



Appeal Decision

Site visit made on 15 January 2024

by Laura Cuthbert BA(Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 29 February 2024

Appeal Ref: APP/F0114/W/23/3324673

Amenity Land Opposite Fernside, Deadmill Lane, Lower Swainswick, Bath BA1 6TD

- 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 Millen Homes Ltd against the decision of Bath and North East Somerset Council.
 - The application Ref 23/00893/FUL, dated 7 March 2023, was refused by notice dated 18 May 2023.
 - The development proposed is development of 2 detached dwellings.
-

Decision

1. The appeal is dismissed.

Preliminary Matters

2. Since the appeal was made, a revised National Planning Policy Framework (the Framework) was published on 19 December 2023. I have taken the revised Framework into account as part of the determination of this appeal.
3. The main parties have set out the relevant planning history related to the site, which includes 2 previous appeal decisions¹, which were both dismissed. These earlier decisions related to proposals for 18 affordable dwellings and then subsequently 15 affordable dwellings on the site. I have had regard to these earlier decisions insofar as they are relevant to the proposal before me now.

Main Issues

4. The main issues are:
 - whether the proposal is inappropriate development in the Green Belt having regard to the National Planning Policy Framework and any relevant development plan policies, taking in to account the effect of the proposal on the openness of the Green Belt;
 - the effect of the proposal on the character and appearance of the area, having particular regard to the effect on the significance of the Bath Conservation Area and the City of Bath World Heritage Site as designated heritage assets through development in it and within its setting, and the non-designated heritage asset known as Dead Mill, through development within its setting;
 - the effect of the development on highway safety, with specific regard to pedestrian and vehicular access, and parking provision;

¹ APP/F0114/W/20/3260800 and APP/F0114/W/22/3299768

- the effect of the proposed development on protected species, most notably bats, badgers and reptiles, including whether the proposal would involve the net loss of biodiversity;
- whether surface water from the development site would be adequately dealt with;
- whether the proposal would make adequate provision for sustainable construction standards;
- the effect of the proposed development on trees; and
- if the proposal is inappropriate development, whether the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations so as to amount to the very special circumstances necessary to justify the development.

Reasons

Whether the proposal is inappropriate development in the Green Belt

5. The appeal site is located within the Green Belt. Paragraph 154 of the Framework states that the construction of new buildings in the Green Belt shall be regarded as inappropriate development. Paragraphs 154 and 155 of the Framework lists a number of exceptions to this. One of the exceptions, criterion g) of paragraph 154, is the limited infilling or the partial or complete redevelopment of previously developed land, as long as this would not have a greater impact on the openness of the Green Belt than the existing development.
6. The appeal site consists of a sloping, open, parcel of land, which is heavily overgrown. There is a dilapidated building, which is of stone and timber construction and known as the 'Bakehouse', positioned in the southwestern corner. It is now integrated into the site, forming part of the boundary wall. Also on the land is a small poly tunnel and 2 dilapidated sheds. The southern boundary abuts Ferndale Road and is enclosed with a stone wall.
7. I acknowledge the definition of 'previously developed land' (PDL) in the glossary of the Framework. In this instance the existing buildings on site are relatively small and its associated greenfield is large in comparison. Although the Framework's definition of PDL covers the curtilage of an existing permanent structure, it clearly points to this not indicating that the entire development of this is therefore necessarily appropriate. I also note the allegation that third parties state that the 'Bakehouse' has been more recently used for the keeping of pigs, so could now fall under the definition of agriculture and thus would be excluded from being PDL.
8. Furthermore, I note the 'Bakehouse' building has not been in use as either Class E or B uses for approximately 25 years, which is evident from the derelict appearance of the building. The appellant states that land cannot be disregarded as PDL simply given the passage of time since last use. However, the tailpiece sentence of the definition in the glossary states that 'land would also be excluded from being considered as PDL where 'the land that was previously developed but where the remains of the permanent structure or fixed surface structure have blended into the landscape'. This would be

applicable to the appeal before me and therefore, on the balance of probabilities, I consider that the site is not PDL in the terms of the Framework.

