



Appeal Decision

Site visit made on 20 February 2024

by **O Marigold BSc DipTP MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 26 March 2024

Appeal Ref: APP/F0114/W/23/3325281

Between Radstock Road opposite Welton Primary School, and Land West of Wheeler Road, Midsomer Norton

- 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 Mr R Thorner of Flower & Hayes Developments Ltd against the decision of Bath and North East Somerset Council.
 - The application Ref is 22/01913/OUT.
 - The development proposed is new shared user bridge over River Somer, private vehicular access track and permissive footpath link between Radstock Road and Land West of Wheelers Road in Midsomer Norton, Somerset, with associated landscaping and engineering works.
-

Decision

1. The appeal is dismissed.

Preliminary Matters

2. I have taken the address of the site from the appeal form, which more clearly describes the site location than that used in the application form. I am satisfied that no party would be prejudiced as a result.
3. An executed Unilateral Undertaking (UU) pursuant to S106 of the Town and Country Planning Act, dated 6 February 2024, was submitted by the appellant during the appeal. This makes provision for an off-site wildlife habitat area; management and maintenance of the proposal; and tree protection, replanting and management. The Council has commented on the UU, and I shall consider it below.

Background and Main Issues

4. The application is in outline, with access, landscaping and layout falling to be considered now. Appearance and scale are matters reserved for future application and I have determined the appeal on this basis. A plan showing the possible design of the bridge has been provided, which I have treated as being illustrative.
5. The main issues are the effect of the proposal on:
 - the character and appearance of the area, and
 - biodiversity, in particular the broadleaved woodland habitat of the site.

Reasons

Character and Appearance

6. The site consists of land that slopes steeply downwards towards the adjoining River Somer. It now consists principally of a dense woodland, protected by a Tree Preservation Order, and has an attractive soft and verdant appearance. The proposal seeks to create a new pedestrian route through the woodland, including the creation of a bridge linking Radstock Road with land on the opposite side of the river. Also proposed is a private vehicular access and track, that would provide better access to an adjoining meadow, allowing for its improved maintenance and use, such as for the keeping of horses.
7. Detailed landscaping plans show that some 35 trees would be felled within the site as part of the proposal. None of these trees are identified individually as being of high quality in an Arboricultural Impact Assessment. A total of 76 replacement trees would be planted, whilst root protection areas and a no-dig surface would seek to ensure the survival of the trees not proposed for felling. The UU includes measures for vegetation and tree protection, replanting, and future management of the woodland, which represents a benefit of the proposal.
8. Nevertheless, the location of the replacement trees would be restricted to the narrow confines of the application site boundary, and they would initially be smaller than those being replaced. As such, their visual benefits would be limited compared to the existing trees. Furthermore, the linear arrangement of the replacement trees would appear planned, thus contrasting with the random, natural evolution of the wood.
9. In places the proposal would be built-up above existing ground levels whilst the bridge would inherently constitute a further hard addition to the landscape. Even if no additional tree loss were necessary, the proposal would cut through and fragment the woodland, thus diminishing its overall integrity and appearance. For the above reasons, the proposal would have an urbanising effect on the site and its surroundings.
10. Policy NE2 of the Local Plan Partial Update (LPPU), adopted January 2023, requires that a Landscape and Visual Impact Assessment (LVIA) is submitted for proposals that may impact on landscape character. No LVIA is before me, but I saw that public views of the proposal and its landscape effects would be obtainable from the footpath along the River Somer and may well also be available from other locations. The surrounding area is partially built-up, but this makes retention of the landscape value of the woodland more important.
11. Accordingly, the proposal would have a harmful effect on the soft and verdant appearance of the woodland and therefore on the overall character of the landscape. Other public routes have been referred to, such as the upgrading of the Five Arches Greenway. However, I understand that this follows the alignment of an existing linear feature in the landscape (a former railway line) and so is not comparable to the proposal.
12. Consequently, despite the benefit of secured woodland management, I conclude that the proposal would harm the character and appearance of the area. As such, it would be contrary to Policy CP6 of the Core Strategy, adopted July 2014, policies D1 and D2 of the Placemaking Plan, adopted July 2017, and

LPPU Policies NE2 and NE6. These require proposals to respond to and conserve landscape features and distinctiveness, and to avoid adverse impacts on trees and woodlands of amenity value. It would also conflict with the similar aims of the National Planning Policy Framework (the Framework). I therefore give this harm substantial negative weight.

