

## **DELEGATED REPORT**

**Application No: 21/04746/OUT**

**Details of location and proposal and Relevant History:**

**Field On Corner With Ferndale Road, Deadmill Lane, Lower Swainswick, Bath, Bath And North East Somerset**

The application site relates to a parcel of land located on the corner of Ferndale Road and Deadmill Lane, within the Lambridge Ward of Bath. The site lies within the designated Green Belt, the World Heritage Site Boundary, and the designated landscape setting of the Settlement of Bath. The Bath Conservation Area borders the southern and eastern boundaries of the site, and the Cotswolds Area of Outstanding Natural Beauty borders its western boundary.

Outline planning permission is being sought for the layout and access for the proposed construction of fifteen affordable dwellings on land at Deadmill Lane, Bath with a request for all other matters to be reserved.

Relevant Planning History:

96/00426/FUL

REFUSED - 13 December 1996

Erection of a village hall with associated car park and amenity area

98/00238/FUL

REFUSED - 8 July 1998

Erection of a dwelling after demolition of bakehouse/stable including improvements to road junction

01/02429/FUL

RF - 16 January 2002

Conversion of former bakehouse building to create a new dwellinghouse

20/00491/OUT

REFUSED - 9 April 2020

Erection of 18 dwellings.

DISMISSED AT APPEAL - 01 March 2021

**Summary of Consultation/Representations:**

The consultation responses received are summarised as follows: :

EDUCATION SERVICES - No objection

CRIME PREVENTION - No objection in principle. Concerns regarding layout and external cycle stores.

ARCHAEOLOGY: No objection

**DRAINAGE AND FLOODING (LLFA):** The information provided within the FRA is unacceptable and further information is required.

**PLANNING POLICY:** No objection subject to conditions; the proposal must meet the criteria listed within policy RA4; including (d) the development is in scale and keeping with the form and character of its location; as well as addressing the other reasons for refusal from the previous application

**ARBORICULTURE:** Objection. Insufficient information has been provided to demonstrate that existing offsite trees have been considered in determining the layout of the site. Two plots will be adversely affected by the current proposals. The layout does not demonstrate that it seeks to avoid any adverse impact on trees and woodlands of wildlife, landscape, historic, amenity, productive or cultural value. This is contrary to policies NE1 and NE6 of the Placemaking Plan.

**ECOLOGY:** Objection. Insufficient information to ascertain that the site will meet the requires of UK Law and National and Local planning policy.

**HOUSING:** Objection. The proposal fails to comply with the provisions of policy RA4; the properties are below NDSS standards; the proposal fails to address the 1-bedroom dwelling local need; the applicant has not provided evidence to justify the proposed tenure or equity share arrangement of shared ownership; legal agreement is required to secure the affordable housing; confirmation of rent tenure and equity share proposal for shared ownership; unacceptable dwelling types and bed sizes

**PARKS:**

Comments received 11th November 2021 - to the north of the application site is Council owned land transferred to B&NES for allotment use. Transfer of Land included a "right of access" to this land (vehicles and cars) and this needs to be provided.

Comments received 2nd December 2021 - No objection; confirm the vehicular access and pedestrian gate on the revised layout plan is acceptable

**HISTORIC ENVIRONMENT:** Objection. Although the level of harm to the setting and significance of the Conservation Area, Dead Mill and the World Heritage Site has been reduced, unless the planning balance now tips in favour of the development, the same reasons for refusal as the previous application would apply.

**LANDSCAPE:**

Comments received 8th November 2021: Objection. The proposal would result in harm to the openness of the Green Belt, contrary to policies CP8 and GB1; The proposal would cause unacceptable harm and adversely affect the significance of the World Heritage Site, contrary to policies HE1 and B4; The proposal would erode the positive contribution that the site makes to the historic landscape setting of this part of the Conservation Area, have an adverse effect on the significance of the Conservation Area and detract from the appreciation and understanding of and harm the significance of Dead Mill, contrary to HE1; be detrimental to the character and environmental quality of the area, contrary to policies D1 and D2

Comments received 13th January 2022: Objection. Some queries addressed but previous conclusions remain valid.

**HIGHWAYS:**

Comments received 5th November 2021: The applicant should be provided with the opportunity to address the highway observations. Objection at this time raised as the applicant has failed to demonstrate that they can provide a suitable vehicular access which does not prejudice highway safety, or provide safe and convenient access to (and within) the site for pedestrians, cyclists and those with mobility impairments, contrary to policy ST7.

Comments received 27th January 2022: Objection. The applicant has failed to demonstrate that they can provide a suitable vehicular access which does not prejudice highway safety or provide safe and convenient access to, and within, the site for pedestrians, cyclists and those with a mobility impairment contrary to the requirements of policy ST7 of the Placemaking Plan (2017).

COUNCILLOR ROB APPLEYARD: This is a highly contentious application within the Green Belt and residents cannot identify any exceptional circumstances that would allow permission and create a loss of valued green space. If the officer is minded to approve, can this application be placed in front of the committee.

COUNCILLOR JOANNA WRIGHT: Objection on the grounds of Green Belt, Affordable Housing, Transportation Links, Ecological Emergency, lack of access to allotment land. If the officer is minded to approve, can this application be placed in front of the committee.

COUNCILLOR SARAH WARREN: I would support Cllr Appleyard's referral of this highly contentious planning application, in the Green Belt, on the corner of Deadmill Lane and Ferndale Road, to the committee for full public scrutiny if officer's should be minded to approve it.

