



Appeal Decision

Site visit made on 28 May 2024

by G Roberts BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19 June 2024

Appeal Ref: APP/Z0116/W/24/3337248

71 Battersea Road, Easton, Bristol, BS5 6AJ

- 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 S Akram against the decision of Bristol City Council.
 - The application Ref. 22/04977/F, dated the 11 October 2022, was refused by notice dated the 19 July 2023.
 - The proposal is for developing five sustainable and compact houses that are attractive to young couples, students and small families. The proposed concept responds to modern lifestyle and suits groups who deliberately make sustainable choices on a daily basis and utilize sustainable means of transportation. The project is a study of sizes and typologies of housing units as a response to the scarcity of housing in the vibrant city of Bristol.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. I have referred to the description of development as set out on the Application Form.
3. Since the application was refused the National Planning Policy Framework (Framework) has been revised, most recently in December 2023. Most of the relevant policies remain unchanged, albeit some of the paragraph numbering has changed. Whilst some of the housing policies have changed, these do not affect the main issues raised by this appeal or the application of the tilted balance, which is a matter I address under the heading 'Planning balance'. For these reasons and as the appeal was lodged on 19 January 2024, following the publication of the revised Framework, I have not invited any further comments from the parties.
4. Prior to my site visit an Inspectors Request was circulated to the parties by email on 22 May 2024. Although I invited the parties to comment on this, my findings remain as set out in that Request. As the Request stated, the appeal included the plans and documents that formed the basis of the Council's decision to refuse planning permission on 19 July 2023. The appeal also included a revised scheme prepared by the Appellant in response to the Council's decision. The Appellant requested, in their Statement of Case (SOC), that the appeal be determined on the basis of the revised scheme. The SOC stated that the Appellant had significantly amended the proposal in response to the Council's decision and continued by outlining that one of the grounds of appeal was their request that they be given a further opportunity to

demonstrate that the revised proposal mitigated the potential adverse impacts identified by the Council.

5. The Request also referred to an email dated 25 March 2024 where the Council argued that the revised scheme was substantially and fundamentally different to that considered by them at the application stage. The Request confirmed that I agreed with the Council's view in this respect. Following my site visit and a further review of the evidence, my view on this matter has not changed.
6. Paragraphs 16.1 – 16.2 of the 'Procedural Guidance: Planning Appeals – England' (updated 11 January 2024) states it is important that what is considered by the Inspector is essentially the same as that considered by the Local Planning Authority and interested parties at the application stage. Also, that the appeal process should not be used to evolve a scheme. Paragraph 16.3 continues with reference to the 'tests' that will be considered when revised plans and information is submitted, 'tests' that have been refined in the judgement *Holborn Studios Ltd v The Council of the London Borough of Hackney* [2017] EWHC 2823 (Admin).
7. The revised scheme involves a substantive difference to the application scheme and would, in my judgement, necessitate a different application. The revised scheme would also cause an unlawful procedural unfairness to the parties involved in the appeal. The latter would arise not just from the revised plans, but also the significant additional information that was submitted in support in the form of a Biodiversity Net Gain Assessment, Ecological Impact Assessment, Landscape & Ecological Management Plan, revised Sustainability Statement and revised Design & Access Statement. None of this evidence has been considered by the Council or any of the consultees, and neither has it been subject to public consultation.
8. It is essential that the appeal process is fair and open to all parties, including interested parties. In this respect, I find that my consideration of the appeal can only relate to the original plans and documentation considered by the Council at the application stage, and on which interested parties and other consultees views were originally sought.

Main Issues

9. The main issues are the effect of the proposed development on: (a) the character and appearance of the area; (b) the living conditions of neighbouring occupiers; (c) whether the development secures a good standard of quality accommodation for future occupiers; (d) whether the proposed development would operate successfully in relation to highway safety and would include appropriate provision for parking, servicing, refuse and cycle storage; and (e) whether the proposal has adequately considered the implications for ecology, habitats and trees.

Reasons

Character and appearance

10. The appeal site is located at the eastern end of Battersea Road, a cul de sac of predominantly two storey terraced houses. The site comprises an irregular shaped plot which currently forms part of the curtilage to 71 Battersea Road, the host property. It would appear that the land previously formed part of the

garden to the host and includes a detached garage that would be demolished to accommodate the appeal proposal. Other than the garage, the appeal site is flat, with the eastern part laid to lawn and the western part hardstanding that provides access to the garage and an area for siting out. The western boundary of the appeal site abuts the side elevation to the host and its retained rear garden. The northern boundary forms the common boundary to the rear gardens of the properties in Chelsea Park. The eastern part of the appeal site tapers to a point where it meets the boundary of the Bristol – Bath Cycle Path (BBCP). The latter then runs along the eastern and southern boundary of the appeal site to an existing access and driveway into the site from Battersea Road. Just to the south of this access is a path (track) that leads up to and provides pedestrian and cycle access to the BBCP. As a consequence, the BBCP sits at a much higher level to the appeal site.

