



Appeal Decision

Site visit made on 8 October 2024

by S Harrington MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22 October 2024

Appeal Ref: APP/F0114/W/24/3336375

Colliers Yard, Frome Road, Radstock BA3 3PT

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant outline planning permission.
 - The appeal is made by Mr A Charlton, Charlton Property Ltd against the decision of Bath and North East Somerset Council.
 - The application Ref is 21/05103/OUT.
 - The development proposed is a detached dwelling.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The application was made in outline. Matters of access, appearance, landscaping, layout and scale are reserved for future consideration (the 'reserved matters'). I have therefore treated any references to reserved matters in documentation as illustrative.

Main Issues

3. the main issues are:
 - whether the site is a suitable location for the proposal, having particular regard to the local spatial strategy;
 - the effect of the proposal on the character and appearance of the area, with particular regard to the Radstock Conservation Area (CA);
 - whether the proposal would provide sufficient living conditions for future occupants of the proposed development, with particular regard to outlook and natural light;
 - whether the proposal would comply with local and national policies that seek to steer new development away from areas at the highest risk from flooding; and
 - the effect of the proposal on ecology and bio-diversity.

Reasons

Location

4. Policy DW1 of the Bath and North East Somerset Local Plan Partial Update (January 2023) (LPPU) sets out the district-wide spatial strategy which focuses development in Bath, Keynsham, and the Somer Valley. Radstock is within the

Somer Valley, where Policy SV1 of the Bath and North East Somerset Placemaking Plan (July 2017) (PP) provides the spatial strategy for the Somer Valley which amongst other things, enables housing within development boundaries or on previously developed land (PDL) adjoining and closely related to the development boundary.

5. The appeal site is outside of the defined development boundary. However, it is put to me that the appeal site is 'brownfield' previously used for car sales. The National Planning Policy Framework (Framework) provides a definition of PDL which includes land which is or was occupied by a permanent structure, including the curtilage of the developed land and any associated fixed surface infrastructure. This excludes land that was previously developed but where the remains of the permanent structure or fixed surface structure have blended into the landscape.
6. I observed that the appeal site features some historic hardstanding and previously had planning permission for car sales. However, aside from fencing does not feature any permanent structures and despite what appears to be recent cutting of foliage at my visit, has a verdant undeveloped appearance and blends into adjacent woodland. Consequently, on the substantive evidence before me, the appeal site would not constitute PDL.
7. In areas outside of the development boundary, PP Policy RE4 seeks to support essential housing development for rural workers. This Policy only supports proposals that respond to an essential need for a rural worker to live permanently at or near their place of work. The proposal relates to an open market dwelling and there is no substantive evidence before me that it provides for the aforementioned circumstance. Therefore, in combination with the appeal not constituting PDL, there would inevitably be conflict with the settlement strategy.
8. Consequently, I conclude the site is not a suitable location for the proposal having particular regard to the local spatial strategy. The proposal would conflict with LPPU Policy DW1 and PP policies SV1 and RE4, the purposes of which are outlined above.

Character and appearance

9. The appeal site is located within the CA. I observed that the significance of the CA in part, arises from both the historic pattern of development directly linked to the industrial past of the area and its relationship with open landscape. Indeed, the Radstock Conservation Area Assessment (March 1999) outlines that the CA includes areas of open landscape reflecting the almost unique character of Radstock whereby the surrounding countryside comes close to the heart of the town.
10. The site is located within an area which features a mixture of commercial and residential development, although notable expanses of foliage contribute to the area having a wooded and spacious character. Although historically in a commercial use, the appeal site has an undeveloped verdant appearance and in combination with adjacent wooded land, provides a visual and physical green gap between built form which contributes positively to the character of the area.

