



Appeal Decision

Site visit made on 30 September 2024

by Laura Cuthbert BA(Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10 October 2024

Appeal Ref: APP/Q3305/W/23/3335782

The Bell Inn, 13 Frome Road, Rode, Frome BA11 6PW

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a failure to give notice within the prescribed period of a decision on an application for planning permission.
 - The appeal is made by Wellington Pub Company against Mendip District Council.
 - The application Ref is 2022/2374/FUL.
 - The development proposed is 3no. dwellings and associated access.
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Decision

1. The appeal is allowed, and planning permission is granted for 3no. dwellings and associated access at The Bell Inn, 13 Frome Road, Rode, Frome BA11 6PW in accordance with the terms of the application, Ref 2022/2374/FUL, subject to the conditions in the attached schedule.

Preliminary Matters

2. Following the submission of the appeal against non-determination, the Council has provided a Case Officer's Report, which provides clarity in terms of the main reasons why the Council would have refused planning permission had it been able to do so.
3. The main parties have set out the relevant planning history related to the site, which includes an earlier appeal decision¹, which was dismissed. The proposal under this scheme was four dwellings in a courtyard arrangement. I have had regard to this decision insofar as it is relevant to the proposal before me now.

Main Issues

4. The main issues are:
 - whether the proposal would provide a suitable location for housing, having regard to the development strategy for the area; and
 - the effect of the proposal on the significance of The Bell Inn, a Grade II Listed Building, and the Rode Conservation Area as designated heritage assets, through development within their setting.

Reasons

Suitable Location

5. The appeal site lies outside of, but adjoining, the development settlement limit for Rode as defined by the Mendip District Local Plan 2006-2029 Part 1:

¹ APP/Q3305/W/22/3305951

Strategy and Policies (Local Plan) (adopted 2014). Core Policies 1 and 2 of the Local Plan set out the spatial strategy for the district and provides details of how housing will be provided across the District's towns and villages. Whilst Rode has been classified as a 'Primary Village', the site lies outside of any defined settlement boundary for Rode and is classed as open countryside. It is not allocated for housing and the proposal would not fall within any of the exceptions set out by the development plan to enable new development in the open countryside. It would not be supported by any other policies.

6. The Council has stated that 'although the site is not within the Rode development limits, it does adjoin them and having regard to accessibility to the services and facilities which this Primary Village has to offer, the location of the site is equally as sustainable as those properties within the adjoining development limits. It is not therefore unreasonable in this case, to consider the site for development subject to any adverse impact of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies within the Framework taken as a whole'.
7. Nevertheless, by virtue of its location outside of any defined settlement limits, the proposal would be contrary to Core Policies 1 and 2 of the Local Plan which, in combination, set out the overarching spatial development strategy and settlement tiers for the District. Criterion 1 (c) of Core Policy 1 states that in the open countryside, development will be strictly controlled.

Designated Heritage Assets

8. The appeal site comprises a flat, square parcel of land, situated to the rear of The Bell Inn, a Grade II Listed Public House, situated on the edge of the village of Rode. The Bell Inn is positioned at the junction of Frome Road and Church Lane. The site is also outside of but adjacent to the Rode Conservation Area (CA), the boundary of which runs to the south of the appeal site.
9. The car park associated with the pub lies immediately to the north of the building, with the appeal site positioned to the north of the car park. The land currently comprises overgrown scrub land, with established vegetation enclosing the site to the north, east and west. The southern boundary is open alongside the adjacent car park. Aside from the pub itself, the context of the appeal site is residential development which runs in a linear form and close building lines along Church Lane. They are predominantly set back behind front gardens and parking areas and tend to have strong frontages onto the road.
10. The Bell Inn is an early 19th Century Inn, and is of interest, in part, as a roadside pub and has been identified as a local landmark building in the Rode Conservation Area Appraisal (CAA) (adopted 2009). Its significance for the purposes of this appeal lies primarily within its architectural details and historical value, as a 19th Century Inn.
11. Rode CA was designated in 1973 and focused on the main part of the village. A detached portion, known as the Frome Road Area, was added at a later date and The Bell Inn is within this latter area. Frome Road is a linear group of older buildings, dominated by the parish church, and set on both sides of the busy main road. The CAA states that the overall character is that of a low density, sporadic corridor of vernacular buildings set close to the road line, interspersed with areas of green space and open countryside and with obvious focal points in the parish church and pub. This is broadly what I observed on my site visit.

