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## Appeal Decision

Site visit made on 6 December 2022

by **J J Evans BA (Hons) MA MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 20 January 2023

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**Appeal Ref: APP/F0114/W/22/3299768**

**Land to the north east of Deadmill Lane, Deadmill Lane, Bath BA1 8NE**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
  - The appeal is made by Mr Millen against the decision of Bath and North East Somerset Council.
  - The application Ref 21/04746/OUT, dated 15 October 2021, was refused by notice dated 15 February 2022.
  - The development proposed is a development of 15 affordable dwellings.
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### Decision

1. The appeal is dismissed.

### Procedural Matters

2. The original application sought outline planning permission, with access and layout to be determined at that stage, and with all other matters reserved. I have considered the appeal on that basis.
3. The appeal site lies within the Bristol and Bath Green Belt. The appeal decision for 18 affordable dwellings upon the site (ref:APP/F0114/W/20/3260800) established that such development would not amount to inappropriate development in the green belt, and would accord with the aims and objectives of Policies CP8 and RA4 of the Bath and North East Somerset Core Strategy (2014) (CS). Following that decision, the Council and the appellant consider the proposed 15 affordable dwellings also to be a rural exception site. Given this and having regard to the findings in the appeal decision for the 18 dwellings, I have not considered the matter further.
4. The Council's appeal statement refers to a Preliminary Ecological Appraisal Report (dated September 2022) provided by the appellant for the appeal, and some local residents have commented upon it. This report was submitted after the Council's refusal of the scheme, in response to one of the reasons for refusal. The appeal process should not be used to evolve a scheme, and it is important that the facts before me are essentially those considered by the Council and other parties. Whilst the Council and some local residents have assessed the report and made comments, others have not had an opportunity to do so.

Consequently, in the interests of openness and fairness the report has not been accepted as part of the appeal.

5. The appellant has provided a Unilateral Undertaking (UU) to secure affordable housing provision, open space, sustainable urban drainage, and other facilities and services arising from the development. I will return to this matter later.

## **Main Issues**

6. The main issues in this case are:
  - firstly, the effect of the proposal upon the character and appearance of the area, having particular regard to the effect upon the Bath World Heritage Site, upon the setting of the Bath Conservation Area, upon the non-designated heritage asset Dead Mill, and upon nearby trees;
  - secondly, the impact of the proposal upon highway safety;
  - thirdly, the impact of the proposal upon protected species within the area;
  - fourthly, whether the proposal would make adequate provision for surface water drainage; and
  - fifthly, whether the proposal would make adequate provision for securing any additional need arising from the development, having particular regard to affordable housing.

## **Reasons**

### *Character and Appearance*

7. The appeal site comprises two fields upon a steeply sloping hillside, bounded by Deadmill Lane to the west and Ferndale Road and the terraces of houses along this road to the south and east. Within the site, close to the junction of Ferndale Road with Deadmill Lane is a group of stone outbuildings, and there are also other sheds and a polytunnel. There are stone retaining walls along parts of the highways, some having hedgerows growing above them, and the two fields are separated from one another by a wall. The lower field is largely overgrown with brambles and nettles, whilst the upper field is mostly rough grass.
8. *World Heritage Site.* The appeal site is within the Bath World Heritage Site (WHS), a designation which acknowledges the uniquely planned nature of the city within an area of distinct topography. Bath is set within a bowl that is surrounded by hills. The historic development of the city through time concentrated first in the lower areas, and then through the deliberately planned development up the hillsides that occurred in the Georgian period. There are extensive views across the city from the high land, and part of the experience of these views is the distinct contrast that arises between the urban and rural areas. When

approaching the city from high land, the hillsides comprise a tapestry of built areas interspersed with parks, woods, and fields. The planned nature of the Georgian townscape is evident, as is the relationship of these buildings and that of later development to areas of open space. This interplay of the city with green space is part of the significance of the WHS, as well as being a distinctive feature of the local landscape.

