



Appeal Decision

Site visit made on 8 October 2024

by S Harrington MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24 October 2024

Appeal Ref: APP/F0114/W/23/3334021

Land West of Providence Bungalow, Frome Road, Radstock, Bath And North East Somerset

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by Mr T Gregory, Gregory Design and Build Limited against the decision of Bath and North East Somerset Council.
 - The application Ref is 23/02008/FUL.
 - The development proposed is residential development for 6 No. 3 bedroom houses, including waste and re-cycling building, and tree works.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The appeal site address provided within the application form was incomplete, being described as 'Land to the north of Frome Road – refer to location plan'. As such, I have utilised the address provided within the decision notice in the banner heading above, which provides a more accurate description of the location.
3. Following the decision of the Council, the appellant has submitted further information in relation to ecology being an Ecological Statement¹, Badger Survey and Tree Inspection Report², Reptile Presence/Absence Survey³, Botanical Survey Report and Biodiversity Net Gain (BNG) calculation⁴. It is suggested that this information should be considered in the appeal decision to address the Council's fifth and sixth reasons for refusal.
4. The Procedural Guide to Planning Appeals – England states that the appeal process should not be used to evolve proposals and is clear that revisions intended to overcome reasons for refusal should normally be tested through a fresh application. I have had regard to the degree of engagement of all parties and the interests of fairness. Given the further information does not fundamentally alter the appeal proposal, and that the Council have had opportunity to comment on the additional information, I have accepted its submission and taken account of this evidence.
5. The Council has confirmed that the further information is sufficient to overcome the fifth reason for refusal, subject to the imposition of appropriate

¹ Seasons Ecology ref:SEB2647

² Seasons Ecology ref: SEB2647_04

³ Seasons Ecology ref:SEB2647_03

⁴ Seasons Ecology ref:SEB2647_02 V2

conditions. They therefore advise that they no longer wish to defend the reason for refusal in respect of badgers, bats and reptiles. I therefore do not address this matter in the reasoning below.

Main Issues

6. 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); and
- the effect of the proposal on bio-diversity.

Reasons

Location

7. Policy SV1 of the Bath and North East Somerset Placemaking Plan (July 2017) (PP) provides the spatial strategy for the Somer Valley. This Policy, amongst other things, seeks to protect and enhance the distinctive character of the area whilst enabling housing within development boundaries, previously developed sites adjoining and closely related to the housing development boundary, or sites identified within an adopted Neighbourhood Plan (NP).
8. The appeal site is adjacent, but outside of the defined development boundary and is not a site identified within a NP. Nevertheless, it is put to me that the appeal site is 'brownfield' due to the site historically being the route of a tramway.
9. However, the National Planning Policy Framework (Framework) definition of previously developed land (PDL) excludes land that was previously developed but where the remains of the permanent structure or fixed surface structure have blended into the landscape.
10. Although the appellant points to the existence of a wall which was the boundary of the tramway, I observed that there did not appear to be any above ground permanent structures of the tramway evident. Indeed, my observations accord with the appellant's Heritage Statement (March 2023) which states 'There is no physical evidence left of the tramways existence on the ground'. Furthermore, the Design and Access Statement also highlights the lack of any evidence of the tramway remaining. Instead, the appeal site has a verdant undeveloped appearance which forms part of a hillside landscape.
11. Consequently, on the substantive evidence before me, the appeal site would not constitute PDL, and in combination with the appeal site's location outside of the development boundary, there would inevitably be conflict with the settlement strategy.
12. Therefore, I conclude on this main issue that the site is not a suitable location for the proposal having particular regard to the local spatial strategy. The proposal would conflict with PP Policy SV1, the purposes of which is outlined above.

Character and appearance

13. The appeal site is within the CA. 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) (RCAA) 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. Moreover, the appeal site is within is CA character area 7 (Wirthlington Collieries) within which the RCAA notes that the hillside north of Frome Road is of intrinsic importance to the special character of the area.
14. The surrounding local landscape character is formed by the distinctive valley setting, and the green corridors running into the town along the middle valley sides. The appeal site itself is part of a visually prominent semi-wooded and scrub corridor linking the rural wooded valley landscape to the east with the centre of Radstock to the west. As such the appeal site positively contributes to the character of the area.
15. The proposal would inevitably require the felling of trees and it is put to me that the Council have permitted other proposals for felling of trees similar to that proposed. The appellant's Arboricultural Report⁵ (AR) recommends the removal of Ash trees within the appeal site due to Ash dieback, with it being put to me that the loss of these trees will be compensated for with new individual broad canopy native trees lower down the valley side, ornamental and native trees within the development and areas of native woodland blocks and mixed native hedges.
16. Nevertheless, photographs provided by the Council's Arboricultural Officer dating from June 2023, and therefore after the AR, indicates that the level of infection was generally low to very low. At my site visit, whilst noting signs of potential Ash die back progression, I observed that the trees still provide a significant positive visual contribution to the surrounding area, due to their size, prominence and location within a green corridor. They are therefore of significant positive value, notwithstanding their life expectancy may be reduced.
17. The appellant's Landscape and Visual Impact Assessment (LVIA)⁶ identifies that the appeal site is visible from a number of viewpoints both along Frome Road, and more distant viewpoints, particularly from the opposing valley side.
18. In terms of effects on local landscape character, the LVIA acknowledges that there would be adverse effects, with some at a moderate level. With regard visual effects, the LVIA outlines these would be noticeable, prominent and moderate adverse in close range views, with a high magnitude of change. From other viewpoints, visual effects are assessed as being either slight or negligible, However, these visual effects are on the basis of a low sensitivity (aside from viewpoint 5) of potential visual receptors.
19. The definition of sensitivities provided within the LVIA methodology, notes that visitors to conservation areas where setting is recognised as integral to the area's importance should be high sensitivity, whilst residential communities

⁵ Paul Marshall 9th October 2022

⁶ ACLA Ltd (May 2023) ref: ACLA/BTI

and private properties with partial or glimpsed views of the development from apparent key living and access areas are medium sensitivity.

