

Planning East – Appeal Decisions

Please see below list of appeal decisions made by the Planning Inspectorate between 18th September 2024 and 18th October 2024. Detailed reports from the Planning Inspectorate follow the list.

Full details of all appeals, can be found on the Council's website
<https://publicaccess.mendip.gov.uk/online-applications/>

Application Reference	2024/0344/ADV
Site Address	Land adj to Wirral Park Roundabout, Glastonbury
Applicant/Organisation	Alight Media Ltd
Application Type	Advertisement Consent
Proposal	Erection & display of a single freestanding 6 x 3 metre LED display unit
Decision	Refusal (Delegated)
Appeal Decision	Appeal Dismissed
Appeal Decision Date	27.09.2024

Application Reference	2021/2280/FUL
Site Address	Billingsley, Bath Road, Oakhill
Applicant/Organisation	S Spence
Application Type	Full Planning Permission
Proposal	Erection of a detached holiday let..
Decision	Refusal (Committee)
Appeal Decision	Appeal Dismissed
Appeal Decision Date	01.10.2024

Application Reference	2023/2245/OUT
Site Address	Land at Chapelfield, Oakhill
Applicant/Organisation	Johnstone Land Company (Bristol) Limited, R Keen, T Keen & J Keen
Application Type	Outline Planning Permission
Proposal	Application for Outline Planning Permission with some matters reserved for up to 23 no. two storey houses (including 30% affordable housing), parking, hard/soft landscaping, open space, drainage and infrastructure with details of access/layout/scale.

Decision Refusal (Delegated)
Appeal Decision Appeal Allowed
Appeal Decision Date 02.10.2024

Application Reference 2022/2374/FUL
Site Address The Bell Inn, 13 Frome Road, Rode, Frome
Applicant/Organisation Wellington Pub Company
Application Type Full Planning Permission
Proposal Erection of 3no. dwellings & associated access.
Decision Non-determination
Appeal Decision Appeal Allowed
Appeal Decision Date 10.10.2024

Application Reference ENF/2020/0034
Site Address Land West of Winters Hill Lane, West Compton, Shepton Mallet
Applicant/Organisation T Harvey
Appeal Type Enforcement Notice
Appeal Decision No Further Action
Appeal Decision Date 16.10.2024



Appeal Decision

Site visit made on 22 August 2024 by R Dickson BSc (Hons) MSc MRTPI

Decision by Ben Plenty BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 1st October 2024

Appeal Ref: APP/E3335/W/24/3344072

Billingsley, Bath Road, Oakhill, Shepton Mallet BA3 5AB

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by Mr Simon Spence against the decision of Somerset Council.
 - The application Ref is 2021/2280/FUL.
 - The development proposed is for the erection of a detached holiday let.
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Decision

1. The appeal is dismissed.

Appeal Procedure

2. The site visit was undertaken by a representative of the Inspector whose recommendation is set out below and to which the Inspector has had regard before deciding the appeal.

Main Issue

3. Whether the proposed development would be in a suitable location having regard to the development plan and national policies.

Reasons for the Recommendation

4. The appeal site is accessed from Bath Road and is situated in a small hamlet with a collection of other houses. Both the Appellant and Council agree that the appeal site is outside of any defined settlement boundaries. There are no local services or facilities within the Hamlet.
5. In accordance with policy CP4 of the Mendip District Local Plan Part 1: Strategy and Policies (2014) (LP), any business to be established in a rural setting would need to be appropriately located. In this instance, the holiday let would be constrained by the limited transport options for future visitors. Bath Road is a fast moving and busy road without any pavements and is unlikely to be used by pedestrians because of this. Given that there are no local services or facilities within the hamlet, the lack of direct footpaths to the nearest village would limit the transport options for users of the holiday let. The appellant has identified that there are Public Right of Way footpaths near to the appeal site, however I have not been provided with evidence that these form a direct or convenient route to nearby villages with local services.
6. The hamlet is not served by a bus stop, which further enhances the reliance of the future occupants on a private car. LP Policy CP3 requires proposals for economic development to limit the growth in demand for private transport, and instead encourages sustainable transport modes. These policies are broadly

consistent with the National Planning Policy Framework (the Framework) that supports a prosperous rural economy and sustainable rural tourism and leisure developments which respect the rural character of the countryside.

7. The holiday let would be located in a hamlet. The proposed holiday let would not have access to sustainable transport links and this would encourage car use. This would be in conflict with the strategic policies of the LP, that supports proposals where transport to a site is capable by means other than the private car. The Framework recognises that some areas, not well served by public transport in rural locations, may be suitable for development that meets local business needs. However, the Framework also seeks to promote sustainable rural tourism. The site would not offer any real alternatives for visitors other than to use the private car and would not therefore meet this objective.
8. Accordingly, the proposed holiday let would conflict with Policies CP1, CP3, CP4 and CP9 of the LP, and as such the Framework, which collectively seek to ensure development proposals are located in suitable and sustainable locations having regard to the use of a private car.

Other Matters

9. There are other dwellings and holiday rentals within the hamlet which by virtue of proximity, have similar sustainability credentials. That being said, the presence of unsustainably located dwellings does not carry enough weight as to allow another in the hamlet.
10. It has been drawn to my attention that a similar scheme was granted in 2018. Nonetheless this has now expired and can no longer be implemented. The Council has explained that the revised Framework has raised new material considerations with respect to the suitable location of tourist accommodation with a rebalance of social and environmental objectives. I have not found such a stark change in national policy as identified by the Council. Although the approved scheme raises an issue of inconsistent decision making, this is a local matter and has had a limited bearing on the main issues of this appeal which I have considered on its own merits.

Conclusion and Recommendation

11. For the reasons given above and having had regard to all other matters raised, I recommend that the appeal should be dismissed.

R Dickson

APPEAL PLANNING OFFICER

Inspector's Decision

12. I have considered all the submitted evidence and my representative's report and on that basis the appeal is dismissed.

Ben Plenty

INSPECTOR



Appeal Decision

Site visit made on 30 September 2024

by Laura Cuthbert BA(Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10 October 2024

Appeal Ref: APP/Q3305/W/23/3335782

The Bell Inn, 13 Frome Road, Rode, Frome BA11 6PW

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a failure to give notice within the prescribed period of a decision on an application for planning permission.
 - The appeal is made by Wellington Pub Company against Mendip District Council.
 - The application Ref is 2022/2374/FUL.
 - The development proposed is 3no. dwellings and associated access.
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Decision

1. The appeal is allowed, and planning permission is granted for 3no. dwellings and associated access at The Bell Inn, 13 Frome Road, Rode, Frome BA11 6PW in accordance with the terms of the application, Ref 2022/2374/FUL, subject to the conditions in the attached schedule.

Preliminary Matters

2. Following the submission of the appeal against non-determination, the Council has provided a Case Officer's Report, which provides clarity in terms of the main reasons why the Council would have refused planning permission had it been able to do so.
3. The main parties have set out the relevant planning history related to the site, which includes an earlier appeal decision¹, which was dismissed. The proposal under this scheme was four dwellings in a courtyard arrangement. I have had regard to this decision insofar as it is relevant to the proposal before me now.

Main Issues

4. The main issues are:
 - whether the proposal would provide a suitable location for housing, having regard to the development strategy for the area; and
 - the effect of the proposal on the significance of The Bell Inn, a Grade II Listed Building, and the Rode Conservation Area as designated heritage assets, through development within their setting.

Reasons

Suitable Location

5. The appeal site lies outside of, but adjoining, the development settlement limit for Rode as defined by the Mendip District Local Plan 2006-2029 Part 1:

¹ APP/Q3305/W/22/3305951

Strategy and Policies (Local Plan) (adopted 2014). Core Policies 1 and 2 of the Local Plan set out the spatial strategy for the district and provides details of how housing will be provided across the District's towns and villages. Whilst Rode has been classified as a 'Primary Village', the site lies outside of any defined settlement boundary for Rode and is classed as open countryside. It is not allocated for housing and the proposal would not fall within any of the exceptions set out by the development plan to enable new development in the open countryside. It would not be supported by any other policies.

6. The Council has stated that 'although the site is not within the Rode development limits, it does adjoin them and having regard to accessibility to the services and facilities which this Primary Village has to offer, the location of the site is equally as sustainable as those properties within the adjoining development limits. It is not therefore unreasonable in this case, to consider the site for development subject to any adverse impact of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies within the Framework taken as a whole'.
7. Nevertheless, by virtue of its location outside of any defined settlement limits, the proposal would be contrary to Core Policies 1 and 2 of the Local Plan which, in combination, set out the overarching spatial development strategy and settlement tiers for the District. Criterion 1 (c) of Core Policy 1 states that in the open countryside, development will be strictly controlled.

