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# Appeal Decision

Site visit made on 11 July 2022

**by Robert Parker BSc (Hons) Dip TP MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 08 August 2022**

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**Appeal Ref: APP/Q3305/W/22/3292409**

**23 Broad Street, Wells BA5 2DJ**

- 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 Ms F Shenton of F M Sampson and Sons Limited against the decision of Mendip District Council.
  - The application Ref 2020/0938/FUL, dated 12 May 2020, was refused by notice dated 13 August 2021.
  - The development proposed is demolition of existing commercial buildings and erection of 5no dwellings.
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## Decision

1. The appeal is dismissed.

## Main Issues

2. The main issues are:
  - a) whether the proposal would preserve or enhance the character or appearance of the Wells Conservation Area;
  - b) whether there would be adequate provision for resource efficiency and low carbon measures in accordance with policy requirements;
  - c) the effect of the proposal on the integrity of the Somerset Levels and Moors Ramsar site, with particular reference to phosphate loading; and
  - d) whether the development would have an acceptable relationship with properties in Mill Street, such as to provide privacy for future occupants of the scheme and the residents of neighbouring dwellings.

## Reasons

### *Conservation Area*

3. The appeal site lies within the historic core of the Wells Conservation Area and comprises a single-storey commercial building behind the main street frontages of Broad Street and Mill Street. It is accessed via a carriage entrance onto Broad Street which leads to parking within the site.
4. The existing building is a modern shed and I have seen no information to suggest that it is of architectural or historic merit. Nevertheless, the modest vertical scale reflects the established hierarchy of taller buildings on the street frontages and the low-lying backland development behind. Old maps indicate that the site was a small green space prior to being brought into commercial

use in the mid-20<sup>th</sup> century. Through the carriage entrance and from the inner courtyard it is possible to view the rear elevations of properties in Mill Street. This gives a clear sense of the historic urban plan form.

5. The Wells Conservation Area Appraisal (2011) explains that there has been a certain amount of modern infilling in this part of the conservation area, and recommends that care be taken over the quality of any further such development.
6. The proposal is to replace the existing building with a terrace of 5 dwellings. Demolition of the commercial shed is uncontroversial – the structure has a utilitarian character and it is not especially attractive. Removal would likely enhance the appearance of the conservation area. However, any judgements in this regard must take into account the merits of the replacement scheme.
7. The development would be two-storey with covered car parking at ground floor and accommodation in the attic space served by dormers. The building would be broadly comparable in height to surrounding properties on Broad Street and Mill Street, measuring approximately 10 m to the ridge. Its footprint would be cranked in a quasi-crescent arrangement.
8. The new dwellings would be significantly taller and bulkier than the existing commercial building. The block would be overly large, despite its smaller footprint, and it would be a dominant feature in views through the carriage entrance. The development would appear cramped and awkward within the plot; its form and layout would relate poorly to the surrounding built environment. As a consequence, the legibility of the historic street pattern and building hierarchy would be lost. Public views of the site may be limited, but this does not alter my conclusions; the character and appearance of the conservation area is an intrinsic quality which is worthy of protection.
9. Turning to the detail of the scheme, the use of natural stone for the ground floor and render at second floor would jar with other buildings in the locality which are typically constructed of one material. The specification of reconstituted slate tiles and UPVC windows would fail to respond to the high quality traditional materials which predominate in the historic core of the city. Overall, I consider that the design would give the building a suburban character which fails to contribute to local distinctiveness.
10. Accordingly, I conclude that the proposal would fail to preserve or enhance the character or appearance of the Wells Conservation Area. There would be conflict with Policies CP10, DP1, DP3 and DP7 of the Mendip District Local Plan Part 1: Strategy & Policies 2006-2029 (MDLP) insofar as they seek high quality design which maintains local identity and distinctiveness and respects and enhances the city's historic core.

#### *Resource efficiency and low carbon measures*

11. Amongst other things, Policy DP7 of the MDLP states that proposals for new development should demonstrate that they maximise opportunities for the use of sustainable construction techniques and renewable energy generation on site.
12. The Design and Access Statement sets out a resource efficiency statement which outlines the measures being proposed. The information is limited, and there is no discussion of options for renewable energy generation or the reasons why particular solutions have been considered and discounted.

13. Since issuing its decision, the Council has adopted a Supplementary Planning Document (SPD) on 'Design and Amenity of New Development; Guidance for interpretation of Local Plan Policy DP7'. This document is not prescriptive but it provides guidance on the options to be considered, including a questionnaire to act as a checklist (Appendix 1).
14. The appellant has acknowledged the existence of the draft SPD but has not engaged with the adopted guidance, despite having the opportunity to do so at final comments stage. In my opinion, the level of information submitted with the application is insufficient to secure compliance with MDLP Policy DP7.

