



Appeal Decision

Site visit made on 18 July 2023

by Martin Allen BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 09 October 2023

Appeal Ref: APP/Q3305/W/22/3313309

Land adjacent to Whitemill, Marston Lane, Frome

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Frome LVA LLP against the decision of Mendip District Council.
 - The application Ref 2021/1395/OTS, dated 10 June 2021, was refused by notice dated 1 August 2022.
 - The development proposed is an outline planning application for 5no. self-build dwellings and associated works with details of access and all other matters reserved.
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Decision

1. The appeal is allowed and planning permission is granted for an outline planning application for 5no. self-build dwellings and associated works with details of access and all other matters reserved at Land adjacent to Whitemill, Marston Lane, Frome in accordance with the terms of the application, Ref 2021/1395/OTS, dated 10 June 2021, subject to the conditions set out in the attached Schedule.

Applications for costs

2. An application for costs was made by Frome LVA LLP against Mendip District Council. This application is the subject of a separate decision.

Preliminary Matters

3. Reason for refusal four states that it is the effect of the proposal on the dwelling of 61 Critchell Road that the Council have concern over. However, it has since been clarified that this should refer to the property of Whitemill. I have determined the appeal on the basis of this correction.

Main Issues

4. The main issues are:
 - Whether the proposed development accords with the spatial strategy of the development plan,
 - Whether safe and convenient access to the site can be achieved,
 - The effect of the proposal on the character and appearance of the area, and
 - The effect of the proposal on the living conditions of the occupiers of Whitemill, with particular regard to any overbearing effect.

Reasons

Spatial Strategy

5. Core Policy 1 of the Mendip District Local Plan (adopted December 2014) (the Local Plan) sets out the strategy for the location of new development within the district. Amongst other things, this policy states that development in the countryside will be strictly controlled, and only exceptionally permitted in line with the provisions of Core Policy 4.
6. The Council's reason for refusal refers to Core Policy 2 of the Local Plan. This policy specifically relates to supporting new housing, setting out the number of dwellings that are expected to be delivered and where; referring to locations within the settlement boundaries, as well as strategic sites, together with sites outside of settlement boundaries identified through a site allocations process.
7. The site is located outside of the settlement boundary, does not accord with the provisions set out in Core Policy 4 and has not been identified as a site suitable for development through any site allocation process. Thus, the proposed development conflicts with Core Policies 1, 2 and 4 of the Local Plan.

Access

8. The matter of access is for detailed consideration at this stage and the submitted details show a new vehicular access positioned centrally along the frontage of the site, joining Marston Lane. Details have also been submitted showing the provision of visibility splays on either side of this new access, measuring 2.4m x 35.7m to the south and 2.4m x 36.4m to the north.
9. While the stretch of road onto which the access would be positioned is subject to a 30 mile per hour (mph) speed limit, the submitted speed survey highlights that speeds are generally below this, with the 85-percentile speed at 26.5mph. This is likely due to a narrowing of the carriageway at this location, with vehicles slowing when they approach. Nonetheless, the road is wide enough for two cars to pass.
10. The Council asserts local knowledge as the basis for concern over the site access. However, there is no substantive, objective evidence to show that traffic speeds are above that identified in the speed survey. At the time of my visit, I was also aware of traffic slowing due to the narrowing of the road. In my view, in the absence of corroborative evidence to the contrary, I find that the proposed scheme would provide sufficient visibility of oncoming vehicles so that there would be no risk to highway safety.
11. As mentioned, there is a narrowing of the road at this location. However, I observed that two cars were able to pass. In the event of larger vehicles using this section, there is sufficient forward visibility along the highway to ensure that drivers of vehicles would be able to see oncoming large vehicles. I am content that such situations will likely exist currently and there is nothing before me to convince me that the road is unsafe, or that the increase in the traffic associated with the addition of five properties, at a location with a substantial number of existing accesses joining the highway, would result in it becoming so.
12. Some concern has been raised by interested parties in respect of the ability to achieve the necessary visibility splays without the need to include land not

within the control of the appellant. However, the submitted drawings indicate that the required visibility splays can be achieved over land within the appellant's control and the public highway. Therefore, this matter does not weigh against the scheme.

