



Appeal Decision

Site visit made on 9 June 2023

by Lewis Condé Msc, Bsc, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25 July 2023

Appeal Ref: APP/F0114/W/23/3315878

Aviemore, Fosseway, Westfield, Bath and North East Somerset BA3 4AU

- 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 R Thorner, Flower & Hayes Ltd, against the decision of Bath and North East Somerset Council.
 - The application Ref 22/03099/FUL, dated 29 July 2022, was refused by notice dated 23 December 2022.
 - The development proposed is described as 'Proposed residential development of 7no. new dwellings with garages and associated parking spaces with adapted highway access, and alteration of the existing dwelling at Aviemore'.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. Since the determination of the original application, the Council has adopted the Bath & North East Somerset Local Plan Partial Update (January 2023) (the LPPU). The update is an interim and partial revision of the Bath & North East Somerset's planning policy framework. The LPPU is a schedule of changes to the Bath & North East Somerset Core Strategy (2014) (the Core Strategy) and the Bath and North East Somerset Placemaking Plan (2017) (the Placemaking Plan). This includes changes to existing policies, as well as the introduction of some additional new policies.
3. Insofar as it is relevant to the appeal proposal, the policies cited on the Council's decision notice have not fundamentally changed and remain part of the development plan. Additionally, parties have had the opportunity to refer to the LPPU as part of their appeal submissions.
4. The appellant has submitted updated site plans¹. The updated plans clarify the proposed landscaping arrangements at the site, including detailing trees/vegetation that are to be retained or removed. The updated plans have not fundamentally evolved the scheme, with the proposed scale, design and layout of the dwellings remaining as originally set out. In addition, the appellant has also provided an updated Biodiversity Net Gain Report to reflect the details within the updated site plans. A unilateral undertaking was also submitted in relation to proposed off-site planting works to address the loss of biodiversity at the site.

¹ Drawing F1667/200 'Simplified Site Plan – Trees and Landscaping proposed, retained and to be removed'; and Drawing F1667/100F 'Proposed Site Plan and Location Plan'.

5. As indicated, the new information does not fundamentally alter the nature of the proposed development scheme. Furthermore, both the Council and interested parties have had an appropriate opportunity to provide representations on the appeal submission, whilst I am aware of the objections that were raised in relation to the original scheme from third parties. Accordingly, I do not consider that any party would be prejudiced by my acceptance of the new information.

Main Issues

6. The main issues are the effect of the proposals on: a) the character and appearance of the area; and b) biodiversity.

Reasons

Character and Appearance

7. The appeal site comprises an existing residential dwelling 'Aviemore' together with an adjacent plot of land that sits on the corner of Fosseway and First Avenue. At the time of my site visit much of the appeal site was covered in dense scrub, additionally, it contains several mature trees and hedgerow, mainly along its boundaries.
8. Fosseway (the A367) is a long main thoroughfare in the area, although the section on which the appeal site lies is primarily residential in nature. It contains a mix of dwelling types that vary in their precise character and appearance. This includes terrace properties opposite the site and to the south along with several detached properties nearby including south of Aviemore. Despite variations in appearance, dwellings in the vicinity of the site share a general consistency in layout by predominantly fronting onto the street and being set back behind front gardens. This conveys some sense of space and helps to soften the urban grain.
9. Meanwhile to the rear of the site, beyond an existing band of mature vegetation, lies an industrial estate which can be accessed from First Avenue.
10. The appeal proposal would involve alterations to the existing property of Aviemore, as well as the creation of seven new residential units. These would comprise two pairs of semi-detached dwellings (plots 1-2 and 3-4) which would be located towards the front of the site with frontages onto Fosseway. A further three detached dwellings would be set back behind plots 1 – 4 and would be arranged around a shared courtyard.
11. To accommodate the level of proposed development, plots 1 to 4 are located extremely tight to the site's boundary with Fosseway. Whilst small strips of garden would be provided to the front of these plots, these gardens would be diminutive in scale and would not reflect the depth of those serving neighbouring properties, including the terrace properties opposite. As such, the proposed dwellings would sit uncomfortably close to the highway and result in a rather harsh and dominant form of development in the streetscene. This would contrast markedly with the surrounding built form resulting in the proposed development appearing as an incongruous feature that would appreciably harm the character and appearance of the area.
12. Indeed, the very close relationship of plots 1 – 4 to the public highway would serve to emphasise that the appeal scheme, as a whole, would be a rather

cramped form of development that does not appropriately relate to the layout nor character of its surroundings. This is despite the individual proposed dwellings being of a generally suitable scale and appearance, whilst also being served by adequately sized plots.

