

Appeal Decision

Site Visit made on 9 November 2021

by Alison Fish BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16 March 2022

Appeal Ref: APP/D0121/W/21/3279745

Western Trade Centre, Knightcott, Banwell BS29 6HT

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Bourton Ltd against the decision of North Somerset Council.
 - The application Ref 20/P/2257/OUT, dated 18 September 2020, was refused by notice dated 27 January 2021.
 - The development proposed is outline application for 20 units with appearance reserved.
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Decision

1. The appeal is dismissed.

Applications for costs

2. An application for costs was made by North Somerset Council against the appellant. This application is the subject of a separate Decision.

Preliminary Matters

3. The application was submitted in outline with only matters relating to appearance reserved for future consideration.
4. At appeal stage, the appellant's submissions included revised plans which show two of the dwellings being removed from the scheme and replaced by a play area. The Council have not suggested that they have any objection to my considering this revision. Given that this results in a slight reduction in the number of units on site, I see no reason why accepting the plans would prejudice the position of any party and as such, I have had regard to both the original plans for twenty dwellings and the revised plans for eighteen dwellings in reaching my decision.
5. The Council have confirmed that the drainage strategy submitted in support of the appeal, together with suitable conditions in the event that the appeal is allowed, is sufficient to enable them to withdraw their second reason for refusal. Having considered the submitted information, I too find that an appropriate drainage strategy which would deal with the increased surface water runoff as a result of the development of the site could be achieved and as such, there is no conflict with Policy DM1 of the North Somerset Council

Development Management Policies Sites and Policies Plan Part 1 adopted July 2016 (DMP) which requires the provision of sustainable drainage systems for new development.

6. In addition, the appellant has submitted a revised drawing number 2021_F-029-001 A3 in support of the appeal in respect of reason for refusal number three. The Council have confirmed that it includes sufficient swept path details to enable them, again subject to suitable conditions, to withdraw their third reason for refusal. The revised drawing indicates that large vehicles would be able to access and traverse the site in a safe manner such that there is no conflict with Policy DM24 of the DMP.
7. Given that neither of these issues were the subject of comments by interested parties, I am satisfied, in applying the 'Wheatcroft Principles', that I am able to accept the amended plans and details and determine the appeal on that basis.
8. The appellant has also submitted further information as part of the appeal submission in respect of reason for refusal number four. The Council are not satisfied that the information is sufficient for them to withdraw reason for refusal number 4 and as such, I have determined the appeal on this basis.
9. The Council advises that public consultation on the emerging spatial strategy for the Local Plan 2038 was intended to commence at the end of 2021. The North Somerset Local Plan 2038 'Challenges and Choices Part 2: Choices for the future' was a consultation document dated November 2020 which set out four options for development across North Somerset. It highlighted that developable land across the district is constrained by flood risk, the AONB and Green Belt and each of the options contained a proposal for in excess of 1,500 homes to the north west of Banwell. It also depicts the route of the Banwell by-pass which obtained Government funding in 2019. Despite this, I find that the emerging Local Plan 2038 is at an early stage of preparation such that the level of objection is currently unknown and the funding for the Banwell by-pass would appear to be in connection with the development of housing to be allocated through that process. I therefore attribute limited weight to this in my determination of the appeal.
10. The National Planning Policy Framework (the Framework) was revised on 20 July 2021. Insofar as it is relevant to this appeal, I have taken the Framework into account in reaching my decision.

Background and Main Issue

11. The appeal site forms part of a wider site area which was considered at appeal in 2014¹ for 33 dwellings ('the 2014 appeal') and most recently in 2019 ²as part of an outline proposal for forty seven dwellings and associated works ('the 2019 Appeal'). In both appeals, the Inspectors found that the appeal proposal

¹ Ref: APP/D0121/A/13/2205742

² Ref: APP/D0121/W/18/3206914

would have a harmful impact on the character and appearance of the area. I have had regard to these appeals but have exercised my own judgement in reaching my decision. The northern most part of the site which fronts onto Knightcott Road was granted planning permission in the intervening period for ten dwellings. The site the subject of this current appeal is located immediately to the rear (south) of this land and would be accessed via the same access from Knightcott Road. Since the 2019 Appeal, Certificates of Lawfulness of Existing Use or Development (CLU's)³ have been issued such that the site can now lawfully be used for open storage.