Designated Heritage Assets

8. The appeal site comprises a flat, square parcel of land, situated to the rear of The Bell Inn, a Grade II Listed Public House, situated on the edge of the village of Rode. The Bell Inn is positioned at the junction of Frome Road and Church Lane. The site is also outside of but adjacent to the Rode Conservation Area (CA), the boundary of which runs to the south of the appeal site.
9. The car park associated with the pub lies immediately to the north of the building, with the appeal site positioned to the north of the car park. The land currently comprises overgrown scrub land, with established vegetation enclosing the site to the north, east and west. The southern boundary is open alongside the adjacent car park. Aside from the pub itself, the context of the appeal site is residential development which runs in a linear form and close building lines along Church Lane. They are predominantly set back behind front gardens and parking areas and tend to have strong frontages onto the road.
10. The Bell Inn is an early 19th Century Inn, and is of interest, in part, as a roadside pub and has been identified as a local landmark building in the Rode Conservation Area Appraisal (CAA) (adopted 2009). Its significance for the purposes of this appeal lies primarily within its architectural details and historical value, as a 19th Century Inn.
11. Rode CA was designated in 1973 and focused on the main part of the village. A detached portion, known as the Frome Road Area, was added at a later date and The Bell Inn is within this latter area. Frome Road is a linear group of older buildings, dominated by the parish church, and set on both sides of the busy main road. The CAA states that the overall character is that of a low density, sporadic corridor of vernacular buildings set close to the road line, interspersed with areas of green space and open countryside and with obvious focal points in the parish church and pub. This is broadly what I observed on my site visit.

12. For the purposes of this appeal, the significance of the Frome Road Area of the Rode CA derives from the historic buildings within it, the linear form of development and the open spaces within and around the CA. The CAA mentions that there is also a large meadow behind the Bell Inn. The setting of the CA derives from its relationship with the countryside beyond to the south, and the residential built form along Church Lane and Frome Road. The continuous hedgerow which encloses the appeal site to the northwest is a rural feature of the site, separating the more modern housing along Church Lane from the CA to the south.
13. Paragraph 206 of the National Planning Policy Framework 2023 (the Framework) states that significance of heritage assets can be harmed or lost through the alteration or destruction of those assets or from development within their setting and that this should have a clear and convincing justification. The appeal site, by virtue of its proximity and relationship, forms part of the setting in which the heritage assets are experienced. The sense of openness it provides by way of its lack of built form, allows an appreciation of the heritage assets. It thus contributes positively towards the setting, and therefore the significance of both the Listed Building and CA, aiding the understanding of the Listed Building as its role as an 19th Century Inn and as a local landmark building within the CA.
14. Since the earlier appeal decision, the appellant has provided further evidence that the appeal site does not form part of the pub garden. They have demonstrated that whilst it was historically an orchard, this was cleared by 1946. Satellite imagery from 2001 until 2022 shows no evidence that the appeal site was in use as a pub garden during that period, or that it was ever anything more than grass, in various conditions of management. Furthermore, I note that Google Earth images between 2001 and 2006 show benches and children's play equipment to the southwest of the public house building, and not on the appeal site.
15. Notwithstanding any assessment of the setting of the nearby heritage assets, the proposal would represent a linear form of development, which now has a frontage to Church Lane, set behind car parking and the established vegetation along the highway. The proposal would include a substantial green buffer between the proposal and The Bell Inn, which has been increased since the earlier appeal. I note that the appellant has committed to delivering a 1.2m post and rail fence inset with a beech hedge around the edge of the site. Accordingly, unlike the earlier appeal scheme, the Council no longer object to the proposal in regard to its form, appearance, and layout. Accordingly, they do not allege any harm to the character of the street scene or the surrounding area. Based on the evidence before me, I see no reason to come to a different conclusion on the matter.
16. Nevertheless, the proposal would introduce built form on to the site which is currently devoid of any buildings. The 3 dwellings would have an urbanising effect, including the removal of a section of hedgerow along Church Lane in order to form the new vehicular access, and would sit incongruously within the undeveloped, open setting of the heritage assets. The physical separation of the appeal site from the public house land would also harm the way in which the heritage assets are experienced and appreciated. Consequently, this would harm the significance of the heritage assets.

17. The Parish Council has raised concern that the development site sits between the two village Conservation Areas, and 'adversely impacts the distinctive 'gap' between the medieval origins of the village and its current core'. Whilst I consider that the setting of the Frome Road Area of the CA would be harmed, I do not consider that given the surrounding built form along Church Road, the proposal would have any adverse impact on the gap between the 2 CA's.
18. Nonetheless, in view of the above, the proposal would harm the significance of The Bell Inn, a Grade II Listed Building, and the Rode CA as designated heritage assets, through development within their setting. The proposal would be contrary to Development Policy 3 of the Local Plan, which seeks to ensure that proposals preserve and, where appropriate, enhance the significance and setting of the district's Heritage Assets.

Other Matters

19. There are other listed buildings in the vicinity of the appeal site, including 9 & 11 Frome Road, 17 & 19 Frome Road, Church Row Farmhouse and the Church of St Lawrence. Mindful of my statutory duty set out in section 66(1) of the Act, I have had special regard to the desirability of preserving their settings. From the evidence before me and my observations on site, the special interest and significance of these assets largely stem from their architectural and historic interests, as well as their wider street-scene and rural settings. Given the nature and extent of the proposal, and its distance from these listed buildings, I consider that the settings of these other designated heritage assets would be preserved, and their significance would not be harmed. The Council has raised no concerns in this regard either.
20. Interested parties and the Parish Council have expressed a wide range of concerns including archaeology, highway safety, and the removal of existing vegetation. However, having considered the technical evidence before me and the views of the relevant statutory consultees and that of the Council, I consider that these matters can be controlled and maintained by appropriately worded conditions.
21. I observed that The Bell Inn is currently vacant, and it is of some concern to the Council that the loss of part of its garden to development could render the business less attractive, thereby affecting the future of this heritage asset. However, given that the proposal would now leave a substantial buffer between the site and the public house, this could still be used as part of its garden in the future should it need to do so. Furthermore, as alluded to above, the pub garden appears to be located elsewhere and not on the appeal site.
22. I note the concern that the appellant would develop on the wider plot should the appeal be allowed. However, my decision is based firmly on the merits and circumstances of the appeal proposal before me now. As such, it does not set any precedent that can apply more generally in the area. I also note that an interested party has stated that Rode has already met its future housing allocations. However, the housing land supply is calculated on a boroughwide basis. As the Council is currently unable to demonstrate a five year housing land supply, I can only give this concern little weight.
23. The Parish Council has drawn my attention to 4 other appeal decisions in Mendip and how the Inspectors in these cases had rejected the 'presumption in favour of sustainable development'. However, I do not have the full details of

any of these other developments before me so I cannot be certain that the circumstances are directly comparable to the appeal scheme before me now. Notably, from the limited information provided, I see that these earlier decisions related to larger schemes of between 28 and 40 dwellings. Nevertheless, I have considered this appeal proposal on its own merits.

Planning and Heritage Balance

24. The harm that I have found would be caused to the significance of the heritage assets by virtue of development within its setting, would be localised. Accordingly, the harm would be less than substantial. The Council consider that any harm is at the lower end of a sliding scale of such harm. Nonetheless, I am mindful that less than substantial harm does not equate to a less than substantial planning objection and that any such harm is to be given considerable importance and weight. Paragraph 208 of the Framework states that this harm must be weighed against the public benefits of the proposal.
25. An earlier appeal decision² found that the Council could only demonstrate a 3.3 year supply of housing as of May 2023. The Council has not provided me with a latest supply figure, but they accept they cannot currently demonstrate a five-year supply of deliverable housing sites. Accordingly, the weight to be afforded to the conflict with the development strategy, in light of the land supply shortfall, is reduced and I attach moderate weight to the conflict in these circumstances. Such a level of shortfall would also mean that the provision of 3 houses, would attract significant weight in the balance, consistent with the Government's aim in paragraph 60 of the Framework of significantly boosting the supply of homes.
26. There would also be economic benefits contributing to building a stronger, responsive, and competitive economy, supporting growth with construction and post-construction benefits. The proposal would encourage development and associated economic growth with future occupants contributing to the local economy and continued viability of services in the local area, notably in Rode. There would also be some sustainability credentials associated with the proposal regarding its location and proximity to the defined development boundary. Together these benefits carry moderate weight in favour of the development.
27. For the above reasons, I consider that the benefits of the development, taken together, outweigh the less than substantial harm to the designated heritage assets. Hence, there would be no conflict with the relevant heritage objectives of the Framework. Furthermore, the adverse impacts of the development would not significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework as a whole.
28. Consequently, whilst the development is in conflict with the development plan as a whole, there are material considerations as outlined above, including the Framework, which, in these circumstances, outweigh that conflict and indicate that planning permission should be granted for development which is not in accordance with it.