9. Such a transitional relationship between urban and rural is evident with the appeal site, and it is an impact that is experienced both at the immediate level and also from long distances away. The fields provide an open, green extension of the countryside into the city, and particularly so as the site is bounded in part by the defined and regimented terraced rows of houses at Ferndale Road and by the sinuous, sweeping curve of the Victorian terrace. This juxtaposition of buildings with fields is an integral part of the attractive landscape setting to Bath, and in this case a wedge of open green land extends downhill into a built-up part of the city. As such the site makes a positive contribution to the significance of the WHS.
10. The provision of 15 houses and the associated roads, turning areas, and domestic paraphernalia would erode the extension of green space into the surrounding built-up area. Residential development would be extended high up the hillside. Whilst the housing would infill the green wedge that separates the housing and buildings along Deadmill Lane and Ferndale Road, in doing so it would harmfully remove the complexities of the interwoven relationships that exist between this part of the city and the surrounding rural area.
11. This loss would be evident both from close and distant views, and as such the intricacies of the relationship that exists between the built-up and rural areas would be lost, thereby harming the contribution the site makes both to the local area and to the significance of the WHS. The Landscape and Visual Impact Assessment has concluded that the development of the site would not result in significant landscape or visual effect. However, the sloping nature of the site means that it is visible from local views and also from intermediate ones, such as from Gloucester Road and Woolley Lane. In addition, when approaching the city from the high land to the south the site also contributes towards the distinctive lacework of green spaces amongst built-up areas. The houses would form a small part of the attractive panoramas available, but this would include from important views within and around the city, such as Alexandra and Prior Parks, and Little Solsbury Hill. The loss of even a small green area would be unacceptably harmful given that the site is high up the hillside close to the built-up edge of the city, and in winter months the absence of leaf screening from nearby trees and hedges would serve to exaggerate this harmful prominence. The removal of the green wedge would be at odds with the distinctive urban – rural interplay found upon the hillsides that is such a feature of the Bath WHS.

12. Although landscaping and appearance are reserved matters, a variety of mitigation measures have been proposed, including additional planting, permeable grass grids to the parking areas, the houses being 2½ storeys in height, and the use of materials to harmonise with those found nearby. Landscaping cannot be relied upon to screen development in perpetuity, and the suggested conditions and mitigation measures would not ameliorate the fundamental change in the appearance of the site to one with an essentially urban nature.
13. The appellant has drawn my attention to an appeal decision in the Derwent Valley Mills WHS (appeal ref: APP/M1005/W/17/3198996). In this decision significant weight was attributed to the provision of 65 homes, 20 of which would be affordable, with the harm to the setting of the WHS being outweighed by the benefits accruing from the housing. However, this scheme is for a much larger development, and the nature of the housing and the need for it has not been provided in any detail. Furthermore, the significance of this WHS is not before me and with regard to the unique nature of each one it cannot be assumed that the two are comparable. Given these differences, the case does not form a binding precedent for approving the appeal scheme.
14. *Conservation Area Setting.* The site borders the Bath Conservation Area with the terraces off Ferndale Road and the housing at Bennet's Road being within the designation. The conservation area includes both buildings, open spaces and some agricultural land, and the historic planned nature of the city and its relationship with the topography and the countryside, including the focus of development upon hillsides near roads that lead down into the city, are all part of the character and appearance of the conservation area. Those houses bordering the appeal site at Ferndale Road comprise terraces, and their simple, regular, repeated sizes, forms, and positioning creates a defined edge to the built-up area. This and the presence of similar palettes of materials, along with the buildings responding to the terrain is part of the significance of the conservation area. Although not an assessment of the conservation area as a whole, the Larkhall Character Statement and Development Principles document (1998) describes the area around the appeal site, including that there is a variety of ages and styles of housing.
15. The undeveloped nature of the site creates an open setting to the conservation area, and one which emphasises the attractive juxtaposition of green areas into and adjacent to built-up areas. The open nature of the site emphasises the abrupt and defined edge to the city created by the nearby terraced housing. The elegant form of the Victorian terrace at Ferndale Road is enhanced by the openness of the appeal site, and this terrace creates an attractive frame to the edge of the city. The terraces further up the hill may be of post-war construction, but their regular forms, sizes and deliberately planned positioning also contributes towards the character and appearance of the

conservation area. As the openness of the appeal site allows an appreciation of the edge of the city, it thereby makes a positive contribution to the significance of the conservation area.

