



## Appeal Decision

Site visit made on 28 February 2023

by **Helen Davies MSc MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 6<sup>th</sup> March 2023

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**Appeal Ref: APP/Z0116/W/22/3307466**

**Land to rear of 149 Marksbury Road, Bristol BS3 5LD**

- 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 Alex Fry against the decision of Bristol City Council.
  - The application Ref 21/00843/F, dated 5 February 2021, was refused by notice dated 1 September 2022.
  - The development proposed is Demolition of 149A Marksbury Road and erection of 5no. single storey dwellings on land to the rear.
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### Decision

1. The appeal is allowed and planning permission is granted for Demolition of 149A Marksbury Road and erection of 5no. single storey dwellings on land to the rear, at Land to rear of 149 Marksbury Road, Bristol BS3 5LD in accordance with the terms of the application, Ref 21/00843/F, dated 5 February 2021, subject to the conditions in the attached schedule.

### Applications for costs

2. An application for an award of costs was made Mrs Alex Fry against Bristol City Council. This application is the subject of a separate decision.

### Main Issues

3. The main issues are:
  - The effect of the proposed development on ecology;
  - Whether the proposed development would provide a suitable means of access for emergency vehicles and less able bodied individuals; and
  - Whether the appeal site would be an acceptable location for new dwellings with regards to flood risk and surface water drainage.

### Reasons

#### *Ecology*

4. The site consists of an area of land which is entirely surrounded by dwellings. At the time of my site visit it was largely covered in brambles and scrub vegetation, with evidence of some dumping of household waste materials. The appellant submitted an Ecological Assessment and Bat Survey<sup>1</sup> which concluded there was no evidence of notable species or habitats, a likely absence of roosting bats, very low general bat activity, and no evidence of breeding birds.

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<sup>1</sup> Quantoc Ecology Environmental Consulting, Ecological Assessment, dated 5/2/2021; Bat Survey-Preliminary Roost Assessment, dated 15/9/2021; Bat Survey-Emergence and Activity Surveys, dated 15/09/2021.

5. On the basis of the submitted details, the Council's consultant Ecologist raised no objection to the proposal. I have no good reason to question the validity or accuracy of the submitted details or the conclusions reached by professional ecologists, particularly given the size, condition and location of the site.
6. I acknowledge that the site may have been cleared at some stage prior to the ecology assessments being undertaken and the application subject to this appeal being submitted. However, any such site clearance would not have required planning permission and protected species are subject to separate legislation which is outside of the remit of this section 78 planning appeal.
7. Despite anecdotal information and suggestions from neighbours, I have been presented with no substantive information, or formal evidence from a suitably qualified person, which would lead me to conclude that the site has any habitats, species or features of importance and hence the proposal would not result in the loss of ecological value. In addition, mitigation and enhancement has been proposed as part of the development<sup>2</sup> and suitable protection for existing trees, and ensuring new planting, can be secured by conditions.
8. I conclude that the proposed development would not result in unacceptable harm to ecology. Consequently, the development would comply with Policy DM19 of the Bristol Local Plan Site Allocations and Development Management Policies (adopted 2014) (SADMP), which seeks to protect habitats, species and features which contribute to nature conservation.

#### Access

9. Demolition of 149a Marksbury Road would provide access from the road to the site. The proposal is for a car free development with access only for pedestrians, cycles and emergency vehicles.
10. The Avon Fire and Rescue Service were consulted on the proposal. Despite the distance from the road to the proposed dwellings, and the limitations of the access, they raised no objection, subject to the inclusion of a sprinkler system within each dwelling. This could be secured by a condition and would provide sufficient mitigation for the site access issues.
11. The proposal includes a pedestrian access path of an acceptable width and gradient, in line with non-statutory guidance<sup>3</sup>. I have been presented with no substantive evidence which would lead me to conclude that access would be restricted for individuals with limited mobility, including those who use a wheelchair or mobility scooter.
12. I conclude that the proposed development would provide a suitable means of access for emergency vehicles and less able bodied individuals. Consequently, the development would comply with Policies BCS10 and BCS21 of the Bristol Development Framework Core Strategy (adopted 2011) (CS) and DM23 of the SADMP. Together, amongst other things, these seek to ensure that development provides safe and adequate access, including considering the needs of disabled people, and prioritising the needs of pedestrians and cyclists.

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<sup>2</sup> Quantoc Ecology Environmental Consulting Construction Mitigation and Enhancement Plan 31/3/2022.

<sup>3</sup> Department for Transport Inclusive Mobility: A Guide to Best Practice on Access to Pedestrian and Transport Infrastructure.

