



Area East Committee - Wednesday 9th December 2020

Please find attached the appeal decision notice for the former BMI site, Ansford. (Item 12 – Planning Appeals)

Agenda Item 12



The Planning Inspectorate

Appeal Decisions

Site visit made on 14 October 2020

by Benjamin Webb BA(Hons) MA MA MSc PGDip(UD) MRTPI IHBC

an Inspector appointed by the Secretary of State

Decision date: 11 November 2020

Appeal A: APP/R3325/W/20/3247647

Land at the former BMI site, Cumnock Road, Castle Cary BA7 7HZ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Castle Cary (BMI) Ltd against the decision of South Somerset District Council.
 - The application Ref 18/01602/FUL, dated 17 May 2018, was refused by notice dated 29 August 2019.
 - The development proposed is described as demolition of existing buildings, conversion of and alterations to listed buildings to form 11 No. dwellings, the erection of 70 No. dwellings (total 81 No. dwellings) and associated works, including access and off-site highway works, parking, landscaping, open space, footpath links and drainage infrastructure.
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Appeal B: APP/R3325/Y/20/3247652

Land at the former BMI site, Cumnock Road, Castle Cary BA7 7HZ

- The appeal is made under section 20 of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the Act) against a refusal to grant listed building consent.
 - The appeal is made by Castle Cary (BMI) Ltd against the decision of South Somerset District Council.
 - The application Ref 18/01603/LBC, dated 17 May 2018, was refused by notice dated 29 August 2019.
 - The works proposed are described as demolition of existing buildings, conversion of and alterations to listed buildings to form 11 No. dwellings, the erection of 70 No. dwellings (total 81 No. dwellings) and associated works, including access and off-site highway works, parking, landscaping, open space, footpath links and drainage infrastructure.
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Decision

1. Appeal A is dismissed.
2. Appeal B is dismissed.

Procedural Matters

3. As set out above, there are 2 appeals on this site. Each relate to the same scheme but address separate applications relating to planning permission in the case of Appeal A, and listed building consent in the case of Appeal B. I have considered each on its individual merits, however, to avoid duplication I have dealt with the Appeals together, except where otherwise indicated.
4. The appellant used the same description for both applications. As such, the scope of the works proposed in relation to Appeal B extend well beyond those for which listed building consent is actually required. I have therefore limited

my consideration of Appeal B to those aspects of the scheme involving works to listed buildings.

5. An application for costs was made by Castle Cary (BMI) Ltd against both of the decisions of South Somerset District Council. This application is the subject of a separate Decision.

Main Issues

6. The main issues are:

- the effect of the scheme on protected species;
- whether the scheme would preserve Grade II listed buildings, their settings, or any of the features of special architectural or historic interest that they possess;
- in relation to Appeal A, the effect of the scheme on the position of Castle Cary within the settlement hierarchy; and
- in relation to Appeal A, whether the scheme would provide adequate parking space.

Reasons

Protected species

7. Bats are a protected species under the Wildlife and Countryside Act 1981, and a European Protected Species (EPS) under the Conservation of Habitats and Species Regulations 2017 (the Habitats Regulations). An Ecological Impact Assessment (the Ecology Report), dated March 2018 was submitted with the application subject of Appeal A. This was based on a Preliminary Ecological Appraisal dated July 2017, a limited inspection and surveys carried out between April and September 2017, and a since superseded site layout plan.
8. The Ecology Report states that it will require updating unless development commences within 12 months. More than 1.5 years have therefore now passed since it expired, and more than 3 years have passed since the surveys upon which it is based were undertaken. The information set before me is therefore significantly out of date.
9. The Ecology Report was also out of date at the time the Council made its decisions, however the effect of the scheme on protected species was not a reason for refusal of either application. I therefore sought the views of the parties during the appeal. In response the above evidence was reiterated.
10. The Ecology Report identifies the existence of day roosts of pipistrelle, serotine, lesser horseshoe and greater horseshoe bats within the mill and attached offices, and foraging and commuting by 7 species of bat within and across the site. The warehouse and the engine house/boiler house/power workshop were additionally identified as offering high suitability for bats.
11. The site was thus identified as supporting a high diversity of bat species, including the rarer species serotine and noctule in relatively high numbers. The Ecology Report notes the potential for change, and in this regard the value of the site to, and its use by bats could indeed have changed since it was last surveyed in 2017, and the Ecology Report was produced in 2018. The likelihood

