



Appeal Decision

Hearing held on 21 February 2023

Site visit made on 17 February 2023 (unaccompanied) and 21 February 2023 (accompanied)

by Rachael Pipkin BA (Hons) MPhil MRTPI

an Inspector appointed by the Secretary of State

Decision date: 5 April 2023

Appeal Ref: APP/Z0116/W/22/3305852

8-10 Station Road, Shirehampton, Bristol BS11 9TT

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission
 - The appeal is made by Shirehampton Land against Bristol City Council.
 - The application Ref 21/04865/F is dated 6 September 2021.
 - The development proposed is redevelopment of the site to include 18no. houses and 3no. apartments with associated access, parking and landscaping.
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Decision

1. The appeal is dismissed and planning permission is refused.

Preliminary Matters

2. The appeal was submitted on the basis of the failure of the Council to determine the planning application within the prescribed period. The Council's appeal statement sets out the grounds for refusal had it determined the application. These were that the proposal did not justify a reduced affordable housing contribution; harm to the character and appearance of the Shirehampton Conservation Area (SCA) and harm to the character and setting of the 'Cottage'; inappropriate urban design; lack of green infrastructure; cramped form of development with compromised living standards for future occupants; loss of nature conservation value; mitigation for trees that had been felled; and failure to demonstrate that a Copper Beech tree would be retained.
3. The appeal site has been largely cleared of vegetation. This includes all the trees along the Woodwell Road frontage which were removed without permission and are subject to an ongoing planning enforcement case¹. In addition, a leylandii hedge which ran along the site boundary with Avonwood Close, was removed with consent². One tree, a Copper Beech, remains on the site adjacent to Avonwood Close. This is in the process of being made subject to a Tree Preservation Order³. I have dealt with the appeal on the basis of the site as it would have been prior to the unauthorised removal of the trees.
4. During the course of the appeal, the appellant submitted a plan showing the removal of the Copper Beech tree to facilitate the development. The amended

¹ Council Ref: 21/30147/TPO

² Council Ref: 21/00345/VC

³ TPO no.1421

plan additionally showed increased tree planting on Avonwood Close. I have had regard to the 'Wheatcroft' principles including whether amendments would materially alter the nature of the application and whether anyone who should have been consulted on the changed development would be deprived of that opportunity. I have come to the conclusion that they would. I have therefore proceeded to base my decision on the proposals submitted with the application and which have been subject to consultation.

5. A signed agreement under section 106 of the Town and Country Planning Act 1990 (as amended) (the TCPA) (the s106 agreement) dated 10 March 2023 was submitted after the Hearing. This deals with affordable housing, biodiversity net gain credits, traffic order contributions and tree replacement fees.

Main Issues

6. The main issues are:

- whether or not the proposal makes a suitable contribution to affordable housing;
- the effect of the proposal on the character and appearance of the area;
- the effect of the proposal on heritage assets;
- the effect of the proposed development on green infrastructure;
- the effect of the proposed development on biodiversity;
- whether the proposed development would provide satisfactory living conditions for future occupants, with particular regard to outlook, privacy and daylight; and
- whether there are any other material considerations, including the benefits of the proposal, which would indicate that the proposal should be determined otherwise than in accordance with the terms of the development plan.

Reasons

Affordable housing

7. Policy BCS17 of the Bristol Core Strategy 2011 (the BCS) requires the provision of 30% affordable housing on developments of 15 dwellings or more. It goes on to explain that where scheme viability may be affected, developers will be expected to provide full development appraisals to demonstrate an alternative affordable housing provision.
8. The Council considers that 6.3 homes should be provided in order for the scheme to be policy compliant. The appellant has argued that paragraph 64 of the National Planning Policy Framework (the Framework) and footnote 30 to that paragraph should be applied in this case, thereby reducing the affordable housing requirement.
9. Paragraph 64 states that to support the re-use of brownfield land, where vacant buildings are being reused or redeveloped, any affordable housing contribution due should be reduced by a proportionate amount, which footnote 30 states is equivalent to the existing gross floorspace of the existing

