

DELEGATED REPORT

Application No: 22/01220/FUL

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, on the opposite side of Deadmill Lane.

Planning permission is sought for the erection of two detached dwellinghouses.

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

21/04746/OUT

REFUSED - 15 February 2022

Outline application (with access and layout to be determined and all other matters reserved) for the development of 15 affordable dwellings.

Summary of Consultation/Representations:

Consultation Responses:

COUNCILLOR ROB APPLEYARD:

Given the public concern and objections around the previous applications for this site and the issues such as green belt development and biodiversity matters can I please request if this

application is considered for recommendation of approval can the matter be placed in front of the planning committee for a wider evaluation and consideration.

COUNCILLOR JOANNA WRIGHT:

I agree with Rob - And would also ask that given the public concern and objections around the previous applications for this site and the issues such as green belt development and biodiversity matters can I please request if this application is considered for recommendation of approval can the matter be placed in front of the planning committee for a wider evaluation and consideration.

SWAINSWICK PARISH COUNCIL:

Swainswick Parish Council objects to this proposal. The access is not acceptable in its present form, for vehicles but also pedestrians for one of the houses. A parent with a child in a push chair will have to exit on to Deadmill Lane. The Highways officer has pointed this out in the previous applications.

B&NES Highways are fully aware of the serious traffic issues at this location. Details of this rat-run are well known and the access to this proposed development will create additional serious safety issues. The building process would cause unimaginable issues at and around this confined location for a considerable time and there is no clarity as to how this would be managed. The land is on the edge of a significant ANOB region and is green belt land. There are many known springs at this location and the consequences of disturbing land for development is a cause for concern.

CONSERVATION: Object/recommend refusal

LANDSCAPE: Object/recommend refusal

ARBORICULTURE: Object/scope for revision

HIGHWAYS: Scope for revision

ECOLOGY: Object/recommend refusal

Representations Received:

BATH PRESERVATION TRUST:

- Object
- Harm to the openness of the Green Belt, concluded to constitute inappropriate development with insufficient demonstration of "exceptional circumstances"
- Harm to local distinctiveness and the rural townscape character of Larkhall
- Substantial harm to the picturesque landscape setting of the Bath Conservation Area, World Heritage Site and AONB
- Insufficient justification or assessment of harm to the setting of a NDHA

CAMPAIGN TO PROTECT RURAL ENGLAND:

- Object
- Effect on the Green belt, local character and landscape
- Harm the setting of the World Heritage Site
- Setting of the nearby Conservation Area and Deadmill
- Any claimed benefits are reduced as this is a smaller scheme

121 objections have been received by third parties in relation to the application. The case officer has read all comments in full, and they have formed part of the assessment of this planning application. Due to the large number of comments, a summary of the main issues is presented below, as opposed to quoting the comments verbatim.

- Impact on ecology/wildlife

- Light pollution
- Noise pollution
- Increase in traffic
- Highway safety concerns
- Poor access arrangement
- Increase in pollution
- Impact to Deadmill (non-designated heritage asset)
- Impact to the World Heritage Site
- Urbanise the rural landscape
- Impact upon rural character
- Impact to the AONB
- Impact upon important views
- Loss of green infrastructure
- Loss of agricultural land
- Inappropriate development in the Green Belt
- Not infilling
- Erosion of the countryside
- Not affordable housing
- Drainage concerns
- Overlooking (loss of privacy)
- Loss of light/overshadowing
- Land subsidence
- No public benefit
- No public consultation from the developer
- Previous dismissal at appeal
- Previous refusal reasons not addressed
- Gateway to future development at the site

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
CP3: Renewable Energy
CP5: Flood Risk Management
CP6: Environmental Quality
CP8: Green Belt
CP9: Affordable Housing
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:

D1: General urban design principles
D2: Local character and distinctiveness
D3: Urban fabric
D5: Building design
D6: Amenity
D7: Infill and backland development
D8: Lighting
BD1: Bath design policy
GB1: Visual amenities of the Green Belt
HE1: Historic environment
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
RE5: Agricultural land
ST7: Transport requirements for managing development
H7: Housing accessibility
SCR5: Water efficiency
SU1: Sustainable drainage policy
LCR9: Increasing the provision of local food growing
PC55: Contamination

National Policy:

The National Planning Policy Framework (NPPF) was published in February 2019 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

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:

- Principle of development in the Green Belt
- Principle of the loss of agricultural land
- Landscape and World Heritage Site
- Conservation Area and non-designated heritage assets
- Residential amenity
- Highways
- Ecology
- Arboriculture
- Drainage

PRINCIPLE OF DEVELOPMENT:

Green Belt:

The primary issue to consider is whether the proposal represents inappropriate development in the Green Belt.

