

Appeal Decision

Hearing held on 19 July 2016

Site visit made on 19 July 2016

by Jonathan Hockley BA(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 2 September 2016

Appeal Ref: APP/F0114/W/16/3145629

Land between Miller Walk and Simons Close, Miller Walk, Bath BA2 6JT

- 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 Property Bath Ltd against the decision of Bath & North East Somerset Council.
 - The application Ref 15/04009/FUL, dated 7 September 2015, was refused by notice dated 22 December 2015.
 - The development proposed is described as the 'phased erection of four detached self-build houses and their driveways with access as existing and with new local and strategic landscaping and infrastructure following removal of Leylandii hedge'.
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Decision

1. The appeal is dismissed.

Main Issues

2. Based on all that I have seen, read, and the discussions at the Hearing, I consider the main issues in this case are as follows:
 - The effect of the proposed development on the character and appearance of the area, including the setting of Bathampton Conservation Area.
 - The effect of the proposed access on highway safety.

Reasons

3. The attractive village of Bathampton lies just to the east of Bath and is mainly contained between the A36 Warminster Road to the south and the railway line, canal, A4 and River Avon to the north. The Bathampton Conservation Area (BCA) is largely linear, and follows the line of Bathampton Lane/High Street from its junction with the A36 down to the railway line. The BCA can be characterised by the quality of the individual buildings and the street scene along the Lane, ranging from substantial detached dwellings at the west end of the Lane, to a denser grain of development along the High Street. The character of the BCA is considerably enhanced by various boundary treatments, mature landscaping and open spaces within and adjoining the edge of the conservation area.
 4. The appeal site is a roughly rectangular green area and lies in the heart of the village. The site is encircled by high leylandii trees. These have formed a thick hedge line estimated to be some 12m tall from the appellant's figures. A
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further hedge line of leylandii largely splits the site in two from east to west. To the south of the site lies the long rear gardens of Devonshire Road; with properties on Miller Walk to the east and the house and gardens of Woolston Place to the west. To the north lies an open green area. This falls towards Bathampton Lane and is crossed by a public footpath leading from Miller Walk to the Lane. A stone retaining wall forms the boundary to Bathampton Lane, and the space is framed on two sides by the attractive buildings of Woolston Place and Court Leet, a grade II listed building. This space contributes significantly to the character of the adjacent conservation area.

5. A Landscape and Visual Impact Assessment¹ (LVIA) submitted by the appellant considers that the character of the site is strongly influenced by its adjoining urban context. However, whilst the site is in the heart of the village and has built development on 3 sides, this surrounding development is widely spaced and does not, in my view, influence the site to such a strong degree. The large green space in front of the site has a large impact on the character of the site as part of its setting, and the site itself, whilst dominated from views from the Lane by the leylandii trees, also contributes to the character of the BCA. The thick trees provide a dense green backdrop to the open space in front of it, as can be seen from viewpoint 2 of the LVIA.
6. As part of my visit I also viewed the site from longer range. From the south the site is largely hidden from view by existing development. From the north, due to the fall in land, views are also difficult; however from Solsbury Hill (LVIA viewpoint 7) on the opposite side of the valley and from sporadic views on Swainswick Lane clear views of the village are possible. From such views the site can be seen as a dense green area in the centre of the village, and whilst the trees appear regulated, from such distance the space appears as part of the network of green areas in and around the village.
7. The proposal seeks to remove the leylandii trees from the site and construct 4 detached five bedroom dwellings. The houses would be accessed via a drive constructed off Miller Walk. Substantial new native planting is proposed to help assimilate the dwellings into the street scene and the properties would be designed in a traditional manner.
8. I note that the substantial houses are proposed to be set into the ground so that ridge lines are similar and lower to the surrounding houses, and that open space and 'view corridors' have been retained and created between Plots 1 & 2, and 3 & 4. However, these also contain the parking areas for the properties, with 2 spaces for each house. Given the size of the properties it is reasonable to assume that such spaces would be filled by the future occupants of the houses.
9. When combined with the terrace retaining walls behind the spaces the proposal when constructed would present almost a solid line of built development across the site. Whilst landscaping around the properties and the proposed wildlife corridor would help to soften and mitigate these views, such landscaping would take time to establish and may not be fully successful. When complete the proposal would have the potential to present a harsh line of development facing Bathampton Lane and the green space to the north that forms the setting for the site.

