
Appeal Decision

Site visit made on 31 January 2017

by D Boffin BSc (Hons) DipTP MRTPI Dip Bldg Cons (RICS) IHBC

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 19 May 2017

Appeal Ref: APP/R3325/W/16/3161355

Land to the Rear of the Bell Inn, Broadway Road, Broadway, Ilminster, Somerset TA19 9RG

- 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 G Pavier & M Biard against the decision of South Somerset District Council.
 - The application Ref 15/04866/OUT, dated 28 October 2015, was refused by notice dated 22 July 2016.
 - The development proposed is residential development with associated vehicular access arrangements.
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Decision

1. The appeal is allowed and planning permission is granted for residential development with associated vehicular access arrangements at land to the rear of the Bell Inn, Broadway Road, Broadway, Ilminster, Somerset TA19 9RG in accordance with the terms of the application, Ref 15/04866/OUT, dated 28 October 2015, subject to the conditions in the attached schedule.

Application for costs

2. An application for costs was made by G Pavier & M Biard against South Somerset District Council. This application is the subject of a separate decision.

Preliminary Matters

3. For reasons of accuracy and clarity I have used the address as shown on the appeal form in the banner heading.
4. The application was submitted in outline with all matters other than access reserved for future consideration. Given the information submitted in the design and access statement I have taken the site plan¹ to be illustrative of the appellants' intentions insofar as it relates to layout and landscaping.
5. During the determination of this appeal it was brought to my attention that the Council had adopted a Community Infrastructure Levy (CIL) charging schedule. The appellant has submitted an amended signed Unilateral Undertaking in respect of infrastructure provision and affordable housing taking into account the CIL charging schedule. I return to this matter below.

Main Issues

6. The main issues are:-
 - The effect on the character and appearance of the area;

¹ Drawing No 3448/PL/002 Rev E

- Whether the site would be a suitable location for housing taking into account local and national policies.

Reasons

7. Both parties agree that the Council cannot demonstrate a 5 year supply of housing land as required by paragraph 47 of the National Planning Policy Framework (Framework). Where a local planning authority is unable to demonstrate a five-year supply of deliverable housing land, paragraph 49 of the Framework, which is a significant material consideration, indicates that relevant policies for the supply of housing should not be considered up-to-date.
8. However, paragraph 49 of the Framework also states that all housing applications should be considered in the context of the presumption in favour of sustainable development. For decision taking purposes this means, as set out at paragraph 14 of the Framework that where relevant policies are out of date planning permission should be granted unless: any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole; or where specific policies in the Framework indicate that development should be restricted.
9. Nevertheless planning law requires that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise.

Character and appearance

10. The appeal site comprises the Bell Inn public house and a dwelling (Norbeth) that front onto Broadway Road and a large field that extends to the rear of those properties. The field also extends behind a number of adjacent properties on Broadway Road and its southern boundary is formed by the River Ding and mature trees and landscaping. There are hedgerows on the east and west boundaries of the field.
11. To the west of the site there are dwellings on the Tanyard which is a no through road off Broadway Road. My attention has been drawn to an appeal decision² for a residential development and I noted at my site visit that there were buildings under construction adjacent to the Tanyard. To the north-east of the site is a primary school. The Alms Houses to the north of appeal site, on the opposite side of Broadway Road, are grade II listed.
12. There are three public footpaths that run through the site, two of them enter the site adjacent to the Bell Inn (CH2/6 and CH2/7) and then one of these runs to the eastern boundary and the other to the south-western corner of the site. The 3rd footpath runs between the south-western corner and the eastern boundary of the site.
13. The appeal proposal would involve the construction of up to 25 dwellings off a new no through road that would access Broadway Road from a point between Norbeth and the Bell Inn. The existing garage to Norbeth would be demolished. The site plan indicates that the areas of residential development would be adjacent to the rear boundaries of the existing dwellings on Broadway Road and a significant area along the southern portion of the site would be retained as open space.
14. I noted at my site visit that the settlements of Broadway and Horton are in close proximity to each other with Horton being to the south of Broadway along Goose Lane. Broadway has developed as a linear settlement mainly along

² APP/R3325/W/15/3063768 – 10 December 2015

Broadway Road. The area in the vicinity of the appeal site is characterised by a variety of age and style of buildings. There are also varying depths of development along Broadway Road with access roads off it serving differing numbers of dwellings. Modern developments behind the frontage properties creating a substantial depth of built form are prevalent on the southern side of Broadway Road.

