
Appeal Decision

Site visit made on 13 August 2025

by Mr D Szymanski BSc (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 02 September 2025.

Appeal Ref: APP/D0121/W/25/3364470

Open Space, Trendlewood Way, Nailsea BS48 4TA

- 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 John Orchard of P.J. Orchard RIBA against the decision of North Somerset Council.
 - The application Ref is 24/P/1832/FUL.
 - The development proposed is Construction of 1 No detached dwelling.
-

Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are the effect of the proposed development upon:
 - the character and appearance of the area;
 - a protected tree;
 - non-designated heritage assets of archaeological interest; and,
 - the North Somerset and Mendip Horseshoe Bats Special Area of Conservation (the SAC) and protected species.

Reasons

Character and appearance

3. The area is generally characterised by well-spaced planned residential development along and off Trendlewood Way, around which are some well-treed areas of open space and generous verdant verge features, some of which also include individual trees. The planned residential layouts result in a coherency and rhythm to the area and the greenspaces are of value in providing a spaciousness and verdant character and appearance to the area.
4. The appeal site was part of designated landscaping in past applications for residential development. It is privately owned, currently partly enclosed by mesh fencing, and adjacent to an under-construction development to its southwest. However, being adjacent to two footways and Trendlewood Way, the appeal site is a verdant greenspace feature that despite the fencing, positively contributes to the character and appearance of the area. This is appreciable within its vicinity along Trendlewood Way, part of Avening Close, and walking towards and along the

space on the paths around its boundaries. Interested party representations suggest it is deemed of value to many living nearby or who walk along it.

5. Though the proposed dwelling includes some carefully thought-out design aspects and materials, the appeal scheme would result in the loss and urbanisation of some proportion of this open greenspace from the construction of the dwelling. Though areas of garden would not be lost as greenspace, this would be reduced, enclosed and undergo some domestication. These effects would be harmful to the contribution of the appeal site to the character and appearance of the area.
6. The proposed dwelling position would appear squeezed towards the rear of the triangular plot with a very small triangular rear garden area. One significant flank elevation would almost abut one side plot boundary, and parts of two other elevations would be close to the northeastern boundary and the Norway Maple tree. Despite the relatively spacious remaining front plot area, the scale and position of the dwelling, would result in what would appear highly cramped, unsympathetic, and stridently at odds with surrounding plot layouts, including the scheme currently under construction. This would be significantly harmful to the character and appearance of the area and conditions could not mitigate the harm.
7. Though I note the appellant suggests this appeal scheme and that under construction are comparable, that site was allocated in an adopted development plan document, whereas the appeal site is not, and the appeal site is a landscaping area for previously approved housing. The under-construction scheme also appears to have quite evenly spaced dwellings well-related to their plots. While I have had regard to the neighbouring housing scheme in my assessment, it does not justify the approval of the appeal scheme.
8. For the reasons set out above, the proposed development would be significantly harmful to the character and appearance of the area, in conflict with Policies CS12 and CS31 of the North Somerset Council (NSC) Core Strategy (2017) (the CS), Policies DM32 and DM37 of the NSC Sites and Policies Plan Part 1 (2016) (the SPP1) and Policies SA2 and SA6 of the NSC Sites and Policies Plan Part 2 (2018) (the SPP2). These require proposals are of a high-quality design sensitive to local character, do not adversely affect green spaces making a worthwhile contribution to character including undesignated spaces, enhance local distinctiveness, the siting of buildings respect the existing street scene, and that proposals that result in harm to the character and appearance of the area will not be permitted.
9. It would conflict with the National Design Guide (2021) and the National Model Design Code (2021) which contain design advice with similar objectives to the above policies. It would also conflict with sections 8 and 12 of the National Planning Policy Framework (2024) (the Framework) insofar as these aim to ensure proposals retain open space, are sympathetic to local character including the surrounding built environment and landscape setting, maintain a strong sense of place, and that development that is not well designed should be refused.
10. That the site is privately owned and undesignated does not necessarily preclude it from falling under of Policy DM68 of the SPP1 and CS27 of the CS. However, from the Council's case I am unable to conclude the appeal site specifically falls within the definition of a sporting, recreational, cultural or community facility. The space at Winchcombe Close¹, had a history of use for neighbourhood meetings

¹ Ref. APP/D0121/W/23/3329005.

and events so does differ the circumstances of the appeal scheme. Therefore, based upon the specific evidence before me and what I saw, I have not concluded against these policies.