9. The appellant also argues the site constitutes 'limited infilling'. I accept that there is no definition in the Framework of what constitutes "infilling". However, the Bath and North East Somerset Placemaking Plan (Placemaking Plan) (2017) defines 'infilling' as 'the filling of a small gap in an otherwise built-up frontage, usually consisting of frontage plots only'.
10. The existing terrace of Ferndale Road lies to the south of the site, on the opposite side of the road. There are also further dwellings along Ferndale Road to the east, although these do not have a frontage to the main road as they are positioned at a 90 degree angle to the highway. The built form to the west of Deadmill Lane is much more sporadic. Therefore, due to the variety in the density and positioning of the surrounding built form, I am not convinced that the appeal site would be within an 'extensively built-up frontage'. Consequently, the proposal would not represent infilling in the Green Belt.
11. Nevertheless, even if I were to find the proposal to be either 'limited infilling' or 'redevelopment of PDL, in order to not be considered as inappropriate development, the proposal must also not have a greater impact on the openness of the Green Belt than the existing development.
12. Paragraph 142 of the Framework states that the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open; the essential characteristics of Green Belts are their openness and their permanence. For the purposes of this appeal, I have considered both the visual and spatial aspects of openness.
13. There are existing buildings on the site. However, the site is overgrown and consequently, these buildings, notably the Bakehouse, are not obvious features within the landscape. They sit relatively unobtrusively in the Green Belt, without causing any harm to visual openness, in part due to their modest size.
14. Whilst the proposed dwellings would be single storey, with 'low profile, flat sedum and wildflower roofs', due to their much greater volume, height and massing, they would not preserve the openness of the Green Belt. The erosion of three-dimensional space arising from the overall size of the buildings would cause loss of both visual and spatial openness of the Green Belt. The proposal would therefore have a greater impact on the openness of the Green Belt than the existing development.
15. Furthermore, whilst the use of an eco-grid system for the access and parking area would help to reduce the visual impact, it would still be reasonable to expect a more intensive residential use of the land immediately around the proposal, including planting and domestic paraphernalia. The presence of parked vehicles and associated activity would result in the intervening space around the building having a considerably more domestic and urbanised appearance, in stark contrast with its existing use. As such, in spatial terms, the proposal would harm the openness of the Green Belt, albeit to a limited degree given the scale of the proposed development.
16. Therefore, the proposal would fail to accord with any of the exceptions set out in paragraphs 154 or 155 of the Framework and would have a greater impact on the openness of the Green Belt than the existing development. It would be

inappropriate development under the Framework and Policy CP8 of the Bath and North East Somerset Core Strategy (July 2014) (the Core Strategy) which is, by definition, harmful to the Green Belt. It would also conflict with Policy B1 of the Placemaking Plan, which states that subject to other material considerations, residential development will be acceptable in principle provided the proposal lies within the existing urban area of Bath as defined by the Green Belt boundary. In this regard, the principle of residential development in this location would not be supported.