Biodiversity

13. The site includes deciduous broadleaved woodland, a Habitat of Principal Importance and a local priority habitat. Amongst other things, LPPU Policy NE3 requires that harm to biodiversity should be avoided, mitigated or as a last resort compensated for, to equivalent value. LPPU Policy NE3A requires no net loss and sufficient Biodiversity Net Gain (BNG).
14. As part of the proposal, the condition of the retained woodland on the appeal site would be improved from fairly poor to fairly good. However, it is not disputed that there would be a deficit in habitat BNG units, and that additional mitigation or compensation is necessary. As such, the proposal also includes the creation of a new off-site habitat, on land at Paulton.
15. The UU includes measures for the approval of the design, layout and landscaping of the off-site area, including woodland planting or meadow grassland. However, it does not secure the delivery of specific habitats or BNG units, and the evidence before me does not conclusively demonstrate that no net loss of biodiversity, of broadleaved woodland habitat, or suitable net gain can be provided.
16. Given their fundamental importance, they would need to be established at the outset, before planning permission is granted, rather than being left to subsequent approval, as suggested by the appellant. Furthermore, insufficient information has been provided to demonstrate that measures preferable to off-site compensation in the mitigation hierarchy, such as new or enhanced habitat on site, have been fully explored before resorting to off-site provision.
17. The UU requires the Council to approve the detail of the off-site habitat area or to specify the means necessary to achieve this. Accordingly, it potentially places the onus of the design of the area onto the Council. The UU also seeks to impose a deemed consent regime for these details, with an expedited timescale. It therefore risks sub-optimal measures being authorised by default. In addition, whilst it is aware of the UU, the Council is not a party to it. As such, these measures are not within the scope of a UU and so ultimately it cannot be relied upon.
18. Consequently, I am not satisfied that suitable measures to mitigate the effect of the proposal on the existing woodland would be secured, or that the proposal would deliver no net loss and sufficient BNG. I have taken into account that the proposal would provide ecological advantages to other habitats, such as additional bird nesting boxes and possible enhancement to watercourse ecology. However, these benefits are small, or in doubt, and so do not outweigh the adverse effects identified.
19. For the above reasons, I consider that the proposal would have a harmful effect on biodiversity, in particular on the broadleaved woodland habitat of the site, and so it would conflict with LPPU policies N3 and N3A and the similar aims of the Framework. I therefore give this harm substantial negative weight.

Other Considerations

20. The LPPU promotes sustainable travel. The proposal would provide a new crossing of the river. This would provide much improved pedestrian access from the streets around Radstock Road to facilities around the Town Park, such as the sports centre and doctor's surgery. I understand that such a crossing is encouraged in the Council's Conservation Area Appraisal. The proposal would also provide better connectivity, for example between Welton Primary School and housing in the Wheelers Road area. This represents a clear benefit of the proposal.
21. However, no aspect of the proposal is offered as a public right of way. The evidence before me, including the Somer Bridge Technical Note, confirms that the appellant would retain the right to withdraw public access to it, temporarily or permanently, including at short notice. Measures such as annual closure of the route are also proposed, to prevent it becoming a public right of way.
22. Accordingly, there is a degree of uncertainty about the long-term availability of the footpath link to the public. Nevertheless, I give significant positive weight to the public accessibility benefits of the proposal, as well as limited positive weight to the principally private benefits of the route serving the meadow.

Planning Balance and Conclusion

23. For the reasons given, I have found conflict with the Development Plan as a whole. The material considerations in this case and the benefits of the proposal are not of sufficient weight to indicate a decision other than in accordance with the Development Plan. This leads me to conclude that the appeal should be dismissed.

O Marigold

INSPECTOR