- buildings. It confirms that this does not apply to vacant buildings which have been abandoned.
10. The Planning Practice Guidance (PPG)⁴ explains that where a vacant building is brought back into lawful use, or is demolished to be replaced by a new building, the developer should be offered a financial credit equivalent to the existing gross floorspace of relevant vacant buildings when the local planning authority calculates any affordable housing contribution which will be sought.
 11. The appellant has argued that the vacant building credit should be applied in this case. In view of this, it has made provision for the equivalent of 1.09 units as a financial contribution secured via the submitted s106 agreement.
 12. The Council's position is that the site is not brownfield land given the lawful use of the site is a plant nursery and a horticultural use. It also considers that the use has been abandoned. The vacant building credit should not therefore be applied. Since no other viability evidence has been submitted to justify the lower provision, it is the Council's view that the scheme would not comply with policy.
 13. In carrying out my assessment, I must first establish whether or not the appeal site is previously-developed land (PDL) or brownfield land. If I conclude that it is, I must then consider whether or not the vacant building credit should be applied.
 14. The Framework defines PDL as "land which is or was occupied by a permanent structure, including the curtilage of the developed land...This excludes: land that is or was last occupied by agricultural or forestry buildings....". The appeal site has been used for the growing of plants and is a horticultural use. This has not been disputed. The TCPA defines agriculture as including horticulture. On this basis, the appeal site would not be brownfield land.
 15. The appellant has argued that the appeal site forms part of a larger planning unit, comprising the horticultural use and a detached building, within which there is a residential use, the Cottage, and a retail unit, all of which are within the appellant's ownership. This building is not currently occupied. As such the site should be classified as mixed use and therefore brownfield land.
 16. I have been referred to the judgment in *Burdle & Williams v SSE & New Forest DC*⁵ where it was held that the planning unit is usually the unit of occupation, unless a smaller unit area can be identified which, as a matter of fact and degree, is physically separate and distinct, and occupied for different and unrelated purposes; the concept of physical and functional separation is key.
 17. The detached building occupies the north-west corner of the land in the appellant's ownership. The shop unit is accessed from Station Road. The entrance to rest of the building is within the southern elevation of the property. A porch has been added to this elevation and there is little in terms of a physical boundary separating it from the wider nursery site. I observed the Cottage was also served by a garden gate, currently obscured behind Heras fencing, with direct access onto Station Road adjacent to the main gate to the nursery site. This suggests that it could have its own, physically separate access.

⁴ Paragraph: 026 Reference ID: 23b-026-20190315

⁵ *Burdle & Williams v SSE & New Forest DC* [1972] 1 WLR 1207

18. There is evidence that the dwelling was occupied by the family who operated the nursery, although it seems they have not lived within the Cottage since 2000. However, there was and is nothing to tie that property to the nursery use and it could have been occupied independently.
19. At the Hearing, the appellant referred to the property having been recently let out. An assured shorthold tenancy agreement was submitted in support of this. The tenancy agreement omitted certain details, including a definition of the property being let as well as inconsistencies around the date of the tenancy agreement and period of occupation. The adjacent neighbour disputed that the property had been occupied recently.
20. I find this evidence to be inconclusive. However, to my mind, if the property had been occupied as an independent dwelling then this suggests that it does not functionally form part of the same planning unit as the adjacent horticultural use. I recognise that occupants of the Cottage may have parked within the appeal site. However, it seems to me that this is more directly related to ownership than a physical or functional relationship.
21. The shop has a rear access through the appeal site. I am told that it was serviced from there and provided customer and staff parking. However, it also has a direct access onto Station Road and it seems to me that it would not have been solely reliant on that access through the appeal site. It could have therefore operated independently of the appeal site. The appellant has stated that the shop has an unrestricted Class E use. The use is therefore not tied to the nursery. Given it sold products grown on and related to the nursery, it would not be unreasonable for the shop operators to make use of the appeal site. This, to my mind, does not establish a functional relationship.
22. The red line⁶ of the appeal site has been drawn to exclude the Cottage and shop unit, aligning with its southern wall and excluding the garden gate and the strip of land in which the porch is located. It also includes a narrow strip of land directly outside the Cottage building on the Station Road frontage. Whilst this would effectively prevent independent access to this building without crossing the appeal site, this is a line on a plan and not what is observed on the ground. I therefore give little weight to this line in determining whether the Cottage and retail unit forms part of the same planning unit as the appeal site.
23. On the basis of my observations on site and the evidence before me, I find that both the residential and retail uses are main uses. In coming to this view, I am mindful that both could continue to operate in their current use, irrespective of whether the nursery site was operational. This contributes to my finding that they have no functional relationship with the horticultural use of the site. Furthermore, they occupy a physically separate area which are occupied for different and unrelated purposes. The fact that the detached building is also excluded from the appeal site boundary lends weight to my view that it can be identified as a separate planning unit to the appeal site.
24. The appellant has excluded this building from the appeal site on the basis that an application in relation to that building would raise different issues. I appreciate that dealing with this property under a separate planning application does not mean it is a separate planning unit. Nevertheless, given my findings on the functional and physical relationship between the building and the

⁶ As shown on Site Location Plan, Drawing No. 20.060-001

nursery, I conclude that the appeal site is a separate planning unit. It is an agricultural use and therefore not brownfield land.