Character and Appearance

17. The appeal site is a prominent corner plot, in an elevated position, at the junction of Ferndale Road and Deadmill Lane. It is at the northern edge of Bath, in an area known as Larkhall. The built form is much more regular to the south and east of the site, with more sporadic housing to the west and open countryside to the north. Consequently, the appeal site currently eases the transition from the built up form of Larkhall into the open countryside beyond and contributes positively to the rural setting of Larkhall due to its largely undeveloped nature.
18. Whilst the site might not be within the 'rural area of Bailbrook Lane beyond Gloucester Road', the site does provide 'an open green extension of the countryside into the city', as a previous Inspector found². Furthermore, Deadmill Lane encloses the site to the west and by virtue of its narrow form, lack of footpaths and sporadic street lighting, it has a much more rural feel. The appeal site forms an important role in the rural setting of Larkhall, reflective of the transition into the surrounding countryside.
19. The character of the properties in the immediate area is varied, including two storey Victorian terraces along Ferndale Road to the south, a set of 3 terraces of post-war housing to the east and more sporadic detached properties to the west. There is also a nursing home to the east of the Ferndale Road terrace. This variation in built form is reflected within the Larkhall Character Statement and Development Principles (March 1998) (the Larkhall Character Statement) which states that it is defined by pre and post war housing. The rural character of the area is also reflected within the Larkhall Character Statement. Thus, the open nature of the appeal site contributes positively to the local character of the existing built environment.
20. The appeal site is bordered on the eastern and southern boundaries by the Bath Conservation Area (the CA). The CA is a city-wide designation and consequently, it covers a large area. For the purposes of this appeal, the significance of the CA derives from the buildings within it, the historic planned nature of the city and open spaces. The setting of the CA derives from its relationship with the countryside beyond.
21. Whilst the appeal site is itself outside of the CA, due to its proximity to the CA, it forms part of the clear transition to a more rural character, from the more built up form of Larkhall to the south. It helps to give an understanding of the development of the Larkhall suburb, and its undeveloped nature contributes positively to its rural setting, and thus the significance, of the CA.

² Paragraph 9 - APP/F0114/W/22/3299768

22. The site is also within the City of Bath World Heritage Site (WHS) which is a designated heritage asset of the highest significance. The Statement of Outstanding Universal Value (SoOUV) is the primary source for understanding the significance of the WHS. The main attributes of the WHS as set out in the SoOUV are its Roman Archaeology, the Georgian Town Planning and Architecture, and the green setting of the city. The appeal site is considered to form a positive contribution towards the green setting of the city.
23. On the opposite side of Deadmill Lane is Dead Mill, which is a former flour mill, rebuilt in 1901. The Larkhall Character Statement states that Dead Mill is located on the edge of the built-up area and is an important landmark. Its dominance in the street scene is accentuated by the space surrounding it as the urban area ceases to the south. This marked transition to a more rural character, as one leaves the urban area, is key to the setting of the mill itself. The significance of the building derives from its historic interest, as there is history of a mill building being present on this site dating back to the 14th Century. Consequently, I consider it to be a non-designated heritage asset of moderate significance, and the appeal site forms part of the 'more rural character' which is key to its setting.
24. The proposed dwellings, by virtue of their detached and flat roofed form, would noticeably jar with the surrounding built form, running against the established grain of the pre and post war housing. Although the dwellings have been set down into the ground slightly and are of a reduced height, number and scale from the earlier proposals, they would still be elevated above both Deadmill Lane and Ferndale Road. Therefore, its raised position would highlight its incongruity.
25. The construction of 2 dwellings, along with their associated domestic gardens, by virtue of their siting, would permanently erode the positive contribution the undeveloped appeal site makes towards the rural setting of Larkhall. This would in turn harm the positive contribution the site makes towards the significance of the WHS, and the significance of both the CA and Dead Mill, through development within its setting.
26. The omission of the site from being included within the CA boundary does not automatically mean that it is not worthy of preservation or enhancement. This is particularly given that the Framework recognises the importance of setting to a heritage asset, noting that 'elements of a setting may make a positive or negative contribution to the significance of an asset'.
27. Whilst the proposal would be restricted to the lower parcel of the larger field, it would introduce a new vehicular access and associated parking area to the north of the appeal site. Therefore, rather than retaining 'a verdant edge such that the impacts on the valley side will be largely imperceptible', the proposal would introduce residential use of the land immediately adjacent to the open countryside, which would be very obvious in its rural setting. Screening and the incorporation of planting along the Ferndale Road frontage³ would help to mitigate the visual impact of the proposal, as would the retained and repaired stone walls. However, any reduced obviousness in the public realm would not make up for the inappropriateness of the proposed development's size, design, and siting. The limitation of permitted development rights to restrict

³ As shown on Landscape Mitigation Plan (drawing no. DMLB007, 9 February 2023)

outbuildings and extensions would not be sufficient to outweigh the harm identified.