12. For the purposes of this appeal, the significance of the Frome Road Area of the Rode CA derives from the historic buildings within it, the linear form of development and the open spaces within and around the CA. The CAA mentions that there is also a large meadow behind the Bell Inn. The setting of the CA derives from its relationship with the countryside beyond to the south, and the residential built form along Church Lane and Frome Road. The continuous hedgerow which encloses the appeal site to the northwest is a rural feature of the site, separating the more modern housing along Church Lane from the CA to the south.
13. Paragraph 206 of the National Planning Policy Framework 2023 (the Framework) states that significance of heritage assets can be harmed or lost through the alteration or destruction of those assets or from development within their setting and that this should have a clear and convincing justification. The appeal site, by virtue of its proximity and relationship, forms part of the setting in which the heritage assets are experienced. The sense of openness it provides by way of its lack of built form, allows an appreciation of the heritage assets. It thus contributes positively towards the setting, and therefore the significance of both the Listed Building and CA, aiding the understanding of the Listed Building as its role as an 19th Century Inn and as a local landmark building within the CA.
14. Since the earlier appeal decision, the appellant has provided further evidence that the appeal site does not form part of the pub garden. They have demonstrated that whilst it was historically an orchard, this was cleared by 1946. Satellite imagery from 2001 until 2022 shows no evidence that the appeal site was in use as a pub garden during that period, or that it was ever anything more than grass, in various conditions of management. Furthermore, I note that Google Earth images between 2001 and 2006 show benches and children's play equipment to the southwest of the public house building, and not on the appeal site.
15. Notwithstanding any assessment of the setting of the nearby heritage assets, the proposal would represent a linear form of development, which now has a frontage to Church Lane, set behind car parking and the established vegetation along the highway. The proposal would include a substantial green buffer between the proposal and The Bell Inn, which has been increased since the earlier appeal. I note that the appellant has committed to delivering a 1.2m post and rail fence inset with a beech hedge around the edge of the site. Accordingly, unlike the earlier appeal scheme, the Council no longer object to the proposal in regard to its form, appearance, and layout. Accordingly, they do not allege any harm to the character of the street scene or the surrounding area. Based on the evidence before me, I see no reason to come to a different conclusion on the matter.
16. Nevertheless, the proposal would introduce built form on to the site which is currently devoid of any buildings. The 3 dwellings would have an urbanising effect, including the removal of a section of hedgerow along Church Lane in order to form the new vehicular access, and would sit incongruously within the undeveloped, open setting of the heritage assets. The physical separation of the appeal site from the public house land would also harm the way in which the heritage assets are experienced and appreciated. Consequently, this would harm the significance of the heritage assets.

17. The Parish Council has raised concern that the development site sits between the two village Conservation Areas, and 'adversely impacts the distinctive 'gap' between the medieval origins of the village and its current core'. Whilst I consider that the setting of the Frome Road Area of the CA would be harmed, I do not consider that given the surrounding built form along Church Road, the proposal would have any adverse impact on the gap between the 2 CA's.
18. Nonetheless, in view of the above, the proposal would harm the significance of The Bell Inn, a Grade II Listed Building, and the Rode CA as designated heritage assets, through development within their setting. The proposal would be contrary to Development Policy 3 of the Local Plan, which seeks to ensure that proposals preserve and, where appropriate, enhance the significance and setting of the district's Heritage Assets.