16. The importance of the setting of a conservation area is made clear in the National Planning Policy Framework (the Framework) as there is a requirement for proposals to preserve those elements of the setting that make a positive contribution to or better reveal the significance of the asset. In this case not only would the loss of openness detract from the setting of this part of the conservation area, but the layout of the houses and their cross-contour positioning would appear as a discordant contrast with the adjoining terraces which reflect the slope of the hillside. The layout has been designed to retain views across the site and to afford an appreciation of Dead Mill. However, these benefits would be achieved by making a strident contrast with the planned characteristics of the nearby terraces and their considered response to the topography, to the detriment of the character of the area.
17. Moreover, the undeveloped nature of the site, with its hedgerows and retaining walls, creates a sense of verdant, rural tranquillity within the area, particularly when experienced from the immediacy of Deadmill Lane. The retention of the boundary walls would be a positive aspect of the proposal, but new landscaping cannot be relied upon to screen development for its lifetime, and particularly so in this instance where future occupiers would wish to experience the attractive panoramas. The rural nature of the site makes a verdant contrast with the houses at Ferndale Road and also with the concentration of development lower down the hillside. Such an experience is not only part of the local distinctiveness, but emphasises the importance of the appeal site to the setting to the conservation area. The development would unacceptably erode the contribution the site makes to the setting of the conservation area.
18. *Public Benefits and the WHS and Conservation Area Setting.* The Framework requires that when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation. In this case the proposal would lead to less than substantial harm given the size of the development compared to that of the WHS as a whole, and because it would detract from a small part of the setting of the conservation area. Nevertheless, these harms carry considerable weight, and the Framework requires that these harms must be weighed against the public benefits of the proposal.
19. The provision of 15 affordable homes would be a significant public benefit, and such housing would assist in meeting the needs of the local community. Future occupiers would make a small contribution to the local economy, including supporting local services, and there would be a time-limited economic benefit arising from the construction of the housing. There would also be a limited economic benefit arising from

- the New Homes Bonus. The incorporation of climate change measures and additional landscaping would be environmental benefits.
20. Balanced against this is that the greatest need for affordable housing in the area is for single bedroomed units rather than family homes, and whilst the provision of affordable housing is a significant benefit, the absence of such units tempers the weight attributable. Whilst there would be public benefits arising from the scheme, such benefits would not outweigh the significant harm that would arise to the WHS and to the setting of the conservation area.
21. *Non-Designated Heritage Asset.* Dead Mill is a non-designated heritage asset, and it is a distinctive building within the area belying its historic role as a flour mill. Given its size and overtly industrial appearance, it is a landmark building within the Lam Valley, and its position reflects its historic function and relationship with the landscape. As such the mill is of moderate significance as a heritage asset. The mill is now part of the group of mixed development that exists to the western side of the lane, and modern development has already eroded much of its rural context. The scheme would further encroach into its setting. However, the proposed houses would be set away from the mill, and given this separation the building would retain much of its prominence in the area. As such the proposal would not harm the significance of this non-designated heritage asset.
22. *Trees.* Part of the distinctiveness of the local landscape derives from the presence of trees both as individual specimens and within hedgerows. Given the prevalence of terraces and houses and that many have small gardens, near to the appeal site the larger trees are mostly found within areas of public open space, such as those at Ferndale Road. Trees define much of the line of the Lam Brook and hedgerows define field boundaries. The trees within and near the appeal site not only form verdant focal points within the area, but they also create a leafy setting to the edge of the city and thereby to the conservation area. The Framework emphasises the importance of trees and the contribution they make to an area, and the scheme has been supported by a tree protection and landscaping plan, showing canopy and root protection measures.
23. BS5837 – Trees in Relation to Design, Demolition and Construction makes some allowance for disturbance to the roots and crowns of trees during construction works. Trees self-optimize with regard to their location, and in this instance the proposed protection measures have been tightly drawn around the trees, particularly those off Ferndale Road. As with the previous appeal, the scheme does not propose the felling of nearby trees. However, the impact of the slope upon these trees has not been assessed with regard to root protection areas, and this would be necessary because of the proposed layout and the need for any ground and levelling works. I have noted the previous Inspector's comments relating to the impact of the development upon trees, but as



