

Appeal Decision

Inquiry opened on 21 February 2017

Site visit made on 1 March 2017

by **C J Ball** DArch DCons RIBA IHBC

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

Decision date: 18 April 2017

Appeal Ref: APP/F0114/W/16/3150680

Land between City Farm and Cotswold View, The Hollow, Southdown, Bath BA2 1JN

- 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 Juniper Homes (South West) Ltd against the decision of Bath & North East Somerset Council.
 - The application Ref 15/02807/FUL dated 18 June 2015, was refused by notice dated 26 February 2016
 - The development proposed is the erection of 20 dwellings and associated works.
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Decision

1. The appeal is dismissed.

Preliminary matters

2. The inquiry sat for 5 days on 21-23 and 28 February and 1 March. As suggested I made an unaccompanied visit to the site on 20 February. I made a further unaccompanied visit on 24 Feb to view the site in longer views across Bath. I made another visit to the site accompanied by the main parties on 1 March.
3. The Council refused the application for 6 reasons. Before the inquiry, the appellant put forward an amended traffic calming scheme. The Council confirmed that this met the highways objections to the proposal. I agreed to accept the amended plan ref SK11 Rev B as a minor amendment to the proposal and the plan was circulated for comment. As a result the Council withdrew reason for refusal 5 relating to safe access from the public highway.

Environmental impact

4. The proposal has been screened in accordance with the EIA Regulations and is considered not to be EIA development, so that a formal Environmental Statement is not necessary. I note the range of environmental and other information submitted with the application and have taken this into account.

Agreed matters

5. Before the inquiry the parties submitted a statement of common ground. This sets out the reasons for refusal, the planning policy context, a range of agreed technical matters and the heads of terms of a planning obligation. It helpfully details the matters upon which the parties do not agree, related to the reasons for refusal. The statement includes a list of application plans and documents and lists suggested conditions.
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Planning obligation

6. At the inquiry the appellant submitted a unilateral undertaking as a s106 planning obligation. This would commit the appellant to providing 35% affordable housing (7 units) on site; carrying out offsite highways works and contributing £5,000 to a TRO; providing employment and training for local workers; making a fire hydrants contribution of £1,500; and submitting a Landscape and Ecology Management Plan. Other necessary contributions would be secured through the Council's CIL Charging Schedule. Submission of the undertaking met the Council's objection in this regard and consequently reason for refusal 6 was withdrawn.

Main issues

7. Accordingly I consider the key issues in the appeal to be:
 1. The effect of the proposal on the character and significance of the Bath World Heritage Site (WHS) and the Bath Conservation Area (CA) as designated heritage assets;
 2. The impact that the design and layout of the proposed development would have on the character and appearance of the surrounding area; and
 3. The effect of the proposal on the ecological value of the site.

Policy background

8. The local development plan consists of the Bath and North East Somerset Core Strategy (CS), adopted in July 2014 and the saved policies of the Bath and North East Somerset Local Plan (LP) of 2007. Policies of relevance to the key issues are CS policies B4: The WHS and its setting; CP6: Environmental quality; and CP9: Affordable housing. Relevant LP policies include NE.1: Landscape character; NE.3: Important hillsides; BH.6: Development affecting CAs; D.2: Design considerations; D.4: Townscape considerations; and NE.9: Locally important wildlife sites.
9. Important material considerations include the City of Bath WHS Setting SPD; the Bath City-wide Character Appraisal SPD; the City of Bath WHS Statement of Outstanding Universal Value (OUV); the City of Bath WHS Attributes; and the City of Bath WHS Management Plan. I have taken account of the draft Twerton, Whiteway, Southdown and Moorlands Character Appraisal. Although at a fairly early stage, it is authoritative and carries moderate weight. I have also had regard to a range of Heritage England (HE) Good Practice Advice Notes.
10. Other material considerations include the National Planning Policy Framework (Framework), which sets out the government's core planning principles and key policy objectives to achieve sustainable development; National Planning Practice Guidance (Guidance); the Council's Planning Obligations SPD; and the emerging Bath and North East Somerset Placemaking Plan (PMP). The Council refers to PMP policies HE1, NE2, NE2A, NE3, D1, D2 and BD1. The PMP is at a relatively advanced stage, it has been approved for development management purposes and these policies are reasonably consistent with the Framework, so carry significant weight.
11. The Council's most recent housing land supply (HLS) assessment, carried out following the PMP Examination, shows that the Council can demonstrate a

district-wide 5.7 year supply of deliverable housing sites. The appellant considers this to be over-optimistic and points out recent findings that there is a significant shortfall in Bath itself. Nonetheless he does not challenge the overall HLS position. This means that, in the terms of Framework 49, relevant policies for the supply of housing are considered to be up-to-date and the appeal must be determined in accordance with the development plan unless material considerations indicate otherwise.