15. I note that the Council considers that the site represents the only area within the core of the village where the original village edge and historic linear pattern of development has been retained. However, I have not been provided with any evidence such as historic maps/plans to substantiate this. Furthermore, the majority of development along the northern side of Broadway Road appears to be of one plot depth and a large amount of that development appears to be historic in age.
16. The Council also consider that the site as open pasture land serves to separate the Tanyard/Brookside Close development to the west from the eastern end of the village including the primary school and the settlements of Broadway and Horton. However, the separation from east to west is only readily apparent when utilising the public footpaths within the site due to the frontage development along Broadway Road. Furthermore, the retention of the southern portion of the site as open space would ensure that a degree of separation would remain east to west and between Horton and Broadway.
17. Whilst the land is clearly valued by the local community, this would apply to many similar situations where open land adjoins a settlement edge. Due to the mature landscaping around some of the boundaries of the field and the existing buildings fronting Broadway the site is well contained visually. As such, it provides only a limited contribution to the distinctiveness of the area and the setting of the village. Nonetheless, the proposal would result in the construction of houses and access roads on an undeveloped area that has public footpaths across it.
18. The proposal would be readily apparent from the public footpaths that traverse the site and from some of the neighbouring dwellings. However, the proposal would be viewed from the public footpaths against the backdrop of the adjacent dwellings on the Tanyard and Broadway. I appreciate the concerns regarding the interruption of views that would arise for some neighbouring residents. However, it is a well-founded principle of the planning system that there is no right to a view across neighbouring land.
19. There could be no mistaking the extension of the village into a currently undeveloped area, but in the context of the existing surroundings the impact would not be significant. Furthermore, the proposed development has been the subject of some thought as to how it might be developed.
20. I note that the site plan indicates that the open space would extend to meet the access road to create an open vista along the access road through to the mature landscaping along the southern boundary. This plan also shows the way in which the edges of the development could be softened with landscaping and the provision of a significant area of public open space. Subject to the control that exists at reserved matters stage the dwellings could be designed to be in keeping with the pattern of development in Broadway and sensitive to local character and architectural styling. As such, I am satisfied that it would be possible to design a scheme which would help to mitigate the visual and landscape impact of the development.

21. Taking into account all of the above I consider that the proposed development would result in limited harm to the character and appearance of the area. It follows that the proposal would conflict with Policy EQ2 of the South Somerset Local Plan (LP) which, amongst other things, seeks development that is designed to achieve a high quality and preserve the character and appearance of the district.
22. Based on my reading of this policy it would not directly influence the supply of housing by restricting the locations where new houses may be developed as its wider purpose is to ensure a high quality of design. Furthermore, I consider that LP Policy EQ2 is broadly consistent with the design requirements of the Framework. Consequently, I afford it considerable weight.