² Appeal Reference APP/Q3305/W/22/3311900

Conditions

29. The Council has suggested 16 conditions. I have assessed these in light of the advice provided in the Planning Practice Guidance (PPG). A condition setting a time limit for the commencement of the development is required by statute. It is necessary that there is a condition requiring the development to be carried out in accordance with the approved plans for certainty.
30. Conditions regarding a sample panel of walling materials to be approved by the local planning authority and for the hard and soft landscaping to be carried out in accordance with the approved details are both considered reasonable and necessary to safeguard the character and appearance of the area.
31. In order to safeguard the trees on site, a condition to ensure the tree protection measures as set out on the approved annotated tree protection plan are implemented is considered both reasonable and necessary. The wording has been amended slightly for clarity purposes.
32. In the interests of highway safety, conditions are considered necessary to ensure that the access, parking and turning areas are all constructed as approved, as well as a condition to ensure that the approved access is constructed with a bound and compacted surfacing. For the same reasons, conditions are considered necessary to ensure the visibility splay as approved is implemented, with no obstructions over 600mm within the splay, as well as ensuring that any gates associated with the vehicular access are appropriately sited.
33. A condition to restrict vegetation removal, unless otherwise advised by a competent ecologist, is considered both reasonable and necessary in the interests of protecting nesting birds. In the interests of protecting European Protected Species, a condition is considered necessary for no external lighting to be erected or provided on the site until a "lighting design for bats" has been submitted to and approved in writing by the local planning authority.
34. A condition which protects any features potentially used by hedgehogs prior to any groundworks and vegetative clearance is considered reasonable in the interests of a priority species. The wording has been amended slightly for clarity purposes. Also in the interests of protected and priority species, a condition which controls the process of clearing the vegetation within the construction area is also considered reasonable and necessary. In order to ensure an enhancement of biodiversity, it is considered necessary to approve a Biodiversity Enhancement Plan.
35. In order to encourage the use of more sustainable modes of transport, it is also considered necessary to require further details regarding the provision of electric vehicle charging points. Finally, in order to minimise disruption to surrounding residents, a condition to restrict the hours of demolition, clearance and redevelopment is also necessary.

Conclusion

36. For the reasons set out above, the appeal is allowed.

Laura Cuthbert

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall begin not later than years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with drawing nos 7112/00A, 11C, 12C, 13A, 14A and 34293YOS-01 TOPOGRAPHICAL SURVEY.
- 3) No construction of the external walls of the development shall commence until a sample panel of all external walling materials to be used has been erected on site, approved in writing by the local planning authority, and kept on site for reference until the development is completed. The development shall be undertaken in accordance with the approved details.
- 4) No development shall commence until the protective measures as stated in the approved annotated tree protection plan are implemented. The local planning authority is to be advised in writing two weeks prior to development commencing of the fact that the tree protection measures as required are in place with photographic evidence.
- 5) No occupation shall commence until the access, parking and turning areas have been constructed in accordance with details shown on the approved plans. The vehicular access, parking and turning shall thereafter be kept clear of obstruction and shall not be used other than for the access and parking of vehicles in connection with the development hereby permitted.
- 6) No occupation shall commence until the approved vehicular access has been constructed with a bound and compacted surfacing material (not loose stone or gravel) for the first 6 metres of its length as measured from the edge of the adjoining carriageway. The access shall be retained as such thereafter.
- 7) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that Order with or without modification), any gates erected or installed at the vehicular access hereby approved shall be permanently hung to open away from the public highway and set back a minimum of 6m from the adjoining carriageway edge.
- 8) No occupation of the development shall commence until the visibility splay shown on drawing number 7112_12C has been provided. There shall be no on-site obstruction exceeding 600mm above ground level within the visibility splay. The visibility splay shall be retained permanently thereafter.
- 9) All hard and/or soft landscape works shall be carried out in accordance with the approved details. The works shall be carried out prior to the occupation of any part of the development or in accordance with the programme (phasing) agreed in writing with the local planning authority. Any trees or plants indicated on the approved scheme which, within a period of five years from the date of the development being completed, die, are removed or become seriously damaged or diseased shall be replaced during the next planting season with other trees or plants of a species and size to be first approved in writing by the local planning

authority. All hard landscape works shall be permanently retained in accordance with the approved details.

- 10) No vegetation removal works around the site shall take place between 1st March and 31st August inclusive, unless a competent ecologist has undertaken a careful, detailed check of the trees, shrubs and scrub and tall ruderal vegetation to be cleared for active birds' nests immediately before works proceed and provides written confirmation that no birds will be harmed and/or that there are appropriate measures in place to protect nesting bird interest on site. Any such written confirmation should be submitted to and approved in writing by the local planning authority by the ecologist accompanied by dated photos showing the site before and after clearance. In no circumstances should netting be used to exclude nesting birds.
- 11) No external lighting shall be erected or provided on the site until a "lighting design for bats" has been submitted to and approved in writing by the local planning authority. The design shall show how and where external lighting will be installed (including through the provision of technical specifications) so that it can be clearly demonstrated that areas to be lit will not disturb or prevent bats using their territory or having access to their resting places. All external lighting shall thereafter be installed in accordance with the specifications and locations set out in the design, and these shall be maintained thereafter in accordance with the design.

No new external lighting, other than that shown on the approved plans, shall be installed within the boundary of the application site unless in accordance with details that shall have first been submitted to and approved in writing by the local planning authority.

- 12) Prior to groundworks and vegetative clearance, any features potentially used by hedgehogs will be dismantled by hand by a competent ecologist between April and October and any individuals found translocated to an appropriate Location prior to works commencing on site. Translocation sites will be submitted and agreed in writing by the local planning authority prior to searches being made. A written confirmation of the completion of the operations will be submitted by the ecologist prior to works commencing on site.
- 13) Any vegetation in the construction area should initially be reduced to a height of 10 centimetres above ground level by hand, brushings and cuttings removed, and the remainder left for a minimum period of 48 hours of fine warm weather (limited rain and wind, with temperatures of 10°C or above) before clearing to minimise the risk of harming/killing any reptiles that may be present and to encourage their movement onto adjoining land. Written notification of the date of the operations will be submitted to the local planning authority prior to the works being undertaken. Once cut, vegetation should be maintained at a height of less than 10cm for the duration of the construction period. A letter confirming these operations and any findings will be submitted to the local planning authority by the ecologist responsible.
- 14) A Biodiversity Enhancement Plan (BEP) shall be submitted to and be approved in writing by the local planning authority prior to

commencement of the development. The content of the BEP shall include the following:

- a) Four Habibat 001 bat boxes or similar will be built into the structures at least four metres above ground level and away from windows of the west or south facing elevations (one on each dwelling).
 - b) A cluster of five Schwegler 1as swift bricks or similar built into the walls at least 60cm apart, at least 5m above ground level on the north facing elevations (a cluster on two of the dwellings).
 - c) Two Vivra Pro Woodstone House Martin nests or similar will be mounted directly under the eaves of the north elevations (mounted on two dwellings).
 - d) Any new fencing must have accessible hedgehog holes, measuring 13cm x 13cm to allow the movement of hedgehogs into and out of the site.
 - e) The new hedgerow/s to be planted up with native species comprised of a minimum of 5 of the following species: hazel, blackthorn, hawthorn, field maple, elder, elm, dog rose, bird cherry and spindle.
 - f) All new shrubs must be high nectar producing to encourage a range of invertebrates to the site, to provide continued foraging for bats. The shrubs must also appeal to night-flying moths which are a key food source for bats. The Royal Horticultural Society guide, "RHS Perfect for Pollinators, www.rhs.org.uk/perfectforpollinators" provides a list of suitable plants both native and non-native.
 - g) One Vivara Pro Woodstone Nest Boxes (32mm hole version) or similar mounted between 1.5m and 3m high on the northerly facing aspect of trees and maintained thereafter.
 - h) One Vivara Pro Barcelona Woodstone Bird Box (open front design) or similar mounted between 1.5m and 3m high on the northerly facing aspect of trees and maintained thereafter.
- 15) Prior to the construction of any part of the development above damp-proof course level, a scheme showing full details of the number and location of charging points for plug-in and other ultra-low emission vehicles in safe, accessible and convenient locations within the development (along with a timetable for their provision), shall be submitted to and approved in writing by the local planning authority. Thereafter the development shall be carried out in accordance with the approved details and timetable.
- 16) Noise emissions from the site during the development, i.e. the demolition, clearance and redevelopment of the site, shall not occur outside of the following hours:
- Mon - Fri 08.00 - 18.00
- Sat 08.00 - 13.00
- All other times, including Sundays, Bank and Public Holidays there shall be no such noise generating activities.