11. There is dispute between the main parties as to if there are trees growing within the site boundary and the Arboricultural Technical Note¹ (ATN) indicates that no trees will be required to be removed, other than Ash trees exhibiting unrecoverable symptoms of Ash Die Back. However, the Arboricultural Impact Assessment (AIA)² surveyed 10 tree features and identified one for removal (T4) to facilitate the development.
12. Notwithstanding, I observed that there are a number of trees surrounding and within the site fringe. Although the AIA indicates Ash trees at the appeal site are displaying symptoms of Ash Die Back. I observed that the trees at and surrounding the site still presently provide a significant positive visual contribution to the surrounding area.
13. Whilst the AIA and ATN outline the use of tree protection measures, given the close proximity of canopies of surrounding trees to the appeal site, pruning and reduction in canopies, if not tree loss would be likely in order to implement the proposal.
14. Furthermore, given the density of surrounding foliage that I observed, there would be significant pressure from future residents to continue to prune overhanging canopies to provide natural light, thereby reducing foliage and screening of built form. Moreover, whilst the proposal would be subject to the reserved matters, inevitably the domestication of, and built form within the appeal site would be evident. This would encroach into and harm the existing green gap and wooded spacious character of the area, and significance of the CA.
15. Additionally, even if an Ash Dieback Management Plan (ADMP) and Landscape and Environmental Management Plan (LEMP) could be secured by a planning condition in order to enhance the quality, structure, diversity and longevity of adjacent woodland, given the location of the adjacent woodland, this would not mitigate the visual effect of tree works at the appeal site which is prominent from the highway.
16. I consider the harm to the CA to be less than substantial. Nonetheless, this harm attracts great weight under the terms of the Framework and falls to be weighed in the balance with the public benefits. The scheme would provide a new dwelling to the areas housing stock. There would also be associated economic benefits to the scheme during the construction period and from future occupation. However, due to the modest scope and scale of the proposal, these benefits attract limited weight and would not outweigh the individual harm to the CA.
17. Consequently, I conclude that the proposal would harm the character and appearance of the area, with particular regard to the CA and there would be conflict with Policy CP6 and SV3 of the Bath and North East Somerset Core Strategy (July 2014) (CS), PP policies D1, D2, NE2a and LPPU policies D5 and NE6. These policies seek to ensure, amongst other things, that development is of high-quality design following urban design principles which conserves and seeks opportunities to enhance local character, landscape setting and the historic environment. The proposal would also be contrary with the provisions of the Framework in relation to achieving well-designed places which are

¹ 19112023_ArbTechNote_Colliers_Yard_JP_v1

² 220614_1.-0_AIA_Colliers_Lane_JP

sympathetic to local character and conserve and enhance the historic environment.

Living conditions

18. Whilst the siting of the proposal would be subject to the reserved matters, given the space constraints of the site, any dwelling is likely to be in close proximity to mature planting around the site boundary. This would result in future occupiers' outlook being under and/or into tree canopies and foliage close by, resulting in an oppressive and overbearing effect on their outlook, especially when in leaf.
19. Moreover, although careful positioning of windows could allow some natural light to some windows, given the density and proximity of surrounding foliage, it has not been sufficiently demonstrated that adequate natural light within the proposed dwelling could be achieved.
20. Consequently, I conclude that the proposal would not provide sufficient living conditions for future occupants of the proposed development, with particular regard to outlook and natural light. The proposal therefore conflicts with PP Policy D6 which seeks, amongst other things, to ensure development achieves appropriate levels of outlook and natural light for future occupiers. The proposal would also conflict with the provisions of the Framework which seek to create places with a high standard of amenity for future users.

Flood risk

21. The appeal site abuts the Wellow Brook river, with parts of the site within Flood Zone 2 and 3 and at risk from fluvial sources. Given part of the site lies within Flood Zone 2 and 3, the proposal falls to be assessed against the requirements of CS Policy CP5 and the provisions of the Framework in relation to flood risk. These require, amongst other things, that a sequential approach should be undertaken, and development should be directed to sites at the lowest risk of flooding now or in the future, taking account vulnerability of land uses.
22. The Planning Policy Guidance (PPG) states that the aim of the sequential approach is to ensure that areas at little or no risk of flooding from any source are developed in preference to areas at higher risk. This means avoiding, so far as possible, development in current and future medium and high flood risk areas, considering all sources of flooding. It continues that even where a flood risk assessment shows the development can be made safe throughout its lifetime without increasing risk elsewhere, the sequential test still needs to be satisfied.
23. The Flood Risk Assessment³ indicates that subject to the reserved matters, a dwelling along with access and egress could be sited within areas of the site outside of Flood Zone 2 and 3. However, given part of the site is within Flood Zone 2 & 3, the site as a whole inevitably presents a greater risk than those entirely within areas of Flood Zone 1. Furthermore, the Framework and PPG refers to 'sites' in relation to applying the sequential test as opposed to part of sites, or buildings.