Planning history

12. The site was evidently in at least partial use as allotments during the war but, in the late 1940s, became part of the playing fields of a new school. The school buildings were replaced in the mid-1990s by a new housing estate, Cotswold View. This post-dated the inscription of the WHS in 1986 and a condition of the planning permission required the land which is the site of this appeal, identified as important hillside, to be kept open to safeguard the appearance of the area.
13. A recent attempt by local councillors to nominate the site as Local Green Space in accordance with Framework 76 was unsuccessful, as the site was considered by the Council not to be demonstrably special or to hold any particular local significance. I note that the reason for rejecting the nomination of the site acknowledged the 'potential to re-develop housing stock in future.'

Reasons

14. The site is an undeveloped open field, fronting The Hollow. Despite originally lying within the curtilage of the school it does not fall within the Framework definition of previously-developed land. It lies between Cotswold View to the north-east and buildings associated with the Bath City Farm to the south-west. The site slopes steeply down to the north-west, where it adjoins the open pasture fields of the City Farm. A public footpath through the fields runs adjacent to the site boundary.
15. The site lies within the boundary of the Bath WHS and immediately adjacent to the boundary of the Bath CA. It also falls within the boundary of the Twerton Farm Site of Nature Conservation Interest (SNCI), which centres on the City Farm.
16. The development would provide 13 market houses in 3 short terraces within the site and 7 affordable houses in 2 terraces on The Hollow frontage. There would be a new vehicular access off The Hollow and shared landscaped areas incorporating ecological mitigation measures. CS policy B1 plans for 7,000 new homes within Bath, with 1,150 to be delivered through small scale intensification throughout the urban area. The site lies within the urban area of Bath and the Council accepts that, in principle, residential development of this site is acceptable.

The effect of the proposal on the character and significance of the Bath WHS and the Bath CA as designated heritage assets

The City of Bath World Heritage Site

17. The City of Bath WHS is a designated heritage asset of the highest significance. The landscape setting of Bath is one of the city's most important assets. The City of Bath WHS Statement of Outstanding Universal Value (OUV) makes it clear that the planned relationship of the built development to its landscape

setting was a major factor in the inscription of Bath as a WHS. The WHS Management Plan identifies six headline attributes which express the essential qualities of the OUV. Of these, the parties agree that 'The Green Setting of the City in a Hollow in the Hills' is the attribute of most relevance to this appeal.

18. In this respect here are a number of prominent green hillsides within the built-up area of Bath which are vital to the city's landscape setting and character. The Bath WHS Setting SPD identifies the Twerton Farm/Bath City Farm fields as one of these important green hillsides. The City-wide Character Appraisal SPD confirms that this undeveloped area is of city-wide importance, breaking up the Twerton townscape and, at night, appearing as a pool of darkness within the built up area. It makes a major contribution to the character and significance of the WHS as a whole.
19. Map 5 of the Setting SPD clearly shows that, while the appeal site is not part of the City Farm holding, it does lie within the area designated as a green hillside forming a prominent feature in the landscape setting of Bath. The loss of the green field site to development would result in a reduction in the extent of the Twerton Farm green hillside as designated.
20. The appellant argues that the impact of this on the landscape setting of the city would be negligible because the site is distinct from the adjacent fields through differences in history, characteristics and surroundings, including a separating tree belt, and so makes a lesser contribution. These differences may exist but what is important to the overall landscape setting is the green, hillside nature of the site, which is not disputed, and its prominence in views from the city.
21. I saw that, from the lower levels of the City, up to Royal Victoria Park and The Crescent, and beyond to the park and public golf course above, the site is largely obscured by the development in front of it, Cotswold View, and is effectively lost within the built development around it. From these viewpoints, the loss of the open site and its development would be barely noticeable.
22. However, I saw that in views from the upper parts of the city, from Primrose Hill, from Weston, from public footpaths within the Cotswold AONB and, particularly, from Lansdowne cemetery and Beckford's Tower (built specifically as a viewpoint), the site is quite noticeable. It forms the rising south-east corner of the designated Twerton Farm green hillside and, although a small part of it, is a clearly visible element in the overall extent of the green open space.
23. I consider that the loss of this part of the important green hillside to development would undermine the contribution it makes to the landscape setting and character of the city and the overall integrity of its OUV. That would directly conflict with LP policies NE.1 and NE.3 and would not be consistent with CS policy B4. The proposal would not enhance or better reveal the significance of the WHS so would also be inconsistent with PMP policy HE1. The reduction in size of the green hillside would not conserve local landscape character or the green setting of the city, contrary to PMP policies NE2 and NE2A.
24. I conclude from this that the significance of the WHS would be harmed by this proposal. Because of its peripheral location, the comparatively small size of the site and the lack of impact in some views, I consider that the development of this site would lead to less than substantial harm to the character and significance of the WHS as a designated heritage asset.