Appeal Decision

Hearing Held on 17 July 2024

Site visit made on 17 July 2024

by C Rafferty LLB (Hons), Solicitor

an Inspector appointed by the Secretary of State

Decision date: 02 October 2024

Appeal Ref: APP/E3335/W/24/3341085

Land at 362977 147235, Chapelfield, Oakhill, Shepton Mallet BA3 5BU

- 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 Johnstone Land Company (Bristol) Limited R Keen, T Keen, J Keen against the decision of Somerset Council. The application is Ref 2023/2245/OUT.
 - The development proposed is outline application for up to 23 no. two storey houses (including 30% affordable housing) with associated parking, hard/soft landscaping and open space, drainage, and infrastructure. Appearance and landscaping reserved matters with access, layout and scale to be determined at outline stage
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Decision

1. The appeal is allowed and outline planning permission is granted for up to 23 no. two storey houses (including 30% affordable housing) with associated parking, hard/soft landscaping and open space, drainage, and infrastructure. Appearance and landscaping reserved matters with access, layout and scale to be determined at outline stage at land at 362977 147235, Chapelfield, Oakhill, Shepton Mallet BA3 5BU in accordance with the terms of the application Ref 2023/2245/OUT subject to the conditions in the attached schedule.

Preliminary Matters

2. On 30 July 2024 the Government published a consultation on proposed reforms to the National Policy Framework (the Framework) and other changes to the planning system and the Secretary of State made a written ministerial statement entitled "Building the homes we need". The main parties were invited to provide comments in relation to the above which have been taken into account in my determination of this appeal.
3. The application was made in outline with appearance and landscaping reserved for future consideration. I have dealt with the appeal on that basis, treating any details of reserved matters shown on the plans as being indicative.
4. The appeal site is approximately 2.4km from the Mells Valley Special Area of Conservation (the SAC), falling within Band C of the Consultation Zone for the SAC. I am the competent authority for the purposes of this appeal and the Habitats Regulations 2017 (as amended) (the Regulations) requires the decision maker to consider whether the proposal could adversely affect the integrity of the SAC. I have therefore assessed this as a main issue in this appeal.

5. The Council's reasons for refusal referred to a lack of planning obligation in respect of certain contributions. An executed section 106 agreement was provided after the Hearing. I have dealt with this later in my decision.

Main Issues

6. The main issues are:
- whether the proposed development would be in a suitable location, having regard to development plan policies;
 - the effect of the proposed development on the character and appearance of the area; and
 - the effect of the development on the integrity of the SAC.

Reasons

Suitable location

7. The appeal site comprises a grassed area to the south of High Street, located outside of, but adjacent to, the southern development limit of Oakhill. The proposal seeks outline planning permission for the erection of up to 23 dwellings at the site.
8. Core Policy 1 of the Mendip Local Plan Part 1: Strategy and Policies 2006-2029, adopted December 2014 (the Local Plan) sets out the spatial strategy to direct development to locations where there is greatest accessibility to services and facilities. In doing so, it establishes a hierarchy of principal settlements, followed by primary villages, secondary villages, and other villages and hamlets. Oakhill is defined as a secondary village, making it appropriate for development aimed at meeting more localised housing, business, and service needs.
9. With regard to housing, Core Policy 2 sets out how provision for a minimum of 9,635 additional dwellings will be made relative to the spatial strategy, apportioning 20% of the overall minimum requirement to primary and secondary villages. Table 9 of the supporting text to Core Policy 2 allocates a housing requirement of 40 homes between 2006-2029 in Oakhill. Evidence submitted at the Hearing suggests that 48 dwellings have been completed or granted consent in Oakhill between 2006 and 2012, such that its localised housing requirement has already been met.
10. In any event, it was agreed at the Hearing that the appeal site, falling outside of the development limits of Oakhill, is within the countryside. Core Policy 1 states that development is strictly controlled in the open countryside but may be exceptionally permitted in circumstances outlined in Core Policy 4. It is agreed between the main parties that the proposal would not meet any of the circumstances outlined in Core Policy 4.
11. Nevertheless, the proposal would be located adjacent to the settlement boundary of Oakhill. Ashwick Parish Council's submissions outline that Oakhill has limited services, alleging that it would be unable to serve this proposed increased level of housing in this location. This was further discussed at the Hearing, with interested parties highlighting the limited public transport services and healthcare and education facilities, creating an overall likely reliance on private car by potential future occupiers of the proposal.

12. However, as a secondary village, Oakhill is deemed to have a level of facilities appropriate to enable some housing development. While its localised housing requirement may have already been met, the growth in housing stock at Oakhill due to the proposal, including the resulting percentage of homes relative to the local requirement in Table 9 of Core Policy 2, would be comparable to other secondary villages in the area. In addition, as the proposal would be located adjacent to established residential development, there would be little difference experienced by potential future occupiers in terms of accessing the services and facilities of Oakhill when compared with residents within the settlement boundaries of the village.
13. Consequently, while the proposal would fail to comply with Core Policies 1, 2, and 4 of the Local Plan due to its location, for the reasons outlined I attach limited weight to the harm arising due to this conflict.

Character and appearance

14. The appeal site is in a primarily residential area, with a range of dwelling styles and forms. In particular, it is surrounded on three sides by housing along Chapelfield, Sunnymead, and the southern side of High Street. Here dwellings generally sit in a tight-knit fashion, set back from the street by modest front gardens within plots of different shapes and sizes, providing an overall varied density of development.
15. Within this context the density of the proposal would not appear out of place. Dwellings would be sited close to the access road behind modest front gardens, with side parking providing visual relief among the built form so that the scheme would not appear unduly cramped, particularly given the varied surrounding pattern and placement of development. While interested parties raised at the Hearing that the perception of density is greater at the appeal site, it remains that at a density of 27.7 dwellings per hectare, the proposal would comply with the supporting text to Core Policy 2, which suggests a density of 25-30 dwellings per hectare in rural areas.
16. Concerns have been raised that the proposed hardstanding at Plots 14-17 would be a prominent feature of the scheme. However, this would be split into two sections, visually separated by the corner dwellings and front gardens at Plots 15-16 so as not to read as a singular overwhelming and unbroken feature, either from the dwellings themselves or when travelling through the site. It would be no more prominent than the corner garaging and parking area of the adjacent Sunnymead development which, although not a defining feature of the area, would provide some context for this adjacent proposed scheme. As such, in both the immediate and wider setting, the hardstanding of the proposal would not appear unduly dominant or out of place.
17. Similarly, the Council noted that spaces between Plots 5-7, 8-9, and 10-11 would be entirely hardstanding with no room for landscaping, and that trees adjacent to the highway may not be deliverable or would result in a road that would not be capable of adoption. However, while a landscaping strategy has been submitted as part of this application, landscaping is a reserved matter. Based on the evidence before me, the discussions at the Hearing, and my observations on site, there is nothing substantive to suggest that a suitable landscaping scheme could not come forward at reserved matters stage.

18. Landscaping along the southern boundary was also discussed at the Hearing, with the submitted plans showing a 1.5m high rubble stone wall with cock & hen coping in this location separating the proposal from the open field beyond and replacing the tree line currently present. The Council stated that this would provide a hard edge to the site, with no opportunity for communal landscaping, or certainty of retention of landscaping features in adjoining rear gardens to integrate this wall into the landscape.
19. However, while indicative, plans show that the wall would be constructed from materials to match others in the vicinity, and I observed a similar wall on the northern boundary. As such, it would retain a rural appearance that would not appear incongruous in the context of the site or the open fields beyond. The lack of a landscape buffer would not result in the proposed wall appearing abrupt and unsympathetic. Rather, the wall would integrate in the countryside setting to the south and mark the transition to the built development of the proposal to the north. I observed longer range views of the site during my visit, including from the nearby public right of way and equestrian yard. Even when experienced from these locations, the proposed boundary wall would not appear visually jarring within the immediate surrounds.
20. It is noted that the dwellings at Plots 5-11 would be affordable housing, and it was discussed at the Hearing that these may be distinguishable from other dwellings in the development, being grouped together with notably smaller front gardens and no garages. However, the Council has overall found the siting and layout of the affordable housing to be acceptable. Based on my observations, I have no reason to disagree. Furthermore, given the mixed form of housing in the immediate area, and the opportunity for a coherent design approach for the scheme to come forward at reserved matters stage, I am satisfied that the layout and siting of the affordable housing would not result in harm to the character and appearance of the area.
21. Reference has been made to a previous appeal relating to a residential scheme at the site. While the Council considers that the proposal would not adequately address previous concerns about character and appearance, I have limited information on that scheme before me and, for the reasons outlined above, I find that the proposal would not result in harm from a design perspective.
22. For the reasons given, the proposed development would not be harmful to the character and appearance of the area. As such, it would comply with Development Policies 4 and 7 of the Local Plan, insofar as these policies seek to ensure that development is of a scale, mass, form and layout that is appropriate to the local context and that the siting and design of development is compatible with its surroundings.

Mells Valley SAC

23. The appeal site falls within Band C of the Consultation Zone for the SAC. It is approximately 2.4km from the SAC, which is designated due to the presence of a large breeding population of Greater Horseshoe Bats, and it is accepted that the landscapes around the SAC are important in providing foraging habitat to maintain the favourable conservation status of these bats. The Mendip District Council Mells Valley SAC Guidance on Development was provided at the Hearing and sets out specifications for bat surveys within the SAC Consultation Zones. For Band C, guidance is clear that developers should take advice from consultant ecologists.