### *Flooding and drainage*

13. Much of the site lies within Flood Zone 2, which is classed as at medium risk of flooding, with the rest of the site in Flood Zone 1, which is at low risk of flooding. Accordingly, as required by Policy BCS16 of the CS and Paragraphs 159 to 167 of the National Planning Policy Framework, a sequential approach to flood risk management is required, along with a site specific Flood Risk Assessment (FRA).
14. The submitted Sequential Test<sup>4</sup> concludes that there are no readily available alternative sites within the search area. The FRA<sup>5</sup> sets out detail on the risk of flooding, including consideration of the river defences in place which reduce the risk of flooding. It also sets out mitigation proposals built into the design and materials, including permeable surfaces, sustainable drainage techniques, floor levels of a suitable height, and the use of voids underneath the dwellings. On the basis of the submitted information, which I have no evidenced basis to question, I am comfortable that the proposal can meet the requirements of the sequential test. Therefore, subject to conditions to ensure the incorporation of suitable mitigation measures, the proposed development would be resilient to flooding over its lifetime and would not increase flooding elsewhere.
15. The Council's Flood Risk Officer objected to the proposal on the basis that not enough information had been provided on the approach to surface water drainage. However, they agreed to the use of a pre-commencement condition to secure suitable details, should permission be granted. The submitted details indicate there is a reasonable basis to suppose that an adequate means of surface water drainage can be incorporated into the proposed development, so I consider it an acceptable approach to secure additional details through a planning condition.
16. I conclude that the proposed development would be an acceptable location for new dwellings with regards to flood risk and surface water drainage. Consequently, the development would comply with Policy BCS16 of the CS, which seeks to manage flood risk associated with new developments.

### **Other Matters**

17. I note the objections from neighbours, the main elements of which have been considered above. I have no suitably authoritative evidence to support claims that the proposal would be over development or that it would have an unacceptable impact on parking, neighbour privacy, air quality or light pollution, and these matters do not form part of the reasons for refusal. While some noise and nuisance would be inevitable during construction, this would be time limited and can be controlled to some extent through the imposition of a construction management condition.
18. Restrictive covenants are not for me to consider under the provisions of a Section 78 planning appeal and are covered by other legislation not under my remit. The appellant has stated that should the appeal be allowed they would need to apply to successfully remove the covenant before the implementation of any consent. The price paid for the land, house prices and insurance prices are also outside of the remit of this appeal.

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<sup>4</sup> Sequential Test – February 2021, Stokes Morgan Planning Ltd.

<sup>5</sup> Flood Risk Assessment (Rev A) – January 2022, Stokes Morgan Planning Ltd.

19. A signed and executable unilateral undertaking has been provided to secure a financial contribution for a Traffic Regulations Order to extend the waiting restriction on Marksbury Road across the site access.

### **Conditions**

20. The Council have suggested a range of conditions, which the appellant has been made aware of and raised no objections to<sup>6</sup>. I have considered the suggested conditions and amended and reordered them as necessary in the interests of precision and clarity in order to comply with advice in the Planning Practice Guidance (PPG).
21. A condition specifying the approved plans is necessary to provide certainty. Given the need to demolish an existing attached dwelling, the subsequent constrained nature of the site access, and the proximity of other dwellings, it is reasonable and necessary to secure construction management details to safeguard the living conditions of neighbouring occupants and highway safety. However, given the modest scale of the proposal, and the need to avoid repeating controls which sit under other legislation, it is not reasonable to require details of traffic routing or a highway condition survey.
22. Given the location in a flood zone and the presence of dumped materials, I have attached conditions to ensure that an adequate system for the drainage of the site is provided, and residents are safeguarded from any potential land contamination.
23. In the interests of the character and appearance of the site and surrounding area and the living conditions of future occupants, conditions are necessary to ensure that trees are protected; refuse, recycling and cycle parking arrangements are implemented; the access, paths and landscaping are maintained; and the sustainability elements of the proposal are implemented.
24. As indicated above, due to the distance from the road and the restriction of the access, a sprinkler system needs to be implemented in each dwelling. A condition has been attached to secure this. Finally, permitted development rights have been removed for extensions and outbuildings. Due to the constraints of the site, the modest size of the amenity space and the proximity of neighbouring dwellings, this is both necessary and reasonable, to protect the living conditions of existing and future occupants.
25. I have limited the use of pre-commencement clauses to where they are essential for the condition to achieve its purpose. However, access to the site is constrained, trees need to be retained, suitable drainage is an essential element of delivering the proposal and any contamination needs to be identified and removed. For these reasons, it is necessary to secure construction management and drainage details and tree protection and contamination remediation arrangements before any work on site starts. Therefore, conditions 3 to 8 are prior to commencement conditions.

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<sup>6</sup> In their final comments dated 27/1/2023, the appellant states that they have no objection to any of the conditions suggested. The suggested conditions include pre-commencement conditions.

## **Conclusion**

26. For the reasons given above and taking into account the development plan as a whole and all other relevant material considerations, the appeal is allowed.