The City of Bath Conservation Area

25. The site lies outside the CA but adjoins its south-eastern edge at the line of trees separating it from the City Farm site. The Council considers that the appeal site lies within the setting of the CA, a difficult concept which is nowhere defined. Nonetheless Framework 132 confirms that the significance of a heritage asset can be harmed by development within its setting. It is therefore necessary to consider the contribution made by the setting of the CA to its significance.
26. The significance of the Bath CA as a whole lies primarily in the siting, inter-relationship and landscape setting of its principal historic buildings. As the Bath City-wide Character Appraisal SPD explains, the old village of Twerton, itself uninfluenced by the building fashions of Bath, has been subsumed into the city by large scale inter and post-war housing development. Bath City Farm, on the steep north-facing slope above the village, is a remnant of the historic field system. As the Appraisal notes, this open green area is of city-wide visual importance.
27. The Twerton, Whiteway, Southdown and Moorlands Character Area is the subject of a recent Character Appraisal. The eastern, southern and western boundaries of this area define the south-western extremity of the city-wide CA. The Character Area is broadly divided into 3 character types: the saxon/medieval/ 19th century village; the post-war housing estates higher up the slope; and the green space of City Farm at the top of the slope. The site is specifically excluded, as it has been in several reassessments of the CA boundaries over the years.
28. I have no doubt that the boundary of the CA extends to include City Farm because of the city-wide visual importance of the green slopes. It is this open area which contributes most to the significance of the Bath CA as a whole. In that respect it can be argued that the setting of this part of the CA – the surroundings in which it is experienced – includes the spread of city viewpoints across the valley and that it is this aspect of the setting which contributes most to the significance of the CA at Twerton.
29. On a more local level, the part of the CA defined by the Character Area is set entirely within built development. The commercial/industrial strip along the River Avon forms its northern boundary, while an expansive range of mainly post-war housing estates adjoin the eastern, southern and western boundaries. The green slopes of City Farm are almost entirely surrounded by housing development, with the one anomalous exception of the appeal site at its south-east corner. The setting of the CA at Twerton, particularly the open area, is essentially characterised by the continuous rows of surrounding houses on its borders. Apart from defining its edges, this setting contributes little to the city-wide significance of this part of the CA. The predominant character of the setting is largely unaffected by the small open appeal site. Development here would not significantly affect the ability to appreciate the significance of the CA from its setting.
30. It therefore seems to me that the development of this site for housing would be consistent with the prevailing character of the setting of the CA here. The Character Appraisal identifies some panoramic viewpoints of the city from Kelston View across the site but, since the development would be at a lower level, with part of the City Farm in the foreground, these would be relatively

unaffected. The Appraisal also identifies factors which may be seen as threats to the Character Area. They do not include the development of this site.

31. There is clearly some tension here with WHS considerations but, in terms of the specific impact on the CA, I find that the development of this site within its setting would, as a whole, have a neutral impact on the character and significance of the Bath CA as a designated heritage asset. The proposal would therefore preserve the character and appearance of the CA, consistent with the clear objectives of LP policy BH.6 and PMP policy HE1.