24. Natural England have been consulted on the proposal. It has outlined that due to the surrounding residential development the appeal site is unlikely to be a foraging route for Greater Horseshoe Bats, and that it does not provide any suitable roosting structures. In addition, the main parties agree that the proposal would not result in likely significant effects in this regard, and the Inspector deciding a previous appeal at the site concurred with this.
25. Nevertheless, I am the competent authority for the purposes of the proposal before me. The appellant's submitted Ecological Report acknowledges that the hedgerows and line of trees at the site offer potential opportunities for foraging bats, and outlines that automated static bat surveys undertaken registered Greater Horseshoe Bats, suggesting that they do pass over the site. Anecdotal evidence of Greater Horseshoe Bats being present at the site was also provided at the Hearing by interested parties.
26. While landscaping is a reserved matter, submitted evidence suggests that 10 trees would be removed from the site, in addition to a hedge on the southern boundary. Together with the introduction of additional residential development in the locality, and its associated activity and external lighting, there is therefore potential for the proposal, both on its own and in combination with other projects, to have a likely significant effect on the qualifying features of the SAC through the disturbance of habitat. This would compromise the conservation objectives of the SAC such that an adverse effect on its integrity cannot be ruled out.
27. However, mitigation has been suggested. This includes the installation of bat boxes, a sensitive lighting scheme, the submission of a Construction Environmental Management Plan and Landscape and Ecological Management Plan, and adherence to the Baseline Ecological Report, all of which could be secured by way of condition. Natural England has confirmed that these conditions would be sufficient to avoid an adverse impact on the integrity of the European site and its relevant features. I am content that such conditions can be imposed and would meet the conditions tests set out in the Framework. This has enabled me to complete my appropriate assessment and to conclude that the proposal would not adversely affect the integrity of the SAC. The scheme would comply with the Regulations.
28. In this regard, the proposal would comply with the Framework, which seeks to ensure that development protects and enhances biodiversity.

Planning Obligation

29. An executed section 106 agreement was provided after the Hearing. This provides a mechanism to secure the provision of education contributions, affordable housing, and public open space, including its management and maintenance. Although the agreement has been signed by the relevant parties, it is necessary that I consider this obligation against the tests in the Community Infrastructure Levy Regulations 2010 and the Framework.
30. Development Policy 11 of the Local Plan states that proposals will make provision for 30% of the total number of new homes to be provided in affordable tenure. This aligns with the aims of the Framework to ensure affordable housing delivery. The section 106 agreement provides for this level of onsite affordable housing to be provided as part of the proposal.

31. Development Policy 16 of the Local Plan states that all new residential development will make a contribution towards the provision of new open space, including management arrangements. This aligns with the aims of the Framework to ensure provision of open space. A total of 0.29ha of open space would be provided on site, which the main parties agree would be sufficient. However, as no LAP, LEAP, or MUGA is to be provided in line with Fields in Trust Guidance for Outdoor Sport and Play, an offsite contribution has been agreed in this respect. The section 106 agreement outlines the on-site public open space, the calculation of the off-site contribution and when this is to be paid, and management and maintenance arrangements.
32. Development Policy 19 of the Local Plan states the effects of new development will be mitigated or compensated by use of legal agreement where the development will result in specific impacts on the area or local infrastructure. This aligns with the Framework, which seeks for plans to set out the contributions expected from development. In this respect it is agreed between the main parties that the proposal would generate additional pupils for surrounding schools. The section 106 agreement outlines the calculation of the education contribution and when this is to be paid.
33. Overall, I am satisfied that the contributions would be necessary to make the development acceptable in planning terms and would be directly related, and fairly and reasonably related in scale and kind, to the development proposed. The agreement, therefore, meets the relevant tests and I have attached weight to its provisions in reaching my decision.

Other Matters

34. The main parties agree that the Council cannot demonstrate a five year housing land supply, with the most up to date figure provided being a 3.24 year supply cited in November 2023. The proposal would provide up to 23 dwellings, including 30% affordable housing, immediately adjacent to an established residential area. While the Council may have previously delivered adequate levels of housing and interested parties cite a lack of need or demand for housing in the locality, it remains that on the evidence there is a significant housing supply shortfall that must be addressed. Although a nutrient neutrality scheme has the potential to unlock residential development, there is nothing substantive before me to provide certainty that this would address the current housing shortfall. As such, I attach significant weight to the additional housing and affordable housing of the proposal.
35. The development would have some socio-economic benefits due to construction investment and contribution to the local economy and local services by future occupiers. However, these would be modest in scale. There is no certainty local contractors would be used, and interested parties highlight that the local services that could benefit are limited. As such, this benefit attracts limited weight. The proposal would provide a footpath link to the adjacent Sunnymead development. While concerns have been raised that this would front onto a car parking area, it remains that it would serve to increase the connectivity of the immediate area, albeit to a modest degree. As such, I attach limited weight to this benefit.
36. The proposal would create onsite public open space and make a contribution to the improvement of offsite open space. While this is necessary to make the development acceptable in planning terms, it also provides a limited benefit to existing village residents. The proposal would also provide a biodiversity net gain of

36.37% in habitat units and 20.91% in hedgerow units. This too counts in favour of the proposal.

37. I note concerns raised by interested parties, both in writing and during the Hearing, particularly with regard to the potential for the proposal to impact on highway safety. Parties have cited existing issues with parking pressure and congestion in Oakhill, in addition to concerns regarding a potential increased collision risk at junctions entering and exiting the village. The proposal would provide adequate parking at the site, such that it would be unlikely to increase parking pressure in the village. While it would increase traffic movements along High Street and at busy junctions, I observed there to be adequate visibility and light traffic during my rush hour site visit. In addition, no concerns in these regards have been raised by the Highways Authority. While queries were raised regarding the ability of private cars and refuse vehicles to access certain parts of the site, this has been addressed by a condition requiring a swept path analysis. As such, I do not find that the proposal would result in adverse effects on transport, parking, or highway safety.
38. Concerns have also been raised by interested parties regarding the potential for the proposal to increase flood risk, with evidence suggesting that High Street can be impacted during heavy rain. The Lead Local Flood Authority considered the previous development at the site to be acceptable, and the Council found no adverse impacts of this nature with regard to the current scheme. In addition, a condition has been attached requiring the submission of a surface water drainage scheme. As such, I am satisfied the proposal would not result in adverse impacts regarding flooding.
39. There is nothing substantive, either submitted in writing, discussed at the Hearing, or observed on my visit, to suggest that the proposal would result in adverse impacts on the living conditions of occupiers of surrounding dwellings, air quality, noise, or land stability. Interested parties have also referred to other decisions on applications and appeals relating to the delivery of housing outside of settlement boundaries, in situations where a five year housing land supply could not be evidenced. However, each application is decided on its own site-specific merits, and reference to development elsewhere carries little weight.

Planning Balance

40. The proposal, due to its location in the open countryside, would fail to comply with Core Policies 1, 2, and 4 of the Local Plan. I have attached limited weight to the harm arising in this regard, even so, the proposal would conflict with the development plan as a whole and because of the housing land supply position, paragraph 11(d) of the Framework is relevant.
41. I have also found that there is potential for the proposal to have a likely significant effect on the qualifying features of the SAC, but as it has been shown that such effects can be mitigated, the effects on the SAC do not provide a clear reason for refusal and paragraph 11(d)(ii) is engaged.
42. The government's objective through the Framework is to significantly boost the supply of homes, and it attaches importance to a sufficient amount of land coming forward where it is needed for this purpose. The proposal would provide up to 23 additional homes in an area which has a housing shortfall and would include affordable housing. As such, I attach significant weight to the additional housing and affordable housing of the proposal. I have also identified limited benefits with regard to socio-economic impact, connectivity,

and provision of public open space, in addition to an evidenced biodiversity net gain, which also count in favour of the scheme.

43. Therefore, taking account of all matters outlined, I find that the adverse impacts of the proposal would be significantly and demonstrably outweighed by the benefits when assessed against the policies in the Framework taken as a whole, such that the presumption in favour of sustainable development would apply.

Conditions

44. Conditions were agreed between the main parties, and discussed at the Hearing. I have amended the wording of certain conditions to ensure that they are appropriate, without altering their underlying aims.

45. In addition to requiring a reserved matters application and the standard timeframe for commencement, I have imposed a condition to require adherence with the approved plans in the interests of certainty and proper planning.

46. The approval of a Construction Management Plan prior to the commencement of construction is necessary in the interests of residential amenity and highway safety, while the approval of a Construction Environmental Management Plan (CEMP) and Landscape and Ecological Management Plan is required to safeguard ecology and biodiversity. I have taken the recommendations of Natural England on board regarding the content of the CEMP. The parties had the opportunity to comment on Natural England's consultation response. A condition relating to obtaining a licence with regard to Great Crested Newts is also necessary in the interests of ecology, particularly with regard to a protected species.

