



Appeal Decision

Site Visit made on 10 November 2021

by R E Jones BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21 December 2021

Appeal Ref: APP/D0121/W/21/3278138

Land west of Barrowfield Cottage, Front Street, Churchill, BS25 5NB

- 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 Mr B and Mrs S Vosper against the decision of North Somerset Council.
 - The application Ref 20/P/2553/OUT, dated 20 October 2020, was refused by notice dated 8 January 2021.
 - The development proposed is outline application with all matters reserved for the erection of up to five open market dwellings, ecological mitigation and associated parking (re-submission of application 19/P/1786/OUT).
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Decision

1. The appeal is dismissed.

Preliminary Matter

2. The application was submitted in outline form with all matters reserved at this stage. Therefore, I have treated the drawings showing the details of layout and access as indicative only.

Main Issues

3. The main issues are the effect of the proposal on the character and appearance of the surrounding area, having particular regard to the Churchill Conservation Area (CA) and trees on the site; and the effect of the proposal on biodiversity, with particular regard to protected species and the North Somerset and Mendip Horseshoe Bat Special Area of Conservation (SAC) and Site of Special Scientific Interest (SSSI).

Reasons

Character and appearance

4. The appeal site comprises a large area of green space to the west of Barrowfield Cottage and fronting onto Front Street. It is located at the western edge of Churchill and within the village's conservation area.
5. The CA is largely focused on Front Street. There is no obvious building line along the street, and many of the historic dwellings are set back in spacious plots. The roadside boundaries of properties are marked by low stone walls with shrubs, trees and native hedgerow rising above them. This verdant interface with the street is rich in character and contributes to the village's attractive setting. Therefore, the CA derives its significance from the historic ambience and rural charm created by the traditional buildings, informal street pattern and the hedgerows, verges and trees that line Front Street.

6. The adjacent Barrowfield Cottage is the end property on this side of Front Street. The adjoining appeal site's west and northern boundaries are contiguous with other field enclosures and together form a large area of green space that extends up to Church Lane, beyond which is a secondary school. A thick mature hedge runs along the site's roadside boundary, while tall trees enclose the site's western boundary with the adjacent field. These features enclose a largely undeveloped space characterised by improved grass and occasional orchard trees, that collectively reinforce and enhance the village's rural character along with the CA's significance.
7. The Churchill Conservation Area Appraisal and Management Plan (the MP) states that the main green spaces are provided by "Windmill Hill" and "Barrowfield", to the north of Front Street. According to the MP, these provide the rural character to the setting of the conservation area. There is no accompanying map or drawing showing those green spaces and whether the appeal site, which forms part of land adjoining Barrowfield Cottage forms part of this area.
8. However, the appeal site is located to the north of Front Street as described in the MP and forms part of a small and contiguous network of undeveloped natural fields, paddocks and grassland, that are in essence green and open spaces. There is also no specific reference in the MP that the green spaces exclude the open land to the west of Barrowfield Cottage. Therefore, it is considered that on the balance of evidence, and in the absence of any compelling information to the contrary, the appeal site is encompassed within the area known as "Barrowfield" and therefore forms part of Churchill's main green spaces, as defined by the MP.
9. Although all details have been reserved at this stage, it would be probable, that residential development would extend along the site's long frontage and urbanise its rural character. The site's elevated position above the road would make dwellings and other domestic features such as vehicles and parking forecourts visible, thus harmfully eroding the verdant and spacious character that defines this part of the village.
10. Single or multiple vehicular accesses would likely fragment and weaken the presence of the prominent hedge lining Front Street. In addition, new access points would require the hedge to be stepped back and splayed to enable visibility for emerging and oncoming vehicles. The effect of this would give the altered boundary a contrived appearance. Moreover, it would diminish the carriageway's narrow alignment, which contributes to Front Street's intimate rural character.
11. Long range views of the appeal site are visible from the public footpaths to the north and from the higher ground at Windmill Hill. There would be a perceptible change in the site's appearance from those locations, with the roofs of dwellings and residential paraphernalia within the associated gardens likely to be visible. Therefore, the proposal would significantly reduce the collective size of the open spaces adjacent to the settlement's north and western edge, and as a consequence would fail to preserve or enhance the rural setting of the village.
12. The appellant contends that the proposal would be consistent with the development pattern of Front Street, by continuing the linear arrangement of dwellings along the road. Yet in doing so it would result in the unacceptable loss of a sizeable area of important green space that forms a natural backdrop to Churchill's north and west, and accordingly I have given more weight to this harm.
13. Planning conditions could limit the scale and position of the dwellings as well as the depth of individual plots. Yet even with those controls in place, I am not convinced that they would overcome the visual effects of the proposal from Front Street and

the footpaths to the appeal site's north. Furthermore, those conditions would be unlikely to resolve the impact upon the site's boundary hedge.

