



Appeal Decision

Site visit made on 11 February 2019

by **M Bale BA (Hons) MA MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 13th March 2019.

Appeal Ref: APP/F0114/W/18/3213784

6 Madams Paddock, Chew Magna, Bristol BS40 8PN

- 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 Andy Bamford against the decision of Bath & North East Somerset Council.
 - The application Ref 17/04739/FUL, dated 29 September 2017, was refused by notice dated 12 April 2018.
 - The development proposed is the demolition of the existing dwelling, associated garage and greenhouse, followed by the erection of a new dwelling and garage, associated landscape and drainage works.
-

Decision

1. The appeal is allowed and planning permission is granted for the demolition of the existing dwelling, associated garage and greenhouse, followed by the erection of a new dwelling and garage, associated landscape and drainage works at 6 Madams Paddock, Chew Magna, Bristol BS40 8PN in accordance with the terms of the application, Ref 17/04739/FUL, dated 29 September 2017, subject to the conditions in the attached schedule.

Application for costs

2. An application for costs was made by Mr Andy Bamford against Bath & North East Somerset Council. This application is the subject of a separate Decision.

Main Issues

3. The main issues are:
 - (i) whether the proposal would be inappropriate development in the Green Belt having regard to the National Planning Policy Framework and any relevant development plan policies;
 - (ii) the effect on the openness of the Green Belt;
 - (iii) the effect on the character and appearance of the conservation area;
 - (iv) whether the harm by reason of inappropriateness, and any other harm, would be clearly outweighed by other considerations so as to amount to the very special circumstances required to justify the proposal.

Reasons

Inappropriateness

4. The site is within the defined housing development boundary of Chew Magna, a settlement washed over by the Green Belt. Policy CP8 of the Bath and North East Somerset Core Strategy 2014 (CS) sets out that the openness of the Green Belt will be protected from inappropriate development in accordance with national planning policy.
5. The National Planning Policy Framework (the Framework) advises at paragraphs 145 and 146 that the construction of new buildings should be regarded as inappropriate in the Green Belt other than when covered by clearly defined exceptions. The site is not covered by paragraph 145 exception (g) relating to the limited infilling or partial or complete redevelopment of previously developed land (PDL) because it is within the built-up area of Chew Magna. Regardless of the presence of buildings on the site, land in built-up areas such as residential gardens is excluded from the definition of PDL in the Framework.
6. A finding that the land is within the built-up area does not automatically classify it as infill, however. Policy GB2 of the Bath and North East Somerset Placemaking Plan 2017 (PP) indicates that development in washed over villages will be limited to infilling. It clarifies in the supporting text that the CS defines infilling as the filling of small gaps within existing development e.g. the building of one or two houses on a small vacant plot in an otherwise extensively built up frontage, the plot generally being surrounded on at least three sides by developed sites or roads.
7. Whether or not this site is considered to be surrounded by developed sites it is not in an extensively built up frontage. The area surrounding the site is a low-density group of buildings that have a limited relationship to any road frontage and sit apart from each other. Whilst this scenario is only an example within the definition, the site is not a small gap within existing development as the distances between the neighbouring properties either side of the site are large. Therefore, the proposal cannot be regarded as limited infilling under exception (e) to paragraph 145.
8. The only other exception under Framework paragraph 145 that the proposal could fall under is exception (d) relating to the replacement of a building, provided the new building is in the same use and not materially larger than the one it replaces. By the appellant's calculations, set out in the planning statement, the proposal would be over 60% larger in terms of footprint, floor area and volume than the existing building, even if potential additional development that could be erected under permitted development rights were taken into account.
9. An assessment as to whether one building is materially larger than another can look beyond a pure numerical calculation. However, whilst the proposed building has been carefully sited, would have a lower maximum height and a series of more spread-out volumes than the existing, and would be finished with more recessive materials, it would occupy a greater proportion of the site and be closer to its plot boundaries. Consequently, as well as being significantly numerically larger, it would also appear visually materially larger than the existing building. Therefore, it does not comply with exception (d).

10. My attention has been drawn to a number of other appeal decisions¹ where greater increases in size have been found to be not inappropriate in the Green Belt. However, I have limited details of the circumstances of these other cases and so they do not lead me away from my own findings on the current scenario. I, therefore, conclude that the proposal would be inappropriate development in the Green Belt.

Openness

11. With the exception of the existing buildings, the site is predominantly open. It is also part of a generally open river corridor within the settlement. Whilst there are limited views towards the site, it can be seen from Dumper's Lane and from the river bridge on Tunbridge Road. I have found that the proposed building would be materially larger than the existing and it would also occupy a greater proportion of the site.
12. I note that the dwelling would be sited so as to maintain much of the site's openness and that the proposal would be more recessive in appearance than the existing dwelling. However, notwithstanding the aesthetic shortcomings of the existing dwelling and its prominence in views from Dumper's Lane, the proposed dwelling would be closer to these viewpoints and the larger scale of the dwelling would be apparent. Overall the openness of the Green Belt would be reduced, although with the removal of the existing dwelling the harm to openness would be limited.