47. I have attached a suite of conditions relating to the assessment of contaminated land risks prior to commencement of development, and appropriate follow up action, to ensure no risk to human health or other receptors. A further pre-commencement condition requiring the approval of external materials is also necessary to safeguard the character and appearance of the area.

48. I have imposed a range of conditions to be discharged prior to the occupation of any dwelling approved. These include a condition requiring the approval of details relating to estates road, footways, and access, among other things, in the interests of highway safety. I have removed the suggested reference to parking and turning areas and to boundary treatments in this condition, given that these details are shown on the approved plans and form part of separate pre-occupation conditions necessary in the interests of: access and highway safety; and living conditions, respectively. Also necessary in the interests of certainty and to ensure adequate access is a condition that each dwelling shall be served by a pathway from the highway to the dwelling.

49. Conditions requiring the approval and implementation of a Travel Plan and bicycle storage are necessary to promote sustainable transport methods, while a condition relating to the implementation of the refuse strategy is required in the interests of amenity and character and appearance. I have also imposed a pre-occupation condition relating to the approval and implementation of a rainwater harvesting scheme in the interests of water efficiency.

50. Conditions are also necessary to require certain details to come forward as part of the reserved matters application. This includes conditions relating to an arboricultural method statement; and a surface water drainage strategy, in the interests of safeguarding trees; and avoiding flood risks, respectively. Such conditions requiring adherence to the Ecological Report and the Biodiversity Net Gain calculation are also necessary in the interests of ecology and biodiversity. This includes the recommendation of the Ecological Report for bat boxes to be installed at the site. While such a condition was also suggested regarding electric vehicle charging points, this is now required by Building Regulations, such that a condition in this regard is unnecessary.
51. A condition relating to an external lighting strategy is necessary in the interests of ecology, particularly regarding bats. I have taken the recommendations of Natural England on board with regard to the specifications required as part of the lighting strategy. I have removed the tailpiece clause that would have permitted other external lighting on site with the written approval of the local planning authority, as any changes to the external lighting should follow the proper planning process.
52. I have also attached a condition to always keep garages for the purposes of parking and storage, in the interests of ensuring appropriate off-street parking provision. I have further attached a condition restricting permitted development rights for the installation of windows on the side elevations of certain properties in the interests of residential amenity. On the information before me, I find this to be justified and proportionate in this instance.

Conclusion

53. The proposal would not accord with the development plan but material considerations, especially the presumption in the Framework, outweigh this conflict. Therefore, for the reasons given, the appeal is allowed.

C Rafferty

INSPECTOR

SCHEDULE 1 – CONDITIONS

1. The development hereby permitted shall take place not later than two years from the date of approval of the last reserved matters to be approved.
2. Details of the appearance and landscaping (“the reserved matters”) shall be submitted to and approved in writing by the local planning authority before any development takes place and the development shall be carried out as approved.
3. Application for approval of the reserved matters shall be made to the local planning authority not later than three years from the date of this permission.
4. The development hereby permitted shall be carried out in accordance with the following plans: Location Plan dated 20 November 2023; Proposed Site Plan Drawing No. 2100 Revision 03 dated 10 August 2023; Proposed Site Plan – Parking Strategy Drawing No. 2101 Revision 02 dated 10 August 2023; Proposed Site Plan – Refuse Strategy Drawing No. 2102 Revision 02 dated 10 August 2023; Proposed Site Plan – Affordable Houses Drawing No. 2103 Revision 02 dated 10 August 2023; Tree Constraints Plan Drawing No. 11900TCP01 (Overview) dated October 2023; Tree Protection Plan Drawing No. 11900TPP01 dated October 2023; and Landscape Strategy Drawing No. 1531-CAM-XX-XX-DR-L-0001 Revision P03 dated September 2023.
5. No development including ground works, vegetation clearance or demolition shall commence until a Construction Management Plan has been submitted to and approved in writing by the local planning authority. The Statement shall provide for:
 - a) construction vehicular routes to and from site
 - b) expected number of construction vehicles per day
 - c) the parking of vehicles of site operatives and visitors including a plan showing the onsite parking arrangements
 - d) loading and unloading of plant and materials
 - e) storage of plant and materials used in constructing the development
 - f) wheel washing facilities
 - g) measures to control the emission of dust and dirt during construction
 - h) delivery and construction working hours
 - i) specific measures to be adopted to mitigate construction impacts in pursuance of the Environmental Code of Construction Practice
 - j) a scheme to encourage the use of public transport amongst contractors
 - k) on-site turning facility for delivery vehicles and egress onto highway only with guidance of a trained banksman
 - l) measures to avoid traffic congestion impacting upon the strategic road network.

The development shall thereafter be carried out in accordance with the approved Construction Management Plan.

6. No development including demolition, ground works, vegetation clearance shall commence until a Construction Environmental Management Plan (CEMP) has been submitted to and approved in writing by the Local Planning Authority. The CEMP shall include the following:
- a) Risk assessment of potentially damaging construction activities.
 - b) Identification of 'biodiversity protection zones'
 - c) Practical measures (both physical measures and sensitive working practices) to avoid or reduce impacts during construction, including nesting birds habitat clearance measures, badgers buffer zones, reptile/amphibian sensitive habitat clearance, and safeguarding measures for bats. This shall include measures to control lighting during construction, details on how hedgerows and trees will be protected, and how dust will be controlled during construction.
 - d) The location and timing of sensitive works to avoid harm to biodiversity features.
 - e) The times during construction when specialist ecologists need to be present on site to oversee works.
 - f) Responsible persons, lines of communication and written notifications of operations to the Local Planning Authority.
 - g) The role and responsibilities on site of an Ecological Clerk of Works (ECoW) or similarly competent person including regular compliance site meetings with the Council.
 - h) Use of protective fences, exclusion barriers and warning signs.
 - i) Ongoing monitoring, including compliance checks by a competent person(s) during construction and immediately post-completion of construction works.

The construction of the development shall thereafter be carried out strictly in accordance with the approved CEMP (biodiversity).

7. No development shall commence until a Landscape and Ecological Management Plan (LEMP) has been submitted to and approved in writing by the local planning authority. The LEMP shall include the following:
- a) Description and evaluation of features to be managed.
 - b) Ecological trends and constraints on site that might influence management.
 - c) Aims and objectives of management.
 - d) Appropriate management options for achieving aims and objectives.
 - e) Prescriptions for management actions.
 - f) Preparation of a work schedule (including an annual work plan capable of being rolled forward over a five-year period).
 - g) Details of the body or organisation responsible for implementation of the plan.
 - h) On-going monitoring and remedial measures.

The LEMP shall also include details of the legal and funding mechanism(s) by which the long-term implementation of the plan will be secured by the developer with the

management body(ies) responsible for its delivery. The LEMP shall also set out (where the results from monitoring show that conservation aims and objectives of the LEMP are not being met) how contingencies and/or remedial action will be identified, agreed and implemented so that the development still delivers the fully functioning biodiversity objectives of the originally approved scheme. The LEMP shall thereafter be implemented in accordance with the approved details.

8. No development shall commence until the following has been submitted to and approved in writing by the Local Planning:
 - a) a copy of the licence issued by Natural England pursuant to Regulation 55 of The Conservation of Habitats and Species Regulations 2017 authorising the development to go ahead; or
 - b) a statement in writing from the licensed ecologist to the effect that he/she does not consider that the specified development will require a licence.
9. No development shall commence until an assessment of the risks posed by any contamination (including gases and water quality) has been submitted to and approved in writing by the local planning authority. This assessment must be undertaken by a suitably qualified contaminated land practitioner, in accordance with British Standard BS 10175: Investigation of potentially contaminated sites - Code of Practice and the Environment Agency - Land Contamination Risk Management (LCRM) (or equivalent British Standard and Model Procedures if replaced), and shall assess any contamination on the site, whether or not it originates on the site.

The assessment shall include: a survey of the extent, scale and nature of contamination; the potential risks to: human health; property (existing or proposed) including buildings, crops, livestock, pets, woodland and service lines and pipes; adjoining land; ground waters and surface waters; ecological systems; and archaeological sites and ancient monuments.
10. No development shall take place where (following the risk assessment) land affected by contamination is found which poses risks identified as unacceptable in the risk assessment, until a detailed remediation scheme has been submitted to and approved in writing by the local planning authority. The scheme shall include an appraisal of remediation options, identification of the preferred option(s), the proposed remediation objectives and remediation criteria, and a description and programme of the works to be undertaken including the verification plan. The remediation scheme shall be sufficiently detailed and thorough to ensure that upon completion the site will not qualify as contaminated land under Part IIA of the Environmental Protection Act 1990 in relation to its intended use. The approved remediation scheme shall be carried out and upon completion a verification report by a suitably qualified contaminated land practitioner shall be submitted to and approved in writing by the local planning authority before the development or relevant phase of development is occupied.
11. Any contamination that is found during the course of construction of the development hereby permitted that was not previously identified shall be reported immediately to the local planning authority. Development on the part of the site affected shall be suspended until a risk assessment has been carried out and submitted to and approved in writing by the local planning authority. Where unacceptable risks are found, the development or relevant phase of development shall not resume or continue until remediation and verification schemes have been

carried out in accordance with details that shall first have been submitted to and approved in writing by the local planning authority.

