



Appeal Decision

Site visit made on 14 June 2021

by Benjamin Webb BA(Hons) MA MA MSc PGDip(UD) MRTPI IHBC

an Inspector appointed by the Secretary of State

Decision date: 28 June 2021

Appeal Ref: APP/F0114/W/21/3270272

Land to the rear of 43 Upper Oldfield Park, Oldfield Park, Bath BA2 3LB

- 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 Margaret Favager against the decision of Bath and North East Somerset Council.
 - The application Ref 19/04909/FUL, dated 29 October 2019, was refused by notice dated 4 December 2020.
 - The development proposed is described as a 2 storey 3 bed dwelling and associated parking using existing access.
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Decision

1. The appeal is allowed and planning permission is granted for a 2 storey 3 bed dwelling and associated parking using existing access, at Land to the rear of 43 Upper Oldfield Park, Oldfield Park, Bath BA2 3LB, in accordance with the terms of the application, Ref. 19/04909/FUL, dated 29 October 2019, subject to the conditions set out in the schedule at the end of this decision.

Procedural Matters

2. The original description of development included a garage. This aspect of the scheme was however omitted from the plans upon which the Council made its decision, and also from the Council's description of development. I have therefore also omitted reference to the garage from the description of development in the banner heading above, as too from my decision.
3. For sake of simplicity the terms nineteenth century and twentieth century are abbreviated as C19th and C20th in my reasons below.
4. An application for costs was made by Mrs Margaret Favager against Bath and North East Somerset Council. This application is the subject of a separate Decision.

Main Issue

5. The main issue is the effect of the development on the character and appearance of the area, and more particularly whether it would preserve or enhance the character or appearance of Bath Conservation Area (the Conservation Area).

Reasons

6. The site is located within the Conservation Area, which is a designated heritage asset. In this regard the National Planning Policy Framework states that when

- considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation.
7. The Conservation Area covers a significant proportion of the city within which the character, appearance and significance of the historic townscape widely varies. Insofar as it is relevant to this appeal, the significance of the Conservation Area, and more particularly the part of it within which the site is located, lies in the predominantly C19th – early C20th layout of streets, spaces and buildings that it contains.
 8. The site is a piece of rough ground severed from the southern end of a plot upon which stands a block of recently constructed flats. The latter fronts onto Upper Oldfield Park and is referred to within the submissions as 'Charters'. Development fronting Upper Oldfield Park mainly consists of substantial detached and semi-detached C19th houses. Charters is of differing design but broadly similar scale and massing. As such, whilst it lacks historic or architectural interest, it generally fits the established pattern.
 9. Development towards the south of the site along Junction Road opposite, is of differing age and character. In this regard the site's primary historic, spatial and visual relationship is with development fronting or otherwise accommodated on plots with a main frontage on Upper Oldfield Park.
 10. The depth of historic plots with a main frontage on Upper Oldfield Park varies. These appear at their deepest at and towards the east of Charters, but markedly decrease in depth towards the west, where there is a corresponding increase in the density of development. In this regard the plot in question is one of a small group of similarly deep historic plots which back on to Junction Road. Though plots further towards the east are only slightly less deep, they instead back onto other plots, and retain large undeveloped garden spaces.
 11. Some of the plots within the group identified above have been split or merged, and, with the exception of that upon which Charters stands, all accommodate buildings to their rear. Some of these are apparently of C19th date, and appear to have once served ancillary functions. Others are more modern, albeit of similar scale. The absence of development from the rear of the plot on which Charters stands is not therefore typical within its immediate setting, either in historic or contemporary terms. Its openness is also not reflective of long-standing use as the residential garden of a C19th dwelling, simply because it was not developed until the C20th, many decades after most other plots fronting Upper Oldfield Park. Here a clear distinction can thus be drawn between the openness of the site and that of the undeveloped gardens of historic plots towards the east, as too therefore the relative townscape value and significance of each as spaces.
 12. In view of my findings above, the plot within which the site is located holds at least some significance as a component of the C19th layout of the area. But, based on the evidence before me, and with the exception of the boundary wall on Junction Road, both the development currently on the plot, and the lack of development to the rear of Charters, hold little significance in themselves. The openness of the plot likewise lacks any obvious value in broader townscape terms, landscaped or not.

13. The form of the proposed dwelling would be derived from that of the historic ancillary buildings noted above, and its positioning and scale would otherwise be similar to that of development to the rear of adjacent plots. Viewed relative to Charters, it would therefore also broadly reflect the established differences in scale and positioning expressed between the large C19th dwellings fronting Upper Oldfield Park adjacent, and contemporary buildings to their rear. That being so, the appeal scheme would not harm appreciation of the significance of the C19th layout, or that of development along Upper Oldfield Park more generally. The proposed development would thus appear both contextually and spatially appropriate.
14. Interested parties have objected to the development on the basis that the scheme for the development of Charters included the site as a garden space. That scheme was allowed at appeal and landscaping conditions were imposed. The Council has indicated that there has been a breach of these conditions. Having regard to the reasons the Inspector gave for imposing the conditions, none of these points however precludes the alternative development of the site as proposed. My findings above are therefore unaltered.
15. Further concern has been expressed that approval of the development would set a general 'precedent' for the development of gardens. However, in view of the site specific nature of my findings above, there is no good reason to consider that this should be the case.
16. For the reasons set out above I conclude that the effects of the development on the character and appearance of the area would be acceptable, and that the character and appearance of the Conservation Area would be preserved. The development would thus comply with Policy HE2 of the Bath and North East Somerset Placemaking Plan 2017 (the PMP), which seeks to safeguard heritage assets, and Policies D1 and D2 of the PMP which together seek to secure development that contributes positively to local character and distinctiveness. Though the Council also cited Policy NE2 of the PMP in the decision notice, this is concerned with landscape character, and so it is not specifically relevant.

