



Appeal Decision

Site Visit made on 15 March 2021

by Nick Davies BSc(Hons) BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 30 March 2021

Appeal Ref: APP/F0114/W/20/3263337

Land adjoining 2 Greenhill, Brittens Hill, Paulton, Bristol BS39 7PH

- 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 Mrs M Payne against the decision of Bath and North East Somerset Council.
 - The application Ref 20/00299/FUL, dated 23 January 2020, was refused by notice dated 10 June 2020.
 - The development proposed is erection of two dwellings and relocation of existing double garage.
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Decision

1. The appeal is allowed and planning permission is granted for erection of two dwellings and relocation of existing double garage at 2 Greenhill, Brittens Hill, Paulton, Bristol BS39 7PH in accordance with the terms of the application, Ref 20/00299/FUL, dated 23 January 2020, and the plans submitted with it, subject to the conditions in the attached schedule.

Main Issues

2. The main issues are:
 - a) Whether the site is suitable for two dwellings, bearing in mind the spatial strategy of the development plan;
 - b) The effect of the development on highway safety; and,
 - c) The effect of the development on biodiversity.

Reasons

Spatial strategy of the development plan

3. The appeal site is part of the residential curtilage of 2 Greenhill Cottages, which is one of a pair of semi-detached houses, set back from Brittens Hill, on the eastern edge of Paulton in the Somer Valley. It appears that the land was added to the curtilage at some point in the past, as there is a hedgerow that still partially divides it from the garden immediately behind the house. Nevertheless, a Certificate of Lawfulness for its existing use as a garden for 2 Greenhill Cottages was granted in 2017, and the site has been subsumed into the wider curtilage. It accommodates a substantial double garage and has acquired a domestic character that sets it apart from the undeveloped countryside to the south and east. The appeal proposes the construction of a pair of semi-detached houses in place of the garage, which would be relocated closer to the road.

4. The spatial strategy for Somer Valley is set out in Policy SV1 of Volume 4 of the Bath and North East Somerset Placemaking Plan (2017) (the Placemaking Plan). As far as housing is concerned, the strategy seeks to enable the construction of 2,470 homes within the Housing Development Boundaries (the HDBs) of five settlements, including Paulton. The policy also says that residential development on sites outside the HDBs will be acceptable if identified in an adopted Neighbourhood Plan. The Policy is silent on how other proposals for housing outside the HDBs should be considered, but it says that the strategy involves protecting and enhancing the distinctive character of the area, including the landscape.
5. Paragraph 20 of the supporting text to Policy SV1 states that the distinctive character of the countryside surrounding the towns and villages will be protected. Paragraph 18 indicates that new housing in the Somer Valley will be restrained, to avoid an imbalance between homes and jobs that could exacerbate existing out-commuting problems. Therefore, although the strategy set out in Policy SV1 does not, expressly, place a strict control on residential development outside the HDBs, the Placemaking Plan, read as a whole, indicates that new housing should be located within them, to protect countryside character and in the interests of sustainability.
6. It is not disputed that the site lies outside the HDB for Paulton, and that it is not identified in a Neighbourhood Plan. The HDB follows the line of the original garden boundary. However, this line does not mark the boundary between the edge of the settlement and the open countryside. The appeal site is, manifestly, part of the domesticated curtilage of the house. It contains a large garage, and is divided from the undeveloped countryside to the south by a substantial hedgerow. Visually, and functionally, the site is part of the settlement.
7. The proposed houses would be similar in scale, design, and materials to 1 and 2 Greenhill Cottages, and would be positioned on a similar alignment. They would sit comfortably alongside them in the street scene, on the site of the existing garage. Consequently, they would appear as part of the mixed frontage development that extends along both sides of Brittons Hill to either side of the site. The southern boundary hedge would be retained, and would continue to provide a robust visual boundary between the edge of the village and the open land to the south. The houses would not, therefore, appear as an intrusion into the countryside surrounding the settlement, and would not result in any harm to the landscape.
8. The houses would be located in an existing residential area, within 800 metres walking distance of all of the community facilities and services available in the village centre. Furthermore, there is a bus stop almost directly opposite the site, and others in the village centre, providing access to higher order services and employment opportunities further afield. Occupants of the houses would, therefore, have access to sustainable travel options to access most of their daily needs, including travel to work.
9. In most cases, it would be expected that the HDB would be determinative of whether proposals for new housing accord with the spatial strategy set out in the Placemaking Plan. However, in this case, the development would be on a site that is in garden use and contains a substantial domestic building, so it already has a residential character. Furthermore, the site is enclosed by a