Character and appearance

13. The site is located on an island bounded by the River Chew. It is at the end of a cul-de-sac such that it stands removed from the central part of the village. The dwellings around the site are somewhat suburban in character and sit in large plots. The River Chew and adjacent orchard gardens, pastures and meadows define this part of the conservation area. The landscape and river valley dominate giving the site an open, verdant character and appearance in common with the areas immediately around it.
14. The form and scale of the proposed dwelling would be in marked contrast to the surrounding dwellings and the more traditionally designed buildings in the village centre. However, whilst the appellant's context analysis is fairly narrow in scope, the architecture is clearly a response to the site and its immediate setting, including reference to some local building materials. There is no substantive evidence as to why the setting requires an architecturally quiet or modest approach, provided its character and appearance can be maintained.
15. A design review panel (DRP) has indicated that the building is of a higher architectural quality than that which it would replace. The panel also found enhancements to landscape design. It found the proposal to deliver an holistic response between the building, landscape and river and this is an endorsement of its response to the setting. I give significant weight to the DRP's support for the scheme which concludes that the proposal would deliver demonstrable enhancements when compared to the existing building, having a reduced impact overall on the landscape.
16. Whilst materials such as zinc cladding are commonly found in urban areas, that does not mean that they cannot be appropriate in a rural setting where the site

¹ Including APP/D3640/D/14/2225464, APP/R0660/A/11/2147008, and APP/G4240/W/15/3081724

- would allow. The flat roof and more angular design would differ from and be larger than the neighbouring dwellings, but the site is somewhat disconnected from any definable street scene. As such, it is equally valid to respond to the landscape context, especially as it is this that defines the character and appearance of the area around the site. The flat green roofs respond to the landscape setting in this regard. A large proportion of the site would remain open and as such the site's contribution to defining the character and appearance of this part of the conservation area would not be undermined.
17. The proposal would replace an existing dwelling of fairly utilitarian design, finished in white render that is highly visible and somewhat incongruous with the prevailing character of the area. By contrast the new dwelling would be finished with recessive materials that were respecting of the immediate context. With regard to the DRP comments I find that, whilst larger than the existing dwelling, it would be a positive addition and a significant improvement over the appearance of the existing dwelling.
 18. A large amount of the external walls would be finished with glazing. However, as I shall discuss below, controls would be required concerning light spill from the dwelling in the interests of ecology. With this in mind, there is no substantive evidence that the potential light spill from the property would be significantly greater than from the existing site, or harmful to the character and appearance of the area in any event.
 19. The removal of those trees required to facilitate the development would not cause harm to the character and appearance of the area. Buildings and hard surfaces are proposed close to a number of other trees and measures are proposed for their protection. Whilst it may be possible to design alternative proposals that would not necessitate such measures, there is no substantive evidence that the protection proposed would not adequately safeguard the health of the retained trees. I, therefore find that the effect of the development on trees would not harm the character and appearance of the area.
 20. Overall, the proposal would preserve the character and appearance of the conservation area and the significance of this heritage asset as a cohesive historic rural settlement would not be harmed. As such, it would comply with PP Policy HE1 which seeks to ensure that heritage assets are suitably safeguarded including through preserving or enhancing those elements which contribute to the special character or appearance of the conservation area.
 21. Accordingly, the proposal would also comply with those aims of policies PP Policies NE2, NE6, D1, D2 ad D4, CS Policies CP6 and CP7 and policy HDE2 of the Chew Valley Neighbourhood Plan which collectively seek to protect the distinctive quality of the environment, and the functionality and connectivity of green infrastructure, through ensuring that development is designed such that it responds to its context and local character, conserves or enhances local landscape character, and avoids impacts on valuable trees.

Other considerations

22. The Council's officer report accepts that a number of benefits would arise from the scheme. These include the provision of a more energy efficient dwelling and general ecological enhancements. I attach moderate positive weight to these benefits.

23. The proposal would also result in a reduction in flood risk to the future occupiers of the site. This would be in terms of the future resilience of the dwelling compared to the existing and the provision of a safe route from the dwelling in times of flood. I attach substantial weight to this benefit.
24. The proposal would not harm highway safety, the living conditions of neighbouring residents, or with appropriate conditions in place, archaeological interests in the area. These are neutral considerations.
25. The Council has indicated that the proposal could result in the deliberate disturbance of European Protected Species. However, the officer report concludes that the derogation tests required by the Habitats and Species Regulations 2017 would be passed. With appropriate conditions in place to control light spill from the proposed dwelling and in light of the benefits that I have outlined above, there is no substantive evidence to lead me away from this position. This, too, is therefore a neutral consideration.
26. Some concern has been raised about potential inconvenience during construction, but as the proposal is for only one dwelling, this is unlikely to be significant. I, therefore, attach very little weight to this matter.

