
Appeal Decision

Site visit made on 11 August 2020

by R E Jones BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 04 September 2020

Appeal Ref: APP/Q3305/W/20/3247050

Land adjacent to The Barn, The Barton, Norton St Philip, Bath BA2 7NE

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by JPW Properties against the decision of Mendip District Council.
 - The application Ref 2019/2549/OTS, dated 11 October 2019, was refused by notice dated 30 January 2020.
 - The development proposed is described as: outline application for two dwellings – some matters reserved.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The application was submitted in outline with landscaping reserved for future approval as indicated on the application form. Therefore, approval is being sought for access, appearance, layout and scale. I have therefore dealt with the appeal on this basis.
3. The Council refused the application in part on account of there being no up-to-date ecological survey to demonstrate the effect of the proposed development on protected species. The appeal has been accompanied by an updated ecology survey, which therefore represents new information. The appeals' procedural guide makes it clear that 'the appeal process should not be used to evolve a scheme, and it is important that what is considered by the Inspector is essentially what was considered by the local planning authority, and on which interested people's views were sought'¹.
4. Nevertheless, it is my view, that the additional information does not fundamentally alter the scheme in terms of its appearance, scale and layout. Whilst I appreciate that the information is technical in nature given that it relates to biodiversity, the Council have had sight of it and had the opportunity to comment. I have therefore assessed the appeal on the basis of the additional information.

Main Issues

5. The main issues in this appeal are:

¹ Annex M, M.2.1, The Planning Inspectorate Procedural Guide, Planning Appeals – England, August 2019

- the effect of the proposed development on the character and appearance of an Open Area of Local Significance (OALS); and
- the potential effect of the proposed development on biodiversity.

Reasons

Character and appearance

6. Situated to the rear of The Barn, a residential dwelling accessed off The Barton, the appeal site comprises a steep bank covered in grass and encompassing several orchard trees. It is enclosed by wooden ranch style fencing. The appeal site slopes sharply downwards away from The Barn to meet its rear boundary and a small watercourse called Norton Brook. Beyond the watercourse, is a large, relatively flat area of open pasture that is separated from Ringwell Lane by tall mature trees. The natural topography, green spaces and mature trees combine to form a cohesive area of undeveloped land between the more built-up parts of Norton St. Philip.
7. The appeal site and the adjoining areas of undeveloped land can be appreciated from the rear of properties fronting The Barton, and from Ringwell Lane through the field access and gaps between the mature vegetation. The natural features of the land form an attractive and tranquil part of the village, while providing relief from the residential development to the east, along The Barton and to the West, at Springfield. Although the appeal site, and other parts of the steep bank, are enclosed by wooden ranch style fencing, this is unobtrusive, and does not substantially diminish its appearance and the role it plays in framing the larger area of undeveloped land. On this basis it is considered the site's distinctive setting makes a significant and valuable contribution to the quality and character of the village. This is reflected by its designation in the Local Plan² as an Open Area of Local Significance (OALS) under Policy DP2.
8. Local Plan Policy DP2 does not support proposals which would harm the contribution to distinctive local character made by OALS. Similarly, Policy DP1 requires proposals to contribute positively to the maintenance and enhancement of local identity and distinctiveness across the district; while Policy DP4 does not support proposals that would significantly degrade the quality of the local landscape.
9. The two split level dwellings proposed, would utilise the existing access used by The Barn. Each dwelling would cover a large portion of the bank, particularly Plot 1 which would be constructed very close to Norton Brook. From the open pastureland beyond Norton Brook and through the gaps in Ringwell Lane the full scale of the dwellings would be observed. From these locations the terraced composition of the dwellings cut into the bank would appear overly engineered and substantial in scale, in contrast to the natural topography and verdant features that would surround them. The proposed dwellings would therefore encroach unduly into an important part of the OALS, while having an imposing and harmful presence on the surrounding undeveloped spaces. Accordingly, the proposal would be unacceptable in terms of its layout and scale, and whilst I acknowledge that landscaping is a reserved matter, new planting would be unlikely to screen or reduce the magnitude of the proposal.

² Mendip District Local Plan Part 1: Strategy and Policies 2006-2029 – adopted 15th December 2014

10. The status of OALS policy has been questioned by the appellant given that the Local Plan is out of date and that there is no background study which evidenced its designation as a policy. Notwithstanding the lack of any background study, the current Local Plan, and the policies therein, will have been through an examination and public consultation prior to being adopted. Moreover, the Framework (paragraph 213) states that existing policies should not be considered out of date simply because they were adopted or made prior to its publication. Due weight should be given to them, according to their degree of consistency with the Framework.
11. In this respect, I find no significant conflict between the Local Plan policies I have referred to and the Framework, particularly, where it requires proposals to protect and enhance valued landscapes in a manner commensurate with their identified quality in the development plan (paragraph 170(a)) . Furthermore, the Local Plan is consistent with the Framework (paragraph 127) where it requires, amongst other things, that proposals are sympathetic to local character, including the surrounding built environment and landscape setting.
12. I note that the Council's Local Plan Part 2 (LPP2) is currently being examined, but as yet unadopted. The Council recently removed their proposal for that development plan to designate OALS as Local Green Space (LGS), following the Examiner's comments in respect of the criteria for designation. Nevertheless, this does not, in my view, reduce the weight of OALS or the relevance they continue to have as a policy of the Local Plan. Moreover, the Council's actions do not reduce this OALS' distinctiveness and local value. Besides, OALS remain a policy designation in the current adopted development plan for the area and the appellant's assertions regarding their status do not in any way reduce the harm I have identified nor lead me to conclude that OALS no longer warrant protection in respect of this appeal.
13. It is acknowledged that the site and the wider OALS does not have a recreation use nor is it publicly accessible, yet this does not detract from its local value given its distinctive natural appearance and the tranquillity it contributes to this part of the village. These qualities can be experienced from locations surrounding the site including Ringwell Lane and the rear of properties along The Barton.
14. The proposed development would therefore cause significant harm to the character and appearance of an OALS. It would conflict with Policies DP1, DP2 and DP4 of the Local Plan which amongst other things require that proposals do not harm the contribution to distinctive local character made by OALS, while also seeking to protect local landscapes. The proposal would also fail to accord with the relevant parts of the Framework I have already referred to.