substantial boundary hedge. Consequently, the development would not intrude into the countryside surrounding the settlement. It would also be in a sustainable location for housing. Therefore, in the absence of an express restriction on development outside the HDB, and in the particular circumstances of this case, I conclude that the proposal would broadly accord with the spatial strategy set out in Policy SV1 of the Placemaking Plan, which is to accommodate housing development within the larger settlements, and to protect the surrounding countryside.

Highway safety

10. Brittens Hill is a class C road, with a carriageway width of about 6 metres to the south of the site, narrowing to about 4 metres just to the north of the existing site access. There are pavements to both sides of the site to the south, but only on the western side to the north. There are numerous residential accesses on both sides of the road in the vicinity of the site, together with a layby directly opposite, and a bus stop just to the south. The road is subject to a 20-mph speed limit. As a result of these factors, the limited volumes of light traffic that pass the site travel at relatively low speeds. The lack of any recorded accidents indicates that highway conditions near to the site access are not inherently dangerous.
11. The houses would be served by the existing access to 2 Greenhill Cottages. The pavement to the south of the site, and the curvature of the road, mean that this access provides good visibility to the left for drivers emerging onto Brittens Hill. To the right, however, the hedgerow along the site frontage restricts emerging visibility to about 7 metres from a point 2.4 metres back from the carriageway edge. This is well below the 25 metre Sight Stopping Distance (SSD) recommended for a 20-mph road in Manual for Streets (MfS). Traffic from the north approaches the site downhill towards a widening of the road, with good forward visibility, so is likely to be travelling at, or near to the speed limit. The restricted visibility for drivers emerging from the existing access does, therefore, have the potential to result in highway danger.
12. The appellant has submitted a plan with the appeal showing a visibility splay that complies, in both directions, with the MfS advice. However, part of the northerly splay is on land outside the appellant's control, so a planning condition requiring its provision would be unreasonable and unenforceable. Nevertheless, the land within the appellant's control would allow for the existing access to be altered, to provide emerging visibility of approximately 14 metres to the right. Whilst still below the recommended SSD in MfS, this would be a considerable improvement to the visibility that is currently available to drivers emerging from the access. It would also provide greater forward visibility of the access for drivers approaching the site from the north. It would, therefore, be a safer access.
13. Whilst there would be an increase in the use of the access as a result of the development, I have imposed a condition that would secure a significant improvement to visibility. This would ensure that there would be no net harm to highway safety, when compared to the continued use of the existing access, with its very restricted emerging visibility.
14. It is suggested that the road narrowing immediately to the north of the site may divert the attention of drivers from the access. However, when approaching from the south, drivers have good forward visibility of the road

narrowing, which is marked by a reflective bollard on the pavement edge. Consequently, they have time to reduce their speed, to cater for the changing highway conditions, before passing the access. Furthermore, even without any widening of the visibility splay, the existing access is readily visible to approaching drivers from a considerable distance. A car emerging from the access would be in the same field of vision as the road narrowing, so an approaching driver would be aware of both. I saw that the road narrowing was effective in reducing vehicle speeds, and therefore enhances highway safety, rather than causing a distraction.

15. I therefore conclude that, with the improvements in place, the vehicular access to the development would be suitable, and highway safety would not be prejudiced. Consequently, the proposal would comply with Policy ST7 of the Placemaking Plan. As there would not be an unacceptable impact on highway safety, the proposal would also accord with the advice at paragraph 109 of the National Planning Policy Framework (the Framework).