SWAINSWICK PARISH COUNCIL: Objection on the grounds of highway safety, impact to neighbouring residents, unacceptable location on the edge of the AONB and in the Green belt, springs at the site

CHARLCOMBE PARISH COUNCIL: Objection on the grounds of erosion of the Green Belt, detrimental to the entrance of the Wooley Valley and the AONB, negatively impact the landscape setting of the Bath World Heritage Site, increase in traffic, highway safety concerns, risk of flooding

Representations Received :

182 objections have been received from third-parties, which have been fully assessed by the case officer and the main points can be summarised as follows:

- Highway safety concerns during construction
- Highway safety concerns regarding the completed development
- Highway safety concerns in relation to proposed vehicular and pedestrian access from Deadmill Lane
- Inappropriate development in the Green Belt
- Loss of green space
- Overdevelopment of the site
- Impact to the World Heritage Site designation
- Impact to the Historic Environment (including Dead Mill and the Conservation Area)
- Environmental impact in regard to the construction phase
- Environmental impact in regard to increase in vehicle numbers due to new residents
- Loss of habitat, wildlife and biodiversity
- Increased light pollution and noise pollution
- Affordable properties not "affordable" in practice
- Landscape impacts locally and within wider views
- Impact of adjacent Area of Outstanding Natural Beauty
- Will affect the transition from urban Bath to the rural countryside
- Erosion of the countryside
- Impact to health of children
- Insufficient school places
- Local services will be overwhelmed
- Increased flood risk
- Residential amenity concerns for existing residents
- No community consultation from the developer

#### BATH PRESERVATION TRUST:

- Site remains an important green and open space within the Larkhall character area that demarcates the rural boundary of Bath
- Does not appropriately constitute a Rural Exception Site and is therefore inappropriate development in the Green Belt
- In-principle objection to development on this site, and further "development creep" on significant green spaces within Bath due to harm and to the OUV of the World Heritage Site and the special qualities of the AONB
- Development would result in substantial, cumulative harm to the multiple heritage assets which is not outweighed by public benefit
- Highway safety concerns
- Contrary to Sections 12, 13, 15 and 16 of the NPPF
- Contrary to policies DW1, B1, B4, BD1, CP6, D1, D2, D3, D4, D5, D6, HE1, NE2, NE2A, CP8, GB1 and RA4 of the B&NES Core Strategy and Placemaking Plan

#### BRISTOL INDUSTRIAL ARCHAEOLOGICAL SOCIETY:

- Concerned that the historic setting of this former industrial building is respected
- The footings of the bakehouse remain
- The building derives much of its character from its setting and any development close to the building would compromise its heritage status
- The views from Ferndale Road across the frontage of the mill will jeopardise the vista across Solsbury Hill
- Highway safety concerns

3 support comments have been received, summarised as follows:

- Hopefully this scheme can be used to enhance Deadmill Lane
- A S106 could be secured to implement a one way system along Deadmill Lane/Ferndale Road to satisfy local residents and improve highway safety
- Great use of land
- We have a housing crisis, so please ensure they are all affordable, preferably Council owned

#### **Policies/Legislation:**

The Core Strategy for Bath and North East Somerset was formally adopted by the Council on 10th July 2014. The Core Strategy now forms part of the statutory Development Plan and will be given full weight in the determination of planning applications. The Development Plan for Bath and North East Somerset comprises:

- o Bath & North East Somerset Core Strategy (July 2014)
- o Bath & North East Somerset Placemaking Plan (July 2017)
- o West of England Joint Waste Core Strategy (2011)
- o Bath & North East Somerset saved Local Plan policies (2007) not replaced by the Core Strategy or the Placemaking Plan:
  - Policy GDS.1 Site allocations and development requirements (policy framework)
  - Policy GDS.1/K2: South West Keynsham (site)
  - Policy GDS.1/NR2: Radstock Railway Land (site)
  - Policy GDS.1/V3: Paulton Printing Factory (site)
  - Policy GDS.1/V8: Former Radford Retail System's Site, Chew Stoke (site)
- o Made Neighbourhood Plans

Core Strategy:

The Core Strategy for Bath and North East Somerset was formally adopted by the Council on 10th July 2014. The following policies of the Core Strategy are relevant to the determination of this application:

- B1: Bath Spatial Strategy
- B4: The World Heritage Site and its Setting
- CP2: Sustainable Construction
- CP5: Flood Risk Management
- CP6: Environmental Quality
- CP8: Green Belt
- CP9: Affordable Housing
- CP10: Housing Mix
- CP13: Infrastructure Provision
- DW1: District Wide Spatial Strategy
- SD1: Presumption in favour of sustainable development

Placemaking Plan:

The Placemaking Plan for Bath and North East Somerset was formally adopted by the Council on 13th July 2017. The following policies of the Placemaking Plan are relevant to the determination of this application:

- SU1: Sustainable Drainage
- D1: Urban Design Principles
- D2: Local Character & Distinctiveness
- D3: Urban Fabric
- D4: Streets and spaces
- D5: Building Design
- D6: Amenity
- D8: Lighting
- D10: Public Realm
- BD1: Bath Design Policy
- HE1: Historic Environment
- NE1: Development and Green Infrastructure
- NE2: Conserving and enhancing the landscape and landscape character
- NE2A: Landscape Setting of Settlements
- NE3: Sites, species and habitats
- NE5: Ecological networks
- NE6: Trees and woodland conservation
- PCS2: Noise and vibration
- PSC5: Contamination
- PCS6: Unstable land
- PCS7A: Foul sewage infrastructure
- ST1: Promoting sustainable travel
- ST7: Transport requirements for managing development
- RA4: Rural exception sites
- H7: Housing accessibility
- SCR5: Water efficiency
- LCR9: Increasing the provision of local food growing
- PC55: Contamination

National Policy:

The National Planning Policy Framework (NPPF) was published in July 2021 and is a material consideration. Due consideration has been given to the provisions of the National Planning Practice Guidance (NPPG).

SPD's:

The City of Bath World Heritage Site Setting Supplementary Planning Document (August 2013) is also relevant in the determination of this planning application.

Other:

Larkhall Character Statement and Development Principles 1998  
The setting of the City of Bath, World Heritage Site

Conservation Areas:

In addition, there is a duty placed on the Council under Section 72 of the Planning (Listed Buildings and Conservation Areas) Act to pay special attention to the preservation or enhancement of the character of the surrounding Conservation Area.