13. I am also conscious that the technical consultee and highway authority, Somerset County Council, raises no objection to the development, further reinforcing my view that the proposed access arrangements are safe.
14. Thus, a safe and convenient access to the site can be achieved and accordingly the scheme accords with policy DP9 of the Local Plan, as far as it seeks to ensure that development makes safe and satisfactory provision for access. The scheme would also not conflict with the highway safety aims of the National Planning Policy Framework (the Framework).

Character and appearance

15. The appeal is located to the western fringe of Frome and occupies a position along a ridge which, as the Council highlights, defines the boundary between the town and the surrounding countryside. To the west of the site ground levels fall away and as a result the ridgeline is visible from vantage points in the surrounding area. Policy D3 of the Frome Neighbourhood Plan identifies the site as within Skyline Area Site B, where it is required that new buildings demonstrate that there will be no unacceptably detrimental impact on the skyline of the area.
16. The appeal scheme would result in dwellings positioned near to Marston Lane, where there is already built development present. The appeal site does not extend to the western edge of the ridgeline, which is most visible from the surrounding area. As a result, the scheme would be viewed within the context of the existing development, and it is with this built form that it would share a close association.
17. I observed that from vantage points further to the west, from along Frome Road, there are views towards the appeal site. However, along the ridge, built development is already visible. The appeal site lies between groups of dwellings and would nestle between these in these longer distance views. Moreover, it would not extend downslope, which would limit its overall visual effect. Therefore, the scheme would not harmfully degrade the transition between the town and the countryside but would sit comfortably within the existing built form of the settlement.
18. There is also concern in respect of the effect of the creation of the new access along Marston Lane, in particular the loss of what is alleged to be a natural hedgerow. At my site visit, I observed that the boundary treatment along the highway comprises a stone wall which was significantly overgrown by brambles. This was not a defining feature of the character or appearance of the surrounding area. Indeed, there was a variety of other boundary features present, and numerous vehicular accesses joining the road. As such, I do not agree that the loss of the roadside wall and brambles would have any harmful effect, particularly as details of the treatment of the boundary along the highway can be secured at reserved matter stage.

19. My attention has been drawn to an appeal decision¹ for residential development along Marston Lane, where it was found that the scheme considered within that decision would be harmful to the character and appearance of the area. However, that scheme was for up to 150 dwellings and thus would have covered a considerably larger area and extend considerably further into the countryside. Also, that scheme would have brought built form over the ridgeline and down an attractive and prominent slope. This is patently not the case with the appeal scheme. As a result, it is not a comparable scheme to that which is before me. I can therefore draw no useful comparison from that decision.
20. Accordingly, I find that the proposal would have an acceptable effect on the character and appearance of the area, and would not conflict with policies DP1, DP4 and DP7 of the Local Plan. Together, and amongst other things, these policies seek to ensure that development contributes positively to local distinctiveness, does not degrade the quality of the local landscape and is of a scale, form, and layout appropriate to the local context. There would also be no conflict with the design aims of the Framework.

Living conditions

21. Whitemill is a dwelling located to the northwest of the appeal site and the Council highlights that it lies at a lower ground level, but do not refer to any specific measurement. The appellant states there is around a 1.5 metres difference. Even accepting the difference in levels, there is in my view sufficient separation between the appeal site and the existing property to ensure, subject to appropriate details at reserved matters stage, that there will be no overbearing effect on the occupiers of this property. This is particularly so given the open nature of the land surrounding the property.
22. I therefore find that the proposal would not have any unacceptable effect on the living conditions of the occupiers of Whitemill, having regard to any overbearing effect. Thus, there would be no conflict with policy DP7 of the Local Plan, insofar as it seeks to ensure development protects the amenity of users of neighbouring buildings. There would also be no conflict with the living condition protection aims of the Framework.

Planning Balance

23. It is common ground between the main parties that the Council is currently unable to demonstrate a five-year supply of deliverable housing sites. While the differing figures are provided by the Council and the appellant, given that both figures are below the required five-year supply, it is not necessary for me to explore this further. The lack of a five-year supply of deliverable housing sites results in the presumption in favour of sustainable development, as envisaged by paragraph 11 of the Framework, being engaged.
24. I have identified that the scheme would conflict with the locational strategy of the development plan. This relates only to the location of the site outside of the settlement boundary. It is however located directly adjacent to it. While there would be no harm to highway safety, the character or appearance of the area, or to the living conditions of neighbouring occupiers, this lack of harm is a neutral matter in the planning balance. Nonetheless, with these factors in

¹ APP/Q3305/W/22/3306827

mind, I accord only limited weight to the harm that would result from the development through the conflict with the locational strategy.