Protected tree

11. The protected Norway Maple is approximately 13m high, of good form, balance, crown density, health and vigour, typical of a tree of its age and species. It makes a significantly positive contribution to the character, appearance and amenity of the area. Its position makes it quite a prominent feature, visible from a good length of the public highway to the north, east and west and when approaching along the footway to the south. The appellant's tree survey indicates a 40+ year life expectancy, so it would be expected to continue to positively contribute to the character, appearance and amenity of the area for several years to come.
12. The plans show the dwelling would be largely outside the root protection area (RPA), but it appears a part would result in an incursion into it, and a patio area would make a clear incursion. While their construction is unlikely to require much excavation outside their extent shown, there would clearly be some excavation and works within the RPA. British Standard 5837:2012 (the BS) explains the RPA is a tool indicating the minimum area deemed to contain sufficient roots and rooting volume to maintain the tree's viability and where the protection of the roots and soil structure is a priority. Designs for foundations should seek to minimise the adverse effect upon trees and new permanent hard surfacing should not exceed 20% of existing unsurfaced ground within the RPA.
13. It is not clear how the foundations would and can be designed to take into account the roots. Though there is reference to hand digging and RPA ground protection measures, it is unclear as to the proportion of the RPA that would be covered by hard surfacing. The works also propose a crown raise to clear by 3m, which the appellant's arboriculturist states will be undertaken to ensure minor wounding that the species can typically tolerate. However, BS3998:2010 confirms that such works should be avoided or minimised in mature trees, because it can increase stem failure. It would seem unavoidable a crown raise to around 3m would require the loss of some significant branches, and wounding. Therefore, I have some concerns due to tree age, the nature of the works, and the advice in BS3998:2010.
14. The dwelling would be away from the canopy, with the canopy broadly to the northwest. However, the canopy would over sail a significant proportion of outdoor space to the front and side, with leaves, fruit and detritus being deposited. There would be further indirect shading and the tree would cast a shadow outside its canopy when the sun is due broadly east and west of these compass points. Notwithstanding the large amount of glazing there would be reduced light into and outlook from the lounge area and main window serving a bedroom, and the outdoor space would feel quite constrained and shaded, with limited outlook.
15. Given the stature and proximity of the tree to the dwelling and its relationship with the outdoor space, there is likely to be pressure for future works to it, or even its felling altogether. These could be prejudicial to its future health and contribution to the character, appearance and amenity of the area. Due to the requirement to balance the effects of tree works with the justification for them in assessing any application, that a tree is protected, does not give full certainty there would be no harmful works permitted to it, either in an application for consent, or any appeal.

16. I note the decision letter² for a site around 300m from this site, but each scheme must be considered on its own merits having regard to its relationship with trees, so that decision is not determinative in respect of this main issue. I am unable to definitively conclude the tree species in the photos from the appellant, which may have a different tolerance to surfacing and works within their RPAs. The tree at Station Road has a differing relationship with its host dwelling, appearing to be in a larger garden, further from the dwelling with a higher crown. The tree at Vynes Croft is likely to result in some significant shading at times. However, it is over a driveway, and it is unclear if the space forms the majority of garden for the dwelling. Therefore, the examples do not justify altering my findings.
17. Based upon the evidence before me, for the reasons set out above, through the pressure for future works, the proposed development would be likely to have adverse effects upon an important protected tree. This would conflict with Policy DM9 of the SPP1 which requires that proposals demonstrate the retention and protection of tree canopy cover has been considered, evaluation of the short- and longer-term effects upon protected trees in sufficient detail, and demonstrate the long-term protection of trees is realistic and would not result in an issue of conflict.