Green Belt Balance

27. The Framework at paragraph 143 indicates that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. It goes on, at paragraph 144, to state that substantial weight should be given to any harm to the Green Belt and that very special circumstances will not exist unless the potential harm to the Green Belt by reason of inappropriateness and any other harm arising from the proposal is clearly outweighed by other considerations.
28. I have found harm to the Green Belt by way of inappropriateness and also to openness. Weighed against this, I attach significant weight to the benefits arising to the character and appearance of the area from the provision of a high-quality dwelling that has a better relationship with the site and is a better architectural response than the existing dwelling. I also attach substantial weight to the flood risk benefits.
29. Whilst these circumstances are not unique to the site, nor are they necessarily dependent on the provision of a larger building, I must assess the case before me on its merits. In this case, I find that these other considerations combine so as to clearly outweigh the harm to the Green Belt that I have identified. Looking at the case as a whole, I find that very special circumstances do exist which justify the development.

Conditions

30. In the interests of flood risk, conditions are required to ensure that the development is carried out in accordance with the submitted flood risk assessment and permitted development rights for additional structures should be removed. A detailed drainage scheme and maintenance strategy is also required. I have amalgamated the Council's suggested conditions in this regard in the interests of clarity. Whilst the Council has suggested that the drainage condition should be a pre-commencement condition, there is no substantive evidence as to why demolition could not proceed first, especially

given that the suggested trigger for implementation is pre-occupation. I have, therefore, linked the required approval to the construction of the new dwelling.

31. In the interests of safeguarding ecological interests, no lighting should be installed at the site without the prior approval of a detailed lighting strategy for the whole site, including the interior of the dwelling. A construction environmental management plan should be submitted, and a condition is required to ensure that development is carried out in accordance with the submitted bat mitigation strategy. The Council has suggested a condition that a report is provided confirming that the ecological mitigation measures have been completed. However, the conditions are sufficiently robust to ensure compliance and a further condition requiring confirmation is not necessary.
32. Conditions requiring the submission of external materials and a landscaping scheme are required to ensure the preservation of the character and appearance of the conservation area, along with a condition requiring implementation of the tree protection measures. A scheme of archaeological work is required to preserve archaeological interests.
33. In accordance with PP Policy SCR5 relating to water efficiency, the Council has suggested conditions seeking approval and implementation of a scheme of rainwater harvesting and that the dwelling should meet stringent water efficiency standards. However, I am mindful of advice in the Planning Practice Guidance indicating that a local plan policy alone cannot be used to justify a condition. There is no substantive evidence that higher standards than those already required by the building regulations are necessary in the particular circumstances of this case. I have not, therefore, imposed such conditions.
34. I have made some revisions to the conditions suggested by the Council in the interests of clarity and to ensure compliance with the Framework.

Conclusion

35. For the reasons given above I conclude that the appeal should be allowed.

M Bale

INSPECTOR

Schedule

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: 374.S.001 P1; 374.S.010 P1; 374.S.100 P1; 374.S.300 P1; 374.P.010 P1; 374.P.100 P1; 374.P.101 P1; 374.P.110 P1; 374.P.300 P2; 374.P.301 P2.
- 3) The development permitted by this planning permission shall only be carried out in accordance with the approved Flood Risk Assessment (FRA) addendum by Clive Onions and the following mitigation measures detailed within the FRA:

- i) Finished Floor Levels set at a minimum of 42.25m AOD;
- ii) the building will be formed of a solid entry area and supporting radial walls with voids underneath the ground floor to allow storage of flood water. The voids will be 600mm in height from the ground level to the floor soffit. After flood events the voids will be inspected for silt and other debris and cleared if necessary;
- iii) the raised decking area will be above the design flood level and supported by pillars in a grid system with a void beneath at a minimum of 750mm in height;
- iv) the decking area including void will be checked and cleared as necessary following a flood event;
- v) a raised boardwalk at a minimum level of 42.25m AOD will be provided to allow safe access and egress to Flood Zone 1. The boardwalk shall be lit to allow use 24 hours a day in accordance with condition 7;
- vi) the garage will be built using flood resilient construction with a floor level at current ground level, and based on the 'flood entry' approach. The access will be formed in permeable gravel construction.

The resilience/mitigation measures shall be fully implemented prior to first occupation. Inspections should be carried out as highlighted above following flood events. The resilience/mitigation measures shall be maintained for the lifetime of development unless otherwise agreed in writing by the Local Planning Authority.