Suitable location

23. LP Policies SS1, SS2 and SS5 relate to the settlement strategy, development in rural settlements and delivering new housing growth. As such they are all relevant policies for the supply of housing and should not be considered up-to-date in relation to paragraph 49 of the Framework. I acknowledge that the Council's reasons for refusal do not make reference to LP Policy SS2 but it is referred to in LP Policy SS1 and the policy is before me.
24. These policies indicate that Broadway is a 'Rural Settlement' where development is strictly controlled. LP Policy SS5 directs most housing growth towards Yeovil, market towns and rural centres as well as providing figures for the required distribution of housing across the district. The LP does not set maximum targets for new homes and it only sets a total requirement for all the rural settlements. LP Policy SS1 states that rural settlements will be considered as part of the countryside subject to the exceptions identified in LP Policy SS2.
25. I acknowledge that the settlement hierarchy forms the basis of the LP and that it is designed to take advantage of employment and service opportunities in the market towns and rural centres and, amongst other things, to increase the level of self-containment. I also note that Broadway has minimal employment opportunities and that there is a low level of opportunity to travel to work by sustainable modes of transport.
26. The Council have stated that since the adoption of the LP planning permission has been granted for 30 dwellings in Broadway and that combined with this proposal there would be an increase of approximately 17% in the number of households. The Council consider that this would be a disproportionate increase in the size of the settlement due to the deficiencies of the location in transport sustainability terms.
27. However, Broadway does contain a number of key services and facilities including a primary school, doctor's surgery, village hall and public house. In the supporting text (paragraph 5.41) to LP Policy SS2 it states that '*It is important to ensure that the occupiers of new homes in Rural Settlements are able to live as sustainably as possible by having easy access to basic facilities that provide for their day to day needs. Therefore, new housing development should only be located in those Rural Settlements that offer a range (i.e. two or more) of the following services..*'. Broadway has at least four of the services listed. I also note that the Council's Officer Report stated that Broadway is a sustainable location for housing given the facilities that the village provides.
28. There are limited employment opportunities within the village and in relation to commuting to work most residents in Broadway will be reliant on the private

- motor car. Nonetheless, the future occupants of the proposed development and the developments previously approved would be able to access a number of key services by alternative means of transport such as walking or cycling.
29. In relation to LP Policy SS2 the proposal would create a significant public open space area and the public footpath access to the primary school would be improved. A number of affordable houses would also be delivered. I consider that given my findings in relation to character and appearance above that the proposal would be commensurate with the scale and character of the settlement.
30. Clearly extra housing would support and help to maintain the viability of existing services and facilities in the village itself and nearby Horton. In this respect and taking into account the proposed affordable housing the proposal would increase the sustainability of the settlement. This is also the general thrust of paragraph 55 of the Framework which states that housing should be located where it will enhance or maintain the vitality of rural communities.
31. The appellants' statement of community involvement outlines the engagement and consultation undertaken by them. I acknowledge that the Parish Council and a number of residents oppose the scheme for a number of reasons. I also note that there was a letter of support submitted at the time of the planning application. As such even though there appears to have been robust engagement and consultation the local community do not appear to generally support the proposal and it follows that there would be conflict with this part of the policy. However, in my experience it is not unusual that residents who oppose a proposal are more motivated to write into the Council than those who support it.
32. Taking into account all of the above, I consider that the settlement can be treated as being a relatively 'sustainable location' in a rural area and that the proposal either individually or taken cumulatively with the previously approved schemes would not undermine the settlement strategy or the delivery of housing. Moreover, even though the proposal would conflict with part of LP Policy SS2 when read as a whole it would comply with LP Policies SS1 and SS5. The proposal would also comply with paragraph 55 of the Framework. Consequently, the site would be a suitable location for housing taking into account local and national policies.
33. Even though LP Policies SS1, SS2 and SS5 are not up-to-date they are based on planning principles that are broadly consistent with the Framework. However, there is no dispute between the parties that the Council can only demonstrate a housing land supply of around 4 years 2 months. I note that the Inspector in the Vardens Farm appeal decision³ stated that this figure represents a worsening situation over the past year and I have no reason to dispute his findings. As such, I give these policies moderate weight in relation to paragraph 49 of the Framework.

Other matters

34. The Parish Council and a number of local residents have raised concern in relation to the proposed access to the site and congestion due to traffic and parking in the village. I note that the Parish Council refer to the results of a traffic survey from September 2016. However, the evidence before me only relates to the traffic count taken between 27 June 2016 and the 1 July 2016. I