³ CHW Engineering 6 May 2022

24. Accordingly, I find that a sequential test is required in relation to the appeal proposal. A lack of objections from the Environment Agency during the planning application stage, does not negate the requirement for the sequential test to be passed. No sequential test assessment is before me. I therefore have no substantive evidence that there are no reasonably sequentially preferable locations and therefore no other sites that could accommodate the proposal in areas of lesser flood risk.
25. Consequently, the proposal would not comply with local and national policies that seek to steer new development away from areas at the highest risk from flooding. The proposal would conflict with CS Policy CP5 and would also be contrary to the provisions of the Framework, both of which I have previously outlined.

Ecology & biodiversity

26. LPPU Policy CP7 seeks to ensure that the integrity, multi-functionality, quality and connectivity of the strategic Green Infrastructure network will be protected, enhanced and managed. LPPU Policy NE1 and CS Policy SV3 also require that green infrastructure is protected, and that development does not adversely affect the value of green infrastructure corridors. Moreover, LPPU Policy NE3 seeks to prevent new development from causing harm to biodiversity. This policy prioritises the avoidance and minimisation of harm to biodiversity, but where this is not possible seeks for appropriate mitigation/compensation to be provided.
27. Given the appeal sites location along the Wellow Brook and its spatial relationship with adjoining habitat, the appeal site is part of, and positively contributes to the green infrastructure network. The Ecological Impact Assessment⁴ (EIA) identifies habitats including semi-natural broadleaved woodland, running water and unmaintained hardstanding with some sparse ephemeral vegetation cover.
28. Furthermore, the Council's ecologist has identified that the hardstanding is likely to comprise open mosaic habitat indicated by the presence of plant species characteristic of the habitat type which is a Habitat of Principal Importance for preserving biodiversity. Moreover, whilst not identifying any protected species at the appeal site at the time of the survey, the EIA identified potential for the site to support badger, roosting/foraging bats, nesting birds, dormouse, reptiles, hedgehog and otter.
29. Even if conditions could be imposed to ensure measures are in place to protect protected species and woodland habitat, the proposal would inevitably result in the loss of some, if not all of the mosaic habitat. LPPU Policy NE3a requires Biodiversity Net Gain (BNG) of a minimum of 10%, demonstrated by the latest DEFRA metric or agreed equivalent is secured in perpetuity (at least 30 years).
30. The ATN suggests enhancement measures could be secured by way of a ADMP and LEMP, and the proposal would provide ecological advantages to other habitats, such as additional bird nesting boxes. Nevertheless, No DEFRA metric or agreed equivalent is before me, and it has not been demonstrated how the proposal would provide the required level of BNG, particularly given

⁴ Abricon July 2022

the ecological value attributed to open mosaic habitat, or how it would be maintained in perpetuity.

31. Consequently, the proposal does not secure suitable measures to mitigate the effect of the proposal on ecology and biodiversity, with resultant harm to the green infrastructure corridor. As such it would conflict with LPPU policies CP7, NE1, N3 and N3a, and CS Policy SV3, the purposes of which I have outlined above. The proposal would also conflict with the provisions of the Framework in respect of conserving and enhancing the natural environment.

Other Matters

32. Although the appeal site is not within 5km of the Bath & Bradford on Avon Bats Special Area of Conservation (SAC), the Council's ecologist has noted that there are other nearby roosts which form part of the SAC population including a lesser horseshoe bat roost located 28m from the site and a great horseshoe roost 675m to the north-east. Potential habitat loss and/or lighting associated with the proposal could result in impact to roosting and foraging or commuting of SAC bats.
33. However, Regulation 63(1) of the Conservation of Habitats and Species Regulations 2017 indicates the requirement for an Appropriate Assessment is only necessary where the competent authority is minded to give consent for the proposal.
34. Given my conclusions on the main issues above, it is not necessary for me to consider this matter any further as the proposal would not take place and would not affect the habitat site.
35. The proposal would provide benefits in terms of the contribution of a single dwelling towards housing supply within a location easily accessible to services and facilities. The proposal would also help to support the construction industry during the short term, as well as further economic and social benefits as a result of its future occupation. However, these benefits would be limited due to the scope and scale of the development.

Conclusion

36. For the reasons given above, I find that the proposal would conflict with the development plan, read as a whole. No material considerations, individually or cumulatively, indicate that a decision should be taken otherwise than in accordance with it. Therefore, the appeal is dismissed.

S Harrington

INSPECTOR