12. The appellant argues that there have been material changes since the 2019 appeal which include changes to the layout, density and landscaping proposals, the approval of funding for the Banwell by-pass, the lawful use of the site for storage and a more recent appeal decision on an unrelated site. I will return to these later in my decision.
13. Against this background, the main issue with regards to this appeal is whether the site is a suitable location for housing have regard to the character and appearance of the area including the Mendip Hills Area of Outstanding Natural Beauty (AONB).

Reasons

Character and Appearance

14. The appeal site is located in the open countryside beyond the settlement limit of Banwell, in a hamlet known as Knightcott. Policy CS33 of the North Somerset Core Strategy adopted January 2017 (CS) seeks to protect the character of the countryside and prevent unsustainable development by permitting only certain types of development. The proposed development of eighteen or twenty houses on the appeal site would be contrary to Policy CS33 and the Council's strategy for the distribution of housing across a settlement hierarchy.
15. Much of the existing development extending along Knightcott Road is located to the south side of the A371 which gives it a linear form. Being located behind this built-up frontage, the appeal site is bordered by a field along its eastern and southern boundaries, which continues to rise up to where it meets a rural lane known as High Street. The land continues to rise southwards from here towards the AONB, which is approximately 135m distant from the appeal site. Immediately to the west of the site, is land which is used for the keeping of horses. A public right of way (footpath) crosses the adjacent field between Knightcott Road and High Street and traverses the south eastern corner of the site.
16. There were no crops in the field at the time of my visit so I was able to walk from Knightcott Road up to High Street. The footpath heads away from the well

³ Ref: 19/P/0555/LDE and 19/P/1495/LDE

trafficked A371 providing an opportunity for walkers to appreciate the gently undulating, pastoral landscape with views of Banwell Hill and that part of the AONB being a significant element of its allure.

17. From the footpath, there are clear views into the appeal site from the east where the evergreen planting does not fully extend along the boundary. The Landscape Masterplan (Figure 17) describes a 'thick band of trees and shrubs' on the southern boundary as being protected and retained. However, I found that this boundary consists of some native planting which is relatively sparse with evergreen planting at one end. As such, there are clear views into the site from the PRoW to the east and south of the site.
18. At the time the LVIA was carried out, the fields surrounding the site were covered by a maize crop and therefore certain assumptions were made in the LVIA. I cannot agree with the conclusion of the LVIA that it would be 'very difficult to perceive any change in view as a result of the development'. A development of either eighteen or twenty dwellings would be significantly more visible in the rural landscape. My own observations and the addendum viewpoints submitted as part of the appeal indicate to me that the addition of housing on the site would be a noticeable urban intrusion into an otherwise rural landscape and that this would also be at odds with the general pattern of development at Knightcott.
19. In the longer term, the proposed landscaping is shown to screen much of the development but the roofscape, particularly from the PRoW to the south, would be clearly visible. The proposed roof heights would range from 5.9m to 8.13m and as such, are not materially different to those considered by the Inspectors in the 2019 and 2014 appeals. The appellant has suggested that these trees could be the subject of a Tree Preservation Order (TPO) but I have not been provided with any certainty in this respect and as such, I give this limited weight.
20. The North Somerset Council Landscape Character Assessment Supplementary Planning Document September 2018 (LCA) describes the J2: River Yeo Rolling Valley Farmland area as 'generally a peaceful pastoral landscape with intact hedges and hedgerow trees'. It describes the overall strength of character as 'moderate' and generally in 'good' condition with a strategy of conserving the peaceful, rural nature of the landscape with intact pasture and field boundaries and to strengthen and enhance weaker areas. The proposal to erect either eighteen or twenty dwellings on the site would not conserve the rural landscape.
21. Even with the amendments to the scheme made by the appellant to reduce the number of dwellings, providing single storey dwellings to the south of the site, pulling development away from the eastern and southern boundaries and providing a detailed landscaping scheme, I find that the proposal would result in a new urban built form of development which would project out into the fields which surround the site, completely at odds with the linear form of the existing hamlet which I have identified above.