25. To be balanced against this limited harm are the benefits that would accrue from the development. These include the provision of five new self-build dwellings, where there is good access to services without the need to rely on the private car. There would also be economic benefits through the construction of the development and support for local business through an increase in the population of the area.
26. Overall, I consider that the package of benefits that would result from the development should be given significant weight in the planning balance, particularly as the appeal scheme would deliver new housing, including self-build units. As I have identified above, I accord limited weight to the harms that would result. Accordingly, in my judgement the negative factors resulting from the proposals, namely the conflict with locational policy, do not significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole. Thus, the planning balance indicates that a decision should be taken other than in accordance with the development plan.

Other Matters

Nature sites

27. The appeal site lies within the Mells Valley Special Area of Conservation (SAC) and the Mendip Woodlands SAC. Given the location of the site within these designations and that I find the scheme is acceptable in relation to the other main issues, such that I would be minded to allow the appeal on those matters, I must undertake an Appropriate Assessment (AA), to consider what impacts, if any, the development would have on these designated areas. I have undertaken this assessment on a proportional basis, drawing on the information provided by the Council and adopting a precautionary approach.
28. The Mells Valley SAC is designated for populations of Greater Horseshoe bats, semi-natural dry grasslands, and scrubland facies, as well as caves. The bat population is sustained by foraging habitat, as well as hedgerows used for commuting and foraging. The proposed development has the potential to impact this species through the loss or degradation of foraging habitat, the severance of flight lines and disturbance from new artificial light.
29. The Council identifies that in respect of the semi-natural dry grasslands and scrubland facies and caves of the Mells Valley SAC, as well as the Mendip Woodlands SAC, there would be no pathway of potential impact and thus no likely significant effect. I agree with this finding. However, the development would result in a likely significant effect on the bat population of the Mells Valley SAC. Consequently, this effect needs to be mitigated, in order to overcome the harm and make the development acceptable in planning terms. This aligns with the Council's own AA.
30. Natural England has been consulted on the AA undertaken by the Council, the findings of which I have agreed with. On the basis of this, NE has no objection to the proposals provided that appropriate mitigation is secured, in the form of a detailed ecological scheme to be submitted at reserved matters stage, a Construction Environmental Management Plan (CEMP) and details of lighting

within the site. Thus, subject to securing the mitigation, the scheme would not have an adverse effect on the nature conservation interests of nearby designated nature conservation sites. The ecological scheme can be secured by way of planning obligation, as discussed below, and the CEMP and lighting details by way of planning condition.

31. Subject to this mitigation being secured, the scheme would accord with policies DP5 and DP6 of the Local Plan, insofar as they seek to ensure that development must ensure the protection of important species and protect bat populations.

Planning obligation

32. The appellant has submitted a signed and completed Unilateral Undertaking (the UU) under Section 106 of The Town and Country Planning Act 1990. This undertaking seeks to secure that all of the dwellings constructed as part of the development will be Self-Build dwellings, as defined in the Self-Build and Custom Housebuilding Act 2015.
33. In addition to this, the UU also secures the provision of Biodiversity Net Gain, a Landscape Ecological Management Plan, Surface Water and Foul Water Drainage Strategies, as well as to establish a Management Company to ensure that the above are managed in the future.
34. The Council has been given the opportunity to comment on the submitted UU and without prejudice to its case that permission should not be granted, further to the stated reasons for refusal, it accepts the contents of the UU in the majority, with a number of amendments suggested to Schedule Four – Management Company. The Council considers that additions to this part of the UU should be incorporated which, in particular require that the appellant provide financial details in relation to the funding arrangements of the management company prior to occupation, and suggested insertions are provided in this respect.
35. In respect of the obligations pertaining to self-build housing, drainage, and ecological matters, I am satisfied that the obligations as contained within Schedules One to Three (inclusive) accord with the planning obligation tests as laid out in paragraph 57 of the Framework and Regulation 122 of the Community Infrastructure Levy Regulations.
36. Schedule Four seeks the establishment of a Management Company, which is to be responsible for the ongoing management of the above features. However, I am conscious that the future maintenance and management of these matters is specifically secured in the respective schedules of the UU. Given the scale of the development, at only five dwellings, in my view it is not necessary for a further mechanism of control to be imposed through a management company. To do so would be an obligation that is not fairly and reasonably related in scale and kind to the development. Thus, this part of the UU fails to meet the statutory and policy tests I refer to above, and the appellant should not be held to this specific obligation. The others remain relevant and necessary.

