

Appeal Decision

Site Visit made on 16 March 2021

by T Gethin BA (Hons), MSc, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 7 April 2021

Appeal Ref: APP/D0121/W/20/3262154

6, Land to the rear, Harmony Drive, Portishead BS20 8DH

- 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 N Hakim against the decision of North Somerset Council.
 - The application Ref 20/P/1781/FUL, dated 30 July 2020, was refused by notice dated 1 October 2020.
 - The development proposed is Erection of 2no. dwellinghouses including creation of a vehicular access.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are the effect of the proposed development on: the character and appearance of the surrounding area, with particular regard to trees; and wildlife.

Reasons

Character and appearance

3. Containing a significant number of trees, areas of grassland and various shrubs and other vegetation, the relatively large appeal site has an undeveloped garden character and a verdant, wooded appearance. There are two Tree Preservation Orders (TPOs) on the site, with TPO 654 covering trees in the southern, south-western and northern parts and TPO 354 preserving a group of trees on the shared boundary with 7 Harmony Drive. Although the surrounding area includes a number of residential properties, there are also a significant number of trees in the locality which form an important visual feature in their suburban setting and provide a green break in built form.
4. None of the trees on the site are identified by the submitted Arboricultural Report (June 2020) as being in poor condition, having a short life expectancy or likely to naturally fail in the near future. Collectively, the trees also form part of the wider area of wooded land and I observed on my site visit that the majority of the trees on and surrounding the site appeared to be of a reasonable quality and positively contribute to the character and appearance of the surrounding area. It seems to me that the disagreement between the main parties about the classification of trees as C category specimens is therefore somewhat academic.
5. The proposed development would result in the removal of a total of 24 individual trees, one group of trees and two hedgerows. It is suggested that,

when compared to the extant outline planning permission¹ (the approved scheme) for one new dwelling situated in the southern part of the site (the approved dwelling), the appeal scheme only proposes the additional felling of four individual trees and a section of hedgerow. It has also been put to me that none of the additional trees to be felled are preserved.

6. However, the submitted evidence – including the details in paragraphs 3.23 and 3.24 of the appellant’s appeal statement, and comparing that information against the submitted Arboricultural Report and the approved plan for the approved scheme – indicates that the appeal scheme would actually involve the additional felling of some twelve trees, one group of trees and one hedgerow compared to the approved scheme. Of these, at least four seem to be situated within the areas covered by the TPOs (individual trees T692 and T693 within G2 of TPO 354 and trees T600 and T697 within the area A1 covered by TPO 654). From comparing the various scaled plans, it appears that the additional group of trees to be felled (G666) and individual tree T667 may also be situated just within the area covered by TPO 654.
7. The Planning Practice Guidance (PPG) advises that the TPO area category should only be used as a temporary measure. Amongst other aspects, it sets out that it is only intended for short-term protection in an emergency, may not be capable of providing appropriate long-term protection, and it may over time become difficult to be certain which trees are protected because the category will protect only those trees standing at the time it was made. Accordingly, with TPO 654 being of the area category and made in 1990, it is not clear to me what trees in the area identified as A1 in the Order are actually preserved. Be that as it may, the available evidence indicates that some of the additional trees proposed to be felled (compared to the approved scheme) do fall within the TPO 654 area and there is little substantive evidence before me which indicates that those trees were not present when the Order was made.
8. I have therefore considered the effect of the proposed development on the basis that some of the additional trees to be felled not only positively contribute to the visual amenity of the surrounding area but are also preserved specimens. Although a significant number of trees would remain on and surrounding the site, the extent of proposed tree felling would not be inconsiderable. There would also be significantly more tree felling than compared to the approved scheme. The reduction, both cumulatively from the construction of both dwellings and individually from the additional felling arising solely from the proposed extra dwelling, would clearly erode the verdant nature of the site and its connection with and contribution to its wooded surroundings.
9. The proposed additional dwelling and its garden would be situated in relatively close proximity to a significant number of retained trees on and near the site. The position of those trees – particularly to the west and south-west and along the boundary with the approved dwelling – and the orientation of the site indicate that the additional dwelling would be shaded significantly by trees and would only receive a limited amount of direct sunlight, mainly from the south-east. The sunlight reaching the additional dwelling would thus generally be limited to the morning. Given its position, the garden of the proposed additional dwelling would be likely to receive even less sunlight, and levels of daylight would also be likely to be somewhat limited given parts of it would be

