



Appeal Decision

Hearing held on 9 May 2023

Site visit made on 9 May 2023

by Nicola Davies BA DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19th May 2023

Appeal Ref: APP/F0114/W/22/3313592

Former Garden Centre, Whitegate Nurseries, Stockwood Hill, Keynsham, BRISTOL, BS31 2AN

- 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 Mr S Ellis against the decision of Bath and North East Somerset Council.
 - The application Ref 21/04795/FUL, dated 23 October 2021, was refused by notice dated 29 June 2022.
 - The development proposed is conversion of existing 5 buildings to form 6 dwellings, with associated parking and internal access road.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. Subsequent to the Council's decision having been issued, the Council have adopted the Bath & North East Somerset Local Plan Partial Update (19 January 2023) (the Local Plan Partial Update). The Update is an interim and partial revision of the Bath & North East Somerset's planning policy framework. The Local Plan Partial Update is a schedule of changes to the Bath & North East Somerset Core Strategy (2014) (the Core Strategy) and Bath and North East Somerset Placemaking Plan (2017) (the Placemaking Plan). As such, the Local Plan Partial Update is not a new Plan. It combines the Local Plan Update Policies with the existing Core Strategy and Placemaking Plan policies and forms part of the adopted development plan for Bath & North East Somerset. Both parties have had the opportunity to comment on the implications of the Local Plan Partial Update in relation to the appeal.
3. The Statement of Common Ground submitted and signed by both parties indicates an agreement has been reached in regard of offsite trees. As such, the Council have confirmed that refusal reason 5 has been withdrawn as a result of additional information provided. I have dealt with the appeal on the basis that refusal reason 5 is no longer before me.
4. Given both reasons for refusal 3 and 4 relate to highway matters I have combined my considerations in regards of these refusal reasons to avoid repetition.

Main Issues

5. The main issues raised in respect of this appeal are: -
- a. Whether the proposal would be inappropriate development in the Green Belt having regard to the National Planning Policy Framework (the Framework);
 - b. Whether the site is suitable for the proposed development having regard to the spatial strategy of the development plan and whether the proposed works would constitute re-use or reconstruction of the existing nursery buildings/structures;
 - c. The effect of the proposed development upon biodiversity; and
 - d. The effect of the proposed development upon highway safety and accessibility to sustainable transport.

Reasons

Green Belt

6. It is common ground between parties that the proposed development does not represent inappropriate development in the Green Belt as it can be considered to fall under criterion (g) of paragraph 149 of the Framework. On this basis, the parties agreed that the proposal would not be inappropriate development in the Green Belt or conflict with the purposes of including land within it.

Location and alterations

7. Policy DW1 of the Local Plan Partial Update sets out the overarching strategy to promote sustainable development by focussing new buildings, jobs and community facilities in Bath, Keynsham and the Somer Valley and for development in rural areas to be located at settlements with a good range of local facilities and with good access to public transport. Policy RE4 of the Placemaking Plan sets out that new dwellings will not be permitted outside a Housing Development Boundary in the open countryside unless there is an essential need for a rural worker.
8. The location of the site would be outside any established built-up area boundary and is in a countryside location. Therefore, the appeal site would not be an appropriate location for residential development. The site would not be isolated with regard to other developments in the area. Nonetheless, the closest services and facilities are located at Keynsham and Policy DW1 requires development in rural areas to be located at settlements. Given the proposal would not be located within a settlement offering services and facilities the proposed development would not be sustainably located. Furthermore, the proposal is not intended to support a rural worker.
9. Notwithstanding the above, Policy RE6 2) of the Placemaking Plan allows for the re-use of rural buildings where the building is not of temporary or insubstantial construction and not capable of conversion without substantial or complete reconstruction or requires major extension.
10. The Council's contention in regard of structural issues is that 4 of the 5 buildings/structures (1,2, 4 and 5) would require substantial reconstructions

and essentially the proposal would represent a rebuild scheme given the quantum of works required to make the buildings habitable.