Policy B1, the Bath Spatial Strategy, states that subject to other material consideration, residential development will be acceptable in principle provided the proposal lies within the existing urban area of Bath as defined by the Green Belt boundary. The site is within the Green Belt, and therefore, in accordance with policy B1 cannot be considered to be within the urban area of Bath. In this regard the principle of residential development in this location is not supported.

Paragraph 149 of the National Planning Policy Framework (NPPF) states that the Local Planning Authority should regard the construction of new buildings in the Green Belt as inappropriate and that inappropriate development is, by definition, harmful. It goes on to list a number of exceptions which may be considered appropriate. The proposal is for market housing and therefore, the only exception that the scheme could conceivably be assessed against would be (e) limited infilling in villages.

There is no definition of what constitutes "infilling" in the NPPF. However, the Bath and North East Somerset Placemaking Plan 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 will generally be surrounded on at least three sides by developed sites or roads". It must therefore be established whether the development can, in the first instance, be considered infilling.

Officers consider that, whilst the site is arguably surrounded by development on three sides (roads to the south and west, and dwellinghouses to the east), it does not form part of an extensively built-up frontage. The existing site is part of a wider green buffer, which frames the edge of the urban fringes of Bath. It is read as the transition between the urban area, into the countryside and is experienced as such on the ground. Officers therefore do not consider that this site represents infilling in the Green Belt.

The NPPF (paragraph 138) states that the Green Belt has 5 purposes. The three of most relevance to this case are as follows:

- a) to check the unrestricted sprawl of large built-up areas
- b) to assist in safeguarding the countryside from encroachment
- d) to preserve the setting and special character of historic towns

Officers consider that the erection of two new dwellings on this site would represent encroachment into the countryside and that the site would be experienced as such on the ground. Rather than infilling a small plot in an extensively built up frontage, the development would form an extension of the existing built form, encroaching into what is currently open countryside. On the ground, it is not experienced or read as an infill plot. It would result in unrestricted sprawl of the built-up area of Bath into the Green Belt. Purpose (d) also seeks that the Green Belt will preserve the setting and special character of historic towns. Officers consider that this site is important in creating the gentle transition between the urban built-form to the open countryside, which provides the landscape setting to the World Heritage of Bath. This will be expanded upon further in the Landscape section of this report, but the proposal is considered to be contrary to purpose (d).

For the reasons above, the proposal is not considered to represent infilling and is contrary to the 5 purposes of the Green Belt.

Furthermore, exception (e) of Paragraph 149 of the NPPF refers to limited infilling in villages. The application site is not considered to be located within a village. The site is directly adjacent to what can be considered the urban area of Bath, in accordance with policy B1. This positioning, outside of a village, within the Green Belt and adjacent to an urban location, furthers the argument that the development would result in the encroachment of urban built-form into the countryside.

The development does not fall within any of the exceptions to inappropriate development in the Green Belt and is therefore considered to be inappropriate development. It is, therefore, by definition harmful. Officers consider that the erection of two large dwellings in this location would be harmful to the openness of the Green Belt and would also, as above, be contrary to the purposes of including land within it.

The NPPF states that inappropriate development in the Green Belt should not be permitted except in Very Special Circumstances (VSC). VSC will not exist unless the potential harm to the Green Belt (which must be given substantial weight) by reason of inappropriateness and any other harm arising from the proposal is clearly outweighed by other considerations. An assessment of this will be made in the Planning Balance section of this report.

Loss of agricultural land:

A number of third-parties have raised that the proposal would result in the loss of agricultural land. Policy RE5 of the Bath and North East Somerset Placemaking Plan has regard to this. It directs development towards the worst and least versatile agricultural land. Development upon agricultural land which is the best and most versatile (Grades 1 and 2) will not be supported unless there are sustainability benefits to outweigh the loss. Having reviewed Council mapping, part of the site falls within Grade 3 and part falls outside of the grading system. It is not considered that the site represents the best and most versatile agricultural land which is sought to be protected by policy RE5 and there is no objection in principle on this basis.

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, the boundary of which is located on the opposite side of Deadmill Lane. 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.