### **Officer Assessment:**

The main issues to consider are:

1. Principle of development in the Green Belt
2. Highway Safety
3. Landscape, World Heritage Site and impact to rural character
4. Impact upon the Conservation Area and non-designated heritage assets
5. Arboriculture
6. Ecology
7. Drainage
8. Affordable housing and planning obligations
9. Residential amenity

### **PRINCIPLE OF DEVELOPMENT IN THE GREEN BELT:**

The application site lies within the designated Green Belt, within the ward of Lambridge. Policy CP8 of the Core Strategy states that the openness of the Green Belt will be protected in accordance with national planning policy. Paragraph 137 of the National Planning Policy Framework (NPPF) states that the Government attaches great importance to Green Belts. Accordingly, Paragraph 149 notes that Local Planning Authorities should regard the construction of new buildings as inappropriate development in the Green Belt. Inappropriate development is, by definition, harmful and should not be approved except in very special circumstances. Paragraph 149 goes on the list a number of exceptions where the construction of new buildings can be considered appropriate. Of relevance of this case is exception (f) which allows for "limited affordable housing for local community needs under policies set out in the development plan (including policies for rural exception sites).

Policy RA4 of the Placemaking Plan is consistent with exception (f) of Paragraph 145 which allows 100% affordable development sites to come forward as an exception, provided that 5 criteria are met. Planning application reference 20/00491/OUT for 18 affordable dwellings at this site was refused on a number of grounds. The first reason for refusal was as follows:

*The development does not meet the necessary criterion for this proposal to be considered as a rural exception site, or any other exceptions to inappropriate development the Green Belt as listed*

*within paragraph 145 of the National Planning Policy Framework. The development is therefore considered to be inappropriate development in the Green Belt and there are not considered to be any very special circumstances to outweigh this harm. The development is therefore contrary to the Development Plan including Bath and North East Somerset Core Strategy Policy CP9 and Placemaking Plan Policy RA4 and the advice within the National Planning Policy Framework.*

Of further relevance to this application is the Inspector's decision for appeal APP/F0114/W/20/3260800 made by the appellant against the Council for the refusal of application 20/00491/OUT. Whilst the Inspector dismissed the appeal, it was concluded that the application site did, in fact, fall within the criteria to be considered a rural exception site under national policy and Placemaking Plan policy RA4 and did therefore not represent inappropriate development in the Green Belt. The inspector did not, therefore, uphold refusal reason 1 (as above) for this application. This forms a material consideration for the current planning application for outline permission for 15 affordable dwellings at the site and an assessment as to whether the proposal is acceptable in principle is made with this in mind.

The NPPF, nor the Core Strategy or Local Plan, does not define what constitutes "limited" within the context of affordable housing. The preamble to policy RA4 states that the rural exception policy allows the release of land that would not normally be used for housing for development of affordable housing, on small sites and where there is a demonstrable local need. The terms "small sites" is also not defined. In this regard, it is a matter of planning judgement as to whether the proposal can be said to be providing limited affordable housing on a small site.

Within the previous application, it was noted by the case officer that the application site was not within a rural parish, which would be the expected location for a rural exception site. It was also noted that the site was not considered "small". Paragraph 15 of the Inspector's report states the following:

*...the appeal site comprises agricultural land which forms part of the countryside that surrounds Bath. It is land that would not normally be used for housing. Furthermore, neither the Framework nor the development plan make any reference to limited affordable housing or rural exception sites having to be within a rural parish. The proposed 18 dwellings on this 0.39 ha rural fringe could reasonably be deemed to fall within the remit of limited affordable housing and qualify for consideration as a Rural Exception Site under CS policy RA4.*

The Council considers that given the ruling of the planning inspector, it would be unreasonable not to consider the proposed development, for 15no. affordable dwellings, not to qualify for consideration as a rural exception site under RA4. The size of the site has not changed, and the reduction in the number of dwellings further fulfils RA4 in terms of being "small". As such, the Council consider the application site to be a rural exception site.

Policy RA4 only allows residential development of 100% affordable housing where it meets the specified criteria. These criteria are assessed in detail below.

Criterion (a):

It meets a demonstrated local need for affordable housing

The proposed housing mix will be 8no. shared ownership properties (3-bedrooms) and 7no. affordable rent units (2-bedrooms). The Council's Housing Officer has raised that current Homesearch data shows that there are 109 general needs applicants for rented accommodation and 53 shared ownership applicants who have expressed a first-choice preference for Larkhall including Lambridge. It should be noted that some applicants may have applied for both. The available data demonstrates that whilst there is a need for both 2-bedroom and 3-bedroom homes, the greatest need is for 1-bedroom properties. The application does not provide any 1-bedroom homes.

The Planning Obligations SPD (2015) sets out that development will only be supported where there is robust evidence of local housing need. The Council has developed its preferred approach to local housing needs surveys, but other evidence can be considered to support applications such as information from the Homesearch Register. Tenure mix, unit sizes and the scale of development will be dictated by the robust and timely evidence of local need. No evidence has been submitted as part of the application and therefore, using solely the Housing register as the evidence base, the Council would expect the mix to include 1-bedroom properties. Additionally, evidence shows that more rented than shared ownership is required. The proposal does not have regard for this.

The Council would consider that on the basis of this alone, the proposal does not fully meet an identified local affordable housing need, although does accept that there is some need for 2- and 3-bedroom properties.

However, as aforementioned, the appeal decision for application 20/00491/OUT is a material planning application. In regard to criterion (a) the inspector concluded as follows:

*The Council has informed me that in November 2020, there were 114 general needs applicants on Homesearch that had expressed a first-choice preference for Larkhall (including Lambridge). The appellant has also informed me, following a Freedom of Information request, that 134 households within the Lambridge ward require social housing. This is sufficient to demonstrate a local need for affordable housing.*

The decision of the planning inspector is a material consideration which cannot be ignored by the Council. It is therefore considered that it would be inappropriate in the absence of additional information to come to a differing conclusion to the inspector. In this case, it is considered that criterion (a) of RA4 is satisfied.

Criterion (b):

The housing remains affordable in perpetuity

The applicant has submitted a unilateral undertaking which seeks to ensure that the affordable housing remains so in perpetuity. The applicant has not shown willingness to secure the planning obligations to the Council's satisfaction and the unilateral undertaking has not been agreed in this regard. The applicant has stated that the Unilateral Undertaking which was submitted under 20/00491/OUT was deemed acceptable by the Inspector. However, the unilateral undertaking as part of this application, which is materially different to the previous application in that the number of dwellings has changed has not been agreed with the Council. As such, there can be no assurance at this stage that the housing will remain affordable in perpetuity. Criterion (b) is not met.