¹ Ref 19/P/1796/OUT.

underneath tree canopy. Conversely, the approved dwelling and its garden would be situated in a notably more open part of the site and, with significantly fewer trees surrounding it compared to the proposed additional dwelling, it would be likely to receive greater levels of sunlight throughout much of the day. Its relationship with individual trees, such as T668, and the woodland as a whole would not therefore be similar to that of the proposed additional dwelling. In relation to this, I was struck on my site visit by the dominating presence of trees that would surround the additional dwelling and the extent of shading of it that would occur – even after accounting for the trees proposed to be felled – compared to the approved dwelling.

10. The remaining retained trees on the site would be protected by suitable construction methods and the proposed dwellings would also not encroach into root protection areas. However, this would not ensure that the long term preservation of the retained trees would not be threatened by the proposed development. Given the extent of shading of the additional dwelling and the dominating presence of trees that would surround it, it appears inevitable that future occupiers of that dwelling would consider that their living conditions were being affected by overshadowing and reduced light levels. The retained trees would therefore be likely to be viewed by new occupants of the additional dwelling as an issue of conflict rather than, as per the guidance in the Council's Biodiversity and trees Supplementary planning document 2005 (SPD), an asset. They would therefore be likely to seek to have some of the remaining trees on the site felled and/or significantly pruned at some future point.
11. With many of the trees that would cast shade and limit daylight levels for the additional dwelling being located within the area covered by TPO 654, future occupiers' desires to fell and/or prune trees surrounding the additional dwelling would be likely to involve some preserved trees. However, given that the trees would be affecting the living conditions of the occupiers of the additional dwelling, it seems to me that the Council would struggle to justify refusing such requests. With so many trees in relatively close proximity to the proposed additional dwelling, health and safety could also be cited as a concern. In coming to this view, I have taken into account that future occupiers of the additional proposed dwelling would be aware of the trees and TPOs, and some may see the woodland as an asset.
12. Future felling and/or significant pruning would further erode the site's connection with the surrounding wider area of wooded land and thus reduce the site's positive contribution to the character and appearance of the locality. Combined with the proposed tree felling to make way for the development, the appeal scheme would therefore result in significant harm to the character and appearance of the surrounding area. The proposed replacement trees, although relatively significant in number, would be of limited size when planted and would thus be likely to take several years to mature and provide any sort of notable contribution to the area's visual amenity. Accordingly, they would not be sufficient to offset the losses and resulting harm.
13. The conflicting figures before me relating to canopy cover and proportions against the wider woodland area are neither particularly helpful nor instructive as to the acceptability of the appeal scheme. They do not therefore lead me to a different conclusion.

14. For the above reasons, I conclude that the proposed development would harm, significantly, the character and appearance of the surrounding area. I therefore find that it conflicts with Policies CS9 and CS12 of the North Somerset Council Core Strategy (CS) and Policies DM9 and DM32 of the North Somerset Council Development Management Policies Sites and Policies Plan Part 1 (SPP). Amongst other aspects, these seek to: safeguard the existing network of green infrastructure including through protecting trees in woodlands; and achieve high quality design and place-making including through proposals demonstrating sensitivity to local character and enhancing the area taking into consideration the existing context, and demonstrating that the long term retention of appropriate trees is realistic.