- of change appears increased by the limited evidence for disturbance of the buildings on site, as too the large number of bat species previously recorded.
12. The Ecology Report indicates that conversion of the mill and offices would lead to the disturbance and destruction of bat roosts, and thus sets out mitigation measures. These include landscaping, and creation of dedicated roost features within the roof void of the warehouse, and cellar beneath the offices. However, neither is clearly detailed on the application plans. Furthermore, if use of the site by bats has in fact changed since these measures were specified, I cannot be certain that they would be sufficient to mitigate any harm caused.
 13. Given the effect on a EPS, I am required to have regard to the 3 tests set out for EPS Licensing, which are: whether the development is necessary for preserving public health or public safety or other imperative reasons of overriding public interest; there is no satisfactory alternative; and, the action will not be detrimental to maintaining the population of the species concerned at a favourable conservation status in its natural range. Again however, in the absence of up to date evidence, a full and proper assessment of the scheme against these tests is not possible. It is nonetheless clear that a scheme supported by up to date evidence would be a more satisfactory alternative to one which is not. Therefore, and with respect to the Habitats Regulations, it appears unlikely that an EPS License could be lawfully granted.
 14. I acknowledge that the potential exists for a report whose validity expires after 12 months to reach this point during the normal lifetime of a permission/consent. This does not however mean that it is therefore acceptable to undertake decision making on the basis of evidence that is already out of date. Nor can this matter therefore be appropriately addressed by condition. Indeed, Circular 6/2005 states that conditions requiring surveys should only be used in exceptional circumstances, and none are apparent in this case.
 15. In view of the above I have had regard to paragraph 175(a) of the National Planning Policy Framework (the Framework) which indicates that in the absence of avoidance or adequate mitigation of harm to biodiversity, planning permission should be refused.
 16. Paragraph 175 is not specifically drafted in relation to applications for listed building consent. However, in view of the fact that the bat roosts were recorded within the listed buildings on site, and the works giving rise to harm are subject of listed building consent, my findings above similarly indicate that listed building consent should be refused.
 17. For the reasons outlined above I conclude that it has not been demonstrated that the scheme would avoid or adequately mitigate unacceptable harm to bats, which are a protected species. The scheme would therefore conflict with Policy EQ4 of the South Somerset Local Plan 2006-2028 (the Local Plan), which supports these objectives.

Listed buildings

18. There are 2 listed buildings on the site. These are described within the statutory list as the 'Mill Building to Ansford Factory' (the mill) and the 'Offices to Ansford Factory' (the offices) (hereafter jointly referred to as 'the listed buildings'). The listed buildings directly adjoin and feature distinctive construction in local Hapsden stone.

19. Insofar as it relates to this appeal, the special interest and significance of the listed buildings lies in their construction in 1851 as original components of John Boyd's horsehair and general weaving establishment. The mill has a typical linear form comprising 3 open working floors, lit by a regular and continuous arrangement of windows along the sides. The offices have a more domestic scale and appearance, reflected particularly in the presence of large sash windows. The mill building is relatively unaltered, and both buildings retain a considerable amount of historic fabric, despite having lain empty for many years, and having undergone some related deterioration. The direct relationship of the mill with the offices means that each plays an important role within the setting of the other, with the significance of each experienced together in external views.
20. There is consensus between the parties that the adjacent warehouse and engine house/boiler house/powered workshop (the curtilage buildings) have a principal and accessory relationship to the listed buildings, and thus that they are covered by their listing. I see no reason to question this view. Both are however of later date, and whilst the warehouse was presumably used to store products manufactured in the mill, the engine house/boiler house/powered workshop appears to have had a direct functional relationship with the since demolished powerloom mill. The particular contribution each makes to the special interest and significance of the listed buildings thus differs, though each ultimately forms part of the same historic factory site.
21. The significance of the listed buildings additionally lies in their association with Grade II listed Ochiltree House immediately to the south. This is because the listed buildings were constructed within its grounds, and historically accessed via an inscribed entry formed within its frontage. They remain visible from High street along this entry, and a gated access remains on the boundary between.
22. Two other Grade II listed buildings lie adjacent to the boundary of the site. These are Beechfield House and Cumnock Terrace. Beechfield House was once owned by John Boyd, and its grounds were used to expand the factory. However, it otherwise pre-dates the listed buildings, and insofar as it relates to this appeal, its significance chiefly resides in its mid/late eighteenth century date, domestic architecture and spacious garden setting, as chiefly appreciated from within the High Street. Cumnock Terrace was, on the other hand, constructed as workers housing, and lies adjacent to the current site entry. Insofar as it relates to this appeal, its significance lies both in its imposing architectural character as viewed within Cumnock Road, and in its historic association with the factory. It is however located some distance from the listed buildings, and thus its contribution to their significance is far less directly appreciated than that of Ochiltree House.
23. In view of the above, and in accordance with Sections 16(2) and 66(1) of the Act as applicable, it is necessary to have special regard to the desirability of preserving the listed buildings, their settings and any features of special architectural or historic interest they possess. In this regard paragraph 193 of the Framework additionally states that great weight should be given to the conservation of designated heritage assets.
24. I have divided consideration of this matter below into 3 parts: (a) works; (b) setting; and (c) public benefits. Parts (a) and (b) are summarised at the ends of each section, and jointly concluded within section (c).