Criterion (c):

Occupancy of the affordable housing would remain, as a first priority, for those with demonstrated local connections

The submission notes that St Arthur Homes will act as the registered provider (RP) with Homes England for the affordable dwellings on the site. However, St Arthur Homes only owns and manages shared ownership properties and no RP for the rented units has been secured. In this regard, the Inspector noted that this could be secured through the unilateral undertaking for application 20/00491/OUT. Notwithstanding this, the legal agreement for the current application has not been agreed by the Council and as such, the Council cannot be satisfied that Criterion (c) is met at this stage.

Criterion (d):

The development is in scale and keeping with the form and character of its location



For reasons outlined below in this report, the application is not considered to be in scale and keeping with the form and character of its location and criterion (d) is not met.

Criterion (e):

The development is well related to community services and facilities

Although the development is in relatively close proximity to local services and facilities, due to the lack of pedestrian links, the Council considers that from a sustainable transport perspective the site is not well related to community services and facilities. Officers note that the Inspector's decision for application 20/00491/OUT states that the site is well related to services and facilities. Officers consider that in this case, the Inspector's decision should be given weight and, in this regard, even though the proposal is unacceptable on highway safety grounds (for reasons discussed in the next section of the report), criterion (e) can be said to be met.

Officers conclude, therefore, that the proposal does not comply with a number of criteria which are outlined in policy RA4. However, national Green Belt policy allows for the limited infilling of affordable housing, as outlined in exception (f) of Paragraph 145. The proposal is considered to comply with the overall aims of policy RA4 and can be considered to be limited infilling of affordable housing. As a matter of principle, it is considered that the proposal is not inappropriate development in the Green Belt and is compliant with national policy and policy CP8. The Council has concluded this on the basis of the material considerations which include the appeal decision for application 20/00491/OUT.

In principle, the development can be said to be acceptable, subject to other material considerations. The report will now move on to assess the proposal against the relevant policies

#### HIGHWAY SAFETY:

Since the previously refused application, 20/00491/OUT, which was refused on Highway Safety grounds, further information has been submitted to support the current application. This has been assessed in relation to the proposal.

The Transport Assessment (paragraph 3.3) confirms that the width of Deadmill Lane in the vicinity of the proposed site access is approximately 4m, which is below the 4.1m recommended by Manual for Streets (MfS) to allow cars travelling in opposing directions to safely pass one another. There are concerns that the existing alignment of Deadmill Lane is inadequate to safely accommodate the additional vehicle trips which will be generated by the proposed 15 dwellinghouses.

Table 1 in the Transport Assessment provides a summary of the volume of traffic using Deadmill Lane, together with the 85th percentile speed, recorded by an Automated Traffic Count (ATC) which was undertaken between the 12th and 18th of September 2021. The table records the daily traffic flows northbound on Deadmill Lane of 21 vehicles during the peak morning period, 31 during the peak afternoon period, and 221 over a 12-hour period. Southbound flows are recorded as 172 vehicles during the peak morning period, 52 during the peak afternoon period and 626 over a 12-hour period. This demonstrates that the predominate flow of traffic is southbound.

The table records the 85th percentile speeds of both northbound and southbound traffic as below the posted speed limit (20mph); 19.9 and 19.7mph respectively. Paragraph 3.9 states that the highest northbound flows on Deadmill Lane were 26 trips in the am peak period and 39 trips during the pm peak period with the highest southbound flows being 206 in the am peak period and 59 during the pm peak period. However, officers note that these are inconsistent with those summarised in "Table 1". The updated transport note did not clarify this.

The applicant has concluded that, based on the summary provided by Table 1, Deadmill lane has low levels of traffic flows. Highways officers challenge this conclusion, given the recorded vehicle numbers.

Paragraph 4.2 advises that the developer proposed to construct a link between the application site and the existing footway on the northern side of Ferndale Road. However, this is not located on the pedestrian desire line between the development site and the services, facilities, school and public transport links to the south. Officers are therefore concerned that the future occupiers will walk to local facilities via Deadmill Lane, increasing the risk of conflict between motor vehicles and vulnerable road users, a problem exacerbated by the fact that Deadmill Lane does currently not benefit from a dedicated footway. Officers also note that the existing footways within the vicinity of the application and the services, facilities, school and public transport links to the south do not benefit from dropped kerb pedestrian crossing points, including the provision of tactile paving, making access to local facilities difficult for pedestrians who may be visually and/or mobility impaired.

In response to the above, a Transport Note was prepared which states that dropped kerb crossing points will be provided in the following locations:

- Ferndale Road, east of its junction with Deadmill Lane
- Ferndale Road, west of its junction with Deadmill lane
- The access road directly opposite the southern end of Deadmill Lane
- The south-eastern end of Valley View Road

Whilst these crossing points are welcomed by officers, no plans indicating the locations and details of the crossing points have been submitted. As this relates to access and layout these need to be provided for assessment prior to any approval. The lack of this information is unacceptable in this regard.

Paragraphs 4.5 and 4.6 within the applicant's Transport Statement considers the Cycling Network. It is acknowledged and accepted that future occupiers will be able to join the Sustrans National Cycle Network Route 4 by travelling east on Ferndale Road, south on Gloucester Road, west on London Road and then south on Grosvenor Bridge Road. However, there is no indication as to how cyclists originating from the development site will access Ferndale Road. Little regard has been given to how cyclists, some of whom may be inexperienced and/or children, will be able to cycle safely between the application site and local services, facilities, and the school (and beyond). There are concerns that future occupiers will use Deadmill Lane to access these services which will increase the risk of conflict between motor vehicles and vulnerable road users. This issue is exacerbated by the fact that Deadmill Lane currently does not benefit from any dedicated cycle facilities.

In regard to other transport routes, the applicant states that the site is a 16-minute cycle and 40-minute walk from Bath Spa Railway Station. It is questioned whether future occupiers would walk to this transport link.

It is therefore concluded that the proposed site does not facilities easy access to non-car modes of transport which would enable residents to travel sustainably. This is due to the lack of dedicated pedestrian and cycle facilities on Deadmill Lane together with the lack of existing dropped kerbs and tactile paving. Whilst it is accepted that the revised Transport Note proposed new dropped kerbs, these are not shown on a plan and can only be given limited weight.