The impact that the design and layout of the proposed development would have on the character and appearance of the surrounding area

32. The surrounding area is characterised primarily by the homogenous mix of post war and more recent market and social housing. Most is of traditional 2-storey semi-detached construction although there are some terraces, and one or two larger properties have taken advantage of the sloping ground to include more storeys. Although the surrounding buildings have a limited architectural value, they have a clear domestic scale and a strong local character. They represent an important step in the later stages of the expansion of Bath.
33. The proposed development is planned in 2 distinctly separate parts. Two short terraces of small traditionally constructed, 2 storey dwellings would step down the hillside frontage facing onto The Hollow and are intended to reflect the local street scene. Further within the site, larger 3 storey dwellings, cut into the slope, are set out in a series of terraces along the site contours. While this may reflect the historic approach to the development of central Bath, it is not particularly representative of the suburb of Twerton.
34. The tall 3 storey houses would be quite visible from the longer viewpoints. In more local views from City Farm and the intervening public footpath, they would have a major visual impact. In an attempt to reduce the visible height and impact of the houses, they would be given sloping dark zinc-clad or reconstructed slate frontages, partially dressed with horizontal rails, and low monopitch zinc roofs. The sloping elevations would be interspersed with timber-clad, box-like top floor rooms with flat, sedum planted roofs.
35. In the panoramic views of the city over the site from Kelston View, the dark materials and planted roofs of the buildings mean that they would not be predominant in the outlook. Similarly, in longer views, the darker finishes would help to absorb the houses into the background. However, particularly from the public footpath below, the incongruous, awkward nature of the arrangement of, and junctions between, sloping and vertical walls and pitched and flat roofs would be all too apparent. The important roof edges lines, seen from below against the sky, would have an erratic, inconsistent and unordered nature. As a result, the design would have a somewhat unfinished, incoherent appearance, at odds with the simple nature of the surrounding buildings.
36. As Framework 58 makes clear, while not discouraging appropriate innovation, development should respond to local character and history, and reflect the identity of local surroundings and materials. While the frontage buildings make a decent attempt at this, the design and appearance of the larger houses pays no more than lip service to the character of the local surroundings. Their incongruous design would neither promote nor reinforce local distinctiveness.

37. The layout of the site would also be divisive, with the 7 affordable social housing units grouped together in a less desirable part of the site and deliberately kept separate from the larger market houses. While this might suit housing management practices, it would prejudice social integration and undermine community cohesion. The isolated, markedly different and clearly identifiable affordable units would not result in tenure blindness, a key objective of the Council's Planning Obligations SPD and CS policy CP9. This would be a poor layout strategy, inconsistent with its surroundings.
38. Accordingly I find that, in conflict with LP policies D2 and D4 and CS policy CP6, the design and layout of the proposed development would have an unacceptably harmful impact on the character and appearance of the surrounding area.

The effect of the proposal on the ecological value of the site

39. The site is part of the Twerton Farm Site of Nature Conservation Interest (SNCI), making up approximately 6% of the overall area. The parties agree the ecological characteristics of the site, including the valuable habitats provided by the double hedge of trees and shallow ditch on the north-west boundary. Most of the site would be developed. Significant harm would be caused to the ecological value of the site by development so, in accordance with national and local policy, appropriate mitigation or compensation is required.
40. The Council accepts the range of mitigation measures proposed in the submitted Ecological Appraisal. These are intended to retain the ecological value of the site and include the retention of boundary habitats and connecting grassland; the creation of a floristically rich meadow-type or shade tolerant grassland, including a strip of species rich grassland adjacent to the north-western boundary; the creation of a pond; and new tree, shrub and hedgerow planting.
41. However, the site layout is such that built development, including enclosed gardens, occupies so much of the site area that the mitigation measures could not fully be put into effect. The double hedge and boundary habitats would not be retained; narrow strips of grassland would not compensate for the valuable habitats lost; they would be separated by garden walls so there would be no real interconnectivity; and, while there would be some additional tree planting, a significant part of it would be within gardens where its survival cannot be assumed.
42. Altogether the proposal would not incorporate the degree or quality of mitigation or compensation that was agreed as appropriate and proportional to the impact of development and the extent of habitat loss. As designed, the site layout allows insufficient area for the agreed mitigation measures to be properly made. The mitigation features would be too small, poorly designed and laid out, and would not provide the intended habitat value. I consider that, contrary to Framework objectives, LP policy NE9 and PMP policy NE3, the development as proposed would cause unavoidable harm to the remaining features of ecological value and lead to an overall net loss in ecological value of the site.

Other matters

43. Local residents were also concerned about the highway safety impact of adding a new junction within an existing traffic calming scheme. I heard reports of inconsiderate road users ignoring the traffic calming at speed. That must be a matter for regulation and enforcement. After much discussion with the

appellant, the Council accepted that an amended scheme would overcome its original highways objections. There were evidently some negotiated compromises over published standards but the Council clearly concluded that this would not result in dangerous highway conditions. In the absence of specific evidence to the contrary, I must be guided by those conclusions.