(a) *Works*

25. The decision notice related to Appeal B identifies harm caused by demolition and intervention specifically in relation to the 'factory building' and warehouse. It is unclear whether the factory building should be taken to represent the mill or the engine house/boiler house/powered workshop, given that the latter would be the only building demolished. Notwithstanding the duty set out in Section 66(1) of the Act, the decision notice related to Appeal A omits any reference to the listed buildings.
26. The nature of harm is not otherwise clearly identified or explained in the Council's submissions. Here the Regulation Committee reports related to both Appeals, each of which carried a recommendation of approval, contain no detailed assessment of the impact of the scheme on the listed buildings, and none has been provided at appeal. I note that comments from the Council's conservation officer (CO) and Historic England (HE) were cross referenced in the Committee report related to Appeal B. However, these comments chiefly relate to earlier iterations of the scheme, and so their usefulness is limited. Indeed, the sole reference to direct 'harm' to the mill was by HE in relation to loss of a staircase, whose retention was subsequently proposed. Moreover, whilst HE did additionally observe that the scheme of subdivision of the mill would be both significant and intensive, the CO described this as the 'best solution'. HE's remit in offering comment was otherwise strictly limited. Consultee comments from HE and the CO do not therefore provide any clear, comprehensive, or consensus view of the scheme upon which the Council finally made its decision.
27. In accordance with my duties as set out within the Act, I have considered this matter in further detail, and having done so, consulted the parties. In this context the appellant has reiterated the evidence previously submitted, including the Heritage Statement/Statement of Significance.
28. The proposed vertical subdivision of the mill would fundamentally alter the historic plan form and circulation of the building, entailing loss of the 3 open working floors, and introduction of a domestic layout and pattern of circulation within each of the units created. This would be further reflected externally in the introduction of a more identifiably domestic arrangement of entrance doors, which would break the existing sequence of windows at ground floor level on the east and west elevations. Though in terms of external form, the building would remain recognisable as a former mill, the changes otherwise entailed in conversion would critically undermine and obscure key defining characteristics of its historic design. The adverse impact on the significance of the mill would thus be substantial. Paragraph 194 of the Framework states that such harm should be exceptional, requiring clear and convincing justification.
29. The CO's identification of vertical subdivision as preferable to horizontal subdivision, was on the basis that intrusive works to increase fire and acoustic separation between floors would not be required. However, I have not been provided with any detailed explanation of how these matters would in fact be dealt with as part of the conversion, or indeed how compliance with other regulatory requirements, such as those relating to insulation and ventilation, would be handled. Whilst the rationale for favouring vertical subdivision over horizontal subdivision has not therefore been properly evidenced, considerable uncertainty otherwise exists in relation to how a broad range of works capable

- of giving rise to harm would be specified. This is unnecessary, given that most, if not all such matters, could have been addressed at design stage, at which point the greatest scope exists to avoid or minimise potential for harm.
30. The absence of this information reflects a broader lack of explanation in written or plan form, of the schedule of works required in order to enable conversion of the listed buildings and warehouse.
 31. Insofar as details have been provided, these are principally contained within the submitted Structural Reports. Other brief coverage of works occurs within the Heritage Statement and the Ecology Report, the latter as noted above. None of these documents however provides a detailed specification of any of the works they outline.
 32. The Structural Reports are dated October 2017, and therefore 3 years old. Change in the intervening period is illustrated in the partial collapse of the engine house/boiler house/powered workshop. The usefulness of the reports is further limited by the fact that the surveys upon which they are based involved visual inspections only. Even in this regard, considerable parts of the listed buildings, including the whole of the eastern elevation, were not inspected. The reports cannot therefore be considered fully informed or up to date. Furthermore, and notwithstanding the identified need for structural interventions, the reports are not accompanied by any detailed drawings.
 33. The reports additionally seek to advocate broad and generic measures, which if directly implemented, could allow for extensive removal and replacement of historic fabric. This includes in relation to the external facades of the listed buildings, within which stonework replacement is proposed where delamination has occurred. As delamination is extensive, the loss of historic fabric could be equally extensive, causing radical change in the appearance of the building. Necessity, practicality, achievability and impact are all unexplained.
 34. The installation of damp proof membranes and injection of the walls is also advocated, but again without any consideration of their appropriateness. Indeed, neither measure would generally be suited to a traditionally constructed building, given their capacity to harmfully alter patterns of moisture movement within the fabric. More sensitive solutions exist.
 35. Moreover, the possible presence of dry rot and the need for underpinning of the listed buildings is noted, but no follow-up investigation was undertaken. Therefore, the nature of the measures potentially required, their necessity and likely impact on the fabric of the listed buildings are all again unknown.
 36. Insofar as works outlined within the Structural Reports would potentially cause harm, the absence of adequate supporting evidence or justification is clearly contrary to the requirements of paragraph 194 of the Framework.
 37. The Council has drafted a condition requiring the agreement of a detailed method statement, and a specification of all works to the listed buildings. Such a condition would provide broad scope for undefined matters requiring listed building consent to be agreed after the consent itself had been granted. In view of my findings above, as too the fact that the Act does not provide scope for listed building consent to be granted in outline, I see no justification for such an approach. None has otherwise been offered. The condition is therefore unacceptable as a substitute for provision of the detailed information necessary

in order to properly exercise the duties set out within the Act, and to apply the tests set out within the Framework.