25. I have found that the appeal site is a separate planning unit from the adjacent building. As I have found that the appeal site does not meet the Framework definition of PDL as it includes horticultural buildings which are excluded from the definition, the vacant building credit could not be applied. There is therefore no need for me to go on to consider whether or not the use has been abandoned.
26. Therefore in the absence of any other justification for a reduced provision of affordable housing, I conclude that the proposed development would not make a suitable contribution to affordable housing. It would therefore conflict with Policy BCS17 of the BCS as referred to above.

Character and appearance

27. Development in the surrounding area is varied in form, with some older properties of different styles and ages. There is a tighter urban grain within the SCA and a more suburban form of development along Avonwood Close and to the south along Woodwell Road.
28. The proposal consists of development which fronts the two roads either side of the site, Woodwell Road and Avonwood Close. It would have a linear form of terraced properties, with a modest setback from the street. Housing within the local area addresses the street in a traditional manner which the appeal scheme would replicate. In the context of surrounding development, the linear pattern of development would not appear out of keeping.
29. However, due to the size of the properties, their deep footprints and the amount of development proposed, the flank walls of the proposed dwellings would extend rearwards some distance back from the Woodwell Road frontage. This would be particularly apparent in respect of Units 19-21 which would be set forward of the existing adjacent development to the south on Woodwell Road and would have a deep 2.5 storey blank flank elevation. This would be visible on the approach from the south, where it would appear dominating and overbearing.
30. Furthermore, in relation to the Cottage which is adjacent to the appeal site, Unit 11 would appear too close, partially obscuring one of its main elevations and two windows. I discuss this in more detail in my next main issue, but this would be harmful and would make the proposed development appear unduly cramped along this street frontage, with an inadequate gap between these properties.
31. Due to the amount of development proposed, the width of the site between the two roads and the presence of the Copper Beech tree on Avonwood Close, the layout of the scheme would have a staggered and irregular form. Units 5 to 8 on the Avonwood Close frontage would be set back from the adjacent dwellings. On the Woodwell Road frontage, Units 13 and 14 would be set forward. This irregular building line is not characteristic of development within the locality and would make the development appear somewhat contrived and incoherent in its appearance as found by the Council. This would not add to the quality of the area.

32. I therefore conclude that the proposal would cause some moderate harm to the character and appearance of the area. It would thus conflict with Policies BCS20 and BCS21 of the BCS and Policies DM26, DM27 and DM29 of the Bristol Local Plan – Site Allocations and Development Management Policies 2014 (the SADMP) and the Framework. These policies together seek a high quality urban design, which contributes positively to the area's character, provides an appropriate density informed by the local context and that responds appropriately to local distinctiveness.