³ APP/R3325/W/16/3151168 – 26 September 2016

- note that a number of parties have referred to LP Policy TA5 but this policy is not before me.
35. The proposed access would only have a pavement on one side and I note that there are no off-street parking facilities for the Alms Houses. At the time of my site visit there were 2 cars parked on Broadway in front of the Alms Houses. There is concern that these factors would mean that the access would not be safe and suitable for all people. However, the radius of the access with Broadway was amended to take into account vehicles parked on the highway.
 36. The amended swept path analysis drawings⁴ show that a large refuse vehicle (4 Axle) would be able to satisfactorily enter and exit the site without conflicting with the parking in front of the Alms Houses. I noted at my site visit that there was a moderate demand for on-street parking and that Broadway was lightly trafficked at the time of my site visit (in the middle of the day). I acknowledge that other times of the day that the level of on-street parking and the amount of traffic on Broadway would be higher.
 37. The proposal would increase the amount of traffic on the surrounding roads. However, I note that there were no technical objections from the Council or the Highway Authority in relation to highway safety or congestion. I have no reason to dispute these findings. As such, based on the evidence before me the proposal would provide a safe and suitable access and the residual cumulative impacts of the additional traffic would not be severe. It follows that the proposal would comply with paragraph 32 of the Framework.
 38. Whilst concern has been raised regarding drainage and flooding, only the public open space would be within Flood Zones 2 and 3. I note that a number of parties have referred to a previous planning application and appeal decision on this site. This was not referred to in the Council's Officer Report and I have no details of it before me and as such I can give it little weight. The Environment Agency raised no objections to the proposal subject to conditions.
 39. Wessex Water have stated that due to sewer flooding in Suggs Lane they have extended the routine jetting and raised a scheme to carry out a full hydraulic appraisal of the foul sewer network. They have also stated that the foul flows from 25 properties would be very small. The Council are satisfied that there is sufficient capacity in the sewer network and that the proposal would not increase the risk of flooding, subject to the use of appropriate planning conditions. I see no reason to come to a different conclusion.
 40. I have also taken into account the concerns raised by residents in respect of the potential implications of the proposal in relation to ecology, construction traffic and the capacity of the local school and surgery to accommodate an increase in population. However, such matters do not form part of the Council's case and adequate protection measures could be secured by condition that would adequately address the appeal scheme's impacts in respect of construction traffic and ecology. There is no evidence before me to indicate that the development proposed would be otherwise unacceptable.
 41. Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990, (the Act) requires the decision maker, in considering whether to grant planning permission for development which affects a listed building or its setting, to have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest. The Council considered that there would be a lack of inter-visibility between the

⁴ Drawing Nos 14934/02/AT01 rev A and 14934/02/AT02 rev A

Alms Houses and the proposed development and it would be difficult to view the new access and the Alms Houses together. It also considered that subject to the control that exists at reserved matters stage, in relation to boundary treatments, the setting of the Alms Houses would not be harmed. I concur with that assessment and I am satisfied that both the heritage asset and its setting would be preserved.

42. While I understand that my decision will be disappointing for some local residents, the information before me does not lead me to conclude that these other matters, either individually or cumulatively, would be an over-riding issue warranting dismissal of the appeal.

Planning obligation

43. Paragraph 204 of the Framework and Regulation 122 of the Community Infrastructure Levy Regulations require that planning obligations should only be sought, and weight attached to their provisions, where they are: necessary to make the development acceptable in planning terms; directly related to the development; and fairly and reasonably related in scale and kind to the development.
44. The Unilateral Undertaking secures the provision of 35% affordable housing on-site, an off-site contribution to play, recreation and leisure facilities and the provision and maintenance of the on-site public open space. I am satisfied that these contributions are justified by the Council's evidence on these matters. They are necessary, directly related to the development, and fairly and reasonably related in scale and kind to the development. Consequently these obligations meet the three tests for planning obligations set out in Regulation 122(2) of the CIL Regulations 2010 and the Framework. The Council has also informed me that these would not breach the 'five obligation limit' to which Regulation 123(3) of the CIL Regulations applies. I have therefore taken them into account in this decision.

