



Appeal Decision

Site visit made on 6 August 2020 by Scott Britnell MSc FdA MRTPI

Decision by Andrew Owen BA(Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22 October 2020

Appeal Ref: APP/Q3305/W/20/3247051

Land at The Barton, 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 planning permission.
- The appeal is made by Mr Christopher Parsons against the decision of Mendip District Council.
- The application Ref 2019/2552/FUL, dated 11 October 2019, was refused by notice dated 30 January 2020.
- The development proposed is to erect a single dwelling house with access, garage and parking.

Decision

1. The appeal is dismissed.

Appeal Procedure

2. The site visit was undertaken by an Appeal Planning Officer whose recommendation is set out below and to which the Inspector has had regard before deciding the appeal.

Procedural Matters

3. There are variations in the address of the appeal site given on the application form, appeal form and the Council's decision notice. The address in the banner header above has been taken from the application form.
4. The application was made by Mr and Mrs C Parsons. The appeal has been made by Mr Christopher Parsons who I have taken to be one of the applicants and is eligible to make the appeal.

Main Issue

5. The Council's second refusal reason was made on the basis of there being no up to date ecological survey. The appeal has been accompanied by an e-mail from Seasons Ecology dated 6 February 2020 providing an ecological update pertaining to the appeal site, which the Council considers overcomes the refusal reason. As I have no compelling evidence before me to come to a different conclusion, it is not necessary for me to consider this matter further.
6. The main issue in this appeal, therefore, is the effect of the proposal on the character and appearance of an Open Area of Local Significance (OALS).

Reasons for the Recommendation

7. The appeal site is part of the rear garden of The Barton, a detached dwelling set within large grounds. The land to the rear of the dwelling drops sharply towards Ringwell Lane and incorporates a section of Norton Brook. The presence of Norton Brook, along with the open and undeveloped green nature of the appeal site, provides a verdant, tranquil and distinctive setting that makes a significant and positive contribution to the character and appearance of the area. The appeal site is appreciated from the rear of the properties fronting The Barton, the adjacent pasture and from Ringwell Lane to the west, from which it is separated by stone walling and vegetation. It is also visible from the adjacent dwellings to the south.
8. The Council has designated the appeal site as an OALS under the Mendip District Local Plan 2006-2029 Part 1: Strategy and Policies, adopted 15 December 2014 (LP). This designation includes the pasture to the north of the appeal site. Although the appeal site has a more domestic appearance than that pasture land, through its well-maintained cut grass and residential paraphernalia, its appearance complements and adds variation to it. Policy DP2 of the LP states that permission will not be granted for development which would harm the contribution to distinctive local character made by OALS.
9. The proposed dwelling would be two storeys in height and of sizeable scale. A detached garage and gravel drive are also proposed. Although the appeal site is located at the lower point of the garden, the house, garage and drive would encroach upon and have a visually urbanising effect on the OALS, resulting in harm to its character and appearance. Moreover, this harm would be exacerbated by the loss of vegetation and trees on site required to construct both the proposed dwelling and access and I do not consider that new planting or landscaping would be likely to sufficiently mitigate this impact.
10. The appellant has questioned the status of the OALS policy and considers that the Local Plan is out of date. It is argued that there is no record of any methodology or evidence to support the original designation of OALS's. However, the current Local Plan has been adopted and it would have been through various stages of public consultation and public examination prior to its adoption. It would not be appropriate for me to re-assess the justification for the policy, or the designations, as part of this appeal. Moreover, Paragraph 213 of the Framework states that existing policies should not be considered out-of-date simply because they were adopted or made prior to the publication of this Framework. Due weight should be given to them, according to their degree of consistency with this Framework (the closer the policies in the plan to the policies in the Framework, the greater the weight that may be given).
11. Paragraph 127 of the Framework requires, among other things, that proposals are sympathetic to local character, including the surrounding built environment and landscape setting. Paragraph 170a of the Framework states that planning policies should contribute to and enhance the natural and local environment by, among other things, protecting and enhancing valued landscapes in a manner commensurate with their identified quality in the development plan. I consider that the OALS policy is broadly consistent with the Framework. In this regard, my findings are consistent with those of the Inspector who considered the appeal at Land adjacent to The Barn¹.

¹ APP/Q3305/W/20/3247050.