Heritage assets

33. The Shirehampton Conservation Area Character Appraisal 2023 (the SCACA) identifies a number of different character areas within the SCA. The appeal site lies within the northern end of the Station Road character area, close to The Green and High Street character areas. This part of the character area is described in the SCACA as having a generally denser urban grain and higher scale. Station Road is characterised by late Victorian and Edwardian development, whilst the space around The Green is surrounded by development, some of which dates back to the 18th century. Both areas are urban in character.
34. The appeal site is described in the SCACA as an anomaly. However, it describes the site as contributing positively to the area with its verdant green boundaries and the rural character they give to Woodwell Road. The SCACA goes on to identify key views and landmarks within the Station Road character area and includes the view south down Woodwell Road describing it as well defined with verdant edges and rubble stone walls and giving a semi-rural character. It was suggested to me that these rural characteristics provide a link to the historic origins of the settlement.
35. At the time of the Hearing and my site visit, the majority of the vegetation on the Woodwell Road boundary had been removed from the appeal site, leaving a rubble wall topped by metal railings which provide open views into the site and of the somewhat derelict glasshouse structures upon it. As things stand, with the unauthorised removal of the trees, the buildings within the appeal site detract from the appearance of the SCA and, as glasshouses, appear anomalous and unrelated to surrounding development where it lies between the urban area to the north and more suburban housing development to the south along Woodwell Road. In its state of disrepair and neglect, the appeal site detracts from the character and appearance of the SCA.
36. However, it is appropriate for me to consider how the appeal site would have contributed to the SCA prior to the unauthorised removal of the vegetation. The section of Woodwell Road along the appeal site frontage is narrow. It is enclosed by both the wall to the appeal site and a more substantial and taller retaining wall positioned at the rear of a recent housing development opposite which fronts Station Road. There would have also been significant vegetation along the appeal site frontage behind the wall.
37. The enclosure of this narrow lane gives it an intimate character. The use of rubble stone contributing to a rustic appearance, although in the case of the appeal site wall, somewhat undermined by the presence of concrete coping stones and metal rails, which give it a more formal appearance. The trees would have provided a softer appearance. However, even with the trees in place, given the recent and substantial housing development opposite, it does

not, to my mind, display the semi-rural character identified within the SCACA. I therefore find that the appeal site, whilst providing a pleasant enclosure of Woodwell Road, makes a limited contribution to the significance of the SCA.

38. The Cottage which adjoins the northern edge of the site boundary is identified within the SCACA as an unlisted building of merit and a non-designated heritage asset. Whilst in a state of some disrepair, it has a more rustic character and an attractive symmetry and features which, apart from the addition of a more recent and unsympathetic porch, are largely intact. In this regard, the building makes a positive contribution to the character and appearance of the area and SCA. Whilst an attractive and visually interesting building, I do not find this a landmark building within the locality. The appeal site lies within its setting.
39. With the removal of the boundary vegetation from the Woodwell Road frontage, views of the south facing elevation of the Cottage have been revealed and it is more visible in views looking north towards the village centre along Woodwell Road. Both the south and west elevations of the Cottage, which are the main elevations to this building, are visible in their entirety from Station Road and the junction of Pembroke Road irrespective of the removal of the vegetation.
40. Along the Woodwell Road frontage, the proposed houses would be set back from the road behind shallow front gardens and a newly formed footway and on-street parking. The rubble wall would be demolished and rebuilt, set back from the road, to enclose the gardens. New tree planting is proposed between the parking to provide a more verdant appearance as well as to, in part, reinstate some of the verdant character lost through the tree removals on the site.
41. As a consequence, this stretch of Woodwell Road would be less enclosed and the intimacy experienced along the road would be lost. The additional width, on-street parking and linear housing development would have an urbanising effect. However, in the context of the housing development opposite and the location of this development between the more dense urban centre and the suburban development to the south, a proposed linear housing development in itself would cause limited harm to the character or appearance of the conservation area.
42. The south elevation of the Cottage would be partially obscured by the position of the development, which would be set approximately two thirds back from the Station Road elevation of the Cottage. With limited space between the Cottage and the proposed development, a significant portion of the south elevation of the non-designated heritage asset would be obscured. Although outside the scope of this appeal, plans have been submitted indicating alterations to the Cottage including the blocking up of the front door and two windows, at ground and first floor. It is understood that this would be required in response to the proximity of Unit 11 in relation to this property.
43. Such alterations if carried through would detract from the building. Irrespective of this, as these do not form part of the proposals before me, the position of Unit 11 would prevent the building from being read as an architectural composition, reducing the experience of this property and its symmetry and the details which contribute to its value.