The site can be considered a "finger" of countryside that projects into the adjoining parts of the built-up area and as such, makes a valuable contribution to the local character of the built environment. The parcel of countryside is of elevated value as it is within the Green Belt and World Heritage Site and adjoins the Conservation Area and AONB. The submission puts forward the argument that the development should be considered as infill, under policy D7. Policy D7 states that infill development could be supported where it has regard to the character and quality of the surrounding townscape and reflects the form, grain and pattern of development. Policy D7 defines infilling as "the filling of a small gap in an otherwise built-up frontage, usually consisting of frontage plots only". For the reasons set out in the Green Belt section of this report, the Council do not consider the development to be infill. Additionally, the proposal would result in development on an open parcel of land which makes a positive contribution to the surrounding townscape and would be contrary to criterion (a) of policy D7. The siting of 2 detached dwellinghouses in this location, with little relation to the surrounding developments would also not be reflective of the existing pattern and grain. As such, the development would be contrary to criterion (b) of policy D7.

Policy NE2 requires the submission of a Landscape and Visual Impact Assessment (LVIA) for proposals with the potential to impact on the landscape/townscape character of an area or on views. There is no doubt that the current proposals fall into this category, but no LVIA has been submitted. The submission makes reference to the LVIA which was submitted as part of a previously refused scheme on the site. Officers do not consider this to be an acceptable approach. Although the number of dwellings currently proposed is less than the previously refused scheme, the function of an LVIA is to assess the landscape and visual effects of a specified development proposals. If the development proposals are changed, the LVIA needs to be re-issued with a supplement to explain how the findings of the original LVIA need to be updated in relation to the new proposals. Therefore, in this regard, the scheme is not compliant with requirement 3 of policy NE2.

Policy NE2 also requires a development to demonstrate that the "whole scheme, including hard landscape and planting proposals, will contribute positively to the local area...". The planning history of the site, including recent appeal decisions, makes clear that the landscape impact of a scheme on this site is a sensitive issue. No landscape proposals have been submitted with the current application and therefore requirement 1c of policy NE2 is not met.

Officers consider that insufficient information has been provided to demonstrate that there would not be an adverse impact upon the landscape. The development has the potential to harm the visual amenities of the Green Belt, contrary to policy GB1 and cause unacceptable harm and adversely affect the significance of the World Heritage Site, contrary to policies B4 and HE1.

As such, 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, these changes are not considered sufficient to address previous concerns regarding the impact to the landscape and WHS which previously formed the reasons for refusal for application 20/00491/OUT and 21/04746/OUT. It is therefore considered that the proposal would have an adverse impact on the setting and significance of the WHS, although officers accept that the level of harm has been reduced given the reduction in the quantum of development from the previously refused schemes.

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 proposal will provide two-market dwellings and this small contribution to housing delivery within the district can be afforded weight. However, the location of development is not supported in principle and the Council has a 5-year housing land supply. This public benefit is considered limited. The scheme would result in the creation of construction jobs, relative to the scale of development and again officers give this limited weight. It is not considered that the proposal would have public benefits which would outweigh the harm to the World Heritage Site which should be afforded great weight.

As such, the proposal is considered to be contrary to policies B1, B4, NE2, NE2a, HE1, D1, D2 and D7 of the Bath and North East Somerset Placemaking Plan.

CONSERVATION AREA AND NON-DESIGNATED HERITAGE ASSETS:

Policies D1-D5 have regard to urban design principles, including building design and the impact of development on the character and appearance of an area. Policy HE1 requires development that has an impact upon a heritage asset, whether designated or non-designated, will be expected to enhance or better reveal its significance and setting. The site is within the Bath Conservation Area and is in close proximity to Dead Mill, a non-designated heritage asset. 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.

The wedge of open green space penetrates down into the more built-up area of Larkhall. The tip of the green area at the junction of Ferndale Road and Deadmill Lane, where the two properties are proposed to be constructed, figures prominently in views from the road to the south and creates the anticipation that one is moving away from the built-up area to something more open and rural. In this respect, although the development has been reduced in scale from previously refused schemes, developing the site would still result in some loss of the unspoilt, green open qualities of the area. The pleasing contribution the site makes to the historic landscape setting of this part of the Conservation Area would be eroded by the development in this respect. As such, the proposal is considered to result in harm to the setting and significance of the Conservation Area; the level of harm is considered to be towards the lower end of less than substantial. The proposal is therefore contrary to policy HE1.