¹ Land at Miller Walk, Bathampton; Landscape and Visual Impact Assessment, Nicholas Pearson Associates July 2015

10. This effect would be present in both the short and in the long range views that I have identified and would have a detrimental effect on the setting of the BCA, to which the site makes a noticeable contribution. Paragraph 132 of the National Planning Policy Framework (the Framework) states that the significance of a heritage asset can be harmed through development within its setting. Due to the size of the site when compared to the Conservation Area as a whole I consider that such harm would be less than substantial.
11. In such circumstances the Framework states that the harm should be weighed against the public benefits of the proposal. The scheme would provide economic and social benefits in the form of 4 new houses for the area. At the time of the appeal the appellant considered that the Council could not demonstrate a 5 year supply of deliverable housing land. However, at the Hearing it was confirmed that they now accepted that a supply of housing land was available. Such supply is in accordance with paragraph 47 of the Framework.
12. The appellant notes that the Framework states that local planning authorities should 'boost significantly' the supply of housing, and also noted previous undersupply issues in the District. However, the requirement to boost significantly the supply of housing is contained within paragraph 47, which includes a requirement to identify and annually update 5 years supply of deliverable housing sites, including buffers to deal with previous undersupply and ensures that the Council meets the objectives of the Framework in this regard. I also note that the Council's supply includes a 20% buffer to cater for the previous undersupply.
13. The appellant considers that the removal of the leylandii trees would provide a benefit for surrounding residents and for the village as a whole, opening up views and improving the character of the area. The comments of an Inspector from a proposal in 2007² are noted, who considered that the leylandii (at that time stated to be some 5m tall) were material changes in circumstances since previous appeals in 1997 and 1998, and that the leylandii had devalued the contribution that the site makes to the locality as the site was almost hidden from public view.
14. The leylandii are now significantly taller than in 2007. I agree with the comments of this previous Inspector in that the leylandii form a solid block of green in the centre of the village, in a form which is not characteristic of the surrounding area. However, the positive effects that could be accrued through the removal of the trees could be achieved without the development of buildings proposed. I also note in this respect the 2007 Inspector's comments that the screening of the appeal site does not remove the need to consider the impact of the proposal because the character of the land would change and that the appeal site has the potential to make a contribution both to the openness of this part of the settlement and to the setting of the Conservation Area.
15. Whilst the 2007 appeal resulted from an outline application and the current appeal is a detailed application, for the reasons given above in paragraph 9 I consider that the proposal would cause harm to the setting of the BCA and the surrounding area. When considered in the round I do not consider that the

² APP/F0114/A/07/2038358

identified public benefits of the proposal would outweigh the harm to the setting of the BCA that the proposal would cause.

16. I therefore conclude that the proposed development would have an adverse effect on the character and appearance of the area, and would neither preserve nor enhance the setting of the BCA. Such harm would not be outweighed by the public benefits of the scheme. The proposal would be contrary to policies BH6 and NE1 of the Bath and North East Somerset Local Plan, October 2007 (the Local Plan) which together state that development affecting a conservation area (CA) will only be permitted where it would preserve or enhance the character or appearance of the CA or the character of the landscape.
17. The appellant raises concerns over the contents of Policy BH15 of the Local Plan and considers that the policy may not be consistent with the Framework. This policy states that development which adversely affects open spaces that make a contribution to the character of a settlement will not be permitted. The supporting text notes that within many of the District's villages there are open spaces which make an important visual contribution to local character. It notes that the nature of such spaces may vary and that some may be privately owned. Whilst the site may be 'closed' visually, it still represents an open space, free from development, which I consider falls within the remit of this policy. Furthermore, I am of the view that the policy is consistent with the Framework, particularly the core planning principle that planning should take account of the different roles and character of different areas.
18. The proposal would also be contrary to Policy CP6 of the Bath and North East Somerset Core Strategy, 2014 (the Core Strategy), which states that the Council will protect, conserve, and seek opportunities to enhance the historic environment including the setting of designated heritage assets.

Highway safety

19. The appeal site would be accessed off Miller Walk, a fairly modern development. On the turn of a bend in the Walk, a 'grasscrete' access heads west down a slope and to the appeal site. A public right of way (PROW) also heads in this direction. The submitted plans indicate that a 3m wide strip of permeable block paving could be placed across the area, although at the Hearing the Appellant stated that they also consider the site could be accessed as it is at present. At the time of my visit some of the access had been covered with gravel.
20. The County Highways Authority have concerns over the proposed access, including an issue as the access area is not included within the red line and therefore have concerns over whether any proposed improvements could be made. There is also a dispute between the appellant and various neighbouring parties over the extent of rights over the access.
21. The plans show that the right of access to the appeal site is some 7m wide. However, the grasscrete is considerably narrower than this and would not allow 2 cars to pass on it. The access also has a steep gradient for the initial duration of the track leading off from Miller Walk. The proposal seeks to construct 4 large detached properties, and it is reasonable to assume that at least 8 cars would be parked on the estate when constructed.