44. I appreciate that much of this elevation would have been obscured in views from the south by the presence of the trees. However, the Cottage and its primary elevations are visible through the entrance to the appeal site where it can be appreciated from the surrounding area. The proximity of the proposed dwelling adjacent to this would significantly reduce that view.
45. Thus, the linear housing development would be harmful in terms of its scale and position in relation to adjacent properties, notably in respect of the Cottage. Harm to both the SCA and the setting of the non-designated heritage asset arises from this.
46. I have been referred to a previous dismissed appeal⁷ in 2019 for a more substantial building on the site. I note that the Inspector in that appeal found the potential impact of that development on views into the SCA towards The Green from Woodwell Road in the south overstated. He found these to be framed by dense planting, which would not be affected by the development. However, that dense planting no longer exists and therefore the context is different and the views from this direction a lot more open. The findings of this Inspector do not therefore alter my own conclusions on this matter.
47. The reuse of the rubble stone in the new boundary walls would provide elements of the rustic character of the road although, in the context of what is proposed with a relatively high density of development and on street parking, it is unlikely that much of the sense of its rustic character would be apparent. Nevertheless, given my findings in respect of the character along this stretch of Woodwell Road, this would give rise to limited harm to the SCA.
48. I appreciate that the appellant has agreed to the use of the timber framed windows and for such matters to be controlled by an appropriately worded planning condition. I also consider the pallet of materials to be reflective of the varied materials found throughout the SCA.
49. However, as I have set out in my reasoning in respect of the character and appearance of the area, the layout and form of the development would be unduly dominant, it would obscure views of the symmetrical form of the Cottage and would be harmful.
50. As such, the proposal would fail to preserve or enhance the character or appearance of the SCA and would harm its significance. I attach considerable importance and weight to the desirability of avoiding any such harmful effect in accordance with section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990.
51. The harm the proposal would cause to the significance of the SCA would be less than substantial and at the lower end of the scale. Paragraph 202 of the Framework states that where a proposal would lead to less than substantial harm to the significance of the heritage asset, this harm should be weighed against the public benefits of the proposal.
52. The proposal would deliver 21 homes in an accessible location and would redevelop a site that is untidy and detracts from the local environment. It would improve highway safety along a short stretch of Woodwell Road. In addition, there would be economic benefits both during construction and occupation of the proposed development. However, in combination, these

⁷ APP/Z0116/W/18/3198899

public benefits carry moderate weight and they would not outweigh the less than substantial harm to the significance of the SCA that would arise.

53. I have also had regard to paragraph 197 of the Framework which sets out that the effect of an application on the significance of a non-designated heritage asset should be taken into account in determining the application. In weighing applications that directly or indirectly affect non-designated heritage assets, a balanced judgement will be required to have regard to the scale of any harm or loss and the significance of the heritage asset.
54. The proposal would obscure a significant portion of a primary elevation of the non-designated heritage asset through development within its setting. This would detract from the non-designated heritage asset and would be harmful. This attracts significant weight in the planning balance.
55. I conclude that the proposed development would adversely affect both a designated and a non-designated heritage asset. It would therefore conflict with Policy BCS22 of the BCS and Policies DM26 and DM31 of the SADMP. These policies require development to safeguard or enhance heritage assets and the character and setting of locally listed buildings and conservation areas and responding appropriately to historic assets.
56. I have found no specific conflict with Policies BCS21 and DM29 with regard to heritage harms, as these are general policies in relation to urban design and the design of new buildings.

Green infrastructure

57. The loss of the trees is considered to be harmful to the visual amenity of the area and the SCA as previously discussed. Had these trees been retained, the Council would have sought their retention as part of a scheme for the redevelopment of the site. However, since the trees have been removed, the Council has sought their replacement through a combination of on-site tree planting and financial contributions towards replacement tree planting off-site.
58. The scheme proposes the retention of the Copper Beech tree and includes proposals for 28 replacement native trees as well as shrub and domestic planting. Tree planting on the site would include four trees to the Woodwell Road frontage plus three additional trees within an 'ecozone area', all of which would be provided on land outside private ownership on the site. It would also include tree planting within the rear gardens of the proposed houses. A financial contribution towards payment for replacement tree planting off-site would be secured through the s106 agreement. The contribution has been calculated on the basis of the guidance set out in the Planning Obligations Supplementary Planning Document 2012 (the SPD).
59. The Copper Beech tree is an attractive, semi-mature tree. It contributes to the visual amenity along Avonwood Close. Whilst the plans show the retention of this tree, it is set out in the agreed Statement of Common Ground (SoCG) that this tree would need to be felled in order to accommodate the proposed development.
60. The Copper Beech would be in close proximity to Units 5 and 6 on the Avonwood Close side of the development. In addition, the drawing indicates a widened footpath along this frontage which appears to run either through or very close to the trunk of this tree. Given this, the success of effectively

protecting this tree during construction works is questionable. Moreover, due to its position close to the houses, it is likely to give rise to concerns for future occupants for the tree to be removed or pruned, which would be harmful to the visual amenity of the area. As such, it seems unlikely that this tree could be retained in the long term as acknowledged within the SoCG.