Additional matters raised

37. Comment has been made of the lack of infrastructure and services within the settlement, including health and education facilities, and that there is no capacity to cater for the proposed development. No substantive evidence has

- been submitted to demonstrate that there would be any unacceptable effect in respect of these matters.
38. Interested parties also make reference to the possibility of brownfield sites being available elsewhere, as well as that there are other development taking place within the settlement which will deliver new housing, that permitting the scheme would set a precedent, that there would be potential for further development nearby and the presence of a covenant on adjoining land. These matters are noted but are not sufficient to dissuade me from my findings above.
39. Concern is raised that dwellings could be positioned within the root protection area of trees. However, the matter of layout is not for determination at this stage and as such this has little bearing on my decision.
40. Mention is also made that the site was considered and rejected for inclusion within the Local Plan, at the time it was examined by an Inspector. However, that consideration was made in 2000, a considerable time ago. Moreover, there is nothing that convinces me that a detailed scheme was considered and thus the findings of the Inspector at that time do not lead me to conclude that the appeal scheme that is before me is unacceptable.
41. In terms of biodiversity, the development would result in the loss of part of a field as well as some of the existing boundary features. However, there is no substantive evidence that the scheme, subject to mitigation as set out above, would result in any unacceptable effect in this regard.
42. Mention is made of possible overshadowing of neighbouring properties, however given the separation distances involved, together with the location of existing properties in relation to the appeal site, I find that there would be no significant or unacceptable shadowing of nearby dwellings.

Conditions

43. When considering the suggested conditions, I have borne in mind the tests laid out in paragraph 56 of the Framework.
44. I have imposed the standard conditions for an outline planning permission, albeit I have allowed additional time in recognition of the scheme being self-build. In the interests of certainty, I have also imposed a plans condition, albeit that I have removed some stated extraneous plans that were suggested.
45. A condition has been suggested to inform the submission of future reserved matters. This includes the stipulation of car parking provision. However, control in this respect would be possible through the reserved matter of layout. I do however consider it necessary to require details of energy efficiency in the interests of environmental sustainability. Additionally, to ensure a satisfactory form of development, details of design principles are also required, as well as visual effects. I do not consider details of heights and the treatment of the western edge of the development are necessary as these also are matters that can be controlled through future reserved matters applications.
46. In the interests of highway safety, conditions are required in respect of the construction of the vehicular access and visibility splays. To prevent degradation of the environment, a condition is required in respect of drainage.

47. So that the scheme has an acceptable effect on matters of biodiversity importance, conditions are also required in respect of a Biodiversity CEMP as well as external lighting. The appellant has requested that a number of conditions, including those in respect of biodiversity protection, be phased in recognition of the self-build nature of the proposal. While this is noted, given the findings of my own and the Council's AAs, together with the comments provided by Natural England, I am not satisfied based on the information available to me that allowing this information to be provided on a phased basis, and not in a comprehensive manner, would ensure that these matters are appropriately addressed.
48. To ensure that there would be no unacceptable effects on the living conditions of nearby occupiers or on highway safety during the course of the development, a Construction Management Plan is required.
49. A condition is suggested requiring details of levels, and adherence with parameters for heights. While I consider details of levels are necessary, the matter of building heights can be controlled through approval of the details of appearance as a reserved matter.
50. The suggested condition in respect of the retention of garages is not necessary at this stage, as only the matter of the means of access to the site is for determination. Similarly, the suggested condition in respect of accordance with approved landscaping details is not required, as landscaping is not for determination at this stage. For this reason, as layout and landscaping are for future determination, a tree protection condition is not necessary at this stage.

