As a result, that scheme is materially different to the one before me.

Conclusion

38. The appeal site is located in an area where local policies aim to focus development, within the EGE and there are new residential developments close by. There would be no harm to highway safety, the character and appearance of the area or from flooding.
39. Nevertheless, the proposal would not be in a suitable location for housing given its accessibility to services and facilities by modes of transport other than private motor vehicle and there is insufficient information regarding biodiversity.
40. The proposal conflicts with the development plan when considered as a whole and there are no material considerations, either individually or in combination, that outweighs the identified harm and associated development plan conflict.
41. Therefore, for the reasons set out, I conclude that the appeal is dismissed.

Stuart Willis

INSPECTOR