Wildlife

15. Although effectively forming part of the residential garden of 6 Harmony Drive, the site contains a mixture of habitats – including numerous trees and mixed, semi-natural woodland, hedgerows, grassland, scrub and other vegetation – which are potentially suitable to support a variety of wildlife. The appeal site is also close to the Portishead Down Police HQ Site of Nature Conservation Importance (SNCI). Although no amphibians or reptiles were found on the site, the field surveys carried out to inform the submitted Ecological Impact Assessment (by Ashgrove Ecology Limited, dated July 2020) (EIA) recorded 18 species of birds, of which 13 were either confirmed as breeding or probably breeding on the site, an up to six species of bat.
16. From the survey results and desk-based study, the EIA identifies that, amongst other aspects, the site is an important area for foraging and commuting badgers, provides nesting and foraging opportunities for a range of birds, and is regularly used by some bats for long periods of foraging while other bat species either occasionally forage or occasionally commute over it. Although the habitats on the site were therefore found to provide refuge, commuting and foraging opportunities for a range of animals, the EIA concludes that the birds, bats and badgers using the site are of local value. The surveys also found only occasional commuting of greater horseshoe bats over the site and identified that none of the trees have features that could support roosting bats.
17. The submitted evidence does not lead me to question the validity and findings of the surveys and EIA in terms of the current wildlife use of the site and the type and extent of habitats on it. In terms of lesser and greater horseshoe bats, which are designated features of the North Somerset and Mendip Bats Special Area of Conservation (SAC), the evidence before me indicates that the site does not provide an important commuting corridor or foraging and roosting area for these species. Accordingly, and given the degree of separation between the SAC and site, which is within the outer bat consultation zone, I am satisfied that the proposed development would not be likely to have a significant effect on the SAC.
18. However, with the EIA referring to the 2019 Arboricultural Report by Silverback rather than the Arboricultural Report dated 2020 submitted with the appeal, its assessment of significant effects on ecological receptors is based on, amongst other things, the figure of twelve trees being lost to the scheme. However, the submitted evidence indicates that the number of individual trees proposed to be felled is actually double that, and the proposed development would also involve the loss of an additional grouping of trees and a hedge. In addition,

there is the potential for future losses of trees that I have identified above. The EIA does not therefore take into account the total extent of on-site habitat loss – and the likely subsequent reduction in the integrity of and connectivity with surrounding habitats, including the SNCI – that would occur as a result of the proposed development. Accordingly, it is likely to underestimate, potentially significantly, the effect of the appeal scheme on wildlife, even after accounting for any effects that would arise from the approved scheme. I therefore place limited weight on its predicted effects of the proposed development on valued ecological receptors.

19. I recognise that the proposed additional dwelling would be built on amenity grassland which is less species rich than the semi-improved grassland where the approved dwelling would be located. Some of the other habitats and vegetation that would be lost are also identified by the EIA as being easily re-created and of site value only. In addition, various avoidance, mitigation and enhancement measures are proposed in order to limit the effect of the appeal scheme on wildlife and to also provide some improvements for biodiversity. For example, bird and bat boxes would be installed, lighting would not illuminate the boundaries, several replacement trees and shrubs would be provided, a Construction Environmental Management Plan would be prepared, and the appeal scheme would include a wider wildlife corridor with additional planting than the approved scheme.
20. However, given that the EIA does not take into account the full effect of the appeal scheme on habitats, its findings on the residual effects on ecological receptors cannot be entirely relied upon. Accordingly, the proposed mitigation measures are unlikely to sufficiently avoid or offset the totality of the harm. In addition, the proposed replacement trees and shrub planting would in any event be likely to take several years to mature to the point that they would provide effective mitigation for the loss of habitat for bats and birds. Despite being planted with native shrubs, it seems to me that the wider wildlife corridor would also not be significantly more beneficial than the corridor that would be provided as part of the approved scheme, particularly given the appeal scheme would further divide the site and the proposed additional dwelling would reduce the available area for badger foraging. In any event, the EIA already finds an overall adverse effect for breeding birds and if it were to factor in the full extent of additional tree losses arising from the additional dwelling (compared to the approved scheme), it would be likely to identify a greater effect on both this receptor and the other relevant habitats and species.
21. The approved scheme could be built and this would clearly have an effect on habitats and wildlife on the site. The appeal scheme would therefore essentially only result in some additional effects beyond what is already permitted to occur. However, it seems to me that the totality of the negative residual effects on habitats and wildlife would be significant in relation to both the cumulative effects of the development of two units and from the individual additional effects arising from the extra proposed dwelling. Furthermore, even though most of the habitats and species that would be affected by the proposed development may only be identified by the EIA as of local or in some cases site value, several are nevertheless priority species and protected by legislation. Although it has been put to me that the woodland on the site – which would be reduced in extent given the proposed felling and likely future pressures – has not been identified as Section 41 habitat, the EIA classifies it as being of county value and also sets out that woodland is considered a Habitat of Principal

Importance in England under the Natural Environment and Rural Communities Act 2006.