22. The appeal site lies outside of the AONB but paragraph 176 of the Framework requires that developments within the setting of an AONB should be sensitively located and designed to avoid or minimise adverse impacts on the designated area. From the evidence provided and my own observations, I find that the appeal site is within the setting of the AONB. However, I also find that the scale of the proposal and its distance from the AONB, even with the inevitable external lighting which would be provided, would not harm the setting of the AONB and consequently I conclude that the proposal would comply with Policy CS5 of the CS and paragraph 176 of the Framework in so far as it would conserve the landscape and scenic beauty of the AONB.
23. Notwithstanding this, I find that the development of the site would have a significant harmful impact on the character and appearance of the area contrary to Policies CS5 of the CS and DM10 of the North Somerset Council Development Management Policies Sites and Policies Plan Part 1 adopted July 2016 (DMP) which seek to protect the distinctiveness, quality and diversity of the landscape.

Benefits in favour of the proposal and other considerations

24. The appeal site is predominately covered in gravel and hardcore and used for open storage. During my site visit I saw there were a number of containers and skips on site together with cars, caravans, piles of hardcore, pallets and building materials. There was also a double decker bus and two containers stacked on top of each other. Part of the eastern side of the site is covered in rough grassland where no storage was taking place. The main parties accept that the appeal site with its current use detracts from the character and appearance of the area and I agree. However, it appeared to me that storage was spread out across the site such that it was not concentrated in one area nor was it particularly intensive. As such and with the planting along the boundaries of the site, the effect of the current use from outside the site is relatively limited and this carries limited weight in my determination of the appeal.
25. The appellant argues that there is a realistic fall-back position as the CLU's would not preclude the appeal site from being operated as a storage park with stacked containers or the erection of new employment buildings amounting to 200sqm under Part 7 Class H of The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) ('GPDO'), and that the impact this would have on the character and appearance of the area would be more detrimental than the appeal scheme.
26. However, I have set out above my observations in relation to what was being stored at the site at the time of my visit. The CLU's were granted back in the summer of 2019 and there does not appear to have been any action by the appellant to intensify the use of the site for storage. Indeed, the ariel photographs showing the extent of storage on the site in 2014 and 2017 would appear to indicate that current storage at the site is less intensive than it has been in the past.

27. With regards to the erection of new buildings under Part 7 Class H of the GPDO, this relates to land within the curtilage of an existing industrial building or warehouse. Whilst there is no authoritative definition of the term 'curtilage', I understand the ordinary meaning of the word to be an area of land with an intimate relationship with a building which sits upon it and which serves the building in some necessary or useful way.
28. It is the northern part of the site (subject to the permission for ten dwellings) which contains permanent structures and the Council have included this land on the brownfield land register. The appeal site does not include any permanent structures but the appellant contests that it does form the curtilage of the existing business at the site as a car garage/mechanic. I saw on my site visit that the range and type of items being stored on the appeal site goes beyond what could be reasonably expected to relate to a car garage/mechanic including building materials, dilapidated caravans and containers. I do not consider that the physical enclosure of the site with planting and bunds is a determinative factor in defining the curtilage of a permanent structure and in the absence of any other evidence from the appellant, I conclude that the appeal site does not amount to 'curtilage' and as such, I am not persuaded that either argument forwarded by the appellant would amount to a realistic fall-back position and I give this limited weight my consideration of this appeal.
29. Similarly, I find that the appeal site does not amount to previously developed land and does not therefore benefit from the encouragement in paragraphs 85 and 119 of the Framework for the development of such sites to meet a housing need.
30. My attention has been drawn to an appeal decision⁴ relating to Purn Way in North Somerset where the Inspector concluded that in all probability the Council would need to release tracts of land within the countryside to meet its housing requirement. Indeed, this was recognised in the North Somerset Local Plan 2038 'Challenges and Choices Part 2: Choices for the future' which I have dealt with above.
31. Paragraph 134 of the Framework encourages design which promotes high levels of sustainability. Policy CS2 of the CS requires sites of over 10 dwellings to demonstrate that 15% of the dwellings energy requirements will be met from renewable sources. Meeting the policy requirement would mitigate the impact of the development and would therefore have a neutral impact in the planning balance. The applicant has submitted an Energy Statement which demonstrates that the dwellings could obtain 35% of their energy requirements from renewable sources, through the use of underground heat pumps and is willing for it to be a condition of planning permission. As such, I give this moderate weight in the overall planning balance.