Non-designated heritage assets

18. Framework Paragraph 207 states applicants shall describe the significance of any heritage assets proportionate to their importance and no more than sufficient to understand the potential effects of a development upon their significance. Where a site has the potential to include heritage assets of archaeological interest, developers are expected to submit an appropriate desk-based assessment and, where necessary, a field evaluation. Paragraph 208 states that effects upon the significance of heritage assets need to be considered and paragraph 216 states the effect upon a non-designated heritage asset (NDHA) should be taken into account in determining an application.
19. The appeal site is understood to be within a landscape rich in medieval and post-medieval features, including associated with the Nailsea coalfield and is approximately 130m from earthworks denoting hollow ways and remnants of ridge and furrow, the extent of which is not established. Previous survey and evaluation conducted on land just to the south of the site revealed several circular and linear anomalies and confirmed the existence of a rectilinear enclosure. Therefore, though the appeal site is limited in size it would appear there is significant potential for it to include NDHAs of archaeological significance.
20. However, there is no substantive archaeological evidence before me from the appellant such as a desktop appraisal, geophysical survey and/or related assessments or evaluations establishing the extent and importance of any remains, and any effects of the appeal scheme upon their significance. There could be features warranting in-situ preservation, or other mitigation measures necessary, appropriate to their significance.
21. Therefore, the nature and extent of archaeological remains, could have implications for the acceptability of the development, or its form or layout. I am satisfied therefore, that it is necessary for further pre-determination works to establish the significance of the NDHAs and the effects of the proposed

² Ref. APP/D0121/W/12/2187915.

development upon them. In consequence, the approach of imposing a Grampian-type condition would not be an acceptable solution in this instance.

22. For the reasons set out above, I cannot be certain of the effects of the proposal upon the significance of NDHAs of archaeological interest, or that there would not be unacceptable effects. This conflicts with Policy CS5 of the CS and Policy DM6 of the SPP1, which seek that the significance of heritage assets are conserved and where a site has the potential to include heritage assets of archaeological interest, where necessary, proposals are accompanied by sufficient evidence to establish, their extent, importance and the potential harm to significance before an application is determined. It would also conflict with paragraphs 207 and 208 of the Framework, the relevant provisions of which I have set out above.

The SAC and protected species

23. The appeal site lies within an SAC consultation zone in the North Somerset and Mendip Bats SAC Guidance on Development Supplementary Planning Document (the SPD) (2018). The Conservation of Habitats and Species Regulations 2017 (as amended) (the Regulations) require where a project may result in a likely significant effect (LSE) on a European site (i.e. the SAC), a competent authority is required to assess its implications upon the integrity of that site, in view of its conservation objectives. Any LSEs need to be considered alone and in combination, adopting the precautionary principle.
24. The SAC is designated as it provides a range of listed habitats for Greater and Lesser Horseshoe bats³. These habitats and species comprise its qualifying features. The SAC conservation objectives are to ensure that its integrity is maintained or restored as appropriate and that the SAC contributes to achieving the favourable conservation status of its qualifying features, which includes the populations and distributions of Horseshoe bat species.
25. The SPD states that LSEs could include from loss of foraging habitat or fragmentation of commuting habitat. It sets out that whilst the consultation zones are not within the SAC, the landscape surrounding the SAC is important for providing foraging habitat to maintain the favourable conservation status of the Horseshoe bats. They also need to be able to move through the landscape between roosts and foraging areas, requiring linear landscape features such as hedgerows. Schemes should seek to retain and enhance existing habitats and features of value to bats, including hedgerows.
26. The appellant's ecologist's view is that based upon photographs, the appeal site has a negligible risk to support protected species. It is however, unclear as to the photographs upon which this is based. What has been referred to as a hedgerow, is to form part of an ecological corridor for the adjacent development⁴, the survey data for which recorded calls from Horseshoe and other bats, and implies the feature forms a commuting route. The feature currently comprises bracken, brambles and some limited shrubs adjacent to a low-level wall, for which the approved scheme is for brambles and bracken to be removed, and new planting.
27. This appeal scheme would result in the loss or enclosure of much of the feature so could be detrimental to its use. Though it is not fully clear this can be defined as a

³ Citation for Special Area of Conservation dated 14 June 2005 (Ref. UK0030052).

⁴ Refs. 18/P/5234/OUT and 22/P/1295/RM.

hedgerow, it is nevertheless a linear vegetated feature, and I cannot conclusively conclude that Horseshoe bats do not use it for commuting. Though the appeal proposals include new planting, this would be at a different position, length and angle. There is no substantive ecological evidence demonstrating it would adequately mitigate the effects upon the existing feature, or that sensitive lighting and roosting features integrated within the dwelling, would in any way mitigate this.