12. No development above ground level shall take place until a schedule of materials and finishes, and samples of all external facing materials, including roofs, have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved sample panels.
13. The development hereby permitted shall not be occupied until the means of access, parking, and turning areas have been constructed in accordance with the approved plans. The vehicular access, parking and turning areas shall be retained in perpetuity thereafter.
14. No dwelling hereby permitted shall be occupied until it is served by a properly bound and compacted footpath and carriageway to at least base course level between the dwelling and the existing adopted highway.
15. No dwelling hereby permitted shall be occupied until its associated screen walls/fences or other means of enclosure have been erected in accordance with the approved plans. The screen walls/fence or other means of enclosure shall thereafter retained.
16. No dwelling hereby permitted shall be occupied until the proposed estates road; footways; sewers; retaining walls; service route; vehicle overhang margins; embankments; visibility splays; carriageway gradients; drive gradients; verges; street lighting; street furniture; pedestrian and cycle routes and associated vehicular accesses and crossings; tactile paving; proposed levels; swept path analysis for a vehicle of 10.4m length; and service corridors have been constructed, laid out and maintained in accordance with details that shall have first been submitted to and approved in writing by the local planning authority prior to the construction of any aspect of the new section of the highway.
17. No dwelling hereby permitted shall be occupied until bicycle storage in accordance with the Somerset County Council standards has been provided in accordance with details which shall have first been submitted to and approved in writing by the local planning authority. The approved bicycle storage shall be retained permanently thereafter.
18. No dwelling hereby permitted shall be occupied until a Measures-Only Travel Plan in line with the Somerset Council Travel Plan Guidance (2011) is implemented in accordance with details which shall have first been submitted to and approved in writing by the local planning authority.
19. No dwelling hereby permitted shall be occupied until its respective provision for the storage of recycling and waste containers has been made in accordance with the approved Refuse Strategy reference RS.01 Rev I received 15 Feb 2022.
20. No dwelling hereby permitted shall be occupied until a scheme for rainwater harvesting or other methods of capturing rainwater for use by residents (e.g. water butts) has been submitted to and approved in writing by the local planning authority. The development shall thereafter be constructed in accordance with the approved details and thereafter retained.

21. The reserved matters application shall include a Detailed Arboricultural Method Statement following the recommendations contained within BS5837:2012. The Detailed Arboricultural Method Statement shall contain full details of the following:
- a) Timing and phasing of arboricultural works in relation to the approved development;
 - b) Construction exclusion zones;
 - c) Protective barrier fencing;
 - d) Ground protection;
 - e) Details of any works within the RPA (Root Protection Area) and the proposed arboricultural supervision;
 - f) Service positions; and,
 - g) details of any special engineering requirements, including 'no dig construction.
22. The reserved matters application shall demonstrate that the development shall be carried out in strict accordance with the recommendations set out in the Updated Baseline Ecological Report (Addendum). The Updated Baseline Ecological Report (Addendum) shall be adhered to and implemented throughout the construction period strictly in accordance with the approved details.
23. The reserved matters application shall demonstrate that the proposal will comply with the recommendations set out in the Biodiversity Net Gain Assessment (dated October 2023), and achieve at least 36.37% biodiversity net gain in habitat units and 20.91% in hedgerow units.
24. The reserved matters application shall include a surface water drainage scheme for the site, based on sustainable drainage principles and an assessment of the hydrological and hydrogeological context of the development, for the approval of the Local Planning Authority. The surface water drainage scheme shall include:
- a) a programme of phasing, implementation and maintenance for the lifetime of the development;
 - b) details of any private drainage management arrangements and riparian ownership; and
 - c) any management arrangements for features which are not adopted under S104 of The Water Industry Act (1991).
25. No external lighting shall be erected or provided on the site until a "lighting design for bats" has been submitted to and approved in writing by the local planning authority. The design shall show how and where external lighting will be installed (including through the provision of technical specifications) so that it can be clearly demonstrated that areas to be lit will not disturb or prevent bats using their territory or having access to their resting places. The design shall include modelling of light spill to ensure it is limited to 0.5 lux on any adjacent habitat, and all external lighting should have an Upwards Light Ratio of 0%, a colour temperature of 2700 Kelvin or lower, and a peak wavelength higher than 550nm. All external lighting shall thereafter be installed in

accordance with the approved details and shall thereafter be retained and maintained in accordance with the approved details. No new external lighting other than that approved shall be installed within the boundary of the application site.

26. The garages hereby permitted shall be kept available at all times for the parking of motor vehicles by the occupants of the dwelling and their visitors and for ancillary domestic storage and for no other purpose.
27. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that Order with or without modification), no windows, roof lights, or openings other than those expressly authorised by this permission shall be constructed on the side elevation or roofslope of dwellings at Plot Nos. 1, 11 and 23.

END OF SCHEDULE

APPEARANCES

FOR THE APPELLANT

K Stokes	Stokes Morgan Planning Ltd
A Madden	Legal Representative

FOR THE LOCAL PLANNING AUTHORITY

J Milling	Somerset Council
A Clarke	Somerset Council
N White	Somerset Council

INTERESTED PARTIES

R Slater	Local Resident
D Barlow	Local Resident
D Marshall	Local Resident
D Thorley	Local Resident, Ashwick Parish Council

DOCUMENTS AND PLANS SUBMITTED AT THE HEARING

- Appeal Decision APP/E3335/W/23/3324852;
- The Mendip District Council Mells Valley SAC Guidance on Development;
- Somerset Council Ecology comments on application 2020/2603/FUL;
- Photograph of the northern boundary of the appeal site;
- Executed copy of the Statement of Common Ground;
- Mendip Local Plan Part II: Sites and Policies (December 2021);
- Mendip District Net Additional Dwellings completed 2006-2024;
- Mendip District Settlements Growth to Housing Stock and Local Plan Minimum Requirements.



Appeal Decision

Site visit made on 22 August 2024 by R Dickson BSc (Hons) MSc MRTPI

Decision by Ben Plenty BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27 September 2024

Appeal Ref: APP/E3335/Z/24/3345513

Land Adjacent to Wirral Park Roundabout, Glastonbury BA6 9XE

- The appeal is made under Regulation 17 of the Town and Country Planning (Control of Advertisements) (England) Regulations 2007 (as amended) against a refusal to grant express consent.
 - The appeal is made by Alight Media Ltd against the decision of Somerset Council.
 - The application Ref is 2024/0344/ADV.
 - The advertisement proposed is for the erection and display of a single freestanding 6 x 3 metre LED display unit.
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Decision

1. The appeal is dismissed.

Appeal Procedure

2. The site visit was undertaken by a representative of the Inspector whose recommendation is set out below and to which the Inspector has had regard before deciding the appeal.

Preliminary Matters

3. The Council has referenced policies it considers to be relevant to this appeal and I have taken these into account as a material consideration. However, powers under the Town and Country Planning (Control of Advertisements) Regulations 2007 (The Regulations) to control advertisements, may only be exercised in the interests of visual amenity and public safety, taking account of any material factors. Consequently, the Council's policies have not by themselves been decisive in my determination.

Main Issues

4. Paragraph 141 of the National Planning Policy Framework (Framework) states that advertisements should be the subject to control only in the interests of amenity and public safety, taking account of cumulative impacts. The main issues are the effect of the proposed advertisement on public safety and visual amenity.

Reasons for the Recommendation

Public safety

5. The appeal site is situated on a busy roundabout with four exits. This area, although edged with trees, includes a petrol station and other static signage on the roundabout, which already has the potential to distract road users. While there are no signalled pedestrian crossings near to the site, there are footways

around the roundabout, and these include dropped kerbs for pedestrians to cross.

