



Appeal Decision

Site visit made on 3 July 2024

by Alexander O'Doherty LLB (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24 October 2024

Appeal Ref: APP/F0114/W/24/3338903

Halfway Farm, Stanton Road, Stanton Drew, Bristol BS39 4ET

- 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 & Mrs Rupert Gibson against the decision of Bath & North East Somerset Council.
 - The application Ref is 23/02236/OUT.
 - The development proposed is outline application for the demolition of the existing farm buildings and farmhouse and replace with 5 new dwellings, all matters reserved.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. This appeal follows an outline application, where all matters are reserved for later consideration. I have treated the Proposed Site Plan Drawing¹ as being indicative only.

Main Issues

3. The main issues are:
 - whether the proposed development would be inappropriate development in the Green Belt having regard to the National Planning Policy Framework (the Framework) and any relevant development plan policies;
 - the effect of the proposed development on the openness of the Green Belt;
 - whether the appeal site is a suitable location for the proposed development, having particular regard to the spatial strategy in the development plan and the accessibility of services and facilities;
 - the effect of the proposed development on the character and appearance of the area;
 - the effect of the proposed development on protected species and biodiversity; and
 - whether any harm by reason of inappropriateness, and any other harm, would be clearly outweighed by other considerations, so as to amount to the very special circumstances required to justify the proposed development.

¹ Proposed Site Plan Drawing (Drawing No. 1554 – 03) (Rev. A)

Reasons

Whether Inappropriate Development

4. The Framework establishes that the construction of new buildings within the Green Belt is inappropriate development. There are however a limited number of exceptions to this. The main parties have focussed on paragraph 154 d) of the Framework which relates to the replacement of a building, provided the new building is in the same use and not materially larger than the one it replaces. Policy CP8 of the Local Plan Partial Update² (Local Plan) states that the openness of the Green Belt will be protected from inappropriate development in accordance with national planning policy.
5. Although it could be argued that the farmhouse on site could benefit from an existing lawful residential use, it is clear that the remainder of the buildings on site have previously been used for agricultural purposes. Indeed, the planning application form confirms that the current use of the site is agricultural.
6. The proposed development seeks to demolish all of the existing buildings on site, and replace these with buildings in residential use. As the proposed dwellings would not be in the same use as the majority of the existing buildings on site, the proposed development when considered as a whole would not benefit from the exception to inappropriate development found at paragraph 154 d).
7. The proposed development would therefore constitute inappropriate development in the Green Belt for the purposes of the Framework and Policy CP8 of the Local Plan. Inappropriate development is, by definition, harmful to the Green Belt.

Openness

8. The Planning Practice Guidance (PPG) advises that openness is capable of having both spatial and visual aspects³. The site is situated amongst rolling fields in a rural area, and the buildings on site, although dilapidated, appear in keeping with this countryside setting.
9. The proposed development of 5 new dwellings would in all likelihood appear conspicuous from nearby vantage points, whatever layout is chosen, due to the gently rising nature of the site adjacent to the B3130. The proposed dwellings and their associated domestic paraphernalia would appear as an isolated cluster of residential development in this otherwise largely open landscape. Their visual impact on the openness of the Green Belt would therefore likely be greater than the existing buildings on site, which are visually congruent with agricultural activities. The presence of vehicles and domestic paraphernalia on site would reduce the openness of the Green Belt in spatial terms. Even though the impact to openness in these respects would be confined to the local area, harm would nevertheless result to the Green Belt.

Location

10. The district-wide spatial strategy as set out in the Local Plan seeks to ensure that development in rural areas is located at settlements. As the site is located

² Bath and North East Somerset Local Plan: Core Strategy and Placemaking Plan incorporating the Local Plan Partial Update - Volume 1: District-wide Strategy and Policies (adopted 2023)

³ Paragraph 64-001-20190722

outside of a defined housing development boundary, the proposed development would not be in line with this aspiration. The proposed development would not relate to a rural exception site, or to essential dwellings for rural workers, in conflict with part 1) of Policy RE4 of the Local Plan. It follows that, in principle, the site would not be a suitable location for residential development.