28. The appellant submitted a Landscape and Visual Impact Assessment (LVIA)⁴. It identified a number of 'slight adverse' effects and 'moderate adverse' effects. However, it concludes that 'no significant landscape or visual effects have been identified. The proposed development is considered acceptable in terms of its likely landscape and visual effects'.
29. However, having inspected the site myself, my findings above are that such evaluations downplay the significance of the site. In particular, I do not consider that the visual effect of road users on either Deadmill Lane or Ferndale Road would be effectively mitigated by the proposed landscaping. Whilst wider viewpoints could be mitigated, from the more immediate viewpoints (VP1, VP2, and VP3), I do not feel that these visual effects would be effectively mitigated by the proposed landscaping as it would be seasonal and would take time to become established. Therefore, the visual impacts would only be partially mitigated and would be reduced in winter. Overall, I consider that the level of adverse landscape and visual impacts have been underestimated in the LVIA and that the significance of the effect would be greater.
30. The harm that I have found would be caused to the significance of the WHS and the CA, through development within its setting, would be localised. Accordingly, the harm would be less than substantial. I afford considerable importance and weight to that harm. As required by paragraph 208 of the Framework, this harm must be weighed against the public benefits of the proposal.
31. There would be economic benefits associated with the provision of 2 new dwellings, which I afford moderate weight. There would also be various social and environmental benefits with the 'much needed new, high quality dwellings', which would form part of the windfalls and small sites that the Council rely on in order to deliver a 5 year supply of housing, which I again afford moderate weight. Taking all the above into consideration, I am of the view that taken together, the public benefits do not outweigh the harm I have found to the heritage asset.
32. The proposal would also result in harm to the significance of a non-designated heritage asset of moderate significance, through development within its setting. The harm to the significance of a building of moderate significance would result in a minor level of harm. Paragraph 209 of the Framework, in respect of non-designated heritage assets, requires decision makers to make a 'balanced judgement' having regard to the scale of any harm or loss and the significance of the asset. I find that the benefits of the scheme outlined above, taken together, again do not outweigh the harm arising from the harm to the significance of a non-designated heritage asset of moderate significance.
33. The appellant has drawn my attention to another appeal decision within a WHS⁵, which was determined by the Secretary of State. I have been provided with the decision letter and note its contents, notably that of paragraph 35. However, I have determined this appeal on its own merits, on the basis of the evidence that is before me now, and determined that it would harm the WHS.

⁴ Prepared by Lingard Farrow Styles - 3090 Residential Development, Swainswick, LVIA, Revision B, April 2023

⁵ APP/M10005/W/17/3198996

34. Therefore, for the reasons set out above, the proposal would harm the character and appearance of the area, having particular regard to the effect on the significance of the Bath CA and the City of Bath WHS as designated heritage assets through development in it and within its setting, and the non-designated heritage asset known as Dead Mill, through development within its setting. It would be contrary to Policies B4 and CP6 of the Core Strategy, Policies D1, D2, D3, D7, GB1, NE2A and HE1 of the Placemaking Plan and Policies NE2 and D5 of the Local Plan Partial Update for Bath and North East Somerset Council (January 2023) (LPPU). These policies, in combination, seek that the distinctive quality, character and diversity of Bath and North East Somerset's environmental assets will be promoted, protected, conserved or enhanced through ensuring that development conserves or enhances local landscape character, landscape features and local distinctiveness, including the landscape setting of settlements. Development should respond to the site's context, in particular local character and to respond appropriately to urban morphology. It should be of an appropriate grain, reflecting local character.
35. They also seek to protect, conserve and seek opportunities to enhance the historic environment including the character and setting of designated and other heritage assets, including a strong presumption against development that would result in harm to the Outstanding Universal Value of the WHS as set out in the SoOUV. They also seek to ensure that development within the Green Belt should enhance the visual amenities of the Green Belt by reason of its siting, design or materials.