Biodiversity

15. The appellant's ecological assessment indicates that the appeal site's conditions have not altered since the time of the previous survey carried out on the land, other than the removal of a tree for health and safety purposes. Consequently, the assessment concludes that the recommendations from the 2016 survey remain valid and appropriate in relation to the appeal proposal.
16. The Council has assessed this updated ecological assessment and considers that the findings overcome their concerns. Given that the ecological condition

of the site has not significantly changed, and I have no compelling evidence to the contrary, it is considered that the proposal would not give rise to any harmful ecological impacts.

17. The proposed development would therefore have an acceptable effect on biodiversity and in doing so will accord with Policies DP5 and DP6 of the Local Plan. These policies, amongst other things, require proposals to protect, conserve and enhance the ecological network within Mendip and for proposals to be accompanied by necessary reports and mitigation measures. It would also accord with the Framework (paragraph 170(d)) where it requires proposals to minimise impacts and provide net gains for biodiversity.

Other Matters

18. The appeal site and the surrounding OALS has been designated as an LGS in the Norton St Philip Neighbourhood Plan (NP) which is awaiting a referendum. Notwithstanding, the position taken in respect of LPP2, this policy designation, as it relates to the NP, was found to be consistent with the Framework's criteria for allocating LGS³, in a recent High Court decision. Consequently, this affords the site a greater level of protection when considering development proposals. However, given that the recent decision of the High Court has been challenged, along with the current situation with regard to COVID-19, there is uncertainty as to when the NP will proceed to a referendum. On this basis, its status is presently unclear, and I have given only little weight to the site's policy position in respect of the NP. In any case I have found that the proposal does not accord with the policies in the Local Plan.
19. I have been referred to a number of heritage assets in the vicinity of the appeal site, namely the scheduled Tudor Dovecote to the north and the Grade II* listed Church of St Philip and St James off Vicarage Lane. The appeal site is also within the Norton St Philip Conservation Area (NSPCA). Accordingly, I have had regard to the statutory duty and assessed whether the proposal would harm the setting of these heritage assets and any features of special architectural or historic interest they each possess.
20. The proposed dwellings would be positioned at a lower land level than the listed Church and would be mainly screened by the intervening buildings fronting Church Street along with landscaping. Therefore, it is not considered that views of the Church would be harmed by the proposal, and accordingly its setting would be preserved. In terms of the Tudor Dovecote, this is surrounded by existing buildings, and although these are more traditional, the design of the dwellings would be unobtrusive and would not unacceptably encroach into the space around the Dovecot or effect views of the structure, such that it would harm its setting.
21. The proposed development, due to its position on lower ground would not be readily visible, from within, and looking out of the historic parts of the NSPCA from which it derives its significance. Therefore, the proposal would preserve the character and appearance of this conservation area.

Planning Balance

22. The Council does not currently have a 5-year housing land supply (5YHLS). Paragraph 11 of the Framework states that where the development plan is out

³ Paragraphs 99, 100 and 101 of the National Planning Policy Framework

of date or the Council do not have a 5YHLS, permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole, or there are specific policies in the Framework which indicate that development should be restricted.

23. In the context of the development plan I have found that the proposal would be contrary to Policies DP1, DP2 and DP4 of the Local Plan. For this appeal, these policies are generally consistent with the relevant aims of the Framework and whilst they can act to restrict the supply of housing, I attach substantial weight to them. Although, I have found no harm to arise in terms of biodiversity, the proposal would not accord with the development plan when considered as a whole.
24. The proposal would provide a limited amount of short-term employment through the construction of the development and some further modest benefits would result from the additional support to the vitality of the local community from the future occupiers of the dwelling. The proposed dwellings would make a modest contribution to the supply of housing and towards helping to address the Council's shortfall. However, the proposal would result in significant harm to the character and appearance of the area, while failing to protect and enhance a valued landscape. As such it would be contrary to the aims of the Framework in this regard.
25. Overall, I find that the adverse impacts of the proposed development would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework when taken as a whole. Therefore, the proposal would not be a sustainable form of development, and the conflict with the development plan is not outweighed by other considerations including the Framework.

Conclusion

26. For the reasons given above, I conclude that the appeal should be dismissed.

R. E. Jones

INSPECTOR