20. 11 of the viewpoints provided within the LVIA are either within or on the boundary of the CA, as well as viewpoints such as 10, 11 and 13 being from residential areas with views of the appeal site and surrounding green corridor. Whilst I accept that these viewpoints provide distant localised views, the appeal site is clearly seen as an important part of a green corridor that is characteristic of the CA, and therefore of increased landscape value and receptor sensitivity.
21. Consequently, as well as moderate adverse visual effects in close range views, I find that the range of visual effects from more distant views are likely to be of a heightened degree to that detailed within the LVIA, and therefore in a range up to moderate.
22. The proposal would introduce residential built form within the more elevated southern section of the part wooded hillside. Due to the topography, the properties would appear two storey from Frome Road, however would be seen as three storey properties from the rear. I observed similar properties nearby which also feature similar facing materials. However, these are on the lower section of Frome Road and therefore less prominent than the proposal from surrounding views, as well as having a dual frontage with Frome Road and Mill Road.
23. The loss of mature trees, combined with 3 storey built form when viewed from the opposing side of the valley, would accentuate a harmful encroachment of the proposal into the green corridor which links countryside landscape with the centre of Radstock. Furthermore, even if landscape mitigation could be secured by condition, I am unconvinced that this would provide sufficient screening or assimilation to overcome the intrusion of built form given its quantum and the steep topography of the site.
24. The proposal would result in the introduction of housing in close proximity to other residential development. Nevertheless, existing housing frames and emphasises the importance of the appeal site and surrounding green corridor to the landscape setting of Radstock which is intrinsic importance to the special character of the area. Therefore, the proposal would harmfully diminish the identified character and appearance of the area and CA.
25. 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 proposal would provide 6 new dwellings to the area's housing stock. There would also be associated economic benefits from the proposal during the construction period and from future occupation. However, due to the scope and scale of the proposal, these benefits attract limited weight and would not outweigh the individual harm to the CA.
26. Consequently, I conclude that the proposal would harm the character and appearance of the area, with particular regard to the CA. There would be conflict with Policy CP6 of the Bath and North East Somerset Core Strategy (2014), PP policies D1, D2, HE1, NE2a, and policies NE1, NE2 and NE6 of the Bath and North East Somerset Local Plan Partial Update (2023) (LPPU). 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 protect and enhance local character, landscape setting, green corridors, trees and woodland 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 sympathetic to local character and conserve and enhance the historic environment.

Biodiversity

27. LPPU Policy NE3a requires that a Biodiversity Net Gain (BNG) of a minimum of 10% is demonstrated and secured in perpetuity (at least 30 years) after application of the mitigation hierarchy. Baseline habitats have been informed by a Botanical Survey⁷. BNG calculations undertaken utilising the Biodiversity Metric 4.0 demonstrates that the proposal would be capable of delivering appropriate levels of BNG.
28. However, even if I were to accept that the proposal has been designed to first avoid and minimise habitat loss thereby adhering to the mitigation hierarchy, the post development habitat map indicates that the appropriate BNG would only be achieved by providing additional habitats off (although adjacent) the appeal site. The BS also outlines that some of these habitats require management to achieve moderate and good condition, including long term commitment to removal of certain species, mowing and removal of clippings.
29. No planning obligation is before me to secure the BNG. Whilst the adjacent land may well be in the control of the appellant, I am not persuaded that a planning condition to secure the BNG habitat would be reasonable or realistically enforceable, given the required 30-year management period.
30. Consequently, given the lack of a robust planning obligation, I am not satisfied that the proposal would deliver a minimum of 10% BNG. As such it would conflict with LPPU policy N3a the purposes of which I have outlined above.

Other Matters

31. The appellant has cited other planning permissions and an appeal decision which involve other sites outside of the development boundary. However, these differ from the current proposal in several ways. Planning permission 17/05597/FUL involved the redevelopment of a site in light industrial use and was deemed to be previously developed land.
32. In relation to planning permission 16/04709/FUL, conflict with the development plan was identified by both the Council and a previous appeal Inspector. However, the previous appeal Inspector considered that the proposal, which is in a less prominent position along Frome Road and given surrounding development including light industrial, would preserve the character and appearance of the CA. As such, the 'sustainable' location of that appeal site was considered to outweigh the development plan conflict in that instance.
33. Similarly, appeal APP/F0114/W/22/3313796 was allowed due to the 'sustainable location', outweighing conflict with the development plan. In that case, the Inspector found that siting of dwellings in that location would not appear as an overly insensitive form of development, nor harmful to the

⁷ Seasons Ecology ref: SEB2647_02 V2

character or significance of the CA. As such, these cases are materially different to the proposal before me.

Planning Balance

34. Whilst noting the appellant's comments in relation to national housing targets, the Council states they are able to demonstrate a five-year housing land supply, and this has not been disputed. Nevertheless, the proposal would provide benefits in terms of the contribution of six dwellings towards housing supply within a location 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

35. For the reasons given above, I find that the proposed development 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