11. The structures vary in their existing construction. The design and access statement that supports the application discusses the alterations to the structures. The existing walls of building 1 would be replaced with either double glazed or timber walling with the roof being replaced in its entirety. With regard to building 2 areas of existing glazing would be replaced with timber clad walls and new windows with the extension being re-clad and a new roof is proposed. Although some of the existing glazing of buildings 4 and 5 would be retained, a new insulated timber clad wall would be created along the eastern elevation and the roof would be fully replaced.
12. There was some discussion at the hearing as to how the structures are to be re-clad. The structural report that supports the planning application is limited in detail. The report does not contain any structural assessment of the existing structures. Nor does it discuss whether the buildings would be capable of conversion without substantial reconstruction. The structural report describes the existing buildings to consist of lightweight steel framed structures. It also comments that the existing structures are to be retained but strengthened internally with additional steelwork as required to support increased loadings and to provide lateral stability.
13. At the hearing it was established that internally there would be a new timber frame constructed to create the internal living space. Whilst this may reduce the load on the structural framework, the recladding of the structures would be constructed around this. There is some suggestion on the appellant's part that some recladding could take place without touching the frames. Such an approach of constructing new walls would run counter to the description of development provided by the applicant that sets out that the proposal is intended to be a conversion and deviates from other information provided within the application details. For the purposes of this case, I have based my considerations on those details provided within the application submission.
14. From what I saw at my visit the frameworks of the structures are lightweight. I consider the structures are extremely likely to require substantial strengthening to support the proposed recladding. Given this, and the extent of recladding proposed, the works to these structures would be tantamount to rebuilding works and could not be reasonably considered a conversion of these structures. I, therefore, do not agree with the appellant that the proposal would represent a re-use and the proposal is not supported by technical information that might lead me to a different view on this matter. Whilst it has been suggested some recladding of the structures could potentially take place under permitted development, the works are required to facilitate the proposed development for which planning permission is sought.
15. Both parties have drawn my attention to the Hibbitt High Court judgement. Despite both the Hibbitt judgement and the appeal referred to by the appellant (Ref: APP/W3330/W/21/3268761) relating to Class Q permitted development conversions, the same considerations can be applied to this case. The judgement upheld the Inspector's decision that the reuse of a structurally sound steel frame, but little else of the original building, went beyond what could reasonably be considered necessary for the building to function as a

dwelling. In this case the proposal would involve strengthening of the steel frame, new walls, glazing and roofs. Taking into consideration the Hibbit judgement the proposal would not constitute re-cladding as the appellant suggests. Rather the Hibbitt judgement reinforces my conclusion that the proposed development would constitute rebuilding works to create new dwellings.

16. Policy RE6 5) indicates that where the building is isolated from public services and community facilities and unrelated to an established group of buildings the benefits of re-using a redundant or disused building and any enhancement to its immediate setting outweighs the harm arising from the isolated location. However, I have found that the proposal would not represent a re-use of existing buildings to which the consideration of criterion 5) could apply.
17. Policy RE6 7) allows consideration for development where it does not have a materially greater impact than the present use on the openness of the Green Belt or would conflict with the purposes of including land within the Green Belt. It is accepted between parties that the proposal would not be inappropriate development within the Green Belt. The appellant contends that this makes the principle of the development acceptable. However, this does not diminish other aspects of the development plan when read as a whole that seek to direct new housing to existing settlements. The fact that this is a previously developed site in the Green Belt does not automatically override the necessity to consider the acceptability of the location of the site in accordance with the spatial strategy of the development plan, even if the development would not be inappropriate development in Green Belt terms.
18. It is suggested that in certain circumstances development can be approved despite not necessarily being in full compliance with the development plan and taking into account other circumstances. There may be aspects of the proposed development that could be considered beneficial, such as, the proposal making use of a previous developed site that may be prone to vandalism and/or it may reduce the demand of new dwellings in the countryside and/or being a well-designed scheme when taken on its individual merit and/or would create employment. Notwithstanding this, the development plan is up-to-date, and this sets out the districtwide housing strategy pertaining to housing sites. Given my above findings I see no substantive reason that would justify setting aside the housing strategy for the area in this case even if other aspects of the scheme are considered acceptable when taken on their own or collective merits.
19. For the above reasons, the site would not be a suitable location for the proposed development, having regard to the development plan. Furthermore, the proposal would be tantamount to a new build residential development and, as such, would not comply with the districtwide spatial strategy. This brings the proposal into conflict with Policy DW1 of the Local Plan Partial Update and Policies RE4 and RE6 of the Placemaking Plan. It would also conflict with new Policy SCR6 of the Local Plan Partial Update that requires new development to meet sustainable construction standards.