Planning balance

45. Paragraph 49 of the Framework states that housing applications should be considered in the context of the presumption in favour of sustainable development (paragraph 14) bearing in mind the objective (paragraph 47) to boost significantly the supply of housing.
46. The proposal would provide up to 25 new dwellings through a mix of market and affordable housing in an area where there is an acknowledged shortfall. There would also be economic benefits associated with the proposal including the provision of construction jobs, some additional local spend and New Homes Bonus and Council Tax receipts. Prospective occupiers would provide some support for and they would help to maintain the vitality of the local services and facilities. There would also be the opportunity to increase the amount of car parking for the Bell Inn. These social and economic benefits provide significant weight in favour of the appeal proposal.
47. In this case there are no specific policies in the Framework which indicate that development should be restricted. I have found that the development would cause only limited harm to the character and appearance of the area. In this case therefore, the adverse impact would not significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole. The proposal would therefore constitute sustainable development. I consider this to be a significant material consideration

sufficient to outweigh the development plan conflict. There are no other factors which would justify withholding planning permission.

Conditions

48. I have considered the conditions put forward by the Council against the requirements of the Planning Practice Guidance (PPG) and the Framework. In the interests of conciseness, enforceability and to avoid duplication the wording of some of the suggested conditions has been amended. I have attached conditions limiting the lifetime of the planning permission and setting out the requirements for the reserved matters in accordance with the requirements of the Act. I have imposed a condition specifying the relevant drawings as this provides certainty.
49. A condition to secure a Construction Environmental Management Plan is necessary to ensure there are no significant adverse impacts upon general amenity or upon the highway.
50. In the interests of highway safety and the amenity of incoming residents, conditions would be necessary requiring the new estate roads and footways, a travel plan and highway infrastructure to be provided. I have not imposed Condition No 7 of the Council's suggested conditions as it would duplicate Condition No 5 below.
51. In order to address any increased risk of flooding arising from the development, it is necessary to require that development proceeds in line with an agreed drainage scheme. To ensure that the benefits of such a scheme are enduring, it is further necessary to require via condition an agreed approach to the management of the drainage scheme is established. It is also necessary to ensure that the ground levels of parts of the site remain unaltered due to flood risk.
52. In order to safeguard ecology conditions are required in relation to surveys for the presence of reptiles, the adherence with the ecology survey recommendations and a lighting strategy. To avoid duplication I have amalgamated Conditions Nos 2 and 12 of the Council's suggested conditions.
53. To avoid any presently unidentified contamination on site from resulting in adverse environmental effects, it is necessary to specify via condition the measures that must be taken in this respect should such contamination subsequently come to light.
54. The PPG advises that care should be taken when using conditions which prevent any development authorised by the planning permission from beginning until the condition has been complied with. In the case of the pre-commencement conditions, I consider that resolution of the matters specified to be so fundamental to the development that it would otherwise be necessary to refuse the application.

Conclusion

56. For the reasons given above, and having regard to all other matters raised I conclude that the appeal should be allowed.

D. Boffin

INSPECTOR

Attached – Schedule of Conditions

SCHEDULE OF CONDITIONS

- 1) Details of the appearance, landscaping, layout, and scale, (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development begins and the development shall be carried out as approved.
- 2) 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 and the development hereby permitted shall begin not later than two years from the date of approval of the last of the reserved matters to be approved.
- 3) Unless modified under the conditions below, the development hereby permitted shall be carried out in accordance with the following approved plans: 3448/PL/001 Rev B, 3448/PL/003, 3448/PL/002 Rev E, 14934/02/AT01 Rev A, 14934/02/AT02 Rev A, 14934/02/AT03, 14934/02/T04, 14934/02/T01 Rev - dated 27/06/16, 14934/02/T02 – General arrangements and visibility splays for proposed parking areas to the rear of the Bell Inn and for Norbeth House.
- 4) No development shall commence until a Construction Environmental Management Plan has been submitted to and approved in writing by the Local Planning Authority. The plan shall include:
 - Construction vehicle movements;
 - Construction operation hours;
 - Construction vehicular routes to and from site;
 - Construction delivery hours;
 - Expected number of construction vehicles per day;
 - Car parking for contractors;
 - Specific measures to be adopted to mitigate construction impacts in pursuance of the Environmental Code of Construction Practice;
 - A scheme to encourage the use of Public Transport amongst contractors; and
 - Measures to avoid traffic congestion impacting upon the Strategic Road Network.

The development shall be undertaken in accordance with the approved management plan.