14. According to the submitted tree survey, there is a line of diseased trees along the site's western boundary that are unsuitable for retention. It is recommended that these are removed and a scheme for replanting along the boundary is secured through a condition. This approach would be reasonable, while suitable siting arrangements could be made at the reserved matters stage, were I to allow the appeal, ensuring that the dwelling(s) closest to the replanted boundary would not jeopardise its establishment.
15. Even though I am satisfied that the loss of trees at the site could be mitigated by a suitable replanting scheme, I find that the proposal would fail to preserve the character and appearance of the CA, the desirability of which the Act requires that special attention is paid.
16. It would therefore have a harmful effect on the area's character and appearance and conflict with Policies CS5, CS12 and CS32 of the North Somerset Core Strategy (adopted January 2017) (Core Strategy), Policies DM3, DM10, DM32 and DM37 of the North Somerset Sites and Policies Plan Part 1 (adopted July 2016) (Sites and Policies Plan) and the North Somerset Landscape Character Assessment SPD. These seek to protect and enhance aspects of the historic and natural environment that contribute to the distinctive character of the area, are sensitive to the site's context, and do not harm the character of the street scene or local area.

Protected Species

17. The appeal site is functionally linked and associated with the North Somerset and Mendip Horseshoe Bat SAC and there is potential for likely significant effects. As the competent authority under the Conservation of Habitats and Species Regulations 2017 (as amended) (Habitat Regulations), I am required to conduct an appropriate assessment as part of my decision.
18. The Council's supporting guidance document¹ (SACSPD) defines the site as sitting on the boundary of Band B and C of the density bands for lesser horseshoe bat.
19. All species of bat, dormouse and some reptiles are protected under the Habitat Regulations. The Wildlife and Countryside Act 1981 specifically protects other reptiles and protected species and provides general protection for all wild species of birds, animals and plants. Circular 06/2005 states that the presence of a protected species is a material consideration when a development is being considered which would be likely to result in harm to the species or its habitat. It goes on to state that 'it is essential that the presence or otherwise of protected species and the extent that they may be affected by the proposed development, is established before planning permission is granted' (paragraph 99).
20. The appellant's Ecological Assessment and supplementary appeal information (EA) prepared by First Ecology considers the appeal site to provide a low-quality foraging opportunity for bats. However, there are favourable bat habitats along the site's boundaries, while the survey data in the EA recorded a large number of night-time flight passes. The appellant therefore commits to a range of compensatory measures to address potential harm to bat habitat on the site and the wider area. Those measures would be implemented through a Landscape and Ecological Management Plan (LEMP) and a scheme of lighting design for bats, which the appellant proposes to agree through pre-commencement conditions.

¹ North Somerset and Mendip Bats Special Area of Conservation (SAC) guidance

21. The trees and hedgerow along the site's west and roadside boundaries provide important habitat for foraging horseshoe bats. Due to the likely creation of new vehicular access points and the replacement of diseased trees, those foraging habitats would, in part, be removed. The appellant makes assurances that the frontage hedgerow would be retained. Replanting of habitats along those boundaries could also be successfully re-established for foraging. Even if that were the case, I am not clear how a buffer of 5-10m between plot and vegetated boundaries (advised by the Council's Biodiversity and Trees SPD (BTSPD) would be maintained given the likely presence of dwellings near the site's frontage and side boundaries. The indicative site layout plan shows dwellings close to those boundaries, as such greater clarity is required that buffers could be maintained for mitigation purposes.
22. Similarly, there would be a requirement, in accordance with the BTSPD that lighting levels close to foraging corridors/habitats can feasibly be maintained at below 0.5 lux. There is no evidence before me demonstrating that light spill from both external and internal sources can be adequately controlled as a matter of principle. Furthermore, in cases where it is unclear whether mitigation would be effective, there is no evidence that a negatively worded Grampian style condition is acceptable in the context of securing such mitigation for SAC habitat sites.
23. Further mitigation to compensate for the loss of bat foraging habitat includes the creation of a pond to the north of the appeal site. The appellant indicates that the details of this would be agreed through a pre-commencement condition. However, there are no details of the pond's size or location, whether it would displace existing foraging habitat or be suitable at the proposed site. Without having some basic understanding of those details, I am unable to establish if the pond would be acceptable to mitigate the scheme's impact.
24. The appellant refers to Natural England's (NE) advice that the LEMP and lighting schemes are agreed through pre-commencement conditions. However, in a later response to this appeal consultation NE appear to alter their earlier position and request that those details are agreed prior to a decision being taken. On that basis if they are not agreed at this stage there is no certainty that the proposal would avoid significant impacts on the SAC.
25. In the circumstances, I must take a precautionary approach which requires that planning permission cannot be granted in the absence of evidence demonstrating that there would be effective mitigation measures to protect the integrity and favourable conservation status of the SAC.
26. District licencing relating to Great Crested Newts (GCN) sites or habitats is available in North Somerset. If this approach is followed, further surveys or detailed mitigation (including on-site/nearby habitat creation) would not be required at the application stage.
27. The appellant has submitted a GCN District Level Licensing Enquiry Form to Natural England. Yet national guidance for developers² requires that planning applications must include a copy of a countersigned agreement to show that they have joined the scheme. As this has not been submitted with the appeal the proposal does not comply with the guidance and therefore meet the legally compliant approach in relation to GCN.