11. Although in theory agricultural activities on site could be resumed, it has not been shown that this would be a likely prospect in the foreseeable future. As the site is not currently in use, the proposed development would result in an increase in pedestrian and vehicle movements over-and-above this existing situation.
12. Few details have been provided to illustrate the nature and amount of any services and facilities in the vicinity of the site. On the basis of the evidence before me, it appears that these are limited. The future occupiers of the proposed development would therefore likely need to travel beyond the local area to meet their day-to-day needs.
13. Bus stops are located within a reasonable walking distance, to the east of the site. However, any journey on foot or bicycle to these bus stops would involve traversing a busy road with a 40mph speed limit, with no pedestrian footway, cycle lane, or street lighting. I observed that part of this route immediately to the east of Halfway Farm is virtually unpassable without significant risk of collision with vehicles due to the very narrow width of the grass verge adjacent to the road. This risk would be heightened during the hours of darkness due to the lack of street lighting along the road.
14. Consequently, although the Framework states that opportunities to maximise sustainable transport solutions will vary between urban and rural areas, in this case it is highly likely that the future occupiers of the proposed development would be heavily reliant on the use of private vehicles to meet their day-to-day needs. The proposed development would not limit the need to travel, nor would it offer a genuine choice of transport modes, as required by paragraph 109 of the Framework.
15. I therefore find that the site is not a suitable location for the proposed development, having particular regard to the spatial strategy in the development plan and the accessibility of services and facilities. It would conflict with part 1: d: of Policy DW1 of the Local Plan which provides that, amongst other things, the overarching strategy for B&NES is to promote sustainable development by focussing new housing in Bath, Keynsham, and the Somer Valley particularly ensuring development in rural areas is located at settlements with a good range of local facilities and with good access to public transport.
16. The proposed development would conflict with part 1) of Policy RE4 of the Local Plan which provides that, amongst other things, new dwellings will not be permitted outside a Housing Development Boundary in the open countryside unless there is an essential need for a rural worker to live permanently at or near their place of work in the countryside.
17. The proposed development would conflict with part 1) of Policy ST1 of the Local Plan which provides that, amongst other things, development should be located where there are, or will be at the time of development, a range of

realistic travel opportunities to provide genuine alternatives to private car usage and where opportunities to reduce travel distances exist, and with part 1) aa) of Policy ST7 of the Local Plan which provides that, amongst other things, development will be permitted provided that users of the development benefit from genuine choice in their mode of travel through opportunities to travel by sustainable modes.

18. The proposed development would also conflict with chapter 9 of the Framework which seeks to promote sustainable transport.
19. Policy RA1 of the Local Plan has been referred to by the Council. However, as this policy relates to villages located outside the Green Belt or excluded from the Green Belt, it is not directly relevant to this main issue. Nevertheless, the above-mentioned policies are more than sufficient for me to come to a view on this main issue.

Character and appearance

20. As mentioned on the second main issue above, the site is situated amongst rolling fields in a rural area, and the buildings on site, although dilapidated, appear in keeping with this countryside setting. Although all matters are reserved for later consideration, due to the lack of built development for some distance either side of the site, and the prominent location of the site when seen from the road, on a balance of probabilities it is unlikely that a development could be devised on site without it appearing as an isolated and incongruous feature amongst the surrounding rural landscape.
21. I therefore find that the proposed development would have an unacceptable and harmful effect on the character and appearance of the area. It would conflict with Policy GB1 of the Local Plan which provides that, amongst other things, development within or conspicuous from the Green Belt should not prejudice but seek to enhance the visual amenities of the Green Belt by reason of its siting, and with part 1. a) of Policy NE2 of the Local Plan which provides that, amongst other things, development will be permitted where it conserves or enhances local landscape character, landscape features and local distinctiveness.
22. The proposed development would also conflict with paragraph 135 c) of the Framework which provides that, amongst other things, planning decisions should ensure that developments are sympathetic to local character and history, including the surrounding built environment and landscape setting, while not preventing or discouraging appropriate innovation or change (such as increased densities).

Protected species and biodiversity

23. The submitted Reptile Survey Report confirms that a small population of slow-worms was detected at the site with a peak count of one individual. Slow-worms are a protected species under the Wildlife and Countryside Act 1981 (as amended). Circular 06/2005 states that the presence of a protected species is a material consideration when a development proposal is being considered which would be likely to result in harm to the species or its habitat.
24. Although a receptor site in the form of a newly-created habitat has been proposed, the Council have queried how this reptile receptor site would be retained undisturbed during works. Information has not been provided at the

appeal stage to clarify this matter, including how it would be ensured that reptiles are not killed or injured during works. Hence, it has not been demonstrated that the proposed development would not have a harmful effect on slow-worms, which are a protected species.