61. The appellant has proposed compensation for its replacement as an option within the s106 agreement. Whilst this is noted and could provide mitigation generally, the loss of this tree would be detrimental to the visual amenity along Avonwood Close and I am not satisfied that the proposed mitigation would overcome this.
62. I recognise that in a previous scheme for development of the site in 2017, it was proposed to fell the Copper Beech tree and this was not resisted. However, I am told that that scheme was generally more verdant and retained all of the trees on the Woodwell Road side of the site. I do not therefore find the circumstances comparable to the scheme before me.
63. In terms of the on-site planting, the trees within the rear gardens cannot be relied upon to provide green infrastructure in the long-term. However, I accept that the trees to the Woodwell Road frontage could provide a softer appearance and verdant character along this section of road. Likewise, planting on Avonwood Close could make a similar contribution. Within the site, whilst I recognise the intention, the ecozone planting would be shoehorned in between garden boundaries and may be less successful.
64. Concerns were raised by interested parties that the Council is in receipt of payment for trees that has not been utilised. On this basis, it was argued that the appellant should provide replacement trees on site. The Council explained that it has adopted policy and in the locality there are areas where tree planting can take place. It was also confirmed that it is not a requirement upon the appellant to identify sites for planting off-site. However, it recognised that in the absence of a legal agreement that there was nothing to bind the Council in this regard. As a consequence, a section 106 agreement was drawn up which would secure the required action by the Council.
65. Drawing together the above, the proposed development would be likely to result in the loss of the one remaining tree on the site. The proposed on-site planting would provide some compensation and softening of the appearance of the proposed development, particularly on the Woodwell Road frontage. Although off-site planting would be secured through the s106 agreement which I accept would be a suitable form of compensation, the development fails to integrate the one remaining green asset and new green infrastructure on the site would be limited with much of this within private gardens where it could not be relied upon to make a significant contribution to green infrastructure.
66. My conclusions are therefore that the scheme would adversely affect green infrastructure. It would therefore conflict with Policy BCS9 of the BCS and Policy DM17 of the SADMP which together require the retention and integration of green assets, including that all new development to integrate important existing trees.

Biodiversity

67. The appellant asserts that based on the Preliminary Ecological Assessment⁸ there would be a net gain of 54.69% in habitat and 100% in net gain in hedgerows. The baseline for this assessment is disputed. The Council considers it should be based on the value of the site before it was cleared.
68. The appellant maintains that the baseline for biodiversity consideration is the date of the planning application. Nevertheless, a biodiversity net gain report⁹ was produced utilising an ecological report¹⁰ from a 2017 survey carried out on the site in relation to the previous application. The reports applied Natural England's Biodiversity Metric 3.0. It reports a 14.59% gain in hedgerows and 0.77% loss in habitats.
69. Planning Practice Guidance¹¹ sets out that the baselines for assessing the existing biodiversity value of a development site will need to be assessed at the point that planning permission is applied for. It may also be relevant to consider whether any deliberate harm to this biodiversity value has taken place in the recent past, and if so whether there are grounds for this to be discounted in assessing the underlying value of the site (and so whether a proposal would achieve a genuine gain).
70. The removal of trees and vegetation on the site has reduced the opportunities for biodiversity, thereby causing some loss of nature conservation value and biodiversity. The Council considers that the felling of the trees was to facilitate the development. I have been provided with limited evidence that there was a compelling reason for the vegetation to be cleared from the site, particularly as there appears to be no urgency in respect of clearing the dilapidated buildings. I therefore consider that the baseline for any assessment should be based on the site as it was prior to these clearance works. Therefore, my assessment is based on the later biodiversity net gain report utilising the 2017 survey data.
71. As a consequence of the proposal there would be a small reduction in biodiversity. The appellant has suggested that this is largely attributed to a pond that previously existed on the site. I observed at my site visit that the pond is overgrown and disused. However, there is nothing to suggest it was not fully functional and contributing to biodiversity at the time of the 2017 survey. I therefore do not discount this.
72. In order to mitigate the biodiversity habitat loss, new habitat features are proposed to be incorporated into the proposed development. This includes native species rich hedgerow with trees, urban trees, mixed scrub and vegetated gardens. Where habitat enhancement measures are provided to achieve a biodiversity net gain, there is an expectation¹² that they will be maintained for at least 30 years after the development is completed. With this in mind, I note that much of this enhancement lies within private garden space over which there would be little control in terms of securing the long-term management of these. Thus, whilst I was told some Council's do include trees within private gardens, I do not consider they can be relied upon and I therefore exclude them from my assessment.