11. The common boundary of the appeal site to the rear gardens of Chelsea Park is formed by a high block wall with timber fencing above, whose overall height is not shown on the submitted plans. The common boundary to the BBCP is formed by a similar block wall with timber fencing above, which the submitted plans indicate varies in height from 2.0 to 3.7 metres. This boundary also acts as a retaining wall. Whilst there is some planting within the rear gardens of Chelsea Park, the boundary with BBCP is dominated by a band of mature trees. All of these trees are sited outside the appeal site but are visually prominent from within the site and from neighbouring properties. They provide a significant green backdrop to the site and are an important positive feature of the character of the area and the setting of the BBCP.
12. Within this context, the appeal proposal involves the demolition of the existing detached garage and the construction of five three storey 2-bedroom houses. No on-site parking is proposed, with only pedestrian access shown and rear gardens to each unit comprising an area of lawn and decking.
13. The appeal proposal would introduce a substantial amount of new building into the rear garden area. The new buildings would be three storeys and would extend high above the existing boundary walls and fencing and would thus be highly visible to surrounding properties and to the public using the BBCP. This significant mass of building would be introduced into a location where there is currently no development and as such it would be completely out of keeping with the prevailing pattern and rhythm of development on Battersea Road. The proposal would impact on the sense of openness that prevails on the site, and also the green corridor formed by the BBCP, which is a positive feature that makes an important contribution to local distinctiveness and character. In this respect, I also note that the Councils Delegated Report (CDR) states, which has not been challenged, that the BBCP is a designated Site of Nature Conservation Interest (SNCI) and an Important Open Space (IOS).
14. The proposed buildings, together with the associated decking, pavement, cycle and refuse storage, would occupy a large part of the appeal site. Built development, extending to three storeys, would be sited close to the common boundary of the rear gardens to Chelsea Park and to the boundary with the BBCP. As a consequence, the proposal would appear cramped and contrived, and would represent a poor quality of urban design that fails to deliver or contribute positively to the character of the area or to reinforcing local distinctiveness. Overall, the proposal would be out of character with its surroundings and would lead to the overdevelopment of the appeal site.

15. The Appellant refers to the contemporary and innovative sustainable design of the appeal proposal. I accept that paragraph 135 c) of the Framework states that innovation or change should not be discouraged, but it also states that new development should be visually attractive, function well and add to the overall quality of the area, be sympathetic to local character including the surrounding built environment and landscape setting, establish or maintain a strong sense of place and with a high standard of amenity for existing and future users. For the reasons outlined above, the appeal proposal would fail to comply with the overall requirements of paragraph 135.
16. The Appellant contends that the proposal would provide much needed housing accommodation. Whilst I acknowledge the housing benefits of the proposal, which I return to later, Annex 2 to the Framework excludes rear gardens from the definition of previously developed land and paragraph 72 also states that plans should consider the case for setting out policies to resist inappropriate development of residential gardens "*for example where development would cause harm to the local area*". Similar advice is set out in paragraph 128 (d) of the Framework. As I have found, the appeal proposal would result in significant harm to the character and appearance of the area and also to the setting and SNCI and IOP designations that apply to the BBCP. Notwithstanding the above, I accept that the appeal site does have some development potential and could accommodate a high quality contemporary scheme. Even so, the scheme before me is excessive in terms of its scale and the amount of development that it seeks to bring forward on what is an irregular shaped, small and physically constrained site.
17. Accordingly, I find that the appeal proposal would cause significant harm to the character and appearance of the area contrary to policies BCS9 (Protection & Enhancement of Green Infrastructure) and BCS21 (Quality Urban Design) of the Bristol Core Strategy (June 2011) (BCS), policies DM17 (Development Involving Existing Green Infrastructure), DM21 (Development of Private Gardens), DM26 (Local Character & Distinctiveness), DM27 (Layout & Form) and DM29 (Design of New Building) of the Bristol Site Allocations & Development Management Policies Plan (July 2014) (BDMP), and the corresponding policies of the Framework.

Living conditions - neighbours

18. As I confirmed earlier the proposed buildings would be sited close to the common boundary to the rear gardens of the properties in Chelsea Park. Whilst there would be some relief to the new buildings through their design, they would be 3 storeys high extending across most of the length of the rear gardens to these Chelsea Park properties. As a consequence, the proposed buildings would be highly visible from the rear windows and private amenity areas to those properties. From these viewpoints, the combined height, mass and scale of the proposed development would be visually dominant and would have an overbearing impact on their living conditions. The amount of built development proposed, so close to the common boundary, would overpower and overshadow these properties, significantly harming the occupiers living conditions.
19. The submitted plans show various glazed doors, balconies and glazed rooms facing the rear and towards the properties in Chelsea Park, resulting in an

unacceptable loss of privacy to those occupiers. All of these views would be direct and from a height, where no such views exist at present.