a result of the lack of information before me relating to the potential indirect impact of the development, I am not convinced that conditions would be sufficient to protect nearby trees during construction, nor ensure their long-term health and vitality, and thereby the positive contribution they make to the character and appearance of the area.

24. For these reasons the proposal would have a harmful and unacceptable impact upon the character and appearance of the area, and the suggested conditions would not mitigate this harm. The harms to the WHS and to the setting of the conservation area would not be outweighed by public benefits, and consequently the scheme would fail to accord with the Framework. Furthermore, the proposal would be contrary to CS Policies B4 and CP6, and Policies NE2, NE2A, NE6, RA4, D1, D2, D3, D4 and HE1 of the Council's Placemaking Plan (2017) (PP). These policies require, amongst other things, a strong presumption against development that is harmful to the WHS, that development should conserve or enhance the historic environment, as well as be in keeping with the form and character of the local area, responding positively to local distinctiveness, identity, history, urban fabric, trees, and also to topography and landforms.

### *Highways*

25. The existing field access onto Deadmill Lane would be enlarged to provide vehicular access to the houses. I note that the previous Inspector considered the provision of an access onto Deadmill Lane would be acceptable, and having regard to this, the proposed access would have similar visibility splays, although there would be a necessity to keep the splays clear from obstruction above 0.6m. Such a requirement could be conditioned, albeit integral to this would be whether and what form of landscaping would be appropriate near to the access and its subsequent ongoing maintenance.
26. Deadmill Lane is narrow and constrained, and concerns regarding its suitability to accommodate the additional traffic arising from the development have been raised by local residents and by the Council, particularly as the traffic surveys took place during school holidays. It also appears that both Deadmill Lane and Ferndale Road are used as short-cut routes. The lane is speed restricted to 20mph, and there appears to have been no personal injury accidents recorded. Having regard to the nature of the lane, including its narrow width and curvature, most vehicles would move at slow speeds. Furthermore, the previous Inspector found the increased use of the lane by 18 households to be acceptable, and given that the proposal before me is for 15 homes, the increase in vehicular traffic arising from the proposal would not be so great as to result in significant harm to other motorists.
27. Whilst noting these comments of the previous Inspector, matters of layout are for my consideration. The nature of Deadmill Lane is that large vehicles, such as fire engines and refuse trucks, would need to

turn within the site so as enter and exit in forward gear. However, with regard to the proposed layout, the swept paths provided by the appellant rely upon large vehicles utilising private land to be able to turn. It might be the case that such matters could be resolved through conditions, but as layout and access are for consideration at the outline stage, it is apparent from the evidence before me that the constraints of the layout are such that large vehicles could not turn within the site. Even having regard to the frequency of large vehicle movements generated by the development, the inadequacy of turning space for the proposal before me could encourage vehicles to reverse into or out of the site, which would raise safety concerns with regard to other users.