22. When combined, the narrowness of the grasscrete and the gradient of the slope would not be suitable for such a development, or for possible emergency vehicle access. Whilst 8 cars is not a huge number it is entirely possible that some of these cars, and visitor or delivery vehicles to the proposed houses, could meet on the track at the same time, leading to awkward reversing situations, particularly up the steep slope to Miller Walk, or more likely vehicles moving off the grasscrete to let others pass, potentially damaging the green character of the area. Such circumstances could also cause limited conflict with users of the PROW.
23. The appellant notes that Manual for Streets³ (MfS) states that an access width of 2.75m can be provided. However, this appears to relate to the provision for fire engines and refers to 'short distances' and as such I am not convinced is strictly relevant in this case
24. I do not consider therefore that the existing access is suitable to allow a high standard of safe access and egress of vehicles to the proposed development. Given the absence of the access area within the red line of the application, it has been suggested that a condition could be imposed to upgrade the track should I come to such a conclusion.
25. However, the evidence both in writing and at the Hearing indicates a good deal of disagreement over the legal situation concerning whether the appellant would be able to upgrade the access legally. It is not within my powers to make a judgement on such matters, but given this uncertainty, I cannot see how a condition could be reliably imposed to require the track to be upgraded and passing places provided, when there is doubt over whether such a condition could be complied with. Planning Practice Guidance states that conditions may be possible prohibiting development authorised by the planning permission until a specified action has been taken (such as the provision of the upgrade of the access). However, such conditions should not be used where there are no prospects at all of the action in question being performed within the time-limit imposed by the permission, and given the long running nature of the dispute I am not convinced from the information provided that this would not be the case.
26. At the Hearing the appellant confirmed that their view remained that the access could be improved and upgraded by the use of permitted development powers. The Council consider that the upgrade works would require planning permission. Whether or not planning is required for such works is not a matter for me to determine in the context of an appeal made under S78 of the above Act, and I note in this context that an appeal to consider the provision of permeable block paving to the existing access way as a certificate of lawful development is under way and is due to be determined in early 2017.
27. The 2007 Inspector considered that he had no evidence to suggest physical access to the site could not be secured. However, I am not aware of the information that was provided to the Inspector for this appeal; furthermore, I note that the reasons for refusal in that case appeared to relate to character and appearance, and initially, a protected sycamore tree. From the information I have been provided with therefore it appears that there was no highway reason for refusal on that decision.

³ Manual for Streets, 2007. Departments for Transport and Communities and Local Government

28. I therefore consider, on the basis of the evidence provided to me and as heard at the Hearing that the proposed use of the existing access for the proposal would have an adverse effect on highway safety, and would be contrary to Policy T24 of the Local Plan, which states that development will be permitted if it provides a high standard of highway safety. For the reasons given above, I am not convinced that a condition could satisfactorily resolve such a situation.

Conclusion

29. For the reasons given above, and having regard to all other matters raised, I conclude that the appeal should be dismissed.

Jon Hockley

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Valerie Vivian	Appellant
Sam Grant	Big Tree Planning

FOR THE LOCAL PLANNING AUTHORITY

Alice Barnes	Bath and North East Somerset Council
Andrew Sharland	Bath and North East Somerset Council
Ed Winter	Bath and North East Somerset Council
Daniel Friel	Bath and North East Somerset Council
Adrian Neilson	Bath and North East Somerset Council

INTERESTED PARTIES:

Lin King	Bathampton Parish Council
Karol Gwazdacz	Local resident
Juliet Gwazdacz	Local resident
Mrs Horton	Local resident
Philip Clissold	Local resident
Keith & Maureen Rossiter	Local residents
Margaret Carney	Local resident
Moira Brennan	Local resident
Christine McCann	Local resident
Tony Williams	Local resident
Sheila Weston	Local resident
Sharon Akin	Local resident
Helen Bools	Local resident
Alison MacAdam	Local resident
Terry and Gill Gazzard	Local residents
Amanda Adams	Local resident
Amanda Cameron	Bath Chronicle