38. I acknowledge that the scheme would entail reuse of the listed buildings and warehouse, thus avoiding the potential for harm that could arise from continued disuse and deterioration. The scheme would also involve removal of intrusive features including an external staircase, include repairs, and reinstatement of missing components. Though necessary supporting information is once again lacking, each could potentially deliver conservation benefits.
39. These benefits would however be of less value than had conversion occurred when the buildings on site were more intact and in better condition, as was the case when a previous consent for residential conversion was granted in 2002. They must otherwise be set against the harm I have identified above, which necessarily includes that which would arise from demolition of the engine house/boiler house/powered workshop. In this regard, and in the absence of the information necessary to fully assess the scheme, it is not possible for me to reach an overall finding that the proposed conversions would in fact achieve preservation in accordance with the expectations of the Act.
40. It has additionally been claimed that residential conversion would secure the optimum viable use of the listed buildings and warehouse. Here the Planning Practice Guidance (PPG) states that harmful development may sometimes be justified in the interests of realising the optimum viable use of an asset, notwithstanding the loss of significance caused, and provided the harm is minimised.
41. However, I have not been provided with any firm evidence that alternative uses which might entail less harm to the significance of the listed buildings have been seriously considered. I therefore lack the evidence necessary to conclude that residential conversion represents the only viable option. Indeed, the fact that the 2002 scheme was never implemented, casts some reasonable doubt. Furthermore, in the absence of any detailed schedule of works, the full costs of conversion are unknown, and thus the margin of risk built into the scheme viability assessment may be incorrect. For these reasons, and given that the appellant has otherwise failed to demonstrate that the harm caused to the significance of the listed buildings and warehouse would be minimised, I cannot conclude that the proposed residential conversion would secure their optimum viable use. As such, my findings above are unchanged.
42. In summary, I find that the scheme would harm the special interest and significance of the listed buildings. Insofar as this is capable of being quantified, the harm caused to the mill would be substantial, and that to the offices less than substantial. Less than substantial harm would also arise in relation to works, including demolition, to curtilage buildings. The above would be clearly contrary to the expectations of the Act, and conflict with paragraphs 193 and 194 of the Framework. The harm identified attracts great weight.

(b) Setting

43. As outlined above, the significance and special interest of both the mill and the offices as listed buildings derives in part from their direct association. Insofar as I have already found that harm would be caused to the external appearance and functional character of the mill, this would also adversely affect

- appreciation of its historic relationship with the offices. This is because both are viewed together. It follows therefore that the setting of the offices would not be preserved. The harm caused would be less than substantial.
44. Demolition of the engine house/boiler house/powered workshop would have an adverse effect on the integrity of the group of historic buildings on the site. This has already been weakened by loss of the powerloom mill, with which the engine house/boiler house/powered workshop was closely related. Again, the harm caused would be less than substantial.
45. With regard to the listed buildings identified outside the site, appreciation of the significance of neither Beechfield House nor Cumnock Terrace would be directly affected by the development. This is because, as outlined above, the significance of Beechfield House is primarily appreciated from the High Street frontage, and that of Cumnock Terrace from Cumnock Road, neither of which would see much change. The past association of the listed buildings on site with Ochiltree House would continue to be reflected and remain appreciable through the installation of a gate within its historic position. As such appreciation of the significance of these buildings, as too the contribution they make to the significance of the listed buildings on site, would be preserved.
46. The broader development would take place on land principally occupied by later phases of the factory. Some of the designs proposed would make general reference to demolished elements such as the powerloom mill. HE has queried the mix of industrial/domestic mix of designs on the approach to the listed buildings, which I agree would represent an unusual mix. The listed buildings would however remain distinct, as too would their historic linkage to the High Street, despite the fact that access from the High Street has not been proposed. In the above regards the setting of the listed buildings would be preserved.
47. In summary, I find that demolition of the engine house/boiler house/powered workshop would not preserve the settings of the listed buildings, and that the setting of the offices would be further harmed by changes in the external character and appearance of the mill. The harm caused would be less than substantial in each regard. This would be contrary to the expectations of the Act, and conflict with paragraphs 193 and 194 of the Framework. The harm identified attracts considerable importance and weight.