Conclusion

51. For the reasons given above, and having regard to all matters raised, I conclude that the appeal should be allowed.

Martin Allen

INSPECTOR

SCHEDULE OF CONDITIONS (12)

1. The development hereby permitted shall be begun either before the expiration of five years from the date of this permission, or before the expiration of two years from the date of approval of the last of the reserved matters to be approved, whichever is the later.
2. Details of the appearance, landscaping, layout, and scale (hereinafter called "the reserved matters") for each plot shall be submitted to and approved in writing by the local planning authority before any development takes place on that plot and the development shall be carried out as approved.
3. Application for approval of the reserved matters shall be made to the local planning authority not later than 5 years from the date of this permission.
4. The development hereby permitted shall be carried out in accordance with the following approved plans/documents:
 - Drawing Numbers 2 001G, 2 010A, 2 110F and 4473 002 Rev A.
 - Ecological Impact Assessment.
5. With the first reserved matters submission each respect of each plot, the plans and particulars shall include details of:
 - an Energy Efficiency Statement Incorporating into development scheme practical measures to achieve energy efficiency through siting, layout and, design and renewable energy generation.
 - Design principles for the site area to include the following:
 - How the proposals integrate/assimilate with the built edge of Frome and respond to the existing built character; and
 - The impact of the new roof lines within wider views.
6. No occupation of the development shall commence until the visibility splays shown on drawing number 4473-002A have been provided. There shall be no obstruction exceeding 300mm above ground level within the visibility splay. The visibility splay shall be retained permanently thereafter.
7. No occupation shall commence until the approved vehicular access has been constructed with a bound and compacted surfacing material (not loose stone or gravel) for the first 6 metres of its length as measured from the edge of the adjoining carriageway. The access shall be retained as such thereafter.
8. Notwithstanding the details submitted, no development shall commence until a surface water drainage scheme for the site, based on sustainable drainage principles and an assessment of the hydrological and hydrogeological context of the development, has been submitted to and approved in writing by the Local Planning Authority. Discharge from the site shall be restricted to greenfield rates of runoff with attenuation provided up to the 1 in 100 year plus 40% climate change event. The scheme shall include a programme of phasing, implementation, and maintenance for the lifetime of the development and subsequently be implemented in accordance with these approved details.
9. No development shall take place (including demolition, ground works, vegetation clearance) until a construction environmental management plan

(CEMP: Biodiversity) has been submitted to and approved in writing by the Local Planning Authority. The CEMP (Biodiversity) shall include the following:

- Risk assessment of potentially damaging construction activities.
- Identification of "biodiversity protection zones".
- Practical measures (both physical measures and sensitive working practices) to avoid or reduce impacts during construction (may be provided as a set of method statements), including: protection measures for retained trees and hedgerows; sensitive vegetation clearance measures for amphibians, reptiles, nesting birds and hedgehogs; safeguarding measures for bats; and safeguarding measures for badgers including buffer zones.
- The location and timing of sensitive works to avoid harm to biodiversity features.
- The times during construction when specialist ecologists need to be present on site to oversee works.
- Responsible persons, lines of communication and written notifications of operations to the Local Planning Authority.
- Use of protective fences, exclusion barriers and warning signs.
- Ongoing monitoring, including compliance checks by a competent person(s) during construction and immediately post-completion of construction works.

The approved CEMP shall be adhered to and implemented throughout the construction period strictly in accordance with the approved details.

10. No external lighting shall be erected or provided on the site until a "lighting design for bats" has been submitted to and approved in writing by the Local Planning Authority. The design shall show how and where external lighting will be installed (including through the provision of technical specifications) so that it can be clearly demonstrated that areas to be lit will not disturb or prevent bats using their territory or having access to their resting places. All external lighting shall thereafter be installed in accordance with the specifications and locations set out in the design, and these shall be maintained thereafter in accordance with the design. No new external lighting, other than that shown on the approved plans, shall be installed within the boundary of the application site unless in accordance with details that shall have first been submitted to and approved in writing by the Local Planning Authority.
11. No development on each plot shall take place until a Construction Management Plan for that plot has been submitted to and approved in writing by the Local Planning Authority. The Statement shall provide for:
 - the parking of vehicles of site operatives and visitors,
 - loading and unloading of plant and materials,
 - storage of plant and materials used in constructing the development,
 - wheel washing facilities,
 - measures to control the emission of dust and dirt during construction, and
 - delivery and construction working hours.The development shall thereafter be undertaken in accordance with the approved Construction Method Statement.
12. No development on each plot shall take place until full details of the finished levels, above ordnance datum, of the ground floors of the proposed

buildings, in relation to existing ground levels, for that plot have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved levels.

END OF SCHEDULE