6. The Planning Practice Guidance highlighted by the appellant identifies roundabouts as being one of the many points in which drivers need to take more care, and where advertisements are more likely to affect public safety. I also recognise that the topography around the site is generally flat, adjacent to streetlights and as such the site presents good forward visibility for approaching motorists. Nonetheless, the proposal would be situated in a highly visible position, at a point where road users attention should be focused on safely navigating the roundabout.
7. The proposed advertisement would be within the 'frame' of approaching eastbound traffic from Wirral Park Road, seeking to safely merge onto the roundabout. The proposal would be located within the immediate eye line of these approaching drivers and those passing through the roundabout. This would hamper motorist's clear sense of horizontal perspective that would confuse a driver's view of existing highway hazards. In such views motorists would be distracted by the proposed advertisement. This distraction would prevent concentration, diverting attention from other road users. This would increase the risk of collisions, thereby being demonstrably harmful to highway safety.
8. I acknowledge that there are other smaller advertisements at this roundabout. However, these are static, of a lesser scale, and related to the businesses accessed from the roundabout. Although digital advertisements can be controlled in terms of their brightness and interval between advertisement changes, the presence of a digital advertisement in this location would be highly distracting for road users. The introduction of the proposed advertisement, in addition to the other advertisements would have a cumulative effect of distracting drivers and would therefore be harmful to public safety.
9. Accordingly, the proposed advertisement would be harmful to public safety, in conflict with the Framework. In accordance with the Regulations, I have taken into account Policy DP9 of the Mendip Local Plan Part 1: Strategy and Policies 2006-2029 (2014) (Local Plan), which seek to ensure proposals are safe. As I have concluded that the proposal would harm public safety, the proposal would also conflict with these policies.
10. I have considered the conditions suggested by the appellant to limit brightness, and secure controls over the display of images. However, these would not overcome the harm I have identified as they would not address the overall prominence of the advertisement resulting from the digital display, nor would they suitably address the effect of the constant digital illumination or changing images which would contribute to that harm. I do not consider therefore that these conditions, or others, would be sufficient to mitigate the identified harm to public safety.

Visual amenity

11. The advertisement would be set before a backdrop of trees in a commercial setting. Near to the site there is a petrol station, and beyond that there are other service-station related businesses. While the proposed advertisement would be separated by a road from the other advertisements, it would still

relate to the commercial setting of the roundabout and prevailing character. The proposal would be of a larger scale than other advertisements in the commercial area, however given that 48-sheet digital advertisements are not uncommon, it would complement the overall character of the area.

12. The proposal would be adjacent to a residential area, however given that the illuminated advertisement would address the roundabout, and the rear would be screened with hedges and trees, it would not harm the visual amenity of the area in respect to the impact on residential amenity.
13. For these reasons, the proposal would not result in any significant adverse impacts to the visual amenity of the area. As such, the proposal would accord with paragraphs 135 and 141 of the Framework, which require development to be sympathetic to the local area and for a decision maker to consider its effect on amenity. In accordance with the Regulations, I have taken into account Policies DP1, DP7 and DP9 of the Local Plan, which collectively seek to ensure proposals have an appreciation of the built context of their locality. Given that I have concluded that the proposal would not harm visual amenity, the proposal would be in accordance with these policies.

Other Matters

14. I have been provided with two other examples of approved advertisements at 21 Old Taunton Road and Land at Rosebery Avenue. Their highway context differs from this appeal. The first was on the side of a building in an area with no complex junctions. In terms of public safety, the second differs from the appeal site as it was situated on the approach to a roundabout, rather than on it, as is the case in this appeal. These examples therefore bare little weight on my recommendation.

Conclusion and Recommendation

15. Although I have concluded that no harm would arise from the proposal with respect to visual amenity, it would be harmful to public safety which would not be mitigated through the control of intensity of illumination or frequency of changes. As a result, for the reasons above and having had regard to all other matters raised, I recommend that the appeal should be dismissed.

R Dickson

APPEAL PLANNING OFFICER

Inspector's Decision

16. I have considered all the submitted evidence and my representative's report and on that basis the appeal is dismissed.

Ben Plenty

INSPECTOR



Appeal Decision

Hearing held on 8 October 2024

Site visit made on 8 October 2024

by P N Jarratt BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16 October 2024

Appeal Ref: APP/E3335/C/23/3333243

Building on land west of Winters Hill Lane, West Compton, BA4 4PA

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended). The appeal is made by Mr Tony Harvey against an enforcement notice issued by Somerset Council.
 - The notice was issued on 12 October 2023.
 - The breach of planning control as alleged in the notice is without planning permission and within the last four years operational development consisting of:
 - i) The erection of a steel framed and glass/cement board clad building (photograph attached to the notice);
 - ii) Associated ground works to create hardstanding,
 - iii) Erection of a wooden stable building (foreground in photograph attached to the notice).
 - The requirements of the notice are:
 - (i) Demolish the building including excavating and removing all foundations. Remove the resulting debris permanently from the land.
 - (ii) Remove all the areas of hardstanding from the land. Remove the resulting debris permanently from the land.
 - (iii) Restore the land to its immediate condition prior to the unauthorised operational development being commenced.
 - The period for compliance with the requirement is 6 months.
 - The appeal is proceeding on the grounds set out in section 174(2) (a), (d) and (f) of the Town and Country Planning Act 1990 (as amended). Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.
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Decision

1. Since the notice is found to be a nullity, no further action will be taken in connection with the appeal. In the light of this finding the Local Planning Authority should consider reviewing the register kept under s188 of the Act as amended.

Reasons

2. There are deficiencies in the enforcement notice relating to the allegation, the requirements, the reasons for issuing the notice and the plan.
3. The notice indicates that the land to which the notice relates is land to the west of Winter's Hill Lane, West Compton, and edged in red on the plan. It reflects the red line area on the Acorus location/block plan 200-01A accompanying refused application 2022/2348/FUL. This is an irregularly shaped area showing the siting of the steel-framed building and vehicular access. Excluded from the site but adjacent to it is shown a small rectangular un-annotated area, thought

to be a shed or stable building. The proposed site plan accompanying the application (drawing 200_03) illustrates the siting of the steel-framed building, two adjacent areas of hardstanding and an enlarged stable building.

4. The area subject to the notice does not reflect what has occurred and what is currently visible on the site. In particular, the red line excludes what may have been a modest 2/3 horse stable building at one time but excludes part of the area occupied by the extension to the side and rear of this building to create a four horse stable with tack room, etc and an extended hardstanding to the north of the stable building.
5. It only became apparent at the site inspection following the hearing that the plan is incorrect. The red boundary of the plan inadequately illustrates the extent of the area subject to the alleged operational development and, in particular, the stables as extended are partly within and partly outside the appeal site. It would be impossible to correct the plan without implications in respect of the allegations and requirements. The plan is defective, though that in itself would have been correctable if other matters had not rendered the notice so defective.
6. The allegation makes no reference to the purpose for which the steel-framed building is intended. The statements of both parties refer to the development being intended for residential use, and indeed, that is what the completed building has been used for over recent months.
7. The allegation at 3(iii) refers to stables in the foreground of the photograph in the notice, whereas there is no such stable in this position.
8. The requirement at 5(i) is to demolish a building (singular), yet the allegation refers to the erection of a steel framed building and a wooden stable building. The requirement is ambiguous.
9. Paragraph 4 of SI 2002/2682 for England indicates that an enforcement notice shall specify the reasons why the local planning authority considers it expedient to issue the notice; all policies and proposals in the development plan which are relevant to the decision to issue the notice; and the precise boundaries of the land to which the notice relates (whether by reference to a plan or otherwise). The plain words of the provisions indicate that a plan is not mandatory and it is perfectly possible to specify the precise boundaries merely by giving the address of the premises.
10. The reasons for issuing the notice reiterate the reasons given for refusing application 2022/2348/FUL, which relate to the development of housing in the open countryside. Whilst this complies with s173(10) to some extent, no reason is given why it is expedient to include the erection of a wooden stable building in the allegation. S172(1)(b) provides that an enforcement notice can only be issued where it appears to the local planning authority to be expedient to do so.
11. An enforcement notice must be drafted to tell the recipient fairly what has been done wrong and what must be done to remedy it¹. I find the notice to be

¹ Miller Mead v MHLG [1963] 2 WLR 225

fundamentally defective as I consider that it is hopelessly ambiguous and uncertain. The notice is a nullity.

12. I have a duty to get the notice in order and I have wide powers to correct the notice including the substitution of the plan so long as the amendments would cause no injustice to the parties. However, where a notice is a nullity, there are no powers of correction. Whilst certain deficiencies could have otherwise been corrected, that option is not open to me.
13. I appreciate that at the time of the enforcement investigations, officers were limited in their ability to carry out site inspections due to COVID restrictions. Nevertheless, greater attention should have been given to the accuracy of the notice which is dated 12 October 2023, post-dating the extension of the stables and hardstanding. The Council should have been alert to the deficiencies of the notice and could have considered withdrawing the notice and serving a new one under the second-bite provisions.

Conclusion

14. I conclude that the notice is a nullity. In these circumstances, the appeal on the grounds set out in s174(2) (a), (d) and (f) of the 1990 Act as amended and the application for planning permission deemed to have been made under s177(5) of the Act, as amended, do not fall to be considered.

P N Jarratt

INSPECTOR

Appearances

For the appellant:

Amanda Sutherland, Sutherland Property and Legal Services Ltd.

Tony Harvey, appellant

For the Local Planning Authority:

Anna Clark

Lynsey Bradshaw, Planning Officer.

Interested Parties:

Gillian Barker

Richard Woodhouse

Garfield Kennedy

Nick Hall

Stuart Vaughan

Paul Salariya