Create a small, discreet entrance for just two dwellings is not considered to harm the setting and significance of Dead Mill. However, the large area of land which will be encompassed as domestic curtilage will inevitably take on a domestic character which is different from the open semi-rural character the site has. This will have some impact upon the setting of Dead Mill and whilst it is not considered this impact is so significant that a refusal reason would be warranted on this basis, the impact would contribute to the totality of harm caused by the development.

In addition, the proposal for two-detached dwelling would not respond well to the character of the traditional Victorian terrace on the opposite side of Ferndale Road, within the Conservation Area. Detached dwellinghouses are not common in the locality. The positioning on a corner plot is considered to be awkward and the dwellings would relate poorly to Deadmill Lane in particular. The character, siting and design of the dwellings further amplifies the harm to the setting and significance of the Conservation Area.

Paragraph 199 of the NPPF states that when considering the impact of a proposed development on the significance of a designated heritage asset, great weight must always be given to the asset's conservation. This is irrespective of whether any potential harm amounts to substantial harm, total loss or less than substantial harm to its significance. Any harm to, or loss of, the significance of a designated heritage asset requires clear and convincing justification. Where the level of harm falls into the less than substantial category paragraph 202 of the Framework is engaged which states that less than substantial harm, should be weighed against the public benefits of the proposal, including securing its optimum viable use. Public benefits can be environmental, social or economic and should flow directly from the proposed development and be of a nature or scale to be of benefit to the public at large.

The public benefits of the scheme have been discussed in the previous section of this report. They are not considered to be sufficient to outweigh the less than substantial harm to the Conservation Area, which must be given great weight.

As such, the proposal is considered to be contrary to policy HE1 and part 16 of the NPPF.

RESIDENTIAL AMENITY:

Policy D6 sets out to ensure developments provide an appropriate level of amenity space for new and future occupiers, relative to their use and avoiding harm to private amenity in terms of privacy, light and outlook/overlooking.

It has been raised by third-parties that the proposal will result in overlooking towards the existing terrace on Ferndale Road. Officers acknowledge that the proposal will introduce a relationship between dwellinghouses which does not exist at present. The distance between the sites is approximately 16.3m (window to window). At ground floor level, the view from the windows will be partially obscured by the boundary wall, but there will be views from first floor level. Whilst officers consider that overlooking will be introduced, the distance of 16m is a distance which is considered to be acceptable in an urban location; the properties on Ferndale Road are located within the urban area of Bath. As such, the level of overlooking is mitigated by the separation distance, across a road and it is not considered a reason for refusal would be justified on this basis.

Concerns have also been raised in regard to overshadowing and loss of light. Given the siting and location of the dwellings in relation to other surrounding properties, it is not considered that any significant levels of overshadowing or loss of light will occur and as such, a refusal reason on this basis would not be substantiated.

The level of amenity afforded to the two proposed dwellings is considered to be acceptable, with relatively low levels of intervisibility between properties and sufficient access to outdoor space.

Given the design, scale, massing and siting of the proposed development the proposal would not cause significant harm to the amenities of any occupiers or adjacent occupiers through loss of light, overshadowing, overbearing impact, loss of privacy, noise, smell, traffic or other disturbance. The proposal accords with policy D6 of the Placemaking Plan for Bath and North East Somerset (2017) and part 12 of the NPPF.

HIGHWAYS SAFETY AND PARKING:

Policy ST7 states that development will only be permitted provided, amongst other things, the development avoids an increase in on street parking in the vicinity of the site which would detract from highway safety and/ or residential amenity.

Access:

Vehicular access for the proposed dwelling is via a shared access point on Deadmill Lane. The submission sets out that the access will provide splays of 2.4m by 25m, which is considered to be an acceptable splay given the speed of the road. However, it has not been demonstrated on any plan that these splays can be achieved and therefore officers cannot conclude if the visibility splay which is actually being provided is acceptable from a highway safety perspective.

In terms of pedestrian access, a footpath will be provided which will adjoin an existing footpath which leads onto Ferndale Road. Given that the site will only be included two dwellinghouses, the principle of this is acceptable. However, the applicant does not own the land to which the proposed footpath will connect, and officers cannot be certain if this is a viable solution for pedestrians. The site is also sloped towards this path and the case officer also queries the likelihood of pedestrians using such a connection, particularly as the main access is onto Deadmill Lane. Insufficient information has been provided in order to fully ascertain whether this path connection is a viable pedestrian access option.