#### *Somerset Levels and Moors Ramsar Site*

15. The site falls within the catchment flowing into the Somerset Levels and Moors Ramsar site, an inland wetland which provides important habitat for rare aquatic invertebrates. There is a known issue with nutrients entering watercourses and adversely affecting environmental conditions for these species. Advice from Natural England is that any new housing development will result in an increase in phosphates contained within foul water discharge. As the designated site is in 'unfavourable' condition, any increase, including from single dwellings, is seen as significant either alone or in combination with other developments. Habitats Regulations Assessment (HRA) would therefore be required prior to any grant of planning permission.
16. The appellant does not provide any information regarding phosphate impacts. It is contended that no such information is necessary on the basis that the existing building could be converted to dwellings under Class MA<sup>1</sup> permitted development rights. According to the appellant, the Council has indicated that permitted development is not impacted by the need for HRA. This is incorrect. Article 3(1) of the GPDO 2015, as amended, has the effect of imposing a pre-commencement condition on all development that is permitted by the GPDO and would affect a European protected habitat. Permitted development cannot be lawfully begun until the developer has made an application under Regulation 77 of the Habitats Regulations<sup>2</sup> and the local planning authority is satisfied that the development would have no adverse effect on the integrity of the habitat.
17. I have been presented with no evidence to suggest that the appellant has been through the above process, or that they have obtained a grant of prior approval as required by paragraph MA2(2) of Schedule 2, Part 3 of the GPDO. As such, the fallback argument carries very limited weight.
18. To conclude, the evidence before me does not demonstrate, beyond all reasonable scientific doubt, that the proposal would maintain the integrity of the Somerset Levels and Moors Ramsar site. I find conflict with Policies DP5 and DP8 of the MDLP insofar as these seek to protect, conserve and, where possible, enhance internationally designated natural habitat areas. The proposal also fails to meet the requirements of Regulation 63 of the Habitats Regulations.

#### *Living conditions*

19. The proposed development would back onto residential properties in Mill Street and Lawpool Court, many of which have windows overlooking the site. Some of

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<sup>1</sup> Class MA of Schedule 2, Part 3 of the Town and Country Planning (General Permitted Development) (England) Order 2015, as amended (GPDO).

<sup>2</sup> The Conservation of Habitats and Species Regulations 2017

the windows in the rear elevation of the new building would serve secondary spaces and/or would be suitable for obscured glazing. Other openings would serve habitable rooms, notably the kitchen and ground floor bedrooms in Plots 1 and 3. These would face towards Lawpool Court, with the distance between windows being somewhere in the order of 17 m.

20. I acknowledge that mutual overlooking between properties is not uncommon within built-up areas. However, this can often be avoided or minimised using high quality design. In this particular case, the proximity of the development to Lawpool Court and the direct nature of the views would result in a reduction in privacy for neighbouring residents. The occupants of the proposed development would also feel overlooked in certain parts of their home. There would be some conflict with MDLP Policies DP7 and DP8 insofar as they seek to protect the amenity of users of neighbouring buildings and provide a satisfactory environment for current and future occupants.

### **Other Matters**

21. The decision notice refers to the density of development being unacceptable. However, it is the design of the scheme rather than the number of units which would harm the conservation area. Density in itself has not been a determining factor in my consideration of the scheme.
22. The appellant argues that the proposal provides improved access to St Andrews Stream for the Environment Agency for maintenance purposes. It seems to me that any benefits in this regard are likely to be limited, but I have nonetheless factored them into the planning balance.
23. I note the concerns regarding the loss of the retail unit and craft gallery. However, the Council does not object to the principle of housing on the site and I have not been directed to any development plan policies which would preclude residential use or prevent the loss of the existing commercial uses.

### **Conclusion**

24. The Council concedes that it is unable to demonstrate a 5 year supply of deliverable housing sites. Paragraph 11 d) of the National Planning Policy Framework (the Framework) states that, in such circumstances, permission should be granted unless: i. the application of policies in the Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed; or ii. any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.
25. Paragraph 182 of the Framework explains that the presumption in favour of sustainable development does not apply where the plan or project is likely to have a significant effect on a habitats site (either alone or in combination with other plans or projects), unless an appropriate assessment has concluded that the plan or project will not adversely affect the integrity of the habitats site. It has not been satisfactorily demonstrated that the proposal would maintain the integrity of the Somerset Levels and Moors Ramsar site. This provides a clear reason for refusing permission.
26. The proposal would fail to preserve or enhance the character or appearance of the Wells Conservation Area. Paragraph 202 of the Framework states that where a development proposal will lead to less than substantial harm to the

significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal. I have attached significant weight to the benefits of delivering 5 new homes on previously developed land within the settlement boundary, modest weight to the visual benefits of removing the existing commercial building and some, albeit limited, weight to the improved access to St Andrews Stream. However, the adverse impact of the replacement scheme on the conservation area is a matter of considerable importance and weight and this is sufficient to outweigh the public benefits. The harm to heritage assets provides another clear reason to dismiss the appeal.

27. The identified harms bring the scheme into conflict with the development plan taken as a whole. There are no material considerations to indicate a decision otherwise than in accordance with the development plan and for this reason I conclude that the appeal should be dismissed.

*Robert Parker*

INSPECTOR