⁸ NashEcology- Preliminary Ecological Appraisal Report, September 2021

⁹ Plan for Ecology- Natural England Biodiversity Metric 3.0, 18 August 2022, version 4

¹⁰ 2017 Preliminary Ecological Appraisal Report (ECOSA Ltd, 2017)

¹¹ Paragraph: 026 Reference ID: 8-026-20190721

¹² Schedule 7A, Part 1, Paragraph 9(3), Environment Act 2021

73. On the basis that these features are not included within the calculation of biodiversity net gain, according to the Council the proposal would result in a net loss of 8.65% in habitat units. If the Copper Beech tree were to be felled, this would be even greater.
74. The s106 agreement sets out that biodiversity net gain credits will be purchased in accordance with a number to be agreed with the Council under a biodiversity net gain credits scheme which would be a scheme agreed between the government and/or its relevant agencies and/or the Council. I accept that the purchase of such credits could potentially mitigate for the loss of nature conservation value caused by the development.
75. However, the number of credits is not agreed and I have limited information as to what such a biodiversity net gain credit scheme would look like and if it would be available. I am therefore unable to conclude that an appropriate level of biodiversity net gain would be achieved.
76. I also recognise that there are other measures that would be delivered through the scheme, such as the provision of bird and bat boxes which are not currently included under the biodiversity metric. Whilst positive aspects of the scheme, they do not provide the biodiversity gains sought.
77. Consequently, I cannot be certain that the proposal would not adversely affect biodiversity on the site and that it would provide satisfactory mitigation for this. As such, I find it conflicts with Policy DM19 of the SADMP which requires development to be designed and site, in so far as practicably and viably possible, to avoid any harm to identified habitats and where it would result in loss of nature conservation value to provide mitigation on-site and where this is not possible, off-site. It would also not accord with the Framework which requires development to minimise impacts on and provide net gains for biodiversity and to mitigate significant harm to biodiversity.

Living conditions

78. The rear elevations of the proposed dwellings along both road frontages would face towards each other. The separation distance between the first floor facing windows would be between 16.4m and 18.3m. This would be partly due to the deep footprint of the proposed houses and relatively shallow depth of their rear gardens. This would be a relatively short separation distance and could give rise to mutual overlooking of gardens as well as direct views into opposite windows. This would not provide a satisfactory degree of privacy for future occupants of all the facing properties, but especially between units 7 and 15 and 8 and 16 which would have the shortest separation distance.
79. The Council has suggested that a window-to-window distances of at least 21m are considered the norm. However, this is not set out in policy or design guidance. I nevertheless agree that the distance should be sufficient to limit overlooking which I do not consider will be achieved here.
80. I appreciate that there are circumstances where a tighter grain of development has been permitted, and in this respect, the appellant has referred me to a recently completed development at Brooks Dye Works, Southey Street Bristol where separation distances of between 10.3m and 15m were permitted between first floor windows. This does demonstrate that the Council has accepted a much reduced separation distance previously. However, that was

allowed in the context of surrounding development being of densely developed terrace streets.

81. This is not, however, the character of the surrounding area to the appeal site where most properties have large rear gardens providing generous separate distances between back-to-back dwellings. Therefore, whilst closer separation distances may have been exceptionally allowed in the context of the Bristol Dye Works, the same justification does not exist here.
82. Trees are proposed within the rear gardens which could, once of an appropriate height, provide screening between these rear facing windows. However, given the relatively shallow depth of the garden it is likely that these trees would not get to such a height as to do so would likely compromise the amount of light to the proposed dwelling and their gardens.
83. It has been suggested that, due to their proximity to each other, the proposed houses may receive inadequate light or their gardens could be overshadowed. I recognise that the proposed properties would face east or west which means they would receive some sunlight at certain times of the day. The gardens would also receive sunlight from the south for some of the day. However, given the depth of these properties, it is possible that the internal accommodation may not receive adequate daylight thereby providing gloomy accommodation or requiring the use of artificial lighting. No technical information has been provided to indicate that this would not be the case and on that basis, I cannot be satisfied that the proposed accommodation would receive adequate natural light.
84. The Council has additionally raised a concern about the effect of the proposed development on future occupants of the Cottage. This property is currently unoccupied and, I was told, would require work to bring it to a habitable state. The appellant has indicated that it is intended to retain the Cottage for commercial use at ground floor with a flat above.
85. The submitted drawings indicate works to the Cottage including blocking up two windows within the southern elevation. These are primary windows and such works would adversely affect outlook and light to both the rooms they serve. I recognise that the first floor room is served by an additional window in the rear elevation of the property which may compensate for this loss. However, in the absence of firm details as to the nature of the use of this building, I am unable to conclude that the living conditions for future occupants, or working conditions if the ground floor is to be used commercially, of this building would not be harmed by the proposal in respect of outlook and light.
86. For these reasons, I conclude that the proposed development would not provide satisfactory living conditions for future occupants, with particular regard to outlook, privacy and daylight. It would thus fail to comply with Policies BCS21 of the BCS and Policies DM27 and DM29 of the SADMP which require development to provide a high quality environment for future occupants, with a layout which enables the proposed development to achieve appropriate levels of privacy, outlook and daylight.