- 5) No development hereby permitted shall commence until an access scheme has been submitted to and approved in writing by the Local Planning Authority. The access scheme shall include details of the proposed estate roads, footways, footpaths, tactile paving, cycleways, bus stops/bus lay-bys, verges, junctions, street lighting, sewers, drains, retaining walls, service routes, surface water outfall, vehicle overhang margins, embankments, visibility splays, accesses, carriageway gradients, drive gradients, car, motorcycle and cycle parking, and street furniture alongside their design, layout, levels, gradients, materials and method of construction

with reference to plans and sections as appropriate and a timetable for implementation. The access scheme shall be constructed and laid out in accordance with the approach thus agreed, and parking provision shall thereafter be kept clear of obstruction at all times and shall not be used other than for the parking of vehicles in connection with the development hereby permitted.

- 6) No dwelling hereby permitted shall be occupied until it is served by a properly consolidated and surfaced footpath, carriageway and turning space where applicable, constructed to at least base course level between it and the existing highway.
- 7) No dwelling hereby permitted shall be occupied until a network of cycleway and footpath connections has been constructed within the development site in accordance with a scheme that has been submitted to and approved in writing by the Local Planning Authority.
- 8) The new development shall not be commenced until a detailed Travel Plan has been submitted to and approved in writing by the Local Planning Authority. No part of the new development shall be occupied prior to implementation of those parts identified in the Approved Travel Plan as capable of being implemented prior to occupation. Those parts of the Approved Travel Plan that are identified therein as capable of implementation after occupation shall be implemented in accordance with the timetable contained therein and shall continue to be implemented as long as any part of the development is occupied.
- 9) No dwelling hereby permitted shall be occupied until a 1.8 metre wide footway has been constructed across the site frontage with Broadway Road, as illustrated on the site location plan no. 3448/PL/001 Rev B, in accordance with a specification to be submitted to and approved in writing by the Local Planning Authority.
- 10) No development hereby permitted shall take place until a drainage scheme has been agreed in writing by the local planning authority (which shall include details of the hydrological and hydrogeological context of the development, discharge rates and volumes (both pre and post development), temporary storage facilities, right of discharge for surface water, the methods employed to delay and control surface water discharged from the site, the measures taken to prevent flooding and pollution of the receiving groundwater and/or surface waters, gullies, connections, soakaways and means of attenuation). The scheme shall be implemented in accordance with the approved details before the development is first brought into use.
- 11) No dwelling hereby permitted shall be occupied until a scheme for the future responsibility and maintenance of the drainage scheme to which condition No 10 above relates has been agreed in writing by the local planning authority (which shall include details of implementation and maintenance). The drainage scheme shall be completed and maintained in accordance with the approach thus agreed.
- 12) The development hereby permitted shall not be commenced (including any ground works or site clearance) until a survey to determine the presence/absence of reptiles and if present, a mitigation plan or method

statement detailing measures to avoid harm to reptiles, has been submitted to and approved in writing by the local planning authority. The development shall be undertaken in accordance with the approved details and method statements.

- 13) The landscaping and layout details required by Condition No 1 above shall include the recommendations set out in Section 7 of the Ecological Survey dated July 2015. This shall include the provision of buffers to the existing hedges to the east and western boundaries, measures for protecting existing trees and hedgerows growing within the site, a scheme for the eradication of Himalayan balsam, fencing to prevent access to the river bank and the provision of bat and bird boxes.
- 14) No development shall commence until details of a lighting strategy, designed to be sensitive to bats, and the timing of any construction works during the period March to October (inclusive), has been submitted to and approved in writing by the Local Planning Authority. The development shall be undertaken in accordance with the approved details.
- 15) The ground levels of the site which fall within the extents of Flood Zone 2 and Flood Zone 3 as identified on the Environment Agency Flood Map for Planning (Rivers and Seas) shall not be altered from that shown on the site survey (drawing No 3448/PL/003).
- 16) Any contamination that is found during the course of construction of the approved development 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 and a risk assessment carried out and submitted to and approved in writing by the local planning authority. Where unacceptable risks are found remediation and verification schemes shall be submitted to and approved in writing by the local planning authority. These approved schemes shall be carried out before the development is resumed or continued.