Other Matters

19. There are other listed buildings in the vicinity of the appeal site, including 9 & 11 Frome Road, 17 & 19 Frome Road, Church Row Farmhouse and the Church of St Lawrence. Mindful of my statutory duty set out in section 66(1) of the Act, I have had special regard to the desirability of preserving their settings. From the evidence before me and my observations on site, the special interest and significance of these assets largely stem from their architectural and historic interests, as well as their wider street-scene and rural settings. Given the nature and extent of the proposal, and its distance from these listed buildings, I consider that the settings of these other designated heritage assets would be preserved, and their significance would not be harmed. The Council has raised no concerns in this regard either.
20. Interested parties and the Parish Council have expressed a wide range of concerns including archaeology, highway safety, and the removal of existing vegetation. However, having considered the technical evidence before me and the views of the relevant statutory consultees and that of the Council, I consider that these matters can be controlled and maintained by appropriately worded conditions.
21. I observed that The Bell Inn is currently vacant, and it is of some concern to the Council that the loss of part of its garden to development could render the business less attractive, thereby affecting the future of this heritage asset. However, given that the proposal would now leave a substantial buffer between the site and the public house, this could still be used as part of its garden in the future should it need to do so. Furthermore, as alluded to above, the pub garden appears to be located elsewhere and not on the appeal site.
22. I note the concern that the appellant would develop on the wider plot should the appeal be allowed. However, my decision is based firmly on the merits and circumstances of the appeal proposal before me now. As such, it does not set any precedent that can apply more generally in the area. I also note that an interested party has stated that Rode has already met its future housing allocations. However, the housing land supply is calculated on a boroughwide basis. As the Council is currently unable to demonstrate a five year housing land supply, I can only give this concern little weight.
23. The Parish Council has drawn my attention to 4 other appeal decisions in Mendip and how the Inspectors in these cases had rejected the 'presumption in favour of sustainable development'. However, I do not have the full details of

any of these other developments before me so I cannot be certain that the circumstances are directly comparable to the appeal scheme before me now. Notably, from the limited information provided, I see that these earlier decisions related to larger schemes of between 28 and 40 dwellings. Nevertheless, I have considered this appeal proposal on its own merits.

Planning and Heritage Balance

24. The harm that I have found would be caused to the significance of the heritage assets by virtue of development within its setting, would be localised. Accordingly, the harm would be less than substantial. The Council consider that any harm is at the lower end of a sliding scale of such harm. Nonetheless, I am mindful that less than substantial harm does not equate to a less than substantial planning objection and that any such harm is to be given considerable importance and weight. Paragraph 208 of the Framework states that this harm must be weighed against the public benefits of the proposal.
25. An earlier appeal decision² found that the Council could only demonstrate a 3.3 year supply of housing as of May 2023. The Council has not provided me with a latest supply figure, but they accept they cannot currently demonstrate a five-year supply of deliverable housing sites. Accordingly, the weight to be afforded to the conflict with the development strategy, in light of the land supply shortfall, is reduced and I attach moderate weight to the conflict in these circumstances. Such a level of shortfall would also mean that the provision of 3 houses, would attract significant weight in the balance, consistent with the Government's aim in paragraph 60 of the Framework of significantly boosting the supply of homes.
26. There would also be economic benefits contributing to building a stronger, responsive, and competitive economy, supporting growth with construction and post-construction benefits. The proposal would encourage development and associated economic growth with future occupants contributing to the local economy and continued viability of services in the local area, notably in Rode. There would also be some sustainability credentials associated with the proposal regarding its location and proximity to the defined development boundary. Together these benefits carry moderate weight in favour of the development.
27. For the above reasons, I consider that the benefits of the development, taken together, outweigh the less than substantial harm to the designated heritage assets. Hence, there would be no conflict with the relevant heritage objectives of the Framework. Furthermore, the adverse impacts of the development would not significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework as a whole.
28. Consequently, whilst the development is in conflict with the development plan as a whole, there are material considerations as outlined above, including the Framework, which, in these circumstances, outweigh that conflict and indicate that planning permission should be granted for development which is not in accordance with it.