² Developers: how to join the district level licensing scheme for GCNs

28. Although not referred to in its refusal notice or officer's report, the Council's appeal statement raises concerns that the proposal could affect local hazel dormouse habitat at the site.
29. A previous ecology survey of the site (submitted with planning application 19/P/171786/OUT) indicates that the habitat was sub optimal for dormice at that time. However, it identified the northern boundary as having some connectivity with potential dormouse habitat off site. There are also known dormouse populations along Greenhill Road and Churchill Green, which are connected to the site at a landscape scale. The current scheme involves the relocation of a species rich and well-connected hedge along Front Street which could disturb potential dormouse habitat.
30. Without any detailed survey of the relevant features, it is simply not known whether dormice are present at the site, and if there are, whether mitigation measures would be appropriate. There is a further question concerning the implementation of any such measures. The use of a planning condition relating to the submission of a dormouse survey could be imposed. But, given the degree of uncertainty relating to the findings of a survey, the use of a condition would not be reasonable in this case. Therefore, the absence of sufficient information means I cannot rule out potentially significant harm to hazel dormouse.
31. An ecology survey that accompanies an application scheme for 62 houses on the adjoining land to the west has found no evidence of dormouse. That survey, however, relates to a separate site and it does not dismiss with any certainty the presence of dormouse on the appeal land.
32. Understandably the appellant is aggrieved at the timing of the Council's ecological advisor's consultation response. Those comments would have been advisable during the application stage so that queries could be addressed, and further information submitted. Nonetheless, given that the Council's comments relate to protected species there is a duty to take them into account in assessing this appeal.
33. For these reasons, it has not been demonstrated that harm to biodiversity, with reference to protected species and the SAC/SSSI, would be avoided, or adequately mitigated. The scheme does therefore not meet the requirements of Policy CS4 of the Core Strategy, Policy DM8 of the Sites and Policies Plan, the BTSPD and the SACSPD. These require amongst other things, that biodiversity features and habitat sites are safeguarded and enhanced, while appropriate mitigation measures are identified. The proposal would also fail to comply with the requirements of the Habitats Regulations and the Wildlife and Countryside Act.
34. It has also not been demonstrated that the proposal would meet the requirements of paragraph 180 of the National Planning Policy Framework (Framework), which states that development outside a SSSI that is likely to have an adverse effect on it should not normally be permitted.

Other Matters

35. The Council indicate that they cannot demonstrate a five-year land housing supply. Thus, the presumption in favour of sustainable development set out in Paragraph 11 d) of the Framework is engaged. However, despite the deficiency in the housing land supply, Footnote 7 of the Framework indicates that the presumption in favour of sustainable development does not apply where the application of policies that protect areas or assets of particular importance provides a clear reason for refusing the development proposed. Conservation Areas and SAC sites are examples of

such areas/assets and the proposal is contrary to the relevant policies of the development plan and the Framework regarding these.

Heritage and Planning Balance

36. I have found that the proposed development would harm the character and appearance of the CA. Given the absence of information there would also be potential harm to the site's biodiversity interests.
37. Paragraph 199 of the Framework advises that when considering the impact of development on the significance of a designated heritage asset, great weight should be given to the asset's conservation. It goes on to advise that significance can be harmed or lost through alteration or destruction of the heritage asset or development within its setting. Given my findings above, I find the harm to be less than substantial in this instance but nevertheless of considerable importance and weight. Under such circumstances, paragraph 202 of the Framework advises that this harm should be weighed against the public benefits of the proposal.
38. The development would likely result in a small increase in the local housing stock in a sustainable location, as well as an increase in local spending. There would also be improved pedestrian accessibility along the site's frontage. These matters attract moderate weight as public benefits. However, they would not outweigh the harm identified above to the significance of the heritage assets, the conservation of which the Framework indicates that great weight should be given. The scheme benefits would also fail to outweigh the significant harm to the site and area's biodiversity interests. I conclude therefore that the proposal would fail to preserve the special character and appearance of the CA. This would fail to satisfy the requirements of the Act, paragraph 197 of the Framework and it would not be in accordance with the development plan.

Conclusion

39. For the reasons given I conclude that the appeal should be dismissed.

R.E Jones

INSPECTOR