12. The explanatory text to Policy DP2 identifies that the OALS will be reviewed as part of the Part 2 Local Plan or Neighbourhood Plans. The Council's Local Plan Part 2 is currently being examined and has not yet been adopted. However, following the examiner's comments, the Council have removed their proposal to designate the OALS as a Local Green Space (LGS) in that plan². This does not, however, reduce the weight of the OALS policy in the adopted Local Plan. Accordingly, the OALS warrants protection in the context of this appeal. Moreover, the appellant's assertions in this regard, including their own evaluation of the site do not mitigate or reduce the harm that I have identified.
13. I have also been referred to the issues surrounding the emerging Norton St Philip Neighbourhood Plan (NP), which seeks to protect the appeal site as a LGS. The parties have referred me to the Court of Appeal judgement dated 2 October 2020³. This has determined that the areas of LGS within the NP were lawfully designated, but that Policy 5 of the NP, which applies to them once designated, is not consistent with national planning policies for managing development within the Green Belt. The consequence is that that policy is unlawful. However, I do not consider that the policies of the LP, in particular DP2, are affected by the outcome of these legal proceedings, particularly as, unlike policies for LGS, the Framework does not suggest OALS policies need be consistent with Green Belt policies. Further, no referendum has yet been held in relation to the NP and so I afford it limited weight.
14. I conclude that the proposal would cause harm to the character and appearance of the OALS. There would be conflict with LP Policy DP2 and LP Policies DP1 and DP4, which among other things seek to protect landscapes and the distinctiveness of different areas. The proposal would also conflict with the broad aims of Section 15 of the Framework which relate to the natural environment.

Other Matters

15. I consider that the proposal is acceptable in terms of its form, design and materials. The general principle of development is also acceptable, as the appeal site is located within the development limits of Norton St Philip. There would also be no highway safety issues arising from the proposal and there would be sufficient parking for the proposed dwelling. Further, given the position of the proposed dwelling and its relationship to neighbouring properties, no harm would arise to the living conditions of the occupants of those dwellings. There would also be sufficient space for the storage of refuse and recycling facilities, and the proposal is unlikely to be affected by flooding, would have no harmful effects on the ecology of the site and would utilise energy conservation within its construction. However, these matters are to be expected from such a development and I afford them limited weight.
16. The appeal site is located in the Norton St Philip Conservation Area (NSPCA). Section 72(1) of the Planning (Listed Building and Conservation Areas) Act 1990 states that, in the exercise, with respect to any buildings or other land in a conservation area, special attention shall be paid to the desirability of preserving or enhancing the character or appearance of that area. Given its location within the NSPCA, its scale, form, design and materials, the proposal

² Paragraph 1.9 of the Council's Statement.

³ [2020] ECWA Civ 1259, Case No:C1/2020/0812.

would preserve the character and appearance of the NSPCA and harm to its significance as a designated heritage asset would not result.

17. The officer's report refers to a Grade II Listed Building and Scheduled Monument. However, the Council's questionnaire states that the proposed development would not affect the setting of these assets, and I have no reason to come to a different view.
18. The Council acknowledge that they cannot demonstrate a 5 year land supply. In such circumstances the Framework makes it clear that the most important policies for determining the application are out of date in the terms set out in paragraph 11d) and footnote 7 of the Framework. Thus, planning permission should be granted, unless the effects on areas or assets of particular importance provides a clear reason for refusing the development proposal, or any adverse impacts of granting permission would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework as a whole. This balancing will be considered below.

Planning Balance and Conclusion

19. The proposal would contribute to the shortfall of housing in the district, although details of the level of shortfall have not been provided. It is also likely to contribute to the local economy through the construction period and because future occupants would be likely to use local services. The appellant has also suggested that the proposal would be suitable for Self-build or custom housing. However, I consider that the proposed development of one dwelling is unlikely to make a significant contribution to these matters. Therefore, any benefits are likely to be limited.
20. Conversely, the proposal would cause significant harm to the character and appearance of the OALS and would conflict with the development plan. I consider that these policies are broadly consistent with the Framework and so attach substantial weight to the proposal's conflict with them.
21. I conclude that the overall adverse impacts of the proposed development would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework as a whole. The proposal would not therefore result in a sustainable form of development and the conflict with the development plan is not outweighed by other considerations.
22. For the reasons given above, I recommend that the appeal should be dismissed.

Scott Britnell

APPEAL PLANNING OFFICER

Inspector's Decision

23. I have considered all the submitted evidence and the Appeal Planning Officer's report and on that basis the appeal is dismissed.

Andrew Owen

INSPECTOR