22. For the above reasons, I conclude that the proposed development would harm wildlife. I therefore find that it conflicts with CS Policy CS4 and LP Policy DM8. Amongst other aspects, these set out that biodiversity will be maintained and enhanced and require development proposals to take account of their impact on local biodiversity and safeguard or enhance attributes of ecological importance. It would also not be consistent with the guidance in the Biodiversity and trees SPD in relation to demonstrating that development can be successfully reconciled with the interests of biodiversity.

Other matters

23. Third parties have raised a number of other matters, including in relation to land ownership and boundary issues, and construction works and access. However, as the appeal has been dismissed for other reasons, it has not been necessary for me to consider these matters in greater detail.

Planning Balance

24. The main parties agree that the Council cannot demonstrate a sufficient supply of housing land, with the current supply being identified as equating to between some 4 to 4.4 years. Although this is not a substantial shortfall, it is not an insignificant one.
25. The development plan policies that I have found the appeal proposal conflicts with relate to the character and appearance of the surrounding area and wildlife. They are broadly consistent with the National Planning Policy Framework (Framework). However, on the basis of the above and the available evidence, and in accordance with paragraph 11d) of the Framework, as this is an application for the provision of housing, the development policies which are most important for determining the application are deemed to be out-of-date.
26. The application of policies in the Framework that protect areas or assets of particular importance – as per paragraph 11d)i – do not provide a clear reason for refusing the development proposed. Accordingly, and in line with paragraph 11d)ii, I am required to consider if any adverse impacts of granting permission would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.
27. Although the proposed development would lead to the erection of two dwellings, the extant outline planning permission for one dwelling on the site means that the appeal scheme would effectively provide one additional dwelling. Its construction would create further construction-related employment and occupiers of the proposed development would be likely to support local services and facilities. In addition, the site's location means that the development would be accessible by non-car modes.
28. It has been put to me that the proposal would also result in an overall net gain in biodiversity and my attention has been drawn to various policies and guidance which seek a net gain but do not necessarily require it. However, given that I have found that the proposed development would harm wildlife, the appeal scheme cannot reasonably be described as leaving the natural environment in a measurably better state than it was beforehand, which is how the PPG describes net gain in planning.

29. Given the scale of the development, the social and economic benefits – including its contribution to the housing supply – would be limited. Nevertheless, small developments can cumulatively make an important contribution to housing supply. The site is also located within the Portishead settlement boundary where residential development is acceptable in principle.
30. However, I have found that the proposed development would harm the character and appearance of the surrounding area and wildlife. Taken together, the harm arising from the appeal scheme would be significant, as would the conflict with the development plan. Accordingly, when assessed against the policies in the Framework taken as a whole, the adverse impacts would significantly and demonstrably outweigh the benefits of the development proposed. The appeal proposal does not therefore benefit from the presumption in favour of sustainable development.
31. There is a shortfall in housing land supply in the district. I attach significant weight to this, and the development plan and Framework also support increasing the density of development. However, despite this, the limited benefits of the appeal proposal, even when accounting for its cumulative contribution to housing land supply, would neither outweigh the totality of the harm nor the conflict that I have identified with the development plan. Accordingly, material considerations do not indicate that the appeal proposal should be determined other than in accordance with the development plan. Despite being on a site with extant outline consent for a single dwelling, the harm I have identified above also indicates that the appeal scheme cannot reasonably be described as making effective or more efficient use of land.

Conclusion

32. For the above reasons, the appeal is dismissed.

T Gethin

INSPECTOR