*Helen Davies*

INSPECTOR

## **Schedule of Conditions**

- 1) The development hereby permitted shall begin no later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following list of approved plans, drawings and documents:
  - 18.040-100 Site Location and Existing Site Plans
  - 19.037-101F Proposed Block Plan (inc. cycle store detail)
  - 19.037-102 Proposed Site Sections
  - 19.037-103A Proposed Landscape Plan
  - 19.040-110 Plot 1 - House Type A - Elevations and Floor Plan
  - 19.040-111 Plots 2 to 5 - TYPE B - 2-Bed Flat Elevations and Floor Plan
  - 210-120 Existing and proposed street scene
  - Arboricultural Report, January 2019, 31 March 202
  - Construction Mitigation and Enhancement Plan received 22 April 2022
  - Flood Risk Assessment (Rev A) January 2022
- 3) No development shall take place, including any works of demolition, until a Construction Management Statement has been submitted to and approved in writing by the Local Planning Authority. The approved Statement shall be complied with throughout the demolition and construction period and shall include details of:
  - 24 hour emergency contact number;
  - Hours of operation;
  - Parking of vehicles of site operatives and visitors;
  - Locations for loading/unloading and storage of plant, waste and construction materials;
  - Method of preventing mud being carried onto the highway;
  - Measures to protect vulnerable road users (cyclists and pedestrians)
  - Any necessary temporary traffic management measures;
  - Arrangements for turning vehicles and receiving abnormal loads or unusually large vehicles;
  - Methods of communicating the Construction Management arrangements to staff, visitors and neighbouring residents and businesses.

- 4) No development shall take place until a site meeting has been held and attended by the developer's arboricultural consultant and the designated site foreman to discuss and agree details of the working procedures. A schedule of visits shall be drawn up to ensure the arboricultural consultant is present during key stages of the development which includes, but is not limited to, the installation of no dig paths within the root protection area of T002 (as shown in Tree protection plan Dwg 220725-149MR-TPP-Rev C-SD&AM, and in accordance with the Silverback Consultancy Arboricultural method statement, dated March 2022). Site visits must be carried out during the key stages. Copies of written site notes and/or reports detailing the results of site supervision and any necessary remedial works undertaken or required shall be submitted to and approved in writing by the Local Planning Authority, prior to occupancy. Any approved remedial works shall subsequently be carried out under strict supervision by the arboricultural consultant immediately following that approval.
- 5) No development shall take place until a Sustainable Drainage Strategy and associated detailed design, management and maintenance plan of surface water drainage for the site, using SuDS methods, has been submitted to and approved in writing by the Local Planning Authority. The approved drainage system shall be implemented in full prior to the use of occupation of any of the dwellings hereby approved and maintained thereafter for the lifetime of the development.
- 6) No development shall take place until an investigation and risk assessment of the nature and extent of any contamination on the site (whether or not it originates on the site) has been submitted to and approved in writing by the Local Planning Authority. The investigation and risk assessment must be undertaken by competent persons (in accordance with DEFRA and the Environment Agency's 'Model Procedures for the Management of Land Contamination, CLR 11) and include:
  - A survey of the extent, scale and nature of contamination;
  - An assessment of the potential risks to human health, property (existing or proposed), service lines and pipes, adjoining land, groundwaters and surface waters, ecological systems.
  - An appraisal of remedial options, and proposal of the preferred option(s).
- 7) No development shall take place until a detailed remediation scheme, to bring the site to a condition suitable for the intended use, by removing unacceptable risks, has been submitted to and approved in writing by the Local Planning Authority. The scheme must include all works to be undertaken, proposed remediation objectives and remediation criteria, timetable of works and site management procedures. The scheme must ensure that the site will not qualify as contaminated land under Part 2A of the Environmental Protection Act 1990 in relation to the intended use of the land after remediation.
- 8) In the event that contamination is found, no development other than that required to be carried out as part of an approved scheme of remediation shall take place until the approved remediation scheme has been carried out in accordance with its terms. The Local Planning Authority must be given two weeks written notification of commencement of the remediation scheme works. Following completion of measures identified in the approved remediation scheme, a verification report that demonstrates the effectiveness of the remediation carried out must be submitted to and approved in writing by the Local Planning Authority.

- 9) Prior to substantial completion of the dwellings hereby approved, detailed drawings and specifications of the fire suppressant sprinkler system for each new dwelling shall be submitted to and approved in writing by the Local Planning Authority. The fire suppressant sprinkler system shall be implemented in accordance with the approved details prior to occupation of the dwelling and thereafter, be kept in working order for the lifetime of the development.
- 10) No dwelling hereby approved shall be occupied until the refuse and recycling arrangements have been implemented in accordance with the approved plans and shall be retained as such thereafter.
- 11) No dwelling hereby approved shall be occupied until the means of access has been constructed in accordance with the approved plans and shall thereafter be retained for access purposes only.
- 12) No dwelling hereby approved shall be occupied until the cycle parking provision has been completed in accordance with the approved plans and shall thereafter be kept free of obstruction and available for the parking of cycles only.
- 13) No dwelling hereby approved shall be occupied until details of arrangements for the future management and maintenance of footways, footpaths and landscaped areas within the site has been submitted to and approved in writing by the Local Planning Authority. Following occupation of the first dwelling, these elements shall be maintained in accordance with the approved management and maintenance details, for the life of the development.
- 14) The development hereby approved shall be carried out in complete accordance with the Sustainability Statement (Revision A - November 2021).
- 15) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any Order revoking and/or re-enacting that Order) no extension or enlargement (including additions to roofs) shall be made to the dwellinghouses hereby permitted, and no detached buildings shall be erected.

**\*\*\* End of Conditions\*\*\***