Parking:

Three car parking spaces are required for each dwellinghouse, as per the requirements of policy ST7. The applicant has submitted a revised site plan to demonstrate that each property will have three spaces. Whilst the layout of these spaces is less than ideal, with tandem parking reducing the opportunity for turning within the site, it is considered that the site could accommodate sufficient parking and as such, this will not form a reason for refusal.

However, no swept path analysis has been provided which shows that the site can accommodate sufficient turning space to allow vehicles to enter and exit the site in forward gear. Given the narrow nature of Deadmill Lane, reversing onto the road would cause an unacceptable impact to highway safety.

Sufficient cycle parking space will be provided. If the application were being approved, a condition could be added to secure further details of the cycle store so that officers can be satisfied that the store will be secure and covered.

Waste management:

A waste management plan has been submitted which details the locations of the internal bin stores and the proposed location of the bin collection points. Waste collection is proposed on the street which is acceptable in principle. However, insufficient information has been provided to demonstrate that the proposed location of the bin collection point is large enough to accommodate bins on collection day without interfering with the proposed access or movement along Deadmill Lane.

Overall, insufficient information has been provided to demonstrate that safe vehicular and pedestrian accesses to the site can be provided without causing a detrimental impact upon highway safety.

ECOLOGY:

The initial Ecological Appraisal (Cherryfield Ecology, 2019) is welcomed and provides a baseline assessment for the site. The survey identifies that the site comprises tall ruderal, improved grassland, a wall and three small buildings. However, this survey was carried out in 2019 and the Tree Protection Plan and Arboricultural Impact Assessment (drawing no. DMLB004) suggests that

some of the tall ruderal vegetation has now been replaced with bramble scrub. There is potential for the site to support foraging/roosting bats, nesting birds, reptiles, badger and hedgehog. Further surveys are recommended along with avoidance measures for nesting birds, badger and hedgehog and an enhancement scheme which includes bird/bat boxes.

Reptile presence/absence surveys need to be completed at the site between April and October (inclusive) by the applicant's ecologist. This site has potential to support populations of reptile species. There are also records for reptiles within 400m. Ecological surveys are a material consideration in planning applications and should not be conditioned except in Exceptional Circumstances to meet ODPM Circular 06/2005 (paragraph 99), Natural England standing advice and Case Law. In this instance, the survey findings are a material consideration, and it is not considered that exceptional circumstances exist to allow the Local Authority to recommend a condition securing them post-decision. If an off-site e Receptor Location is required, this may need to be secured through a Section 106 agreement or similar before determination. Trapping and translocation is not listed as a mitigation option in the ecology report but would need to be completed if moderate or good sized populations of reptiles are present.

In addition, bat activity surveys and/or static detector monitoring findings have not been provided. Potential for foraging and community bats which may be impacted have not been considered. The site is 2.1km from the nearest component of unit of the Bath and Bradford-on-Avon Bats 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. Insufficient information has been submitted to determine whether the bat SAC 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 upon the SAC, a Habitats Regulations Assessment (HRA) would need to be completed by the Local Planning Authority. It is the duty of the applicant to submit sufficient evidence to inform an HRA beyond reasonable scientific doubt. The Council considered that bat activity surveys, an updated building inspection, confirmation of whether buildings are suitable to provide night roosting/feeding perches for bats, an indicative mitigation strategy and lighting strategy and further consideration of tree TR03 (ground level tree roost assessment) are required to inform the HRA. These have not been provided.

Confirmation that habitats on site are not habitats of principal importance (HPI) as listed in Section 41 of the NERC Act 2006 is also required but has not been submitted. The submitted survey was undertaken in November 2019 which falls outside the optimal survey season for Phase I Habitat Surveys. Therefore, botanical species diversity will have been under-recorded. In particular, grassland quality should be assessed during May to August to confirm that the sward is not good, semi-improved or unimproved grassland and confirmation that tufa springs are not present is needed. 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. Drawing DMLB004 indicates that a section of the western boundary will be lost to create the site access, along with a section of the easterly hedgerow to create the footpath. 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; use of the latest Biodiversity Net Gain metric / calculator would be an appropriate means to demonstrate this.