25. The submitted Bat Survey Report confirms that occasional day roosts and transitional roosts for bats have been observed on site. Bats are a protected species under the Wildlife and Countryside Act 1981 (as amended), and bats are a European Protected Species under the Conservation of Habitats and Species Regulations 2017 (as amended).
26. The Bat Survey Report notes that the proposed works are likely to result in damage to multiple roosts and possible harm to the bats therein. It follows that, without effective mitigation, the proposed development would likely have an adverse effect on protected species.
27. Bat boxes are proposed to be erected on mature trees around the site. The Council have referred to the apparent lack of mature trees on site to support the proposed bat boxes, and the appellants have not provided any clarification at the appeal stage regarding this matter. The new trees proposed to be planted on site would take time to mature, and so cannot be relied upon for this purpose. As it is unclear at this stage whether alternative provision for the proposed bat boxes could be secured on site, this is not a matter which could be dealt with by way of the imposition of a planning condition.
28. As it has not been shown that the proposed mitigation in these respects could be successfully implemented on site, it has not been demonstrated that these mitigation measures would adequately mitigate the adverse impacts caused to the bats' resting places. As such, it has not been demonstrated that the proposed development would not have a harmful effect on bats, which are a protected species. In these circumstances, where it has not been established that the proposed development would not adversely affect the favourable conservation status of the affected bat populations, it is unlikely that a European Protected Species Mitigation Licence would be granted by Natural England.
29. The site is located approximately 130 metres to the north of the River Chew Site of Nature Conservation Interest (SNCI), which is designated for the river and associated marginal habitats, as well as certain protected species. The proposed method of drainage of storm/run off water would be via natural ground soak away. A planning condition has been proposed to carry out filtration testing. The appellants have suggested that, should these tests prove inadequate, then the fall-back position of the existing drainage discharging directly to the River Chew is proposed.
30. In the event that the fall-back position is required to be implemented, few details have been provided to demonstrate what the effect of the surface water run off from the proposed development of 5 dwellings would be on the SNCI. This is contrary to the PPG, which states that where water quality has the potential to be a significant planning concern an applicant should be able to explain how the proposed development would affect a relevant water body in a designated site of importance for biodiversity, and how they propose to

mitigate the impacts⁴. It has not therefore been shown that harm to the SNCI, which contains protected species, would be avoided.

31. Policy NE3A of the Local Plan provides that, amongst other things, for minor developments, development will only be permitted where no net loss and appropriate net gain of biodiversity is secured using the latest DEFRA Small Sites metric or agreed equivalent. A DEFRA metric spreadsheet has not been provided in relation to the proposed development. Hence, it has not been demonstrated that the requirements of Policy NE3A would be met in terms of the proposed development securing no net loss and appropriate net gain of biodiversity.
32. Taking all of the above into account, as the outline permission applied for would itself comprise the planning permission, a precautionary approach is necessary. This means that planning permission must not be granted in the absence of evidence which demonstrates that there would be no adverse effects on protected species, or that mitigation measures would be effective. This is in line with paragraph 186 a) of the Framework which provides that, amongst other things, if significant harm to biodiversity resulting from a development cannot be avoided (through locating on an alternative site with less harmful impacts), adequately mitigated, or, as a last resort, compensated for, then planning permission should be refused.
33. I therefore find that it has not been demonstrated that the proposed development would not have a harmful effect on protected species, nor that an appropriate net gain of biodiversity would be secured in accordance with local planning policy.
34. The proposed development would conflict with part 3 a) of Policy NE3 of the Local Plan which provides that, amongst other things, development that would adversely affect, directly or indirectly, habitats or features of biodiversity/geodiversity importance or value will only be permitted for Sites of Nature Conservation Importance where impacts have been minimised, and with Policy NE3A of the Local Plan which provides that, amongst other things, for minor developments, development will only be permitted where no net loss and appropriate net gain of biodiversity is secured using the latest DEFRA Small Sites metric or agreed equivalent.
35. The proposed development would also conflict with paragraph 180 d) of the Framework which provides that, amongst other things, planning decisions should contribute to and enhance the natural and local environment by minimising impacts on and providing net gains for biodiversity.

Other Considerations

36. The Framework makes it clear at paragraph 153 that substantial weight is given to any harm to the Green Belt. It establishes that 'very special circumstances' will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm resulting from the proposed development, is clearly outweighed by other considerations.
37. The proposed development would support the Government's objective of significantly boosting the supply of homes by way of providing 5 new dwellings.