Conditions

17. I have imposed standard conditions setting out the time period for commencement of development, and identifying the approved plans for sake of certainty. The Council has also suggested a range of additional conditions which I have considered, as set out below. Where I have imposed suggested conditions, I have using modified formats and wordings as necessary.
18. Condition (3) requires the development to be carried out in accordance with the Arboricultural report. This is in the interests of safeguarding a large off-site pine and the positive contribution that it makes to the character and appearance of the Conservation Area. Though the report was prepared in relation to a superseded scheme featuring a garage, it remains valid insofar as it outlines protective measures and a methodology for construction of the access drive and parking.
19. Condition (4) requires the approval of materials, and is necessary to help ensure the development has a satisfactory appearance relative to its setting.
20. Condition (5) requires the provision of a hard and soft landscaping scheme, and maintenance of any tree and shrub planting over a period of 5 years in

order to encourage establishment. Though some information was submitted during the course of the appeal, this is inadequately detailed. The condition is required in order to ensure that the development complements its residential setting, and in order to ensure compatibility of surfacing materials with the adjacent highway.

21. Condition (6) requires the access, parking and turning spaces to be made available for use by motor vehicles prior to the first occupation of the dwelling, and thereafter retained as such. The condition is required in order to secure the provision and functionality of these spaces in the interests of the amenity of future occupants, and in order to ensure that the development caters for the parking demand that it will generate.
22. Condition (7) requires the en-suite, bathroom and north facing first floor bedroom windows to be fitted with obscure or opaque glass. This is not otherwise annotated on the plans, and is chiefly required in the interests of safeguarding the privacy of future occupants given intervisibility with Charters. I have not placed a restriction on opening. This is because I consider it unlikely that the windows would be opened in such a way that would prejudice the privacy of occupants of Charters, given the similarly adverse effects would arise for occupants of the dwelling.
23. Condition (8) requires compliance with the Building Regulations optional standards in relation to water efficiency and accessibility. The basis for this is set out within Policies SCR5 and H7 of the PMP, and the condition is required in the interests of promoting environmental and social sustainability.
24. I have not imposed a requested condition requiring the anticipated regulated energy use in the development to be reduced by 19%. This is because Policy SCR1 of the PMP, cited as a basis for the requirement, states that it seeks a 10% reduction, and because it otherwise applies to schemes at or above a threshold of 1,000m² or 10 dwellings. As such it is not applicable in this case. I have also not imposed a condition requiring submission of a construction management plan. This is because it would be excessively onerous given the very small scale of the development, and its correspondingly limited potential to generate otherwise unavoidable levels of disruption.
25. Lastly, I have not imposed requested restrictions of permitted development rights. Insofar as these would relate to formation of additional openings at first floor level in the north elevation, there is no obvious reason why such openings would be formed, and so no necessity for a restriction. Insofar as these would relate to the construction of buildings within the curtilage, the main scope for this appears to exist within the east part of the site. In this location, regardless of whether the east elevation of the dwelling was to be considered the side or principal elevation, the erection of buildings would be restricted. A condition is therefore unnecessary.

Conclusion

26. For the reasons set out above I conclude that the appeal should be allowed.

Benjamin Webb

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) Unless modified in compliance with the conditions below, the development hereby permitted shall be carried out in accordance with the following approved plans: 703:00-B; 703:01-B; 703:02-B; 703:03-B; 703:04-B; 703:05-B; 703:06-B; 703:07-B; 703:08-B; 703:10-G.
- 3) The development hereby permitted shall be carried out in accordance with the Hillside Trees Ltd report dated November 2019, insofar as this sets out measures for the protection of the offsite pine tree during construction works, and a methodology for the construction of the access drive and parking.
- 4) Construction of the dwelling hereby permitted shall not proceed above slab level until specific details of all facing and roofing materials to be used have been submitted to and approved in writing by the Local Planning Authority. The development shall then be carried out in accordance with the approved details.
- 5) Construction of the dwelling hereby permitted shall not proceed above slab level until a detailed scheme of hard and soft landscaping has been submitted to and approved in writing by the local planning authority. The scheme shall include details of:
 - surfacing of the access, parking and turning spaces;
 - retained and proposed boundary treatments; and
 - a scheme of planting setting out the specific locations, number, type and sizes of trees, shrubs and other plants as applicable.

The development shall then be carried out in accordance with the approved scheme, with all hard landscaping works completed prior to the first occupation of the dwelling hereby permitted, and all soft landscaping carried out in the first planting and seeding seasons following the first occupation of the dwelling hereby permitted, or completion of the development, whichever is the sooner. Any trees or shrubs 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.

- 6) The approved access, parking and turning spaces shall be made fully available for use by motor vehicles prior to the first occupation of the dwelling hereby permitted, and shall thereafter be retained and kept fully available for use by motor vehicles at all times.
- 7) The dwelling hereby permitted shall not be occupied until the en-suite, family bathroom and north facing first floor bedroom windows have been fitted with obscure or opaque glass sufficient to prevent views through. The windows shall remain glazed as such at all times thereafter.
- 8) The dwelling hereby permitted shall not be occupied until the optional requirements set out within regulation 36(2)(b), and M4(2) of the Building Regulations 2010 as amended, have been complied with.