Highways

36. The proposal would be accessed via a new vehicular access from Deadmill Lane. As briefly noted above, Deadmill Lane is a relatively narrow rural lane with no footway, enclosed with a stone wall and an established hedgerow. There is an existing footpath which runs to the east of the appeal site, which provides rear access to 17-20 Ferndale Road and links on to the main part of Ferndale Road to the south.
37. The appellant sets out that the access would provide splays of 2.4m by 25m, which they justify as acceptable given the speed of the road and the fact that no accidents have been recorded in the vicinity of the proposed access.
38. However, the full extent of the visibility splay is not shown on any plan. Drawing no. DMLB002 only shows the visibility sightlines to the south and only the partial sightlines to the north. The visibility splay to the south would also cut through the hedgerow along the boundary. Therefore, whilst I note that its position is within the inside of the bend and so visibility may be easier to achieve, there is still insufficient evidence to demonstrate that the required visibility sightlines can be achieved. Therefore, the proposal could leave the development with substandard visibility sightlines, which would be to the detriment of highway safety.
39. In regard to pedestrian access, a footpath would be provided to the east of Plot 2 which would then cut through the eastern boundary and link on to the existing footpath to the rear of Nos 17-20. However, I note that the appellant does not own the land over which the proposed footpath would connect, and that the footpath link would be on a slope up towards the existing path. Therefore, I am not satisfied that this footpath link would be a practical or viable solution for pedestrians. Consequently, future occupants of the proposal

would use the vehicular access for pedestrian access and thus utilise Deadmill Lane, which has no dedicated footway. Considering the increase in traffic flow along this road as a direct result of the development, albeit it is appreciated that this is limited given the scale of the proposal, there would be a high risk of conflict between pedestrians and vehicles. I also note the suggestion of a 'virtual footway' along Deadmill Lane with a width of 1.5m. However, the virtual footway offers no protection to pedestrians and thus it would only serve to increase the potential for conflict between road users.

40. The application site falls within Zone B of the Parking Standards, which are set out in the Transport and Development Supplementary Planning Document (the SPD). Car parking standards are set at maximum levels in order to achieve low car developments where conditions exist and to avoid over-provision, which can have a detrimental effect on the quality of the places that are created. The SPD states that there should be 1.5 vehicular spaces per dwelling for a 3 bed dwelling. The proposal would provide 6 parking spaces in total, 3 per dwelling. This would be an over provision of car parking which would not be in accordance with the key principles and objectives of the Parking Standards. I acknowledge that there appears to be sufficient turning space on site to enable vehicles to enter and leave in a forward gear. However, this is not justification for providing double the number of parking spaces as set out in the SPD.
41. Furthermore, whilst cycle stores are shown, no further details have been provided in order to demonstrate that the cycle parking would be 'safe, secure and convenient'. Had I been minded to allow the appeal, further details regarding the cycle parking could have been secured via a condition.
42. Nevertheless, for the reasons set out above, the proposal would harm highway safety, with specific regard to pedestrian and vehicular access and parking provision. It would be contrary to policies ST1 and ST7 of the LPPU and Policies D1 and D2 of the Placemaking Plan. These policies, in combination, seek to ensure that highway safety is not prejudiced, including the provision of a safe and suitable vehicular access, as well as ensuring that parking is provided at a level appropriate to reduce the convenience of unnecessary car usage and make sustainable transport a more attractive choice, in order to reduce the dependency on the private car. Development should contribute towards the local social context in a positive way, providing safe, functional and attractive spaces, whilst making connections, by foot, cycle, public transport and by car. It would also be contrary to the SPD which sets out the level of maximum parking that should be provided as part of development proposals.

Trees

43. The appellant submitted a revised Tree Survey and Arboricultural Impact Assessment⁶ with the appeal, which was not included as part of the original application. The Council stated that it did not have sufficient time for this revised assessment to be considered within the timescales of the appeal. Nevertheless, the assessment states that the tree cover at the site consists largely of over mature field hedging and scrub with little arboricultural value. Adjacent to the site are several significant mature trees with good amenity value.