Biodiversity

16. The replacement garage would involve the removal of three willow trees, and the improvements to access visibility would require the removal of approximately 6 metres of garden hedge. A Protected Species Survey & Mitigation Strategy has been submitted with the appeal. The Report concludes that the existing garage does not provide a habitat for bats, and there is a low potential for a small number of common garden birds to nest in the hedge that would be removed for the visibility splay. It is further concluded that any harm to biodiversity could be mitigated through appropriate measures, including the provision of bat and bird boxes, hedgehog connectivity opportunities, and replacement tree and hedge planting.
17. The Council has confirmed that the Report addresses their concerns on this issue, subject to the identified mitigation being secured by a planning condition. The condition that I have imposed will ensure that development proceeds in accordance with the recommendations of the Report, and that the specific mitigation features are installed. Consequently, the development would minimise impacts on, and provide net gains for, biodiversity, in accordance with paragraph 170 of the Framework. Subject to this condition, the proposal would comply with Policies NE3, NE5 and D5 of the Placemaking Plan, which seek to ensure that developments minimise harm to biodiversity, compensate for any harm, and provide ecological enhancements.

Other Matters

18. I have considered representations raising concerns about flooding and foul drainage provision. The application form indicates that foul drainage will be disposed of via the mains sewer, and surface water via the existing watercourse. The Council's Drainage and Flooding Team raised no objections to the proposal, and no evidence has been provided to indicate that the proposed means of drainage would result in flooding, or other issues that would justify the withholding of planning permission.

Conditions

19. In accordance with the legislation, I have imposed a condition limiting the period within which the development must commence. I have also included a

condition specifying the relevant plans, as this provides certainty. The council has submitted a schedule of suggested conditions to cover other matters. I have considered all the suggested conditions against the advice in the Planning Practice Guidance. Where I have agreed that the conditions are necessary, I have altered some of them, in the interests of clarity and precision, to better reflect the guidance.

20. To minimise impacts on, and provide net gains for biodiversity, as required by development policies and the advice in the Framework, conditions are necessary to ensure that the measures identified in the Protected Species Survey & Mitigation Strategy are secured. I have therefore imposed conditions requiring compliance with the recommendations of the Report, including the provision of bird and bat boxes. However, the Report does not provide evidence to demonstrate that a condition placing a general prohibition on external lighting would be necessary or reasonable.
21. To protect the appearance and character of the surrounding countryside, I have imposed a condition requiring a scheme of landscaping, which will also secure the necessary ecological mitigation for the willows and frontage hedge that will be removed. As it also requires measures for the protection of the existing southern boundary hedge during construction works, a pre-commencement condition is justified.
22. A condition requiring approval of external materials is necessary to protect the character and appearance of the area. The need for a condition to secure improvements to visibility at the access has already been explained, and I have incorporated a requirement for the access to be constructed in a bound material, to prevent loose material spilling onto the highway.
23. The plans show the provision of four car-parking spaces for the two houses, and two spaces in front of the relocated garage for the existing dwelling. These areas would be sufficient to meet the Council's adopted parking standards, and I have imposed a condition requiring their provision. There is also a long driveway, which would cater for any additional parking, so a condition requiring the garage to be used solely for car-parking would be unnecessary and unreasonable. Secure storage for two bicycles per dwelling is also necessary to meet the parking standards, so a condition requiring these is reasonable.
24. A condition securing water efficiency measures and rainwater harvesting is necessary to ensure compliance with Policy SCR5 of the Placemaking Plan. I have not been provided with a copy of the Council's Sustainable Construction Supplementary Planning Document, or Policy SCR1 of the Placemaking Plan. I do not, therefore have sufficient evidence to conclude that the suggested condition relating to sustainable construction is necessary, or reasonable.
25. In view of the comments of the Council's Contaminated Land Officer, a condition setting out a precautionary approach to any unexpected contamination that is encountered is reasonable.
26. I have considered whether the Council's suggested condition requiring a Construction Management Plan is necessary. It is contended that the condition is needed to accord with Policy ST7 of the Placemaking Plan, however there is no reference to such a requirement in the Policy. Paragraph 55 of the Framework says that pre-commencement conditions should be avoided unless there is a clear justification. The development proposed is of a relatively

modest scale. Whilst the construction of the houses is likely to result in some temporary disturbance to residents and inconvenience to traffic, this would be true of most development in a residential setting. I am not persuaded that this provides the clear justification that is necessary for a pre-commencement condition.