Paragraph 5.3 of the application considers "Vehicular Access" and application DL003A indicates the visibility splays in both directions. The splays accord with the MfS for a road subject to a 20mph speed limit. However, both of these splays extend over land which the Local Highway Authority have no control. The notation on the plan "area to be kept free from obstruction over

0.6m" relies upon a robust future maintenance regime. Without this, officers are concerned that the visibility splays will be obscured and increase the risk of collision.

The submission confirms that the junction radii will be six metres; with an "area of localised widening on Deadmill Lane to accommodate the turning movements of a refuse vehicle". Despite the proposed widening, the swept path analysis of a Refuse Collection Vehicle (RCV) indicated in Appendix I of the Transport assessment, demonstrates that an RCV approaching the development site from the south is required to overrun the virtual footway proposed for the east side of Deadmill Lane. The plan also shows that an RCV turning right into the development is required to overrun the area to the front of plot numbers 1 and 2. An RVC turning right from the development site is required to overrun a private area, beyond the extend of the adopted highway, which is unacceptable.

The Transport Note, submitted on 30th November 2021 states that the fact that the RVC will overhang the virtual footway is noted. However, due to this being an infrequent movement, the chance of conflict is minimal. Whilst the movements of RVC will not be a daily movement, officers consider that this supports the case that the proposed access is substandard and does not provide safe access of vehicles, cyclists and pedestrians without causing conflicts.

The Transport Note also states that the RVC will not overrun plot nos. 1 and 2 but will in fact overhang it. Officers consider this a matter of technicality. Although the area is not proposed to be pedestrianised, it is private land which could be used as such. This further heightens the argument that the proposed access is not suitable for larger vehicles.

In regard to the fire vehicle swept path analysis, officers are not satisfied that the revised Transport Noted addresses previous concerns that certain scenarios for fire trucks entering and exiting the site have been provided. Whilst the analysis shows that the truck exiting the site to the left will not overhang the footway, it will be located directly adjacent, almost touching it. Officers cannot be satisfied that fire vehicles can enter and exit the site without causing conflict between road users.

The virtual footway is not considered to be acceptable. The developer has justified that a virtual footway will be provided because Deadmill Lane is an insufficient width to accommodate a full kerbed footway. The virtual footway proposed will be 1.5m in width.

Highway officers note that there are examples of virtual footways in the district. However, these have been retro-fitted into existing street scapes and are not associated with new-build residential development. The proposed footway width falls below the MfS standard of 2m. The applicant has stated that this is not possible given the road width of Deadmill Lane.

The proposed footway will offer little or no protection to pedestrians, and potentially cyclists using Deadmill Lane. The proposal will introduce 15 new dwellings and therefore a high number of additional road users to the lane. The development would encourage the use of the footway and would increase the number of opportunities for conflicts between road users. The applicant has noted that the virtual footway will increase pedestrian safety on Deadmill Lane. Officers consider that the increase in the number of dwellings would result in more users of Deadmill Lane and therefore, this is not considered to be a benefit which would outweigh the highway harms.

The Access Arrangement section of the Transport Assessment does not include dedicated facilities for cyclists, including those seeking to join the NCN4 and those looking to cycle to the services, facilities and school to the south.

The proposal therefore fails to demonstrate that suitable vehicular access, which does not prejudice highway safety or provide safe and convenient access to, and within, the site for pedestrians, cyclists and those with mobility impairment.

The matter of car and cycle parking within the site must also be assessed. Policy requires a development of this dwellinghouse mix and quantum to provide 33 policy compliant car parking spaces: 3 of these being visitor parking spaces. The proposal will provide 30 spaces, at a ratio of 2 per dwelling which is considered to be policy compliant. However, no visitor parking is to be provided. The applicant has provided a justification and evidence based on car ownership to support the lack of car parking spaces which has been accepted by the Highways Officer. Should the application be being permitted, it would be advertised as a departure from the development plan. The lack of visitor parking does not, therefore, form a reason for refusal.

Cycle storage is proposed to be communal, with stores dotted around the development site as shown on the layout plan. Officers do not consider that for residential development where there are no other communal aspects (e.g., flatted development) that this is not an acceptable solution and that private, secure cycle parking could be provided. Should the application be being approved, this could be secure by a planning condition.

The proposal is for the layout and access to be determined at outline. Highways Officer consider that there are a number of outstanding issues which need to be addressed at this stage:

- Extent of the street lighting
- No carriageway markings
- No drainage details
- Locations of existing telegraph poles close to the junction not shown on the plans (may need relocating)
- Refuse locations for collection
- Planting adjacent to the site should be removed

The above has not been submitted.

Overall, officers consider that the submitted information fails to demonstrate that a suitable vehicular access, which does not prejudice highway safety or provide safe and convenient access to, and within, the site for pedestrians, cyclists and those with mobility impairment can be provided. As such, the proposal is contrary to the requirements of Policy ST7.

#### LANDSCAPE, WORLD HERITAGE SITE AND IMPACT TO RURAL CHARACTER:

The site lies within the Green Belt, Bath World Heritage Site and is adjacent to the Cotswold Area of Outstanding Natural Beauty. It marks the transition to a more rural character as one leaves the urban area of Larkhall and the built-up area of Bath. The site forms an intrinsic part of the countryside to the north and the west. Due its topography, rising to the north, the sites' prominence is increased from immediate and wider views.

The currently submitted scheme is considered to be very similar to the previously refused scheme (20/00491/OUT), which was refused on the grounds of harm. In his decision, the inspector stated that the site "is an integral part of the lower slopes of the hillside and countryside which are adjacent to the northern edge of the settlement and provides a pleasing contrast to the rows of houses to the south east. It makes a positive contribution to the significance of the World Heritage Site".

A Landscape Visual Impact Assessment was submitted as part of the application and further information in response to the Council's Landscape Officer's comments was also provided. The LVIA is considered to fail to sufficiently consider the impact to the WHS. Although the WHS is primarily a heritage designation, in the case of the City of Bath the Outstanding Universal Values for which it is designated includes many direct and indirect references to landscape qualities. A full consideration of the WHS in terms of landscape character and setting is therefore unacceptable.