⁶ Prepared by Roavr Group - Deadmill Lane, Swainswick, Bath, BA1 6TL

44. The revised assessment has identified that trees T7 and T8 would have to be removed in order to create the required visibility splays. These are poor quality trees and I do not consider that their removal would have an adverse impact on any trees of value. However, I have concerns over the impact of Plot 2 on Tree T11, which is a mature Ash tree of approximately 21m high. It is a Category B tree which lies outside of the site boundary, immediately to the east. Due to the height of the tree, it is highly visible from Ferndale Road and Deadmill Lane and has amenity value, which contributes towards the local landscape.
45. The Root Protection Area (RPA) of T11 would be encroached by the proposed Plot 2, and the proposed footpath. The assessment states that a no-dig geotextile, cellular confinement system could be used to create the path adjacent to the house. However, no further details have been presented in regard to the foundation construction of Plot 2 within the RPA to allow construction without harm to tree roots, that accommodates the future growth of the tree, and that ensures tree roots/moisture extraction would not damage the proposed dwelling. Whilst Plot 2 would only encroach into a small proportion of the RPA⁷, this does not reduce the weight to be given to its protection. Therefore, I cannot conclude with any certainty what potential impacts there might be or whether appropriate mitigation would be achievable. As such, it would not be appropriate in this case to impose a condition to require additional methodology and detail by way of an Arboricultural Method Statement, as suggested by the appellant.
46. Furthermore, the default position of BS:5837 is that no development should occur within the RPA of a tree. The steps taken by the appellant are not sufficient enough to mitigate the impact of the proposal to justify moving away from BS:5837. This is particularly given that the tree has been assessed as a Category B tree. The location of T11 outside of the site boundary does not lower the weight to be given to its protection.
47. I note the Council's concerns regarding the growth of the tree canopy over Plot 2 and that this could cause nuisances of leaf litter and debris for the future occupants. This might put pressure on T11 to be pruned. Whilst these matters might not warrant refusal of the proposal in their own right, I note that no consideration of the proximity of the tree canopy to Plot 2 has been given in the arboricultural assessment. Therefore, the lack of information on these matters only adds to my concerns regarding the impact of the proposal on T11.
48. Consequently, for the reasons set out above, I cannot be satisfied that the proposal would not have an adverse effect on any trees, most notably T11. It would be contrary to Policy NE6 of the LPPU which only supports development where it would seek to avoid any adverse impact on trees of wildlife, landscape, historic, amenity, productions or cultural value.

Ecology

49. The site is approximately 2km from the nearest component unit of the Bath and Bradford-on-Avon Bats Special Area of Conservation (SAC). It is designated due to the internationally important populations of Horseshoe and Bechstein's bats. Some of these species' feed over farmland and use dark

⁷ The appellant has calculated it to be 1.4% of the total area of the RPA.

linear corridors, such as the boundary with Deadmill Lane, to disperse across the landscape.

50. A Preliminary Ecological Appraisal Report (PEAR)⁸ has been submitted. I am slightly cautious of the findings of the PEAR as the site could not be accessed on foot and instead drone shots were used to inform the assessment. Nevertheless, the survey identifies that the site comprises dense scrub, hedgerows, stone walls and two small buildings. There is potential for the site to support amphibians, foraging bats, nesting birds, reptile species, badger, and hedgehog. The site may also offer opportunities for roosting bats in buildings.
51. I note that the current PEAR comes to a different conclusion than the Ecological Appraisal submitted with an earlier application in regard to the requirement for a reptile survey. The current PEAR has identified the site has having 'low' potential for reptiles due to the limited connectivity between the site and the nearby waterbodies. I have no evidence, including that of the Council, to come to a different conclusion on this matter.
52. However, given the appeal site's proximity to the SAC, the proposal for 2 dwellings has the potential to cause significant adverse effects on the integrity of the SAC (either individually or in combination with other plans or projects). This is due to the possibility that SAC bat populations use the dark linear corridors that enclose the site. A risk or a possibility of such an effect is enough to warrant the need for an Appropriate Assessment, as required under The Conservation of Habitats and Species Regulations 2017 (as amended) (the Habitats Regulations).
53. The appellant has carried out a Preliminary Bat Roost Assessment (PBRA) as part of the PEAR. This identified that the likelihood of the site being suitable for foraging/commuting bats is 'moderate'. However, 2 of the buildings on site were not accessed as part of the PBRA. The only mitigation presented by the appellant is the use of 2 bat boxes, restriction on the hours of construction and the limit on the use of artificial lighting post construction.
54. Based on the limited information submitted with the application on this matter, I am unable to determine whether SAC bat populations use the site and thus, whether the proposed mitigation would be sufficient to avoid or mitigate any significant adverse impact on the SAC. Given the site's proximity to the SAC, I consider that further bat activity survey would be required to determine whether SAC bat populations are using the site. Therefore, the proposal has the potential to have a significant adverse effect on the integrity of the SAC.
55. Furthermore, I note that the PEAR accepts that 'the site has potential to be used by badgers'. It states that 'as the development will result in the loss of large areas of grassland further surveys will be required. The surveyor was unable to examine every area due to inaccessibility. Therefore, a badger walker is required immediately prior to any work taking place'.
56. Badgers and their setts are protected under the Protection of Badgers Act 1992 (as amended). Therefore, in the absence of any evidence demonstrating otherwise, and based on the limited information before me, I cannot be satisfied that the siting of the proposal would leave badgers and their setts unharmed. It is essential that the presence or otherwise of protected species,