13. Furthermore, the proposed development would result in the removal of significant levels of mature vegetation, particularly along the site's western and northern boundaries. Much of the vegetation to be removed may be hedgerow/trees of poor specimen quality, but it still collectively provides greenery and visual relief to an otherwise largely built-up area. It also helps to somewhat soften the transition between the primarily residential area along Fosseyway and the nearby industrial estate. I therefore consider that the existing vegetation on site, notably the boundary planting along Fosseyway and First Avenue, provides a significant and positive contribution to the area's green infrastructure.
14. The loss of much of the existing vegetation along the western and northern boundaries would therefore also harm the character and appearance of the area. Whilst there may be opportunities to introduce additional soft landscaping at the site, the proposed siting of several dwellings would limit the ability for suitably mature vegetation to take effect along the above key boundaries. In coming to the above view, I acknowledge that any future development of the site (including the previous permission ref: 19/03942/FUL) may result in pressure to remove the existing hedgerow (H4) along Fosseyway. However, under such circumstances there is likely to be a greater opportunity to provide appropriate replacement planting.
15. I note the appellant's arguments that the proposal would make efficient use of the site, with my attention having been drawn in particular to paragraphs 119 and 120 of the National Planning Policy Framework (the Framework). Together these promote the development of under-utilised land to help meet the need for homes. However, this is not at the expense of well-designed development, which is also promoted by the Framework, notably by ensuring that development accords with the criteria set out in paragraph 130. Due to the proposed development not being sympathetic to its surroundings, I do not consider that the proposal would make efficient use of the land.
16. The Council has also raised concerns regarding the proposed use of reconstituted stone in the construction of the proposed dwellings. However, I am less concerned about this aspect of the proposal, given that properties nearby vary in their precise appearance. Additionally, I observed several examples nearby of reconstituted stone buildings sitting alongside those of natural stone. In the event that planning permission was to be granted, a suitably worded condition could also be used to control the precise external materials for use.
17. Nevertheless, it remains that the proposed layout and cramped form of development would be odds with its surroundings, with resultant harm to the character and appearance of the area. It would therefore conflict with Policies D1, D2, D3, NE1, NE6 and CP6 of the Bath and North East Somerset Core Strategy and Placemaking Plan incorporating the Local Plan Partial Update (adopted 2023) (the CS&PP). Collectively the policies, amongst other matters, seek to ensure that development proposals are of a high standard of design,

that do not harm local character and distinctiveness, as well as maximise opportunities for the effective use of green infrastructure.

Biodiversity

18. CS&PP Policy NE3 seeks to prevent new development from causing harm to biodiversity. The policy prioritises the avoidance and minimisation of harm to biodiversity, but where this is not possible seeks for appropriate mitigation/compensation to be provided. CS&PP Policy NE3a requires that new developments secure an appropriate net gain of biodiversity against relevant DEFRA metrics (or agreed equivalents). Additionally, CS&PP Policy NE5 expects development proposals to maintain or create local ecological networks, through habitat creation, protection, enhancement, restoration and/or management.
19. There were inconsistencies between the appellant's plans, ecology and arboricultural statements submitted as part of the original application. The Council also identified further limitations with the appellant's Biodiversity Net Gain (BNG) calculations. As such, compliance with the requirements of the above policies could not be suitably demonstrated.
20. The appellant has subsequently provided updated site plans clarifying the trees and landscaping that are proposed to be retained and removed from the site, as well as an updated BNG calculation. A Unilateral Undertaking (UU) was also provided at the outset of the appeal to enable proposed off-site mitigation measures to be secured. Whilst the Council has outlined concerns with the acceptance of this additional information, as indicated previously, I am satisfied that no party has been prejudiced by my consideration of the new material.
21. The updated information addresses previous inconsistencies between the appellant's reports/plans. It also suitably outlines the baseline ecological characteristics of the site and defines areas of existing habitat that will be retained on site. The proposed development would result in a net loss of biodiversity on site, however, the appellant has proposed to off-set this through relevant mitigation measures at an alternative site.
22. I understand that the proposed off-site mitigation measures would link to an area of off-set BNG from another development project that has been approved by the Council. The proposed use of off-site mitigation would enable the current appeal proposal to deliver approximately 12% gain in habitat units.
23. The Council has acknowledged that should the updated ecology information be considered, the proposed scheme would be capable of adhering to its adopted biodiversity policies, subject to amendments to the UU and the use of relevant conditions on the grant of a permission. Such conditions would include the need for a biodiversity gain and habitat management plan and full details of a wildlife protection and enhancement scheme. From the evidence before me, I see no reason to disagree.
24. The appellant has not raised concern with the use of such conditions and has provided an updated UU in response to the Council's comments. I am therefore satisfied that the proposal would adhere to CS&PP Policies NE3, NE3a and NE5.
25. Despite compliance with the above relevant policies, including the benefits of a modest net gain in biodiversity, this does not overcome my concerns with the first main issue.

Other Matters

26. I recognise that the main parties are not in dispute over several matters including the principle of residential development at the site, highway safety, flood risk and the proposal's impact on living conditions of existing and future residents. Nonetheless, this is to be expected of new development and therefore does not weigh in favour of the proposed scheme.
27. The appeal scheme would provide socio-economic benefits associated with the delivery of new dwellings both through the construction process and subsequent use. However, given the scale of the proposal such benefits would be relatively modest and would not outweigh the identified harm.

Conclusion

28. For the reasons given above, the appeal scheme would conflict with the development plan as a whole and there are no material considerations worthy of sufficient weight that would indicate a decision other than in accordance with it. The appeal is therefore dismissed.

Lewis Condé

INSPECTOR