No survey of Lam Brook SNCI has been undertaken and therefore it is not clear if there will be any impacts as a result of drainage/surface water discharge. The Brook is 35m from the site and no mention of how surface water will be treated has been mentioned. 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. If consent were being granted, a Construction Environmental Management Plan would also be required to secure on-site measures to ensure no run-off of sediment or pollution into the Brook during construction/operation.

There are records of badger in vicinity to the site. Whilst acknowledged that no evidence of badger was found during the original survey, the survey data is however, almost two-and-half years old. It should be noted that badgers are a highly mobile species and can excavate new setts in short periods of time, as such, an update badger survey is required. There are hedgehog records in proximity to the site, suitable measures to protect them are required and if any are found during works, they would also need to be moved to safety.

The ecological information submitted is significantly lacking. Officers have not invited updated information given the significant amount of information required and the fact that these ecological matters have been raised previously only this site. The applicant informed the case officer that revised surveys would take at least 6 weeks to obtain. The application is unacceptable on a number of grounds and in the interests of assessing the application in a timely manner, the submission of further information was not invited. As such, the application is considered to contain insufficient information to demonstrate compliance with the Conservation of Habitats and Species Regulations (2017) and the Wildlife and Countryside Act (1981). There is also the potential net loss of biodiversity including HPIs contrary to the NERC Act 2006, the NPPF and policies NE3 and D5e of the Bath and North East Somerset Placemaking Plan.

ARBORICULTURE:

There are no trees upon the site directly, but the tree referenced as TR01 (on adjacent land) in in close proximity to the boundary. The root protection zone (RPZ) or construction exclusion zone of tree TR02 is shown as a hatched red line in the AIA. It is recommended to exclude all activity from this area completely in order to safeguard the rhizosphere of the tree by the use of a protective fence. Where it is not possible, a method of protection will be required, such as ground protection. The AIA shows that the RPA falls within 1m of the eastern elevation of the nearest dwellinghouse and that the physical construction of the property will be obstructed if rigidly fenced. A TPP will be required that permits the physical construction without compromising the RPA of the tree. Whilst this has not been provided, it is recognised that this information could be secured by way of a pre-commencement condition.

There is no species information for TR01, but it appears from a desktop assessment to be a sycamore or other large growing species. This being the case, the proximity between house and tree canopy is questionable as allowance has not been made for future tree growth. It should be reasonably foreseeable that the tree canopy will soon extend over the house and cause nuisances of leaf litter and debris which will be resented by occupants. This nuisance is likely to become a more serious issue if it creates personal safety fears re branch failure onto occupied houses. It is therefore considered that due consideration has been given to this matter and that sufficient clearance of this tree has not been presented. This is likely to cause pressure on the tree to be pruned. However, officers consider that a refusal on the basis of possible perception would be substantiated. It is therefore strongly encouraged that should the applicant wish to re-submit another application that this is given further consideration.

FLOODING AND DRAINAGE:

Policy CP5 of the B&NES Core Strategy states that all development will be expected to incorporate sustainable drainage systems to reduce surface water run-off and minimise its contribution to flood risks elsewhere. No information regarding drainage has been submitted with the application. The application is contrary to policy CP5.

SUSTAINABLE CONSTRUCTION AND RENEWABLE ENERGY:

Policy CP2 of the Placemaking Plan has regard to Sustainable construction. The policy requires sustainable design and construction to be integral to all new development in B&NES and that a

sustainable construction checklist (SCC) is submitted with application evidencing that the prescribed standards have been met.

For minor new build development, a 19% reduction in CO2 emissions is required by sustainable construction. In this case the submitted SCC shows that a 25% CO2 emissions reduction has been achieved from energy efficiency and/or renewables. Therefore, the proposed development is compliant with policy CP2 in this instance. These calculations could be secured by condition if the development were being recommended for approval.

Policy SCR5 of the emerging Placemaking Plan requires that all dwellings meet the national optional Building Regulations requirement for water efficiency of 110 litres per person per day. This could be secured by condition if the development were being recommended for approval.

Policy SCR5 also requires all residential development to include a scheme for rainwater harvesting or other method of capturing rainwater for use by residents (e.g., water butts). These matters could be secured by condition if the development were being recommended for approval.

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.

PLANNING BALANCE:

As indicated in the report above, the proposal represents inappropriate development in the Green Belt. Local Planning Authorities should ensure, when assessing planning applications, that substantial weight is given to any harm to the Green Belt. Paragraph 148 of the NPPF states that "Very Special Circumstances will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm resulting from the proposal, is clearly outweighed by other considerations."