⁸ Produced by Roavr Group (dated 23rd September 2022)

and the extent that they may be affected by the proposed development, is established before the planning permission is granted. Therefore, it would not be suitable to condition any further survey work, including a badger walker, in these circumstances.

57. Furthermore, I note the requirement of Policies NE3 and NE3A of the LPPU that 'for minor developments, development will only be permitted where no net loss and appropriate net gain of biodiversity is secured using the latest DEFRA Small Sites metric or agreed equivalent'. The PEAR states that 'the development should be used as an opportunity for biodiversity net gain, by creating new opportunities for wildlife'. However, no metric has been submitted by the appellant and thus I cannot be sure that the proposal would result in 'no net loss and appropriate net gain of biodiversity'.
58. Therefore, based on the evidence before me, the proposal has the potential to harm protected species, most notably bats and badgers, as well as resulting in the loss of biodiversity. Therefore, it would be contrary to Policies NE3, NE3a and D5(e) of the LPPU, which in combination, seek to ensure that buildings are designed to provide new or improved wildlife habitats and features and to only permit development where there would be no net loss of biodiversity. Development resulting in significant harm to biodiversity will not be permitted and adverse impacts on European, UK protected species, UK Priority and locally important species must be avoided wherever possible.

Surface Water Drainage

59. The application forms states that surface water would be disposed of via a sustainable drainage system and the mains sewer. However, the Council has advised that there is no surface water sewer within the vicinity of the site. Furthermore, no infiltration testing has been carried out to demonstrate that soakaways could be a viable solution. Consequently, I cannot be satisfied that the proposal would ensure that surface water from the development site would be adequately dealt with, and that the development would not increase flood risk to any existing property or land beyond the site boundary.
60. I acknowledge that the site falls within Flood Zone 1. However, there are a number of uncertainties in relation to how surface water associated with the site would be dealt with. The appellant suggests that an appropriately worded condition could address drainage matters. However, I have not been provided with any suggested wording by the appellant. Based on the evidence before me, given the lack of certainty I have in regard to this fundamental matter, a condition to deal with surface water drainage would not pass the tests of precision and reasonableness, as stated in paragraph 56 of the Framework.
61. Therefore, the proposal would not ensure that surface water from the development site would be adequately dealt with, without resulting in adverse flood risk elsewhere. It would be contrary to Policy CP5 of the Core Strategy which states that all development will be expected to incorporate sustainable drainage systems to reduce surface water run-off and minimise its contribution to flood risks elsewhere.

Sustainable Construction Standards

62. Policy SCR6 of the LPPU concerns Sustainable Construction for New Build Residential Development. The policy requires new residential development to

achieve zero operational emissions by reducing heat and power demand, then supplying all energy demand through on-site renewables. Through the submission of an appropriate energy assessment, having regard to the Sustainable Construction Checklist Supplementary Planning Document (SPD) (2023), proposed new residential development will demonstrate four sustainable construction standards, including a space heating demand less than 30kWh/m²/annum and a total energy use less than 40kWh/m²/annum.