28. In addition to these concerns, the swept paths of large vehicles would also conflict with pedestrians using the virtual footway. There is no footway to Deadmill Lane, and it may be the case that some future residents would use the proposed pedestrian link with Ferndale Road, but irrespective of this the constraints of the lane are such that those using the virtual footway would have to be highly alert to other users of the highway at all times. Even though vehicles would be travelling at slow speeds, the long length of the virtual footway, when combined with the curvature of the lane, and the absence of refuges for pedestrians and for those with mobility impairments, would result in a route that would cause conflict and thereby safety concerns for all users. The examples of other virtual footways at Hinton Charterhouse, Wellow and Farnham all appear to be within much wider and less physically constrained roads than is the case with Deadmill Lane.
29. Dropped kerbs and tactile paving would be provided, albeit the locations of these points has not been demonstrated. The appellant has provided a generic description of potential locations, and as the Council would accept a condition of further details I have not considered this matter further.
30. Given my findings, the proposal would have an adverse impact upon the safety of the users of the local highway network, and the suggested conditions would not overcome this harm. The scheme would be contrary to the requirements of the above referenced PP Policies and also to ST1 and D1, which seek amongst other things, well connected places that are safe and easy to move around. Nor would the proposal accord with objectives of the Framework that amongst other things requires places to be created that are safe and secure, minimising the scope for conflict between pedestrians, cyclists and vehicles.

### *Protected Species*

31. The site is approximately 2km from the Bath and Bradford-On-Avon Bats Special Area of Conservation (SAC), designated due to the internationally important populations of horseshoe and Bechstein's bats. Some of the bats feed over farmland and use dark linear corridors, such as Deadmill Lane, and with regard to this and the proximity of the site to



the SAC, the provision of an up-to-date survey and assessment of the impact of the development upon bats would not be unreasonable. In addition, the Council and local residents refer to the presence of protected species near the appeal site, including badgers and reptiles, and also species within the Lam Brook. Given this, an assessment of the impact of the development upon protected species in the area would be necessary.

32. The application was supported with an ecology report dated December 2019. However, the age of the survey is such that it cannot be relied upon to provide an accurate assessment of the current site and its ecological importance. Moreover, there are other protected species close to the site within the area, and the presence, use or absence of protected species is a matter that should be assessed so as to inform the nature of any scheme. Circular 06/2005 – Biodiversity and Geological Conservation makes it clear that the presence of a protected species is a material consideration when development is being considered. It is essential that the presence or otherwise of protected species and the extent that they may be affected by the proposed development is established before planning permission is granted so as to ensure that all relevant material considerations have been addressed. Although the Circular states that surveys should only be required where there is a reasonable likelihood of species being present, surveys should only be required by condition in exceptional circumstances. Having regard to the evidence before me, a condition requiring a survey would not be acceptable. Measures to increase the biodiversity value of the site would be a benefit of the scheme, but such provision should also be informed by an up-to-date ecology survey.
33. Whilst I have noted the comments of the previous Inspector, the Framework requires that the planning system should contribute to and enhance the natural environment, minimising impacts on biodiversity. In this case the scheme has failed to demonstrate whether the development would have an impact upon protected species, nor has it been demonstrated that any impacts could be minimised and mitigated. The proposal would be contrary to the requirements of PP Policies NE3, NE5 and D5, which seek amongst other things, to minimise harm to nature conservation, and to protect and enhance biodiversity, and that development should not adversely affect directly or indirectly protected species.

#### *Drainage*

34. The access, internal roads and parking areas would be constructed of porous paving, and an attenuation tank would be constructed for surface water drainage (SWD) which would then go to unidentified gullies within Ferndale Road. Apart from this detail, the scheme relies upon the resolution of SWD to occur through conditions and the UU.

35. The Council has raised concerns regarding the relevance of the borehole data and whether infiltration would be appropriate for this site. Discharging to the Lam Brook could raise ecological and protected species concerns, and local residents have also provided evidence of the brook in flood. In addition, the appellant's Flood Risk Assessment highlights that the views of Wessex Water would need to be sought to ascertain the suitability of proposed foul and surface water discharge.
36. Whilst it might be the case that SWD could be satisfactorily addressed through conditions, there are a number of uncertainties arising from the proposal, and it remains unclear as to whether they could be satisfactorily addressed. In light of these unresolved issues, imposing a condition would not be reasonable and would be contrary to the conditions tests imposed by the Framework. Nor would this uncertainty accord with the requirements of CS Policy CP5, which requires amongst other things, that development incorporates sustainable drainage systems to reduce surface water run-off and to minimise its contribution to flood risks elsewhere.