⁴ Paragraph 34-016-20140306

38. The proposed development would redevelop a site which presently contains derelict and redundant buildings. The Glossary to the Framework advises that previously developed land excludes land that is or was last occupied by agricultural or forestry buildings. Whilst the site as a whole cannot be considered to be previously developed for the purposes of planning policy, the proposed development would however support the development of under-utilised land and buildings, as required by paragraph 124 d) of the Framework.
39. The proposed development would provide work for construction professionals, thereby contributing to the local economy. The future occupiers of the proposed dwellings would be likely to support the economy and community life of surrounding villages.
40. The proposed development would remove the existing access point for the farmhouse. However, as this access point is not currently in use and appears unlikely to be used in the foreseeable future, this matter provides little weight in support of the proposed development.
41. The proposed development would incorporate renewable energy technologies, including potentially via solar panels. Water usage could be saved via rain water harvesting. New areas to specifically benefit habitats could be provided on site, as could areas of hedgerow, albeit as mentioned above, a DEFRA metric spreadsheet has not been provided in relation to the proposed development, as required by local planning policy.

Other Matters

42. The conduct of the Council during the processing of the planning application is not a matter that I can assess in the context of a planning appeal.
43. It is a fundamental requirement that any proposed development under the GPDO⁵ must be found to be permitted development, before the prior approval subject matter(s) can be considered by the decision-maker. In this case, the Council have referred to the fact that the 2 previous prior approval applications were refused on the basis that the schemes did not constitute permitted development. Although the appellants have stated that these applications were both incorrectly determined, no appeal decisions or court judgments have been provided to substantiate these assertions.
44. Moreover, whilst the prior approval application relating to appeal decision Ref APP/F0114/W/24/3338643 was not refused on this ground, that proposed development was found at the appeal stage to have an unacceptable transport and highways impact, which would likely be the case for any future prior approval application(s) relating to any of the buildings on site. Considering this, and having regard to *Mansell*⁶, the purported fall-back positions are merely theoretical prospects. This is not a matter which weighs in favour of the proposed development.
45. Reference has been made to the potential for a new pedestrian footway to be installed alongside the highway in the vicinity of the site, and for new bus stops to be created. However, such a scheme does not form part of the proposed development. Additionally, such infrastructure works would relate to the intrinsic nature of the B3130 rather than being directly related to the

⁵ The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended)

⁶ *Mansell v Tonbridge and Malling BC & others* [2017] EWCA Civ 1314

impacts of the proposed development itself. In any event, it has not been demonstrated that highway safety impacts could be cost-effectively mitigated to an acceptable degree, in the terms of paragraph 114 d) of the Framework. It would not therefore be appropriate to impose a planning condition relating to this matter.

Balancing of Considerations

46. The proposed development would be inappropriate development in the Green Belt and would result in a reduction in its openness. These matters carry substantial weight.
47. Furthermore, planning harms would arise due to the site not being a suitable location for the proposed development, due to the proposed development's unacceptable and harmful effect on the character and appearance of the area, and that it has not been demonstrated that the proposed development would not have a harmful effect on protected species, nor that an appropriate net gain of biodiversity would be secured. I am mindful that the Framework provides that the planning system should be genuinely plan-led, that the creation of high quality places is fundamental to what the planning and development process should achieve, and that planning decisions should contribute to and enhance the natural and local environment. Collectively, great weight has been given to these non-Green Belt harms.
48. The proposed development would result in a net gain of only 4 residential units on site, meaning that the scale of the positive impacts of the proposed development would not be significant. The lack of a DEFRA metric spreadsheet limits the weight which can be given to the purported environmental benefits with respect to Biodiversity Units figures provided in the submitted Preliminary Ecological Appraisal & Biodiversity Net Gain Report. In total, these benefits provide only modest support for the proposed development, resulting in no more than moderate weight in favour of it.
49. It follows that the other considerations in this case do not clearly outweigh the totality of the harms identified. The very special circumstances required to justify the proposed development do not exist. The proposed development would conflict with Policy CP8 of Local Plan which aims to protect the Green Belt from inappropriate development, and with Policy GB2 of the Local Plan which provides that, amongst other things, new buildings in villages in the Green Belt will not be permitted unless it is limited to infilling or it falls under the exceptions to inappropriate development listed within the Framework. The proposed development would also conflict with the aims of Green Belt policy as set out in the Framework.

Conclusion

50. For the reasons given above, having considered the development plan as a whole, the approach in the Framework, and all other relevant material considerations (including the representations of all interested parties), I conclude that the appeal should be dismissed.

Alexander O'Doherty

INSPECTOR