20. Accordingly, I find that the proposed development would result in significant harm to the living conditions of neighbouring occupiers contrary to policy BCS21 (Quality Urban Design) of the BCS, policies DM27 (Layout & Form) and DM29 (Design of New Building) of the BDMP, and paragraph 135 f) of the Framework. The latter, consistent with the development plan policies referred to, seeks to create a high standard of amenity for existing and future users.

Standard of accommodation – future occupiers

21. There are a number of deficiencies in the proposed layout, most of which are addressed in some detail within the CDR. These include: a number of bedroom sizes that fall below those set out in the national space standards; the total size of the new units which fall below those set out in the national space standards for this type of accommodation; the enclosed, constrained and cramped nature of the layout that results in a number of rooms and amenity spaces having a poor aspect and outlook, and limited access to natural light; the poor building relationships that arise between the new units themselves, as well as to the retaining wall to the BCP and the common boundary to the properties in Chelsea Park; and the awkward and limited nature of some of the proposed amenity spaces (lawns and decking) that would restrict their usability and functionality, resulting in a poor quality of amenity space provision.
22. The cumulative impact of these deficiencies results in a number of the new units failing to provide a satisfactory layout and standard of good quality accommodation for future occupiers. These deficiencies are matters that could not be controlled by condition as they raise issues concerning the acceptability of the proposed quantum and layout of accommodation being sought and its compliance with national space standards and development plan policy requirements.
23. Accordingly, I find that the appeal proposal would fail to provide a satisfactory layout and standard of good quality accommodation for future occupiers contrary to policies BCS15 (Sustainable Design & Construction), BCS18 (Housing Type) and BCS21 (Quality Urban Design) of the BCS, policies DM27 (Layout & Form) and DM29 (Design of New Building) of the BDMP, and the corresponding policies of the Framework and national space standards. The Council have also referred to policies BCS10, DM23 and DM32 but these appear more relevant to the transport and refuse requirements for new developments, issues that I deal with below.

Highway safety, refuse and cycle provision

24. The appeal proposal shows a pedestrian access leading to the new units from the existing site access (gate). No vehicle access is shown. Even though the pedestrian access would be acceptable, the existing public footway would need to be extended to avoid pushing pedestrians into the road. This is a matter that could be addressed in a revised scheme, but it is an indication of the lack of attention to such details.
25. The CDR states, based on the Highway Authority's consultation response, that, in principle, a car-free development is supported given the sustainable location of the appeal site and access to other modes of transport. I fully concur with

the Council's findings in this respect, but I also agree with their findings that there is insufficient information, surveys and/or evidence to demonstrate that a car-free development would not harmfully impact on highway safety.

26. The CDR indicates that the proposed 5 units could generate a similar level of demand for parking. In my view, that is likely to be the minimum, in that it excludes visitor parking or the potential for smaller families/couples to own two cars. Even so, no off-street parking is proposed and there is no evidence to demonstrate whether that level of demand could be accommodated on-street. The evidence that is available indicates that Battersea Road already suffers from a high level of parking stress, a problem that I observed on my site visit where, late morning, there were only a few spaces available along the whole of the road. This problem appears to be exacerbated by the lack of any residents parking scheme (control).
27. Based on the above, I agree with the Council's concern that future residents could still own a car and if so would seek to park on-street. The Appellant has referred to the new units being occupied by more sustainably minded residents seeking to be carbon neutral, but there is no substantive evidence before me to support such statements or any mechanism to indicate how car usage amongst future residents could be controlled or mitigated. As such, the proposal would, in my view, be harmful to highway safety due to the potential increase in demand for off-street parking in a location that already suffers from a high level of parking stress.
28. In relation to servicing and deliveries, with no vehicular access shown into the development, all of this activity would take place on the highway. I accept that this would be similar to the current arrangement for the existing housing in the road, but that is not a sufficient justification for allowing new development that could further exacerbate the free flow of traffic on this heavily parked road.
29. Whilst the submitted layout shows an area for refuse/recycling and cycle storage, the CDR indicates that in both instances the level of provision does not meet the standards set out in the relevant policies and guidance. Whilst these are matters that could normally be secured by condition, I am not satisfied that that approach would be appropriate in this case. The inability to provide the required level of refuse/recycling and cycle storage are, in my view, a further indication of the cramped nature of the proposed layout and excessive amount of new built development proposed. Even so, both are matters that should be addressed as part of the original design of the development and at the application stage.
30. Accordingly, I find that the appeal proposal would fail to fully comply with the requirements of policy BCS10 (Transport & Access Improvements) of the BCS and policies DM23 (Transport Development Management) and DM32 (Recycling & Refuse Provision) of the BDMP, as well as paragraphs 115 and 116 of the Framework.