63. A Sustainable Construction Checklist (SCC) has been submitted. However, the checklist is only partially filled in and still refers to 'all 15 of the dwellings on the site', which relates to the earlier proposal. Furthermore, whilst a 'Regulations Compliance Report' has been appended to the checklist, this refers to a site in Rickmansworth⁹, not the appeal site. Therefore, it has not been sufficiently demonstrated that the required space heating demand and energy usage could be achieved. Consequently, I cannot therefore conclude with any certainty that the prescribed standards would be achievable and that the requirements of Policy SCR6 could be met. As such, it would not be appropriate in this case to impose a condition to require the additional information.
64. Given the clear wording in Policy SCR6, the requirement of an appropriate energy assessment does not go 'beyond the requirements of the condition'. Furthermore, based on the evidence before me, the construction standards of Policy SCR6 seem to go beyond the requirements of Part L of the Building Regulations. Therefore, in these circumstances, the sustainable construction standards cannot be addressed through Building Regulations.
65. Accordingly, I have insufficient evidence to be satisfied that the development would achieve the required sustainable construction standards, as set out in Policy SCR6 of the LPPU. Therefore, the proposal would conflict with Policy SCR6. It would also be contrary to the Sustainable Construction Checklist SPD which supplements Policy SCR6 in order to facilitate sustainable construction.

Other Considerations

66. Paragraph 153 of the Framework states that substantial weight should be given to any harm to the Green Belt and that very special circumstances will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations. I turn now to address other considerations that, potentially, might clearly outweigh harm arising from inappropriate development in the Green Belt, and the other harm I have identified above, so as to provide the very special circumstances required to justify a grant of planning permission.
67. As already noted above, there would be some economic benefits associated with the provision of 2 new dwellings, which I afford moderate weight. There would also be social and environmental benefits with the dwellings. The 2 dwellings proposed would go towards the Council's reliance on windfalls and the delivery of small sites in order to achieve its 5 year housing land supply, which I again afford moderate weight. I also acknowledge the alleged shortfall against the Housing Delivery Test.

⁹ Site Reference – Old Chorleywood Road

Other Matters

68. I note the findings of the Inspector in the earlier appeal decision¹⁰. However, I do not have the full details of what was before that Inspector when they made their decision. Notably, from the decision notice, it appears that the effect on ecology and trees, as well as the provision of acceptable visibility splays, were not disputed matters at the time of this decision. Furthermore, these earlier schemes involved the provision of 100% affordable housing so were not considered as inappropriate development in the Green Belt. Nevertheless, I have considered this appeal on its own merits.

Conclusion

69. I have identified that the scheme would be inappropriate development in the Green Belt as defined by the Framework. The proposal has harmful implications for the Green Belt in terms of inappropriate development, the erosion of the openness and the conflict with the purpose of including land within it. The development would also harm the character and appearance of the area, having particular regard to the effect on the significance of the Bath CA and the WHS as designated heritage assets and the non-designated heritage known as Dead Mill, through development in it and within its setting. The proposal would harm highway safety, with specific regard to pedestrian and vehicular access, and parking provision, and I am not satisfied that the proposal would not have an adverse effect on trees or on protected species, most notably bats and badgers. Finally, I have also found that the proposal would not adequately deal with surface water or sustainable construction standards.

70. My analysis above leads me to give moderate weight to the other considerations cited in support of the proposal. I therefore find that the other considerations in this case do not clearly outweigh the harm that I have identified. Consequently, the very special circumstances necessary to justify the development do not exist. As such, the proposal would be contrary to the Framework, which seeks to protect the Green Belt from inappropriate development.

71. For the reasons given above, having regard to all matters raised, the appeal is dismissed.

Laura Cuthbert

INSPECTOR

¹⁰ APP/F0114/W/20/3260800