The harms identified by the proposal are as follows:

- Harm to the Green Belt by reason of being considered, by definition, inappropriate development in the Green Belt. As such, the proposals fail to comply with Part 13 of the NPPF and policy CP8 of the Bath and North East Somerset Core Strategy
- Harm to the openness of the Green Belt. Again, the proposals fail to comply with Part 13 of the NPPF and policy CP8 of the Bath and North East Somerset Core Strategy
- Less than substantial harm to the World Heritage Site and Conservation Area
- Harm to the rural character of the area
- Potential for ecological harm due to insufficient information being provided to demonstrate compliance with UK law
- Insufficient information to demonstrate a suitable pedestrian/vehicular access; potential harm to highway safety
- Insufficient information to conclude that there will be no increased risks of flooding

There are several matters which weigh in favour of the application which must be considered in this balance. These are considered to be:

- Contribution towards housing supply within the district
- Job creation during construction
- CIL contribution

It is considered that the proposal will result in the addition of two new market dwellings within the B&NES district. However, officers would afford this benefit limited weight because the Council has a 5-year housing land supply, and the location of development is contrary to the Bath Spatial Strategy. Additionally, the creation of jobs during construction can be given weight as a benefit of the scheme. The development is relatively small and therefore this contribution will be limited; this benefit if afforded limited weight. Finally, the application would result in the payment of CIL which would be used to benefit B&NES residents. This contribution would again be reflective of the scale of the development and can therefore be afforded limited weight. Overall, it is not considered that these benefits would outweigh the harm to the Green Belt, which is given substantial weight, coupled with the other harms of the development. As such, very special circumstances are not considered to exist, and the development is contrary to national and local Green Belt policy.

CONCLUSION:

The application is considered to be contrary to national and local planning policies and is therefore recommended for refusal.

Recommendation:

REFUSE

1 The proposed development would result in inappropriate development in the Green Belt and would, by definition, be harmful to it. The proposal would harm the openness of the Green Belt by introducing built form upon open land within it and represents the encroachment of built form into the countryside. The development is contrary to the purposes of including land within the Green Belt. The harm is not outweighed by very special circumstances in this case, and therefore the development is contrary to policy CP8 of the Bath and North East Somerset Core Strategy, policy B1 of the Bath and North East Somerset Placemaking Plan and part 13 of the National Planning Policy Framework

2 Insufficient information has been provided to demonstrate that the local landscape character, features, distinctiveness and views would not be 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 GB1, NE2, NE2A and HE1 of the Bath and North East Somerset Placemaking Plan.

3 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". The impact to the setting of "Dead Mill" is considered to add to the totality of heritage harm. The harm to the setting of the Conservation Area is considered to be less than substantial and there are insufficient public benefits which would 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, D5, D7 and HE1 of the Bath and North East Somerset Placemaking Plan.

4 The proposal fails to demonstrate that a suitable vehicular access and turning area, which does not prejudice highway safety, can be achieved. It does not sufficiently demonstrate that a safe, viable and convenient pedestrian access can be provided. 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.

5 Insufficient information in relation to bat populations and reptile species to demonstrate compliance with the Conservation of Habitats and Species (Amendment) (EU Exit) Regulations 2019 and the Wildlife and Countryside Act 1981 (as amended) has been provided. There is the potential for a net loss of biodiversity including Habitats of Principal Importance contrary to the NERC Act 2006, the National Planning Policy Framework and Bath and North East Somerset Placemaking Plan policies NE3 and D5e.

6 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.

PLANS LIST:

This decision relates to the following plans:

10 Jun 2022	DMLB001 REV 2	BLOCK PLAN
10 Jun 2022	DMLB002 REV 2	SITE LAYOUT PLAN
10 Jun 2022	DMLB003 REV 0	LOCATION PLAN
10 Jun 2022	DMLB004 REV 2	TPP AIA
10 Jun 2022	DMLB005 REV 1	SITE SECTIONS
17 Mar 2022	DMLB005 REV 1	PLOT 2 PLANS AND ELEVATIONS
17 Mar 2022	DMLB006 REV 1	PLOT 1 PLANS AND ELEVATIONS
17 Mar 2022	DMLB006 REV 1	BIODIVERSITY PLAN

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

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.

Case Officer:

Isabel Daone

Authorising Officer:

Sarah James