Ecology, habitats and trees

31. Policy BCS9 (Protection & Enhancement of Green Infrastructure) of the BCS and policies DM15 (Green Infrastructure Provision), DM17 (Development Involving Existing Green Infrastructure) and DM19 (Development & Nature Conservation) of the BDMP seek, amongst other matters, to: protect, maintain and enhance local biodiversity, the green infrastructure network, including

important areas of open space, and provide for net biodiversity gains; require development that may impact on existing habitats, species or nature conservation interests to be informed by appropriate surveys and assessments so as to avoid any harm to and mitigate for any impact or loss; to protect and integrate important existing trees within the proposed layout; and to resist development that could harm or lead to the loss of important trees, open space and nature conservation interests. These policies are consistent with those in paragraphs 180 and 186 of the Framework.

32. The Arboricultural Report submitted with the application indicates that the root spread of existing trees, abutting the southern and eastern boundary, are unlikely to have spread onto the appeal site and are contained within the land that forms part of the BBCP. This may be so, but from my observations on site and in comparing the existing site survey with the proposed block plan, it is clear that most of the proposed built development would be located close to these existing trees and in a number of cases within their crowns. With the development extending to three storeys, it would appear that the proposal could not be constructed without significant pruning to these trees. Leaving aside the fact that these trees are located outside the appeal site and are not within the Appellants control, I agree with the Council that this level of pruning would negatively impact on the health and appearance of these important trees and the positive contribution they make to the setting of the BBCP and as well as its IOP and SNCI designations.
33. Moreover and as I confirmed earlier, as these trees sit above the high retaining wall, they visually and physically dominate this part of the appeal site. As such, all of the proposed units would be affected by the existing trees, even if they were pruned, inevitably leading to pressure from future occupiers for the trees to either be removed or significantly pruned further, due to concerns over health and safety, tree deposits and overshadowing. The significant pruning or loss of any of these important trees would, in my view, result in significant harm to the integrity, amenity and ecological value of the green corridor that is formed by the BBCP, as well as to its designation as an IOS and SNCI.
34. Turning to ecology/habitats, in order to assess the effect of an application for new development on any existing or potential biodiversity and ecological interests, sufficient supporting information is required at the outset to understand the significance of any existing interests and the impact, if any, the development would have on them. Consequently, I agree with the Council that due to the lack of information or surveys or evidence on these issues the proposal fails to adequately consider and assess the potential impact of the development on the ecology, nature conservation interests and habitat value of the BBCP and also fails to provide net gains to biodiversity. These are not matters that could be controlled by condition as these surveys and assessments are required to inform and to support the quantum of development proposed.
35. Accordingly, I find that the appeal proposal has failed to adequately consider the impact on ecology, habitats and trees contrary to the requirements of policy BCS9 of the BCS and policies DM15, DM17 and DM19 of the BDMP.

Planning balance and conclusions

36. The Council acknowledge that they are unable to identify a 5-year supply of housing land and that the relevant housing policies of the development plan

are out of date. In these circumstances, paragraph 11 d) ii of the Framework requires planning permission to be granted unless *"any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole."*

37. The appeal proposal would boost housing supply in a sustainable and accessible location, make more effective use of the land, generate short term employment during construction, increase local spend from new residents and generate Community Infrastructure Levy receipts, benefits that are supported by other policies in the development plan and Framework. Even so, the adverse impacts of the appeal proposal on the character and appearance of the area, on the designated IOS and SNCI and setting of the BBCP, on the living conditions of neighbouring occupiers, on highway safety and on ecology, habitats and trees, would be significant.
38. As I have found above, these adverse impacts lead to conflict with a number of development plan policies which remain up to date as they are consistent with those in the Framework and thus should be accorded significant weight. Added to this is the failure of the proposal to meet policy requirements in relation to the standard of good quality accommodation sought for future occupiers, to secure appropriate refuse/recycling provision and to provide sufficient cycle spaces. These further accentuate the harm that would arise from the proposal and the overall unacceptability of the appeal scheme.
39. In my view, the harm I have identified would significantly and demonstrably outweigh the benefits of the appeal scheme, when assessed against the policies in the Framework taken as a whole. Consequently, the presumption in favour of sustainable development envisaged in the Framework does not apply in this instance. The Framework is not a material consideration in this instance that indicates a decision other than in accordance with the development plan.
40. For the reasons given above and having taken all other matters raised into account, I conclude that the appeal should be dismissed.

G Roberts

INSPECTOR