² Appeal Reference APP/Q3305/W/22/3311900

Conditions

29. The Council has suggested 16 conditions. I have assessed these in light of the advice provided in the Planning Practice Guidance (PPG). A condition setting a time limit for the commencement of the development is required by statute. It is necessary that there is a condition requiring the development to be carried out in accordance with the approved plans for certainty.
30. Conditions regarding a sample panel of walling materials to be approved by the local planning authority and for the hard and soft landscaping to be carried out in accordance with the approved details are both considered reasonable and necessary to safeguard the character and appearance of the area.
31. In order to safeguard the trees on site, a condition to ensure the tree protection measures as set out on the approved annotated tree protection plan are implemented is considered both reasonable and necessary. The wording has been amended slightly for clarity purposes.
32. In the interests of highway safety, conditions are considered necessary to ensure that the access, parking and turning areas are all constructed as approved, as well as a condition to ensure that the approved access is constructed with a bound and compacted surfacing. For the same reasons, conditions are considered necessary to ensure the visibility splay as approved is implemented, with no obstructions over 600mm within the splay, as well as ensuring that any gates associated with the vehicular access are appropriately sited.
33. A condition to restrict vegetation removal, unless otherwise advised by a competent ecologist, is considered both reasonable and necessary in the interests of protecting nesting birds. In the interests of protecting European Protected Species, a condition is considered necessary for no external lighting to 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.
34. A condition which protects any features potentially used by hedgehogs prior to any groundworks and vegetative clearance is considered reasonable in the interests of a priority species. The wording has been amended slightly for clarity purposes. Also in the interests of protected and priority species, a condition which controls the process of clearing the vegetation within the construction area is also considered reasonable and necessary. In order to ensure an enhancement of biodiversity, it is considered necessary to approve a Biodiversity Enhancement Plan.
35. In order to encourage the use of more sustainable modes of transport, it is also considered necessary to require further details regarding the provision of electric vehicle charging points. Finally, in order to minimise disruption to surrounding residents, a condition to restrict the hours of demolition, clearance and redevelopment is also necessary.

Conclusion

36. For the reasons set out above, the appeal is allowed.

Laura Cuthbert

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall begin not later than years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with drawing nos 7112/00A, 11C, 12C, 13A, 14A and 34293YOS-01 TOPOGRAPHICAL SURVEY.
- 3) No construction of the external walls of the development shall commence until a sample panel of all external walling materials to be used has been erected on site, approved in writing by the local planning authority, and kept on site for reference until the development is completed. The development shall be undertaken in accordance with the approved details.
- 4) No development shall commence until the protective measures as stated in the approved annotated tree protection plan are implemented. The local planning authority is to be advised in writing two weeks prior to development commencing of the fact that the tree protection measures as required are in place with photographic evidence.
- 5) No occupation shall commence until the access, parking and turning areas have been constructed in accordance with details shown on the approved plans. The vehicular access, parking and turning shall thereafter be kept clear of obstruction and shall not be used other than for the access and parking of vehicles in connection with the development hereby permitted.
- 6) 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.
- 7) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that Order with or without modification), any gates erected or installed at the vehicular access hereby approved shall be permanently hung to open away from the public highway and set back a minimum of 6m from the adjoining carriageway edge.
- 8) No occupation of the development shall commence until the visibility splay shown on drawing number 7112_12C has been provided. There shall be no on-site obstruction exceeding 600mm above ground level within the visibility splay. The visibility splay shall be retained permanently thereafter.
- 9) All hard and/or soft landscape works shall be carried out in accordance with the approved details. The works shall be carried out prior to the occupation of any part of the development or in accordance with the programme (phasing) agreed in writing with the local planning authority. Any trees or plants indicated on the approved scheme which, within a period of five years from the date of the development being completed, die, are removed or become seriously damaged or diseased shall be replaced during the next planting season with other trees or plants of a species and size to be first approved in writing by the local planning

authority. All hard landscape works shall be permanently retained in accordance with the approved details.