44. The planning obligation provisions secure affordable housing, carry out offsite highways works, provide local employment and training, make a fire hydrants contribution and submit a Landscape and Ecology Management Plan are all necessary to make the development acceptable in planning terms. They are directly related to the development and are fairly and reasonably related in scale and kind to it. They meet the tests of CIL Regulations 122 and 123 and comply with Framework 204. However, I am not convinced that a contribution to a Traffic Regulation Order to control inappropriate parking, if it were to become a problem, is necessary. There is no certainty that the TRO would be required so the contribution would not meet the required CIL tests. I give this element of the planning obligation no weight in the overall considerations.

Conclusions

45. I have found that, although the proposal would have a neutral impact on the significance of the CA, the development of this site would lead to less than substantial harm to the character and significance of the WHS as a designated heritage asset. As Framework 134 makes clear, where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal, including securing its optimum viable use. 'Less than substantial' does not necessarily mean insignificant and any harm, as a matter of law, must be given considerable importance and weight in the overall balance.
46. The development would undoubtedly bring public benefits to the area, including a wider choice of market housing and an 'above policy' provision of affordable houses to help meet a pressing need. There would be construction jobs, including employment and training for local people. Altogether these amount to considerable benefits in the public interest. However, on balance, after giving the appropriate weight to the identified harm to the WHS, I consider that these public benefits do not outweigh that harm. I find no clear and convincing justification for the harm that would be caused to the significance of the WHS as an important designated heritage asset.
47. The proposal would conflict with the development plan and emerging policies protecting the WHS, the character and appearance of the local area and the ecological value of the SNCI. The Council recognises the potential to re-develop the site for housing in future and it may be that a more sympathetic scheme would change the balance of considerations. However, the benefits of this particular proposal do not outweigh the harm it would cause and there are no other material considerations sufficient to indicate that the proposal should be determined otherwise than in accordance with the development plan. For the reasons given above I conclude that the appeal should be dismissed.

Colin Ball

Inspector

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Richard Clarke of Counsel	Instructed by B&NES Legal Department.
He called:	
Charles Potterton BA DipLA CMLI	Director, Potterton Associates Ltd, Consultant Landscape Architect.
John Davey DipTP DipCons MRTPI IHBC	Conservation Consultant.
Lucy Corner BSc(Hons) DipCM MALGE	Ecologist, Bath and North East Somerset Council.
Christopher Griggs- Trevarthen BSc MSc MRTPI	Senior Planning Officer, Bath and North East Somerset Council.

FOR THE APPELLANT:

Gary Grant of Counsel	Instructed by CSJ Planning Consultants.
He called:	
Will Harley BSc(Hons) CMLI	Director, WH Landscape Consultancy Ltd.
Stephen Bond MA HonDArt FSA MRICS GradDipConAA	Heritage Places, heritage consultant.
Ben Donadel BA(Hons) BArch PgCert ARB RIBA	Project Architect, Esmond Murray Architects.
Niall Machin BSc(Hons) MCIEEM	Associate Director, Waterman Infrastructure and Environment Ltd.
Michael Orr BA(Hons) BTP DipUD MRTPI	Director, CSJ Planning Consultants Ltd.

INTERESTED PERSONS:

Keith Gotts	Local resident.
Cllr Tim Ball	Ward Councillor.
Graham Sandall	Local resident.
Rebecca Nicholls	Local resident
Malcolm Dodds	Trustee, Bath City Farm.
Richard Harris	Chair, Bath and West Wilts Hawk and Owl Trust.
Mark Reynolds	Local resident.
Maggie Lyons	Local resident.
Cllr Dine Romero	Ward Councillor.
Tim Thurgood	Local resident.
Helen Francis	Local resident.

ADDITIONAL DOCUMENTS SUBMITTED AT THE INQUIRY

- 1 Certified copy of executed Unilateral Undertaking.
- 2 Agreed amendments to conditions.
- 3 Mr Sandall's statement
- 4 Mr Reynolds' statement and attachments.
- 5 Cllr Romero's statement and bundle of forwarded letters.
- 6 Mr Clarke's closing submissions.
- 7 Mr Grant's closing submissions.
- 8 Copy [2015] EWHC 2464 (Admin) Kings Lynn & W Norfolk v SoS & ELM.