(c) Public benefits

48. Through my assessment in subsections (a) and (b) above, I have found that the scheme would cause: substantial harm to the significance of the mill, and less than substantial harm in relation to works undertaken within its setting; less than substantial harm to the significance of the offices in relation to works undertaken both to it, and within its setting; and less than substantial harm in relation to works to, including demolition of, curtilage buildings. In so doing I have attached great weight to the harm that would be caused by works to, including demolition of the listed and curtilage buildings, as applicable, and considerable importance and weight to the harm that would arise due to works undertaken within the settings of the listed buildings. In accordance with paragraphs 195 and 196 of the Framework, and taking account of the fact that that the 4 criteria outlined in paragraph 195 are not applicable, it is necessary to balance this harm against the public benefits advanced in favour of the scheme.

49. Insofar as works to the listed buildings and warehouse have been advanced as public benefits, including in relation to securing their optimum viable use, these have been directly considered above in the context of my assessments in subsections (a) and (b) above. In view of my findings, these benefits attract little weight.
50. The scheme subject of Appeal A would, as a whole, provide 81 dwellings of varied type in an accessible urban location, 11 of which would be affordable. In general terms, the scheme would therefore make a moderate contribution towards addressing a shortfall in the Council's 5-year supply of deliverable housing sites (5YHLS). This, the Council's appeal statement, appears to accept lies between 3 years 6 months and 4 years 6 months, though the appellant claims it lies closer to 3 years. It would also help to address a need for affordable housing, notwithstanding the fact that provision would fall below the 35% sought by the Policy HG3 of the Local Plan.
51. But only 11 of the 81 dwellings would be provided through conversion, and thus through works both specifically requiring listed building consent, and identified as giving rise to harm in relation to both Appeals. This is notably far fewer than in the 2002 scheme, and a small figure both itself and as a proportion of the scheme overall. Of these 11, it is unclear whether any would be affordable. Both the conversions, and the provision of an additional 2 new build units, would on this occasion be facilitated by demolition of the engine house/boiler house/powering workshop. The extent to which the provision of a further 68 units on the broader site would otherwise facilitate the conversions is unclear, and therefore so too is the extent to which any related social and economic benefits arising from the broader development can be directly linked to the works giving rise to harm. Even if I was therefore to consider that the shortfall in 5YHLS was as high as is claimed by the appellant, in view of the above, I attach only limited weight to the social, and linked economic benefits of scheme's provision of housing.
52. The scheme would, as a whole, remediate and make better use of a partly contaminated brownfield site, part of which is included on the Council's brownfield land register. This is itself anticipated in the Local Plan, and support in principle is provided by paragraphs 118(c) and (d) the Framework. However, the scope of any benefit would again be narrowed in relation to the works specifically requiring listed building consent, and identified as giving rise to harm in relation to both Appeals. For this reason, and in view of the appellant's failure to demonstrate the suitability and appropriateness of the conversions, I attach only limited weight to the related social, environmental and economic benefits.
53. A Section 106 agreement has been provided which contains obligations to pay contributions towards education, and sports, arts and leisure. These contributions have been advanced as benefits, however they cannot properly be considered as such. This is because they are required in order to cater for/mitigate demands generated by the development, and would do no more.
54. I have attached no more than limited weight to the benefits outlined above. Taking into account the fact that these benefits could only be delivered by causing potentially unacceptable harm to protected species, I cannot attach any weight to the public benefits overall. Public benefits would therefore be

clearly insufficient to outweigh the harm that would be caused to the significance of designated heritage assets.

55. For the reasons outlined above I conclude that the scheme would not preserve the special architectural or historic interest of the listed buildings, or their settings. With regard to Appeal A, and insofar as it is relevant to Appeal B, the scheme would thus conflict with Policy EQ3 of the Local Plan which states that heritage assets will be conserved and where appropriate enhanced for their historic significance. In relation to both Appeals, the scheme would otherwise fail to satisfy the expectations of the Act, and conflict with heritage policy set out within the Framework.