The photographs within the LVIA do not consider the impact of the scheme in Winter and therefore the effects of the development are considered to be underestimated.

The proposed development for 15 dwellings would significantly alter the character and appearance of the site, creating an urban form and character. The landscape mitigation plan is, at this stage, illustrative and can therefore be given limited weight. However, it is considered that even if the measures on the plan were to be implemented they would not be sufficient in offsetting the harms to the landscape, world heritage site and rural character.

The proposal would result in the loss of green space which provides a positive contribution to the landscape setting of this part of Bath. Despite the reduction in the quantum of development and a greater focus on green landscaping, these changes are not considered sufficient to address previous concerns regarding the impact to the landscape and WHS which previously formed the reason for refusal for application 20/00491/OUT. It is therefore considered that the proposal would have an adverse impact on the setting and significance of the WHS.

Paragraph 199 of the NPPF explains that when considering the impact of a proposed development on the significance of a designated asset, great weight should be given to the asset's conservation. The more important the asset, the greater the weight should be. The World Heritage Site therefore carries considerable weight in any planning balance. The level of harm to the World Heritage Site is considered to be towards the lower end of less than substantial. In accordance with Paragraph 202 of the NPPF, where a development leads to less than substantial harm to the significance of a designated heritage asset, this harm must be weighed against the public benefits of the proposal.

The proposed development will be 100% affordable housing. It would assist in meeting the local affordable housing needs, although as previously noted, the housing mix and tenure is not the preference of the Council. Additionally, the submitted unilateral undertaking has not been agreed to ensure the securing of the affordable housing. Notwithstanding this, for the purpose of the balance of harms and benefits the fact the properties are affordable will be taken into account. In addition, limited jobs will be created during the construction phases and Council Tax could be collected at the properties. However, given the great weight which must be attributed to the World Heritage Sites, these benefits are not considered to outweigh the harm to this designated.

As such, the proposal is considered to be contrary to policies B1, B4, NE2, NE2a, HE1, D1 and D2.

#### CONSERVATION AREA AND NON-DESIGNATED HERITAGE ASSETS:

The application site is within the Bath Conservation Area and in close proximity to a non-designated heritage asset, Dead Mill. There is a duty placed on the Council under Section 72 of the Planning (Listed Buildings and Conservation Areas) Act to pay special attention to the preservation or enhancement of the character of the surrounding conservation area.

The Larkhall Character Statement and Development Principles (1998) document is relevant to this application. The application site is bordered on the eastern and southern boundaries, by the Bath Conservation Area. On the opposite side of Deadmill Lane, to the west, is Dead Mill. Dead Mill is a former flour mill, which was rebuilt in 1901. There is history of a mill on this site dating back to the 14th century. It is considered to be a non-designated heritage asset.

The rural character of the area is noted on page 12 of the Larkhall Character Statement and Development Principles document. It states that Deal Mill is an important landmark and its dominance within the street scene is accentuated by the space surrounding it, as the urban area ceases to the south. The transition to a rural character, as one leaves the urban area, is key to

the setting of the mill itself. The same can also be said for the setting of the adjacent Conservation Area.

Officers note that the current scheme proposes 3 less units than the previously refused application 20/00491/OUT. However, even taking this into account, the proposal would still erode the open, green setting of Dead Mill and the Conservation Area, detracting from the appreciation and understanding of these assets. It is considered that the proposal would cause less than substantial harm to the setting of the Conservation Area and Dead Mill, at the lower end of the scale. The harm must therefore be weighed against the public benefits in accordance with paragraph 202 of the NPPF.

It is considered that the public benefits of the proposal are sufficient to outweigh the harm to the Dead Mill, an undesignated heritage asset, when it is considered independently. This view is supported by the Inspector's decision. However, the Conservation Area is a designated asset which must be afforded great weight in the planning balance. It is not considered the public benefits of the proposals, which are listed in the previous section, outweigh the harm to the setting of the Conservation Area.

There is a duty under Section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 to pay special attention to the preservation or enhancement of the character of the surrounding conservation area. Here, as outlined above, it is considered that the character and appearance of the nearby Conservation Area is not preserved. The proposal is therefore considered to be contrary to policy HE1 and Part 16 of the NPPF.

#### ARBORICULTURE:

The application site is bounded by hedgerows, which contain hedgerow trees, and there are trees on the eastern boundary of the site within neighbouring properties. The application is accompanied by Arboricultural information, but this is restricted to a plan titled Arboricultural Impact Assessment Tree Protection Plan and Landscape Plan. The plan is incomplete and has not been compiled in accordance with the guidance and recommendations of BS5837:2012. No tree schedule has been provided and the impact of the canopy size and species-specific attributes of offsite trees has demonstrably not been considered in the layout proposed.

The proposed layout therefore has potential implications for the hedgerows and trees which are likely to be of landscape, wildlife and amenity values. The layout proposed does not demonstrate that it seeks to avoid any adverse impacts on these features. The proposal is considered to be contrary to policies NE1 and NE6 of the Placemaking Plan in this regard.

#### ECOLOGY:

An objection has been raised to the proposal by the Council's Ecologist. An objection was also raised to the previously refused application 20/00491/OUT and formed a reason for refusal. The Inspector did not uphold this reason for refusal and noted that Ecological Mitigation and a Management Plan could be secured by condition, stating that nothing of substance has indicated that the proposal would be likely to harm any protected species or important nature conservation assets.

The Council considers that this is a new application. The building inspection submitted as part of this application is out of date, as it dates to 2019 and was undertaken over 18 months ago. It is considered that the conclusion that bats are not roosting in the building can no longer be considered valid and an updated survey is required in this regard.

The initial Ecological Appraisal which has been submitted as part of the application is welcomed and it is accepted that this does provide a baseline assessment for the site. There is potential for the site to support foraging/roosting bats, nesting birds, reptile species, badger, and hedgehog.

There are a number of points which need to be addressed at outline stage, as they may inform the layout of the site.