Ecology

20. Updated survey work has taken place as part of the appeal process, and this has alleviated a number of the Council's concerns in respect of ecology. Notwithstanding this, given the large area of glazing proposed the development

has the potential for light spillage onto adjacent woodland that is part of a foraging corridor for bats. Although the appellant contends that the Council's reason for refusal does not deal with this matter, the refusal reason relates to roosting bats and potential negative impacts on horseshoe bat populations linked to the Bath and Bradford-on-Avon Special Area of Conservation (SAC). The site is located approximately 620m from the River Avon which offers supporting habitat for the SAC and the woodland is a favoured habitat for bats.

21. The Framework sets out that natural habitats and biodiversity within the natural environment are to be protected and enhanced. Furthermore, Policy D8 of the Local Plan Partial Update, referred to in refusal reason 2, requires development to retain or improve the darkness of ecological corridors to protect or provide a functional dark route for European protected species. As such, these set out that wildlife habitat is to be protected.
22. At this stage it is not clear whether the lighting emitted from the proposed development could be maintained within acceptable emission levels. The nursery and garden centre would have generated some light. However, the business would likely have operated business hours and may not have generated any significant light during the hours of darkness when bats are active. The use of the site for residential would involve the dwellings to be lit internally, as well as potentially externally, well into the night.
23. There is no survey information relating to the woodland edge that would demonstrate an absence of light sensitive bats. Therefore, a precautionary approach must be taken given the sensitivity of the development to woodland that has the potential to host protected bat species. The potential impact of the proposed development needs to be established prior to any permission being forthcoming.
24. The appellant confirmed at the hearing that there would be no removal of trees or vegetation along the north east boundary of the site. However, the Council considers that the buffer zone should be extended to the north east to protect the full extent of the surrounding woodland and that the buffer should be located outside of any of the proposed gardens to facilitate its management and maintenance. Furthermore, the proximity of the gardens to the woodland may put pressure on the trees within the woodland buffer to be pruned. The proposal does not demonstrate that the full extent of the surrounding woodland would be protected. Corresponding to this, this does not demonstrate that there would be no net loss of biodiversity.
25. The appellant has submitted a Habitat Calculation letter report in support of the appeal that advocates the scheme can achieve a 193% net gain in biodiversity. Despite the associated submitted Biodiversity Matrix spreadsheet being incomplete, I was assured at the hearing that the net gain figure set out in the letter has been informed by using the matrix. Unfortunately, the lack of a completed matrix prevents the verification of the calculation. As such, it is not possible to determine whether the assumptions and requirements for the newly created habitats would meet their target conditions that are detailed and to be achieved.
26. For these reasons, I cannot be satisfied that the proposed development would not result in harm to biodiversity, particularly in relation to bats, and the proposal has not demonstrated that there would be no net loss of biodiversity and would achieve a net gain. This brings the proposal into conflict with

Policies RE6, NE3, NE5, D5e and D8 of the Placemaking Plan and Local Plan Partial Update, Paragraph 174 of the Framework and the Conservation of Habitats and Species Regulations 2017. Given the above uncertainties I do not consider that it would be appropriate to rely on the imposition of planning conditions as there is no substantively clear indication that conditions could ameliorate the objections sufficiently to allow permission to be granted.

Highway safety and sustainable transport.

27. Policy ST1 of the Local Plan Partial Update promotes sustainable travel and healthy streets. Policy ST7 of the Local Plan Partial Update requires users of development to benefit from a genuine choice in their mode of travel through opportunities to travel by sustainable modes and that highway safety is not prejudiced.
28. The previous and lawful use of the site would have generated movements to and from the site. The Council does not dispute the vehicular movements the nursery and garden centre would likely have generated. However, the Council contends that the proposal should have safe and convenient access to services and facilities and offer opportunities to travel by sustainable modes of transport. It is likely that the nature of trips to the nursery and garden centre would have predominantly been by vehicle as this would be convenient for those buying products on sale. However, residential is a very different use of the site.
29. I acknowledge that travel solutions will differ between urban and rural areas. However, Keynsham is within a walkable and cyclable distance, as is the train station and public bus transport at Bristol Road. This is not a 'significant development' as it would only create six dwellings at the site. Nonetheless, safe and sustainable travel is the thread that runs through Policies ST1 and ST7. This is supported by Chapter 8 of the Framework that advocates the creation of places that promote social interaction and encourage walking and cycling, thereby helping to provide safe and accessible places which support healthy lifestyles. Furthermore, Chapter 9 of the Framework requires consideration to be given to a development's location as to whether appropriate sustainable transport modes can be taken up and that safe and suitable access to the site can be achieved for all users. The Apex Transport Note that supports the planning application acknowledges the objectives set out in the Framework but gives little consideration to those other relevant policies set out within the adopted development plan.
30. It would be reasonable to anticipate that future occupiers of the development would seek from time to time to walk or cycle to and from Keynsham, as well as to the bus stop at Bristol Road. Not everyone will own a car. People should be able to walk to services, such as the elderly. Immediately on exiting the site the route along Stockwood Hill to Keynsham is narrow with pinch-points in the highway. There are no footways or street lighting along the stretch where the highway is narrow and there are no verges in which a walker or cyclist could seek refuge of the vehicular highway. Furthermore, it would be an extremely challenging route for those with mobility impairments and those pushing buggies or who have young children. Compounding this is the steep gradient of Stockwood Hill and the limited visibility of on-coming traffic that the pinch points create.