Spatial hierarchy

56. Policy SS1 of the Local Plan sets out the Council's settlement strategy. This identifies Castle Cary as a 'local market town', occupying a third-tier position within the hierarchy. Policy SS1 states that provision will be made for housing, employment, shopping and other services that increase the self-containment of market towns, and enhance their roles as service centres. In this context, Policy SS5 of the Local Plan sets out a residential housing requirement for 374 dwellings in Ansford/Castle Cary between 2006-2028. This is a share of the 5134 dwellings identified for market towns, which is in turn a share of what Policy SS5 describes as 'at least' 15,950 dwellings to be provided across the hierarchy.
57. Insofar as a target is identified in the supporting text of Policy SS5, this concerns the delivery of the minimum 15,950 dwellings. In this regard the 374 dwellings identified in relation to Ansford/Castle Cary is itself a target, but again a minimum target. There is no indication that this cannot be exceeded, provided that exceedance here, or elsewhere, is consistent with the relative distribution of housing across the hierarchy. In this context the ability of Ansford/Castle Cary to accommodate future growth if otherwise identified within the related 2017 Settlement Profile as 'strong'.
58. The Council assessed Policy SS5 against the number of dwellings for which planning permissions had at that point been granted in Ansford/Castle Cary. At 405, the target set out in Policy SS5 had been met and moderately exceeded. It follows that it would be further exceeded were the appeal scheme to be allowed. As set out above however, this would not necessarily be contrary to either Policies SS1 or SS5 of the Local Plan, provided that growth was in line with the relative distribution of development across the hierarchy, and Castle Cary's position within it.
59. The appellant has provided figures comparing Castle Cary to other settlements within the hierarchy, tabulating the housing target, completions/commitments, and resulting total dwellings. This shows that in terms of relative size, the appeal scheme would not alter Castle Cary's position. Though this represents a different way of assessing the scheme's performance against Policy SS5 than that adopted by the Council, the Council has not sought to challenge the appellant's evidence. In the absence of any challenge, and given that the figures provide a more detailed picture of growth across the hierarchy than do planning permissions granted in Ansford/Castle Cary alone, I see no reason to question its validity. Thus, on the basis of the evidence before me, the development would not undermine Castle Cary's position within the hierarchy, or harm the self-containment or role of the settlement in any obvious way.

60. For the reasons set out above I conclude that the effect of the development on the position of Castle Cary within the settlement hierarchy would be acceptable. The development would therefore comply with Policies SS1 and SS5 of the Local Plan as outlined above. The Council also cited Policy SD1 of the Local Plan in the decision notice, however this simply paraphrases the presumption in favour of sustainable development set out within paragraph 11 of the Framework.

Parking

61. The decision notice makes reference to the density of the development and asserts that it is overly cramped. With reference to the Council's appeal statement however, the concern is less one of design, than of the balance between housing and parking space. In this regard a deficiency is identified in relation to the latter.
62. Policy TA6 of the Local plan states that the Council will apply the parking standards set out in the Somerset County Council Parking Strategy (the SPS). Insofar as the SPS sets out optimum levels of parking provision based on the location of a proposed development, and its size, flexibility clearly exists. This is confirmed in the comments of the Highways Authority (the HA) which authored the SPS.
63. In assessing the scheme, the HA stated that the optimum level of parking provision would be 190-207 spaces. As the scheme would provide 171 spaces, there would be a shortfall of at least 18 spaces below optimum. Census-based data relating to local levels of vehicle ownership however indicated a baseline requirement of 130 spaces. Taking this into account, the HA was satisfied that a slight reduction in provision would be unlikely to significantly impact on the adjacent highways. Indeed, the figures suggest that overspill would be likely to occur given that sufficient capacity would exist within the site.
64. In refusing the scheme the Council took a contrary view, stating that the shortfall would result in potentially hazardous parking outside the site. However, the Council has not identified where such parking would occur, and why it would be hazardous, and nor is this immediately obvious. Furthermore, no consideration has been given to the census-based data upon which the HA's view was based. Insofar as the Council's appeal statement claims that the scheme would provide 130 parking spaces against an SPS optimum of 171, it is in any case wholly inaccurate, implying a much greater shortfall in parking provision than would actually occur. In view of the fact that the Council's case lacks an accurate factual basis, and in the absence of any other evidence to support the Council's view, I inevitably concur with the HA.
65. For the reasons set out above I conclude that the development would provide adequate parking space. It would therefore comply with Policy TA6 of the Local Plan, and the SPS, as considered above. The Council also cited Policies EQ2 and EP3 of the Local Plan in the decision notice, however neither addresses parking provision or highways safety. Their relevance is therefore unclear.

Other Matters

Conservation Area

66. The part of the site on which the listed buildings and curtilage buildings are located, is included within Castle Cary Conservation Area (the Conservation

Area). This is addressed by the appellant, but given only passing reference by the Council in relation to Appeal A, and not at all in relation to Appeal B. The Council furthermore appears to have reached no specific conclusion on the matter when the applications were determined by the Regulation Committee, and no reference is otherwise included within the decision notices. In view of the duty set out in Section 72(1) of the Act, it is nonetheless necessary for me to pay special attention to the desirability of preserving or enhancing the character or appearance of the Conservation Area.