- 10) No vegetation removal works around the site shall take place between 1st March and 31st August inclusive, unless a competent ecologist has undertaken a careful, detailed check of the trees, shrubs and scrub and tall ruderal vegetation to be cleared for active birds' nests immediately before works proceed and provides written confirmation that no birds will be harmed and/or that there are appropriate measures in place to protect nesting bird interest on site. Any such written confirmation should be submitted to and approved in writing by the local planning authority by the ecologist accompanied by dated photos showing the site before and after clearance. In no circumstances should netting be used to exclude nesting birds.
- 11) 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.

- 12) Prior to groundworks and vegetative clearance, any features potentially used by hedgehogs will be dismantled by hand by a competent ecologist between April and October and any individuals found translocated to an appropriate Location prior to works commencing on site. Translocation sites will be submitted and agreed in writing by the local planning authority prior to searches being made. A written confirmation of the completion of the operations will be submitted by the ecologist prior to works commencing on site.
- 13) Any vegetation in the construction area should initially be reduced to a height of 10 centimetres above ground level by hand, brashings and cuttings removed, and the remainder left for a minimum period of 48 hours of fine warm weather (limited rain and wind, with temperatures of 10°C or above) before clearing to minimise the risk of harming/killing any reptiles that may be present and to encourage their movement onto adjoining land. Written notification of the date of the operations will be submitted to the local planning authority prior to the works being undertaken. Once cut, vegetation should be maintained at a height of less than 10cm for the duration of the construction period. A letter confirming these operations and any findings will be submitted to the local planning authority by the ecologist responsible.
- 14) A Biodiversity Enhancement Plan (BEP) shall be submitted to and be approved in writing by the local planning authority prior to

commencement of the development. The content of the BEP shall include the following:

- a) Four Habibat 001 bat boxes or similar will be built into the structures at least four metres above ground level and away from windows of the west or south facing elevations (one on each dwelling).
 - b) A cluster of five Schwegler 1as swift bricks or similar built into the walls at least 60cm apart, at least 5m above ground level on the north facing elevations (a cluster on two of the dwellings).
 - c) Two Vivra Pro Woodstone House Martin nests or similar will be mounted directly under the eaves of the north elevations (mounted on two dwellings).
 - d) Any new fencing must have accessible hedgehog holes, measuring 13cm x 13cm to allow the movement of hedgehogs into and out of the site.
 - e) The new hedgerow/s to be planted up with native species comprised of a minimum of 5 of the following species: hazel, blackthorn, hawthorn, field maple, elder, elm, dog rose, bird cherry and spindle.
 - f) All new shrubs must be high nectar producing to encourage a range of invertebrates to the site, to provide continued foraging for bats. The shrubs must also appeal to night-flying moths which are a key food source for bats. The Royal Horticultural Society guide, "RHS Perfect for Pollinators, www.rhs.org.uk/perfectforpollinators" provides a list of suitable plants both native and non-native.
 - g) One Vivara Pro Woodstone Nest Boxes (32mm hole version) or similar mounted between 1.5m and 3m high on the northerly facing aspect of trees and maintained thereafter.
 - h) One Vivara Pro Barcelona Woodstone Bird Box (open front design) or similar mounted between 1.5m and 3m high on the northerly facing aspect of trees and maintained thereafter.
- 15) Prior to the construction of any part of the development above damp-proof course level, a scheme showing full details of the number and location of charging points for plug-in and other ultra-low emission vehicles in safe, accessible and convenient locations within the development (along with a timetable for their provision), shall be submitted to and approved in writing by the local planning authority. Thereafter the development shall be carried out in accordance with the approved details and timetable.
- 16) Noise emissions from the site during the development, i.e. the demolition, clearance and redevelopment of the site, shall not occur outside of the following hours:
- Mon - Fri 08.00 - 18.00
- Sat 08.00 - 13.00
- All other times, including Sundays, Bank and Public Holidays there shall be no such noise generating activities.