28. Given the above, and doubts as to what would ultimately be found and secured by an Ecological Impact Assessment (EcIA) and any Habitat creation conditions, I cannot be certain of the effects of this appeal scheme, and that if necessary, they would be adequately mitigated and secured by conditions. Therefore, applying the precautionary principle, I cannot be certain the appeal scheme would not have LSEs upon the integrity of the SAC. For this reason, the appeal scheme would fail to adhere to the conservation objectives of maintaining or restoring its integrity.
29. Imperative reasons of overriding public interest do not exist, it has not been demonstrated that there are no alternative solutions, and no adequate compensatory measures are demonstrated as secured by the appeal scheme. Given that I may agree to a plan or project, only after having ascertained it will not adversely affect the integrity of habitats sites, Regulation 63 of the Regulations precludes the proposal from proceeding.
30. The appellant considers the Council's reference to decision letters⁵ for two recent appeal schemes are not directly comparable to the appeal scheme situation. It is an important principle of the planning system that each case must be considered on its own merits, and the appeal scheme is considered as such. However, it is noteworthy the decisions refer to the duties of the competent authority under the Regulation 63 of the Regulations, which is one that any Inspector must apply.
31. The Council has referred to protected species in general although which, other than the SAC bats, is not fully clear. The ecological checklist requires where a stone wall is to be lost an EcIA is required, which the appellant subsequently suggests would not be removed⁶. Circular 06/2005 confirms it is essential the presence or otherwise of protected species, and the extent that they may be affected is established before permission is granted. However, surveys should not be required unless there is a reasonable likelihood of them being present and affected by the development. Other than the bats, that there is a reasonable likelihood of them being affected, is not demonstrated. Nevertheless, this does not mitigate or outweigh my concerns about bats as qualifying features of the SAC.
32. For the reasons set out, I cannot be certain the appeal scheme would not have LSEs upon the SAC as a designated habitats site. This conflicts with Policy CS4 of the CS and Policy DM8 of the SPP1. These expect that development maintains and enhances biodiversity, including designated sites of international importance. It conflicts with the NSC Biodiversity Supplementary Planning Document (2024) which requires proposals provide sufficient evidence to demonstrate the above policies are complied with. It also conflicts with the Regulations, as set out above.

⁵ Refs. APP/D0121/W/25/3361731 and APP/D0121/W/25/3361403.

⁶ Letter dated 30 December 2024 by P J Orchard RIBA and Plan Ref. PL31A.

Planning Balance

33. The proposal would result in limited temporary economic benefits from its construction, and minor sustained benefits from on-going spend in the local economy and support to local services and facilities upon completion. Evidence of housing land supply suggests the Council can only demonstrate around a 2.79-year supply. Even were it less in-light of the appellant's submission in respect of increased housing targets⁷, and the shortage regarded as acute, despite the possibility to secure it as a smaller affordable Self-Build and Custom dwelling, the provision of an additional single dwelling as proposed, would be a limited benefit. Any overall landscape and biodiversity gains would be limited overall.
34. The site lies within a settlement boundary and with good access to services and facilities. It would be constructed with resource and energy efficiency materials and design measures, although there is no suggestion they would result in a net benefit in respect of renewable energy generation, so this would be a neutral matter. Were I to agree the proposal is compliant or could be made compliant by the imposition of suitably worded planning conditions, with policies and standards in respect of matters such as its access, accessibility, parking, drainage standards, the living conditions of future occupiers not referenced above, neighbouring occupiers, and construction management, these would be neutral matters.
35. The proposal would result in harm to the character and appearance of the area which is of a magnitude that attracts significant weight against the scheme. The potential for adverse effects and pressure for future harmful works to a protected tree, attract moderate weight against the scheme. That I cannot be certain the scheme would not have harmful effects upon NDHAs attracts significant weight against the scheme. These policy conflicts and harm would significantly and demonstrably outweigh the scheme benefits when assessed against the policies in the Framework taken as a whole in accordance with paragraph 11d)ii), so the appeal should not succeed.
36. Moreover, that it cannot be ascertained there would not be LSEs upon the SAC attracts substantial weight, means the application of policies in the Framework provide strong reason for refusing permission, and ultimately mean under the Regulations, the project cannot proceed.

Conclusion

37. The proposed development conflicts with the development plan read as a whole, the Framework read as a whole, and the Regulations. There are no material considerations, including the policies of the Framework, which indicate the decision should be made other than in accordance with the development plan. Therefore, for the reasons given, the appeal should not succeed.

Mr D Szymanski

INSPECTOR

⁷ Article dated Wednesday 16 April 2025 from the North Somerset Times.