67. Insofar as it relates to this appeal, the significance of the Conservation Area resides in the historic layout of the town, and the collection and interrelationship of historic buildings and spaces it contains. Within this context the historic factory site, which includes buildings both on the high street frontage and the listed buildings themselves, is an important feature. The relationship between the buildings remains appreciable and is specifically signposted by the access provided through Ochiltree House. As such the listed buildings positively contribute to the significance of the Conservation Area.
68. The listed buildings, including the curtilage buildings, are not publicly accessible, and limited views exist from public areas. This does not however alter the fact that the buildings lie within the Conservation Area, or the contribution they make to its character. Moreover, accessibility and visibility would change as a result of the scheme.
69. An opportunity for enhancement clearly exists in the reuse of the buildings and tidying of the site. Harm identified above in relation to the demolition of the engine house/boiler house/powered workshop, would nonetheless clearly translate as harm to the Conservation Area. This would also be true of other harm identified in relation to the external character and appearance of the mill, and appreciation of its relationship with the offices; the more so, given that this would be publicly apparent. The harm caused would again be less than substantial, and in this instance, attracts considerable importance and weight.
70. I am mindful of the fact that the effect of the scheme on the Conservation Area was not considered in any detail by the Council, or a reason for refusal of either application. However, notwithstanding the additional weight that the identified harm lends in favour of dismissing the Appeals, this does not alter the outcome of my findings in relation to paragraphs 195 and 196 of the Framework set out above. Similarly, the additional conflict that a failure to preserve or enhance the character or appearance of the Conservation Area would cause in relation to the Act, the Framework, and Policy EQ3 of the Local Plan, does not alter the outcome of my conclusion in relation to the second main issue. As such the matter is not determinative of the outcome of the Appeals. I am therefore satisfied that the interests of neither party are prejudiced by my findings.

5YHLS

71. In view of the Council's 5YHLS position, my attention has been drawn to the tilted balance set out in paragraph 11 of the Framework, which is echoed in Policy SD1 of the Local Plan. However, with reference to footnote 6 of the Framework, my findings in relation to heritage policy provide a clear reason for refusing planning permission. As such, the tilted balance does not apply.

Conclusion

72. The scheme would cause unacceptable harm to protected species and to designated heritage assets. In relation to Appeal A, it would conflict with the development plan as a whole, and there are no considerations which alter or outweigh this finding. Therefore, for the reasons set out above, I conclude that Appeal A and Appeal B should be dismissed.

Benjamin Webb

INSPECTOR



Costs Decisions

Site visit made on 14 October 2020

by Benjamin Webb BA(Hons) MA MA MSc PGDip(UD) MRTPI IHBC

an Inspector appointed by the Secretary of State

Decision date: 11 November 2020

Costs application in relation to Appeal A: APP/R3325/W/20/3247647 Land at the former BMI site, Cumnock Road, Castle Cary BA7 7HZ

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Castle Cary (BMI) Ltd for a full award of costs against South Somerset District Council.
 - The appeal was against a refusal of the local planning authority to grant planning permission for development described as demolition of existing buildings, conversion of and alterations to listed buildings to form 11 No. dwellings, the erection of 70 No. dwellings (total 81 No. dwellings) and associated works, including access and off-site highway works, parking, landscaping, open space, footpath links and drainage
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Costs application in relation to Appeal B: APP/R3325/Y/20/3247652 Land at the former BMI site, Cumnock Road, Castle Cary BA7 7HZ

- The application is made under the Planning (Listed Buildings and Conservation Areas) Act 1990 (the Act), sections 20, 89 and Schedule 3, and the Local Government Act 1972, section 250(5).
 - The application is made by Castle Cary (BMI) Ltd for a full award of costs against South Somerset District Council.
 - The appeal was against a refusal of the local planning authority to listed building consent for works described as demolition of existing buildings, conversion of and alterations to listed buildings to form 11 No. dwellings, the erection of 70 No. dwellings (total 81 No. dwellings) and associated works, including access and off-site highway works, parking, landscaping, open space, footpath links and drainage infrastructure.
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Decisions

1. The application for an award of costs in relation to Appeal A is allowed in the terms set out below.
2. The application for an award of costs in relation to Appeal B is allowed in the terms set out below.

Procedural Matters

3. The applications were made jointly. In this regard I have considered the application on the basis that it necessarily comprises 2 component parts, in respect of Appeal A and Appeal B respectively.
4. I have not received a response to the above applications from the Council. I have therefore considered the applications against the evidence otherwise set before me by the Council.

Reasons

5. The Planning Practice Guidance advises that costs may be awarded against a party who has behaved unreasonably, and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.
6. The applicant claims that the Council acted unreasonably in relation to both appeals on broad substantive grounds, which I define principally as:
 - (a) preventing or delaying development/works which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations;
 - (b) failure to produce evidence to substantiate each reason for refusal on appeal; and
 - (c) vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis.

