



Appeal Decision

Site visit 13 June 2023

by Helen O'Connor LLB, MA, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 05 July 2023

APP/F0114/W/22/3310049

Land to the South of 2 The Orchard, Stanton Drew, Bristol BS39 4DS

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant permission in principle.
 - The appeal is made by Mr N Warfield of Freemantle Developments Ltd against the decision of Bath and North East Somerset Council.
 - The application Ref 22/02743/PIP, dated 13 July 2022, was refused by notice dated 9 September 2022.
 - The development proposed is a minimum of two and maximum of three 'Passivhaus' dwellings and private allotment with associated access, drainage and hard/soft landscape works.
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Decision

1. The appeal is allowed and permission in principle is granted for residential development comprising a minimum of two and a maximum of three 'Passivhaus' dwellings and 0.1ha of private allotment with associated access, drainage and hard/soft landscape works at Land to the South of 2 The Orchard, Stanton Drew, Bristol BS39 4DS in accordance with the terms of the application, Ref 22/02746/PIP, dated 13 July 2022.

Preliminary Matters

2. In my heading and decision, I have used the address of the appeal site given on the appeal form and decision notice, as this is more specific than that given on the original application form.
3. The proposal is for permission in principle. Planning Practice Guidance (PPG) advises that this is an alternative way of obtaining planning permission for housing-led development. The permission in principle consent route has 2 stages: the first stage (or permission in principle stage) establishes whether a site is suitable in-principle and the second ('technical details consent') stage is when the detailed development proposals are assessed. This appeal relates to the first of these 2 stages.
4. The scope of the considerations for permission in principle is limited to location, land use and the amount of development permitted. All other matters are considered as part of a subsequent technical details consent application if permission in principle is granted. I have determined the appeal accordingly.
5. As indicated, permission in principle must be housing led. Hence, whilst non-residential development may also be given permission in principle, PPG confirms that housing should occupy the majority of the floorspace of the overall scheme. In this case, a private allotment forms part of the scheme in addition to the range of housing specified. The proposed site plan shows three

houses and an area of land for private allotments. However, this is only illustrative given the nature of permission in principle as a planning permission is only created once the related technical details consent is subsequently granted. Nevertheless, the appellant confirms in his appeal statement of case¹ that 0.1ha of the site would be allotment land, which is broadly consistent with the illustrative layout.

6. Furthermore, in any grant of permission in principle, PPG states that the decision notice must specify the location of the site, the type of development and provide an indication of the amount of development the site has permission in principle for. The amount of residential development must be expressed as a range, indicating the minimum and maximum net number of dwellings. This is clear from the description of development. For any non-residential development there should be a description of the type of development and the scale of development permitted. Whilst the private allotment use is described adequately, the scale is not clearly expressed. Accordingly, I have determined this appeal on the basis that 0.1ha of private allotment land forms part of the proposal.
7. Since the application was determined the Local Plan Partial Update for Bath and North East Somerset Council (LPPU) has been adopted on 19 January 2023. Both parties have had the opportunity to comment on the LPPU as part of their submissions. However, policy RE5 of the Bath and North East Somerset Local Plan 2011-2029 Placemaking Plan, July 2017 which is cited on the decision notice remains unchanged. I am satisfied that no injustice will result from the change in policy circumstances.

Main Issue

8. The main issue is whether the site is suitable for the proposal, having regard to its location, the proposed land use and the amount of development, with particular regard to the effect on the best and most versatile agricultural land (BMV).

Reasons

9. The glossary to the National Planning Policy Framework (the Framework) defines BMV as land in grades 1, 2 and 3a of the Agricultural Land Classification. Paragraphs 174, 175 and footnote 58 of the Framework establish a hierarchical approach which in broad terms seeks to recognise the economic and other benefits of BMV but does not preclude development altogether.
10. Likewise, policy RE5(1) of the PP stipulates that development which would result in the loss of the best and most versatile agricultural land particularly Grades 1 and 2, will not be permitted unless significant sustainability benefits are demonstrated to outweigh any loss. This articulates the balance to be applied in circumstances where there would be a loss of BMV. As it does not establish a specific threshold for its engagement, it is reasonable to deduce that even a small loss would suffice.
11. There is no dispute that the Provisional Agricultural Land Classification (ALC) map categorises the appeal site as Grade 1 land. However, this classification is done at a scale of 1:250,000 which means it does not possess the certainty or nuances of a bespoke assessment for an individual site. A more detailed and