#### *Unilateral Undertaking*

37. The UU aims to secure the site for affordable housing, the specification, implementation, management and transfer of open space and sustainable urban drainage, and additional facilities and services arising from the development, such as fire hydrant provision. Having regard to the provision of contributions for open space, recruitment, training and fire hydrants, there is limited evidence demonstrating that such provision would be necessary, related directly to the development, and fairly related in scale and kind as required by the provisions of the Community Infrastructure Levy Regulations (2010) and the tests for planning obligations set out in the Framework. As these aspects of the UU fail to meet one or more of the above tests, I am unable to take them into account in determining the appeal.
38. Notwithstanding this, I have a variety of concerns about the document itself, including its execution and thus whether the Council could rely on it to secure the undertakings. For example, only the front sheet of the UU is dated with dates elsewhere in the document not having been provided, and no mention is made to the appeal reference. There are also errors with regard to the owner's covenants, and matters of securing the type of affordable housing, as well as implementation, tenure, management, and enforceability matters, are ambiguous.
39. As I intend to dismiss the appeal for other reasons, I have not pursued this matter further with the main parties. As it stands, the UU would not make adequate provision for additional infrastructure nor secure affordable housing provision, and the benefits accruing from the provision of these homes is thereby significantly tempered. This would be contrary to CS Policies CP9 and CP13. These seek amongst other things, the timely delivery of required infrastructure and the provision of

a mix of affordable housing units that reflect local need and remain affordable for future eligible occupiers.

### **Other Matters**

40. The Cotswolds Area of Outstanding Natural Beauty (AONB) borders the western boundary of Deadmill Lane. There is a statutory duty to protect the landscape and scenic beauty of an AONB, and the Framework requires that great weight should be given to conserving and enhancing their landscape and scenic beauty. The development would be in close proximity to the AONB, and the Landscape and Visual Impact Assessment refers to the special qualities of the designation, which include the importance of the limestone geology, both in respect of its influence upon landscape form and as a building material, the river valleys, and the significant historic uses of the area. Although the provision of houses upon the steeply sloping hillside would erode the open setting of the AONB, the development would not extend much beyond the northernmost extent of the houses at Ferndale Road and Deadmill Lane. The houses would form part of the built-up edge to the city, and given this the proposal would not significantly detract from the landscape and scenic beauty of the AONB.
41. The Council have raised a concern regarding the cycle parking provision being within two communal sheds. PP Policies D3 and ST7 seek to promote sustainable means of transport by providing and enhancing facilities for cyclists, including the provision of accessible cycle storage facilities and ensuring that development is designed for cycling and walking. The communal sheds appear as an after-thought rather than as part of a considered layout to encourage cycling. Provision on an individual home basis would be more convenient and secure for future residents, and particularly so in this instance as for some the distance to the cycle sheds would be inconvenient when compared to the immediacy of garden storage.
42. Local residents have raised a number of other matters, including the impact of the scheme on neighbouring residents, that the site has not been managed, and that the appellant has submitted numerous applications for development. Some of these concerns are not relevant to the planning considerations of the case, and of those that are, following my findings on the main issues, I have no need to consider them further.

### **Conclusion**

43. For the above reasons the adverse impacts arising from the proposal would significantly and demonstrably outweigh the aforementioned benefits, and the suggested conditions would not overcome these substantial harms. The proposal would conflict with the development plan and there are no material considerations that indicate the decision should be made other than in accordance with the development plan.

Thus, for the reasons given above and having considered all other matters raised, the appeal is dismissed.

*J J Evans*

INSPECTOR