Unreasonable behaviour: Appeal A

7. The application subject of Appeal A was refused partly on the basis of its effect on the spatial hierarchy set out in Policy SS1 of the South Somerset Local Plan 2006-2028 (the Local Plan). This was due to exceedance of the 'housing delivery target' for Ansford/Castle Cary set out in Policy SS5 of the Local Plan. However, Policy SS5 sets out minimum housing numbers, not maximum targets. Policy SS5 otherwise places emphasis on achieving an appropriate distribution of housing across the hierarchy.
8. In this context, the Council referred to the number of dwellings for which planning permission had already been granted the Council, but presented failed to explicitly explain, identify or evidence the harm that would arise due to further exceedance of the housing number identified for Ansford/Castle Cary. This was despite submission of evidence by the appellant which showed that the relative position of Castle Carey within the hierarchy would be sustained, As the Council has failed to demonstrate the existence or nature of harm, or indeed therefore the existence of clear conflict with the Local Policies cited, I find that it acted unreasonably with regard to ground (c) above.
9. The application subject of Appeal A was additionally refused on the basis of inadequate parking provision. This was contrary to the view of the Highways Authority (HA), whose guidance is employed by the Council, and cross referenced by Policy TA6 of the Local Plan. The Council was clearly entitled to take a contrary view. However, in seeking to justify its approach, the Council inaccurately cited the relevant figures. In this regard the optimum standard, the level of proposed provision, and level of shortfall against the optimum standard, were all incorrect, and therefore misrepresented. The Council additionally failed to engage with the census-based data upon which the HA's views were based. Whilst the Council's claim that harm would arise in relation to highways safety due to overspill parking therefore lacked any factual basis, the Council additionally failed to explain where the claimed harm would arise. Consequently, I again find that the Council acted unreasonably with regard to ground (c) above.
10. I have therefore found that in relation to both reasons for refusal of planning permission, the Council made vague, generalised and inaccurate assertions about the proposal's impact, which were unsupported by any objective

analysis. Consequently, the Council failed to demonstrate that the scheme in fact conflicts with the Local Plan, or therefore that its refusal of planning permission was justified.

11. With regard to ground (a), it is clear that the Council would have granted planning permission in the absence of concerns relating to the settlement hierarchy and parking. This was indeed the officer recommendation. On this basis, and in view of my findings above, I therefore find that the Council acted unreasonably in refusing planning permission. This is notwithstanding the fact that I am dismissing Appeal A, given that my reasons for doing so differ from those of the Council.

Unreasonable behaviour: Appeal B

12. At appeal the Council has provided no amplification for its reason for refusal of listed building consent. Moreover, nowhere else within the Council's submissions, including its Committee Reports, is there any detailed analysis of impact. The Council has therefore provided no explanation of what form the alleged 'harm' would take in relation to the listed buildings on site. I therefore find that in these regards the Council acted unreasonably in relation to grounds (b) and (c).
13. The decision notice otherwise makes clear that listed building consent was refused on the basis that planning permission for conversion had been refused. In view of the fact that both applications should have been assessed in accordance with the duties set out in the Act, and the balancing exercises set out in paragraphs 195 and/or 196 of the National Planning Policy Framework, this reason does not appear to be wholly logical. It is otherwise unexplained, as noted above.
14. With regard to ground (a), it is clear that the Council would have granted listed building consent had it not refused planning permission. This was indeed the officer recommendation. On this basis, and in view of my findings in relation to Appeal A, I therefore find that the Council acted unreasonably in refusing listed building consent. This is notwithstanding the fact that I am dismissing Appeal B, given that my reasons for doing so again differ from those of the Council.

Expenses

15. It follows from my findings above that the expenses incurred by the applicant in the appeal process were unnecessary and/or wasted. Indeed, these wholly stem from refusal of both applications subject of Appeals A and B on grounds which the Council failed to properly and soundly justify, and which I have ultimately dismissed at appeal for other reasons.

Conclusions

16. For the reasons set out above, I find that the Council acted unreasonably on grounds (a) and (c) in relation to Appeal A, and grounds (a) – (c) in relation to Appeal B, causing the applicant to incur unnecessary and/or wasted expense in the appeal process. I conclude therefore that the applicant's full claim for costs in relation to both Appeal A and Appeal B must succeed.

Costs Orders

Appeal A

17. In exercise of the powers under section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990 as amended, and all other enabling powers in that behalf, IT IS HEREBY ORDERED that South Somerset District Council shall pay to Castle Cary (BMI) Ltd, the costs of the appeal proceedings described in the heading of this decision; such costs to be assessed in the Senior Courts Costs Office if not agreed.
18. The applicant is now invited to submit to South Somerset District Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

Appeal B

19. In exercise of the powers under section 250(5) of the Local Government Act 1972 and Schedule 3 of the Planning (Listed Buildings and Conservation Areas) Act 1990, and all other enabling powers in that behalf, IT IS HEREBY ORDERED that South Somerset District Council shall pay to Castle Cary (BMI) Ltd, the costs of the appeal proceedings described in the heading of this decision; such costs to be assessed in the Senior Courts Costs Office if not agreed.
20. The applicant is now invited to submit to South Somerset District Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

Benjamin Webb

INSPECTOR