¹ Paragraph 5.5

recent Assessment of Agricultural Land Classification and Soil Resources² accompanied the application. This includes a soil analysis, which indicates fluctuations across the site, with readings that straddle criteria for Grades 1 and 2 such that it is on the borderline between classifications. In these circumstances, the agricultural consultant's recommendation is that it is appropriate to classify the land by the most limiting factor present, and therefore it should not be graded higher than Grade 2.

12. I have not seen substantive technical evidence that undermines the comprehensive findings of the assessment, and on that basis accept that the appeal site comprises Grade 2, very good quality agricultural land for the purposes of policy RE5 of the PP. I am mindful that the appeal site was considered as Grade 1 agricultural land in a recently dismissed appeal decision³ for up to three dwellings. Nevertheless, the Inspector in that case was reliant upon the ALC map and did not have a more detailed assessment before him. Therefore, his findings in relation to the grade of agricultural land, do not outweigh the subsequent soil analysis provided.
13. The proposal would introduce between 2-3 dwellings onto the approximately 0.47ha site which, despite the 0.1ha retained for private allotment use, would inevitably lead to a reduction in land available for agricultural use. It is drawn to my attention that the site is presently sub-divided with approximately 0.15ha being used as part of the domestic curtilage to 2 The Orchard. Be that as it may, the evidence presented does not show that an alternative use to agriculture has been established as lawful. In any event, the proposal would result in the loss of some BMV, and policy RE5(1) of the PP singles out both Grades 1 and 2 for particular mention.
14. The magnitude of harm arising from that loss is likely to be tempered by a number of relevant factors. Firstly, the size of the appeal site is small by commercial agricultural terms, and the ownership is separate to adjoining agricultural land. Secondly, it is triangular in shape which results in notable portions of land forming angled recesses. Thirdly, access is via third party land rather than directly onto the highway. In combination, these would amount to constraints likely to inhibit an efficient use of the land for many agricultural purposes.
15. A small fragment of agricultural land with this configuration would be ill-suited for the operation of larger-scale modern agricultural machinery. Even if direct access onto the highway could be achieved via The Orchard, this would not rectify limitations arising from the size and shape of the land. Evidence provided from a Rural Surveyor⁴ with local knowledge and experience of the area discounts the commercial making of silage, growing cereals, beans or oilseeds on this basis. Moreover, practical difficulties of frequently transporting livestock, feed and/or equipment relative to the size of the land available would remain a deterrent.
16. Consequently, in terms of livestock it would be unlikely to support anything other than low intensity grazing, and in terms of crops there would be some potential for fruit production or market gardening. Accordingly, although of

² Prepared by Reading Agricultural Consultants, dated July 2022

³ Appeal reference APP/F0114/W/22/3291569

⁴ From Cooper and Tanner dated 25 October 2022, Appendix 8, Appellant's Appeal Statement of Case

good quality, in practice these factors would curb the versatility of the land for agricultural purposes and likely level of efficient usage.