- 4) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that Order with or without modification), no structure shall be erected or land raising take place other than as expressly authorised by this permission within the red edge defined by the submitted plans.
- 5) No development shall take place including demolition, ground works, tree removal or vegetation clearance until a construction environmental management plan (CEMP: Biodiversity) has been submitted to and approved in writing by the Local Planning Authority. The CEMP (Biodiversity) shall include, as applicable, a plan showing exclusion zones and specification for fencing of exclusion zones; details and specifications of all necessary measures to avoid or reduce ecological impacts during site clearance and construction; findings of update surveys or pre-commencement checks of the site; and details of an ecological clerk of works. The approved CEMP shall be adhered to and implemented throughout the construction period strictly in accordance with the approved details, unless otherwise agreed in writing by the Local Planning Authority.
- 6) Prior to the commencement of the development hereby permitted, a detailed wildlife mitigation scheme shall be submitted to and approved in writing by the Local Planning Authority. The scheme shall be based upon the recommendations and proposed ecological and bat mitigation the conclusions section and Table 2 and appendix 2 of the approved Ecological Appraisal Report v1.1 dated Sept 2017 by Johns Associates

and paragraphs 93 to 116 and Appendix A of the approved Bat Report v1.2 by John's Associates dated Jan 2018 and shall include:

- i) findings of any necessary further pre-commencement protected species survey or checks;
- ii) the final details of the bat mitigation scheme, as applicable, which can take the form of a licence application method statement if appropriate;
- iii) a copy of the EPS licence granted by Natural England;
- iv) proposed bat mitigation monitoring and reporting;
- v) proposed monitoring of operational light spill levels at least 12 months after occupation.

The development shall thereafter be carried out only in accordance with the approved Wildlife and Bat Mitigation Scheme.

- 7) No external or internal lighting shall be installed without full details of the proposed lighting design being first submitted to and approved in writing by the Local Planning Authority; details to include:
 - i) proposed lamp models and manufacturer's specifications, positions, numbers and heights;
 - ii) light level modelling and a lux plan demonstrating that lux levels above the adjacent watercourse and within the "dark zone" as illustrated in drawing 374.P.252 P1 and Appendix A of the approved Bat Report v1.2 dated Jan 2018 by Johns Associates, shall not exceed zero lux above existing light levels, and shall not exceed 1 lux within a buffer zone adjacent to this;
 - iii) detailed proposals of all necessary measures to limit use of lights when not required and to minimise light spill and impacts on bats and other wildlife, and their habitats, in accordance with Appendix A of the approved Bat Report v1.2 dated Jan 2018 by Johns Associates and approved drawing 374.P.252 P1.

The development and all lighting shall be thereafter be constructed operated and maintained in accordance the approved lighting measures and light spill limits.

- 8) No construction of the external walls of the development shall commence until a schedule of materials and finishes, and samples of the materials to be used in the construction of the external surfaces, including roofs, have been submitted to and approved in writing by the Local Planning Authority. The development shall thereafter be carried out and maintained only in accordance with the approved details.
- 9) No development shall commence, except archaeological investigation work, until the applicant, or their agents or successors in title, has secured the implementation of a programme of archaeological work in accordance with a written scheme of investigation which has been submitted to and approved in writing by the Local Planning Authority. The programme of archaeological work should provide a controlled watching brief during ground works on the site, with provision for excavation of any significant deposits or features encountered, shall be carried out by a competent person(s) and completed in accordance with the approved written scheme of investigation.

- 10) Prior to the construction of the new dwelling, a detailed drainage scheme and a schedule for its future maintenance based on the principles outlined in the FRA shall be submitted to and approved in writing by the Local Planning Authority. The approved scheme shall be implemented prior to the occupation of the dwelling and shall thereafter be maintained in accordance with the approved maintenance schedule.
- 11) No site clearance, preparatory work or development shall take place until the scheme for the protection of the retained trees detailed in the Arboricultural Method Statement prepared by Hillside Trees Ltd. (September 2017) has been implemented. The protection measures shall be fully adhered to and shall remain in place for the duration of construction activities on the site.
- 12) All hard and/or soft landscape works shall be carried out in accordance with the approved details. The works shall be carried out prior to the occupation of any part of the development or in accordance with a programme (phasing) agreed in writing with the Local Planning Authority prior to occupation of the dwelling. Any trees or plants indicated on the approved scheme which, within a period of five years from the date of the development being completed, die, are removed or become seriously damaged or diseased shall be replaced during the next planting season with other trees or plants of a species and size to be first approved in writing by the Local Planning Authority. All hard landscape works shall be permanently retained in accordance with the approved details.