27. The dwellings would have large rear gardens, with external access off the driveway, so there would be ample space for the storage and segregation of waste and recycling. I see no necessity, therefore, for a condition requiring details of such provision. I have also considered whether it would be necessary to impose a condition requiring the side-facing first floor windows in the dwellings to be non-opening and obscure glazed. As the windows would serve bathrooms, it is likely that they would be obscure glazed in any event. As neither window would result in a loss of privacy for adjacent occupiers, a condition would be unnecessary and unreasonable.

Conclusion

28. There are no material considerations that indicate the application should be determined other than in accordance with the development plan. For the reasons given above, I therefore conclude that the appeal should be allowed.

Nick Davies

INSPECTOR

SCHEDULE OF CONDITIONS

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: 1:1,250 Location Plan and 1:200 Layout Plan; 1:100 Ground Floor Plan and First Floor Plan; 1:100 Elevations (Front, Rear and Side X2); 1:100 Garage Elevations (Front, Rear and Side X2) and 1:50 Floor Plan; 1:200 Sections (Existing and Proposed).
- 3) No development shall commence until a scheme of hard and soft landscaping has been submitted to and approved in writing by the local planning authority. The scheme shall include:
 - i) measures for the protection of the hedgerow along the southern boundary of the site throughout the course of development;
 - ii) six low growing native species of tree/shrub (two field maple, two hazel and two dogwood); and,
 - iii) a new boundary feature comprising a double row from a mix of native species including hawthorn (*Crataegus monogyna*), dogwood, field maple, pedunculate oak (*Quercus robur*), blackthorn (*Prunus spinosa*) and hazel, planted in groups of single species of between 5-7 specimens and linked up to the existing boundary hedgerow.

All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding seasons following the occupation of the dwellings or the completion of the development, whichever is the sooner; and any trees or plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species.

- 4) Development shall not proceed above damp-proof course level until details / samples of the materials to be used in the construction of the external surfaces of the dwellings and garage hereby permitted have been submitted to, and approved in writing by, the local planning authority. Development shall be carried out in accordance with the approved details / samples.
- 5) Development shall proceed in accordance with the measures described in Section 5 of the Protected Species Survey and Mitigation Strategy (AD Ecology Ltd, November 2020). The dwellings shall not be occupied until the bird nesting box and bat brick have been installed, in accordance with details that have first been submitted to, and approved in writing by, the local planning authority.
- 6) The dwellings shall not be occupied until the access from the highway has been improved in accordance with details that have first been submitted to, and approved in writing by, the local planning authority. The details shall show a splay that allows visibility across the entire frontage of the site when measured from 2.4 metres back from the highway. The access shall be constructed from bound and compacted surfacing material, and thereafter, the visibility splays shall be kept permanently clear of any obstruction exceeding 900mm above ground level.
- 7) The dwellings shall not be occupied until the areas shown for car-parking and turning on the 1:1,250 Location Plan and 1:200 Layout Plan have been drained and surfaced, and those areas shall thereafter be kept available at all times for the parking of vehicles.
- 8) The dwellings shall not be occupied until two secure covered cycle parking spaces have been provided for each dwelling, in accordance with details which have been submitted to, and approved in writing by, the Local Planning Authority. These facilities shall thereafter be kept permanently available for the parking of bicycles.
- 9) The dwellings shall be constructed to meet the national optional Building Regulations requirement for water efficiency of 110 litres per person per day, and they shall not be occupied until rainwater harvesting or other methods of capturing rainwater for use by residents (e.g. water butts) have been provided, in accordance with details that have first been submitted to, and approved in writing by, the local planning authority.
- 10) Any contamination that is found during the course of construction of the approved development, that was not previously identified, shall be reported immediately to the local planning authority. Development on the part of the site affected shall be suspended and a risk assessment carried out and submitted to, and approved in writing by, the local planning authority. Where unacceptable risks are found, remediation and verification schemes shall be submitted to, and approved in writing by,

the local planning authority. These approved schemes shall be carried out before the development is resumed or continued.