17. The evidence describing the historic use of the land tends to reinforce my view. There has been some small scale informal grazing, but for the majority of at least the last 29 years, the land has not been in a commercial farming use⁵. Amongst other things, paragraph 174b of the Framework states that planning decisions should recognise the economic and other benefits of BMV. In this instance, the appeal site has not made a notable economic contribution to the rural economy for a considerable period, and the balance of evidence before me would suggest that would be unlikely to change irrespective of the outcome of the appeal.
18. Although I am mindful that agricultural practices may change in the future, the small scale and awkward shape of the site are nevertheless likely to remain important determinative factors that would suppress the land from reaching a productive capacity commensurate with its grading classification.
19. Moreover, my approach is generally consistent with that of other Inspectors in the appeal decisions⁶ that have been brought to my attention. Although the developments proposed in those cases vary in scale and nature, and for the most part concern different development plan policies to that before me, the agricultural grading, size and historic use of the land are recurring factors considered as part of the respective balancing exercises.
20. Drawing these points together, the degree of harm that would arise from the loss of Grade 2 agricultural land in this case would be limited. It follows that to comply with policy RE5(1) of the PP, significant sustainability benefits must be demonstrated to outweigh that loss.
21. Two principal aspects of the proposal are highlighted in this regard. Firstly, the dwellings would be constructed to Passivhaus standards. As such, they would constitute highly energy efficient buildings. The reference to this standard is included within the description of development and PPG⁷ states that an application for subsequent technical details consent must be in accordance with the permission in principle that is specified by the applicant.
22. In addition, and unlike the proposal before the Inspector in the preceding appeal, 0.1ha of the appeal site would be used to provide allotment land. Hence, it would be likely to facilitate some food production and provide knock-on environmental benefits. These are both matters referred to in the explanatory text that supports policy RE5 of the PP.
23. Other benefits of the proposal include the addition of 2-3 dwellings to the overall housing stock and both short and long term economic benefits derived from their construction and activity of future occupants. Furthermore, although difficult to quantify, it is likely that some social and community cohesive and health benefits might be gained through the provision of allotments.
24. There is little assistance in the wording or supporting text of policy RE5 of the PP as to what would constitute 'significant sustainability benefits'. In the

⁵ Paragraphs 5.23-5.25, Appellant's Appeal Statement of Case

⁶ Appeal references APP/V2255/W/16/3162806; APP/V2255/W/18/3195507; APP/C3810/W/19/3234972; APP/X1735/W/20/3259067 and APP/F0114/W/16/3142676.

⁷ Paragraph: 003 Reference ID: 58-003-20190615

absence of more specific guidance, it is reasonable to have regard to the overarching and wide ranging economic, social and environmental objectives for sustainable development set out in paragraph 8 of the Framework.

25. Considered in isolation, the extent of such benefits derived from a modestly sized scheme, such as the appeal scheme, will be inherently limited by its scale. However, it does not necessarily follow that this would disqualify them from being significant for the purposes of policy RE5, because the balancing exercise in that policy is framed in comparative terms relative to the loss of agricultural land.
26. Considered proportionately in that context, I find that the cumulative sustainability benefits identified would outweigh the limited harm arising from the loss of BMV in this case. Given the notable differences with the previous appeal scheme in terms of the detailed evidence and nature of the proposal, the consequent balancing exercise has led me to a different outcome.
27. Accordingly, the proposal would fulfil the exception for development outlined in the provisions of policy RE5(1) of the PP. Hence, I do not find a conflict in this respect that would render the site unsuitable for the proposal, having regard to its location, the proposed land use and the amount of development.

Other Matters

28. In making my determination, I have had regard to the representations received. These included objections that the appeal site is within the Green Belt and outside of the housing development boundary specified in the development plan. However, the previous Inspector found that permission in principle for up to 3 dwellings would not be inappropriate in the Green Belt as it would constitute limited infilling within a village. He also found that the site was suitably located for the development proposed. In relation to these matters, the effect of the appeal scheme would be broadly similar, and the evidence presented does not suggest otherwise. Consequently, in these respects the previous recent appeal decision carries significant weight. Neither are these concerns pursued by the Council with respect to the appeal scheme. Therefore, I have little basis to disagree with the findings of the Inspector.
29. Other concerns mentioned relate to transportation, the impact on ecology, the size of dwellings, the effect on living conditions, the impact on landscape character and surface water drainage. However, these matters do not fundamentally relate to the limited scope of permission in principle, namely location, land use and amount of development. PPG⁸ confirms that other matters should be considered at the technical details consent stage and I have not seen compelling evidence to show it would be inappropriate to consider the concerns raised at the second more detailed stage. Moreover, the first stage of the permission in principle procedure does not allow for the imposition of conditions. Hence, these matters have had little bearing on my determination.

Conclusion

30. For the reasons set out above, I conclude that the appeal should be allowed.

Helen O'Connor INSPECTOR

⁸ Paragraph: 012 Reference ID: 58-012-20180615