The first matter is the reptile presence/absence surveys, which need to be completed between April and October inclusive as recommended by the scheme Ecologist. The site has the potential to support populations of reptile species and there are records of reptile within 400m of the site. Ecology surveys are a material consideration in planning applications and should not be conditioned except in Exceptional Circumstances to meet the OPDM circular (06/2005), Natural England advice and Case Law. If an offsite Receptor Location is required, this may need to be secured through a S106 or similar prior to determination. Trapping and Translocation is noted listed as a mitigation option in the Ecology Report, but this would need to be completed if moderate or good-sized populations of reptiles are present. It is not considered that "Exceptional Circumstances" exist in this case which would result in this survey being secured by condition and the Council consider is appropriate to object on this basis.

Potential for foraging and commuting bats to be impacted has not been considered. The site is 2.1km from the nearest component unit of the Bath and Bradford-on-Avon Bats Special Area of Conservation (SAC), designated due to internationally important populations of horseshoe and Bechstein's bats. Some of these species' feed over farmland and use dark linear corridors, such as the boundary with Deadmill Lane, to disperse across the landscape. There is insufficient information submitted with the application to determine whether SAC bat populations use the site and therefore, whether there are likely to be impacts as a result of the proposals. Compliance with the Habitats Regulations cannot be ascertained. If there is a risk of significant impacts on the SAC, a Habitats Regulations Assessment will need to be completed by the LPA. It is the applicant's duty to provide sufficient information to guide the HRA.

Bat activity surveys completed during April to October will be required in accordance with Bat Surveys for Professional Ecologists - Good Practice Guidelines 3rd Edition (Collins et al. 2016). As above, an updated building inspection is required as the submitted survey is over 18 months old. Confirmation of whether the buildings on site are suitable to provide night roosting/feeding perches for horseshoe bats is also required. If SAC bat populations are using the site, an indicative mitigation strategy demonstrating the retention of dispersal corridors, mitigation for loss of foraging habitat and an indicative lighting strategy is required. This has the potential to influence the layout of the proposal which is to be determined at outline stage. If this information had been submitted as part of the application, Natural England would have been consulted.

In addition, no confirmation as to whether habitats on site are Habitats of Principal Importance (HPI) has been provided. This is listed as a required in Section 41 of the NERC Act 2006. The survey provided was undertaken in November 2019 which falls outside of the optimal survey season for Phase I Habitat Surveys and as a result, the botanical species diversity will have been under recorded. In particular, grassland quality should be assessed during April to August to confirm that the sward is not good semi-improved or unimproved grassland and confirmation that tufa springs are not present. The western boundary appears to comprise a hedgerow and it may qualify as Important under the Hedgerow Regulations, as such, an assessment should be made. All HPIs (including hedgerows) should be retained and protected in the first instance, with compensatory habitat creation only considered as a last resort. It is noted that the Design and Access Statement states that hedgerows will be retained by this is not consistent with the submitted site plan and layout proposed. The amount of habitat loss is unclear and should be shown on plan, to demonstrate the extent of existing habitat, and habitats proposed for removal or retention. The scheme needs to demonstrate measurable avoidance of "net loss" of biodiversity.

A survey of Lam Brook Site of Nature Conservation Importance is also required to assess if there will be any impacts as a result of drainage/surface water discharge. The Brook is 35m from the Site and there is potential discharge of surface-water into the Brook. An assessment of presence/absence of any species such as otter, water vole and white-clawed crayfish in areas of the Brook which could be impacted would need to be provided.

There are records of badger within the vicinity of the site. It is noted that the survey demonstrated no evidence of badger, however this survey data is almost two years old and cannot be accepted. Badger are highly mobile and can excavate new sets in short periods of time. An updated badger survey is required.

The development will need to achieve "biodiversity net gain" with a target of 10%+ in accordance with emerging B&NES Policy and forthcoming national legislation, and in line with existing requirements of the NPPF and Local Plan Policies NE3. The commitment to wildflower grassland and ornamental pollinator planting is welcomed but this should not preclude retention of existing habitats at ground level. The Landscape Mitigation Plan (drawing 3090-001-Rev B) is also rather fragmented, with few opportunities to provide ecological features of note. From an ecological perspective, a consolidated scheme with better connected areas of public open space/margins which could be planted with species rich mixes and managed to provide habitats for species such as reptiles would be preferred. The provision of bat, bird (including swift) and invertebrate boxes is welcomed as per Ecological Appraisal (Cherryfield Ecology, December 2019). A Biodiversity Enhancement Scheme could be secured by a condition attached to any consent granted. Hedgehog connectivity measures between boundary features would also need to be provided.

The submitted information is not considered to represent an up-to-date Ecological Assessment of the site. Insufficient information in relation to bat and reptile populations has therefore been submitted and the application fails to demonstrate compliance with the Conservation of Habitats and Species (Amendment) (EU Exit) Regulations 2019 and the Wildlife and Countryside Act 1981. The proposal therefore fails to demonstrate compliance not only with planning policy, but UK Law and as such, officers consider that a refusal reason on this basis is not unreasonable. The situation and information is considered to have changed since the previous appeal.

#### AFFORDABLE HOUSING:

The previous appeal decision accepts that the proposal is a rural exception site. Whilst it is noted that this is an outline application and full details cannot be provided at this stage, there is a lack of explanation in relation to affordability or tenure. A tenure mixes and dwelling size has been provided, but no RP for the social rent units has been provided.

In addition, although a Unilateral Undertaking has been submitted by the applicant, this has not been agreed by the Council and the affordable housing provision is not considered to be sufficiently secured.

#### RESIDENTIAL AMENITY:

The development will change the outlook for a number of nearby residential properties and alter the way that they experience the site. It will increase the level of noise in the area, but in the context of the site, this is not considered to be at a level that would lead to any significant harm to the residential amenity of these nearby neighbouring occupiers.

Overall, the layout and access would not be considered to cause significant harm to the residential amenity of the neighbouring occupiers.

#### HOUSING ACCESSIBILITY:



Policy H7 requires that market housing should have enhanced accessibility standards and should meet the optional technical standard 4(2) in the Building Regulations Approved Document M. The Council can demonstrate a need for 19% of all new market housing to meet enhanced accessibility standards arising during the Plan period.

Any future reserved matters application should confirm which units within the development comply with the aforementioned requirements.