⁴ Ref: APP/D0121/W/20/ 3259109

32. The amendment to the scheme from twenty dwellings to eighteen was made after the planning permission was refused and has included the provision of a play area. The lack of a play area was not a reason for refusal and I have not been referred to any specific documents which indicate the requirement for the site to provide such a facility. Whilst the appellant indicates a need for a play area and the benefits it could have for families in the local area, I attach limited weight to its provision.
33. The Council advise that the proposal generates a requirement for six units of affordable housing to be provided, a factor not disputed by the appellant and as such I have been provided with a planning obligation, in the form of a Unilateral Undertaking (UU), under the provisions of section 106 of the Town and Country Planning Act 1990 (as amended). The UU provides for six units of affordable housing, the provision of open space and play area and financial contributions towards real time bus stop information for the bus stop on Knightcott Road and the future maintenance of fire hydrants designed to serve the development. I have attached moderate weight to the provision of affordable housing but limited weight to the other provisions as they seek to mitigate the effects of the development.

Conflict with the development plan as a whole

34. Insofar as the proposal includes the provision of affordable housing and energy requirements being met from renewable sources, I find that the proposal accords with the development plan. In addition, I have not identified any conflict with the policies which deal with flood risk and highway safety.
35. However, the appeal site is located in open countryside and as such, the proposal is contrary to Policy CS33 of the CS. The restrictive approach in the policy could be affecting the delivery of housing but in seeking to protect the character of the rural area and prevent unsustainable development, it is broadly consistent with the Framework. In addition, I find that the aims of policies CS5 and DM10 in terms of protecting the character, distinctiveness and quality of the rural landscape is consistent with the aims of the Framework and as I have identified significant harm to the character and appearance of the area, this policy conflict weighs against granting planning permission.

Planning Balance

36. The main parties agree that the Council is not able to currently demonstrate a five-year supply of deliverable housing. The Councils published figure is 4.2 years. Paragraph 11 d) of the Framework is therefore engaged.
37. Paragraph 11 of the Framework states that where relevant policies are out of date, permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies of the Framework when taken as a whole or specific policies in the Framework indicate that development should be restricted. I have concluded above that the effect of the proposal on the AONB is acceptable and from the evidence before me, there are no specific policies in the Framework

which indicate that development should be restricted. Therefore, paragraph d) ii) is engaged. This applies a presumption in favour of sustainable development and granting permission unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the Framework as a whole.

38. In the context of the development plan, I have found that the proposal would be contrary to policies CS5, CS33 and DM10. For this appeal I have found these policies to be generally consistent with the relevant aims of the Framework and whilst they can act to restrict the supply of housing, I attach substantial weight to them.
39. The proposal would provide short term employment through the construction of the development and some further modest benefits to the vitality of the local community through the construction of eighteen or twenty dwellings, including the provision of an additional play area. The houses would make a moderate contribution to the supply of housing towards helping address the Council's shortfall. I have taken into account the energy efficiency and affordable housing provision and have given these moderate weight.
40. Accordingly, the adverse impacts of the proposal would significantly and demonstrably outweigh the benefits, when assessed against the Framework as a whole.

Other Matters

41. The appeal site is within the influence of the North Somerset and Mendip Bats Special Area of Conservation (SAC). This is one of four European sites in North Somerset, designated because of its important for Greater and Lesser Horseshoe Bats. Notably, the appeal site is within 0.27km of the Banwell Caves SSSI and as such, the appellants bat survey report concludes that it is likely that bats originating from these statutory protected sites would forage on or commute through the appeal site. The Council are not satisfied that sufficient mitigation has been provided either during the application process nor with the additional information submitted as part of the appeal. However, as I am dismissing the appeal, further consideration of this and an appropriate assessment under Regulation 63 of the Habitats Regulations 2017 in terms of the impact of the proposal on the SAC is not required.
42. Paragraphs 49 and 50 of the Framework relate to applications which are considered premature. I do not consider that the appeal proposal is so substantial as the undermine the plan making process and nor do I find that the emerging plan is at an advanced stage. Accordingly, neither of the circumstances referred to at a) and b) in paragraph 49 apply and as such, I do not find that the appeal is premature.
43. The Council identify that the appeal site does not affect the setting of a Grade II listed building known as '17 Knightcott (Bowman's Batch)' which is within 50m of the appeal site. This is not a matter of dispute between the parties.

Based on the evidence before me and my own observations, I find that the proposal would preserve the setting of the listed building.

Conclusion

44. For the reasons given above, having considered the development plan as a whole, the approach in the Framework, and all other relevant material considerations, I conclude that the appeal should be dismissed.

Alison Fish

INSPECTOR