31. This is not a safe or attractive route for pedestrians, cyclists and those other users, including those using electric bikes and this would prejudice safety of all users of this stretch of highway. The proposal would not provide genuine and realistic opportunities to travel by sustainable modes of transport given the risks one would need to take to access those services at Keynsham. Furthermore, the nature of the highway would encourage future occupiers to travel by private vehicle, the least sustainable mode of transport. The low record history of pedestrian and/or cyclist accidents is perhaps not surprising given the unattractive nature of the highway for walkers and/or cyclists.
32. This is a previously developed site with the nursery and garden centre hosting a café/restaurant when in business. Although it was suggested at the hearing that people likely walked to the garden centre with its café, I do not consider this would have been a likely prospect for those residents of Keynsham in light of my above findings.
33. Given the nature of the highway the site can be considered isolated from services and facilities as the site is not safely accessible to and from an established settlement. The appellant's Apex Transport Note points out that census information shows that other existing residents within the surrounding area walk, cycle and use electric bikes and that there are public rights of way in vicinity. However, these factors do not make the access issues more acceptable noting that future occupiers would likely need to traverse Stockwood Hill to access those illustrated public rights of way in the locality within the Transport Note.
34. I acknowledge the intention to provide eclectic vehicles charging facilities as part of the scheme to encourage the use of ultra-low or zero emission vehicles. However, this is a policy expectation and would not reduce travel by future occupiers. It is, therefore, not a sustainable transport measure in itself.
35. For these reasons, the proposed development would have a harmful effect upon highway safety and would not provide acceptable accessibility to sustainable transport. This brings the proposal into conflict with Policies ST1 and ST7 of the Local Plan Partial Update. Paragraph 111 of the Framework indicates that development should only be prevented or refused on highway grounds if there would be an unacceptable impact on highway safety, which is the case here.
36. I have been directed to a recent Council decision relating to a development at Latchets Kennels near Keynsham. That proposal related to a site beyond the settlement boundary of Keynsham. In that case the Council's Highway adviser considered the site's location beyond the settlement boundary and the historic use of the site. I recognise that the circumstances of that proposal appear to be similar to those in this appeal. Nonetheless, that planning permission does not set a binding precedent for other similar applications and does not indicate that permission should be automatically granted in this instance. The nature and topography of the highways within the vicinity of the site that is before me is quite different and, in this case, gives rise to highway safety concerns, which do not appear to have applied at the site at Latchets Kennels as the highways in that area differ in nature. As such, this appeal falls to be considered on its own merits.
37. The Apex Highway Note refers to a number of planning permissions that have been granted by the Local Planning Authority. It is said that those sites are

less well located to services, facilities and public transport links than the Whitegates Nursery site and the highway authority took into account of the net change in vehicle trip generation. Those decisions appear to have been taken some time ago and pre-dated the 2021 Framework. The Highway Note also refers to a number of appeal decisions that had been upheld by the High Court, albeit those decisions relate to different administrative authorities. I have not been provided the full details of those decisions to consider what similarity, if any, those developments would have to that before me. In any event, each application and appeal fall to be considered on its own merits.

Conclusion

38. Having regard to the above findings and what I heard at the hearing, the appeal should be dismissed.

Nicola Davies

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Daniel Drayton	LPC (Trull) Ltd
Shaun Ellis	Applicant
Nick Morley	NJM Architecture

FOR THE AUTHORITY:

Isabel Daone	Bath & North East Somerset Council
Oliver Smith	Bath & North East Somerset Council
Sam Grant	Bath & North East Somerset Council
Angus Harris	Bath & North East Somerset Council

DOCUMENTS SUBMITTED AT THE HEARING

Copy of High Court Case No: C1/2020/0160