#### **DRAINAGE AND FLOODING:**

The submitted Flood Risk Assessment is not considered to be acceptable. No infiltration tests have been undertaken on the site. The use of borehole data 100m away showing clay, is not acceptable to determine that infiltration is not appropriate on site.

No off-site connection for surface water has been identified. The plan states that there are "gullies in the road". Connection to a highway drain will not be permitted and further investigation and detail about where the site will discharge to, should infiltration not provide viable, is required. The drainage and flooding issues may have an impact on the proposed layout and this information needs to be submitted at this stage.

#### **EDUCATION:**

Third parties have raised that there is insufficient capacity at local schools to accommodate the development. However, the Council's Education Officer has raised no objection in this regard, and it is considered that there would be capacity within schools for the occupiers of the development.

#### **LOW CARBON AND SUSTAINABLE CREDENTIALS**

The policies contained within the development plan are aimed at ensuring development is sustainable and that the impacts on climate change are minimised and, where necessary, mitigated. A number of policies specifically relate to measures aimed at minimising carbon emissions and impacts on climate change. The application has been assessed against the policies as identified and these have been fully taken into account in the recommendation made.

#### **CONCLUSION:**

The proposal has been accepted as not representing inappropriate development in the Green Belt. However, the proposed development is considered to be of an unacceptable scale, quantum and layout which would harm landscape and rural character of the site, the Bath World Heritage Site Designation, the Conservation Area and the setting of Dead Mill. The public benefits of the proposal are considered to outweigh the harm to Dead Mill when assessed independently but it is considered that this contributes to the totality of harm. The public benefits do not outweigh the harm to these designations. In addition, the proposal fails to provide an acceptable layout and access in terms of highway safety. Ecological and Arboricultural matters have not been fully address in accordance with planning policy and UK Law.

It is therefore considered that there are significant omissions and issues with the proposal and on this basis, it is recommended for refusal.

#### **Recommendation:**

#### **REFUSE**

1 It has not been demonstrated that the proposed development could be delivered whilst ensuring that the local landscape character, features, distinctiveness and views are not harmed. The

proposal will result in the erosion of an important open green space as a result of the proposed layout and is considered to result in unacceptable harm to the local landscape and the Bath World Heritage Site. Any harm to the Outstanding Universal Values of the World Heritage Site and its setting are considered to be less than substantial harm. However, the harm is not considered to be outweighed by the public benefits of the proposal. The proposal is therefore contrary to policies B4 and CP6 of the Bath and North East Somerset Core Strategy and policies RA4, NE2, NE2A and HE1 of the Bath and North East Somerset Placemaking Plan.

2 As a result of the proposed siting and layout, the proposal is considered to have a detrimental impact upon the setting of the adjacent Conservation Area and the non-designated heritage asset "Dead Mill". Although the public benefits are considered to outweigh the harm to the setting of Dead Mill independently, the impacts contribute to the totality of harm. The harm to the setting of the Conservation Area is considered to be less than substantial and there are not considered to be public benefits which outweigh this harm. As such, the proposal is contrary to policies B4 and CP6 of the Bath and North East Somerset Core Strategy and policies D1, D2, D3, D4 and HE1 of the Bath and North East Somerset Placemaking Plan.

3 The proposal fails to provide a suitable vehicular access, which does not prejudice highway safety or provide safe and convenient access to, and within, the site for pedestrians, cyclists and those with mobility impairment. The development would therefore prejudice highway safety. As such, development is considered to be contrary to the Development Plan, in particular policies ST1, ST7, D1, D3, of the Bath and North East Somerset Placemaking Plan.

4 Insufficient information has been submitted to allow for any arboricultural implications of the proposed layout to be fully understood. The proposal does not therefore have due regards to trees, particularly those of wildlife, landscape and amenity value. The development therefore fails to comply with the requirements of Bath and North East Somerset Placemaking Plan policy NE6.

5 Insufficient information in relation to bat populations and reptile species has been provided and the proposal therefore fails to demonstrate compliance with the Conservation of Habitats and Species (Amendment) (EU Exit) Regulations 2019 and the Wildlife and Countryside Act 1981 (as amended). At this stage, based on the submitted information, it cannot be ascertained whether the development is ecologically acceptable. The development is therefore contrary to policies NE3, NE5 and D5 of the Bath and North East Somerset Placemaking Plan.

6 The submitted Flood Risk Assessment is considered to be unacceptable and a suitable method of Surface Water Drainage has not been provided. The proposal is considered to be contrary to policy CP5 of the Bath and North East Somerset Core Strategy.

7 The application has failed to secure the required planning obligations to the Council's satisfaction, including an agreed policy compliant affordable housing scheme. The proposal is therefore contrary to policies CP9 and CP13 of the Bath and North East Somerset Core Strategy and the Planning Obligations Supplementary Planning Document 2015.

#### **PLANS LIST:**

This decision relates to the following plans:

Site Plan. Received 21st October 2021  
Location Plan DMLB003. Received 21st October 2021  
Landscape Mitigation Plan. 3090-001 B. Received 21st October 2021  
Site Location Plan DL001. Received 21st October 2021  
Proposed Block Plan DL002. Received 21st October 2021  
Site Plan DL003A. Received 2nd December 2021

In determining this application the Local Planning Authority considers it has complied with the aims of paragraph 38 of the National Planning Policy Framework. Notwithstanding informal advice offered by the Local Planning Authority the submitted application was unacceptable for the stated reasons and the applicant was advised that the application was to be recommended for refusal. Despite this the applicant chose not to withdraw the application and having regard to the need to avoid unnecessary delay the Local Planning Authority moved forward and issued its decision. In considering whether to prepare a further application the applicant's attention is drawn to the original discussion/negotiation.

### **Community Infrastructure Levy**

You are advised that as of 6 April 2015, the Bath & North East Somerset Community Infrastructure Levy (CIL) Charging Schedule came into effect. Whilst the above application has been refused by the Local Planning Authority, please note that CIL applies to all relevant planning permissions granted on or after this date. Thus any successful appeal against this decision may become subject to CIL. Full details are available on the Council's website [www.bathnes.gov.uk/cil](http://www.bathnes.gov.uk/cil)

**Case Officer:**

Isabel Daone

**Authorising Officer:**

Chris Gomm