Other considerations

87. The scheme would deliver 21 residential units. This would contribute to the housing supply and would be a moderate benefit of the scheme.
88. The proposal would deliver economic benefits both during the construction phase and once occupied. In addition, the scheme would redevelop a rundown and neglected site which detracts from the character and appearance of the SCA as well as the area more generally. These factors carry modest weight in favour of the scheme.
89. The stretch of Woodwell Road outside the appeal site is served by a very narrow footpath along its western edge. This is not wide enough to accommodate two people walking side-by-side nor any kind of pushchair or wheelchair. On both my site visits, I observed a number of pedestrians passing along this road, walking in the carriageway and having to step aside when vehicles passed along the road. The scheme would enable them to walk safely on a footpath. The provision of this footpath would be a benefit of the scheme in terms of highway safety. Given the road is not a busy thoroughfare, this carries moderate weight in favour of the scheme.

Planning Balance

90. The Council does not dispute that it cannot demonstrate a five year supply of housing land. As such, in accordance with paragraph 11 d) of the Framework the policies most important for determining the application are deemed to be out of date. In such circumstances, the provisions of paragraph 11 of the Framework should apply. However, given my conclusions on the harm to a designated heritage asset, in accordance with footnote 7 to paragraph 11, the tilted balance does not apply.
91. The scheme would deliver a number of economic benefits as well as a boost to housing supply, providing greater housing choice, in an accessible location. It would also improve access and highway safety along Woodwell Road. Cumulatively, the benefits of the scheme carry moderate weight.
92. However, my finding is that the failure to provide adequate affordable housing, harm to the character and appearance of the area, heritage assets, green infrastructure and biodiversity in combination with unsatisfactory living conditions for future occupants would be in conflict with both development plan policies and the Framework policies that seek to achieve well-designed places and protection of the historic and natural environment. This would not be outweighed by the benefits of the scheme. My conclusion is therefore that the scheme conflicts with the development plan as a whole.

Conclusion

93. The proposed development would be contrary to the development plan and there are no material considerations that outweigh this conflict. Consequently, with reference to Section 38(6) of the Planning and Compulsory Purchase Act 2004, the appeal should be dismissed and planning permission refused.

Rachael Pipkin

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Mr H Leithead	Counsel for appellant
Mr S Litt	Appellant
Mr C Stokes	Stokes Morgan Planning, Lead Consultant
Mr K Morley	Stokes Morgan Planning, Supporting Role
Mr M Watkins	Director, Cambrian Landscape Architects
Mr G Carpenter	AVEC Design

FOR THE LOCAL PLANNING AUTHORITY:

Martin Bunt	Senior Planning Officer
David Martyn	Senior Conservation Architect
Jim Cliffe	Planning Obligations Manager
Fern Kenyon-Hamp	Nature Conservation Officer
Dawn Bodill	Specialist Solicitor

INTERESTED PARTIES:

Ash Bearman	Shirehampton Planning Group
Mr Pugh	Local Resident
Professor John Tarlton	Bristol Tree Forum
Mark Ashdown	Bristol Tree Forum

HEARING DOCUMENTS

HD1	Assured Shorthold Tenancy Agreement
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POST-HEARING DOCUMENTS

PHD1	Executed section 106 Agreement under the Town and Country Planning Act 1990 (as amended)
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