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## Appeal Decision

Hearing held on 15 January 2019

Site visit made on 15 January 2019

**by Patrick Whelan BA(Hons) Dip Arch MA MSc ARB RIBA RTPI**

an Inspector appointed by the Secretary of State

Decision date: 14 February 2019

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**Appeal Ref: APP/F0114/W/18/3201692**

**46 Radstock Road, Midsomer Norton BA3 2AW**

- 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 Mrs W Biggin and Mrs L Waring against the decision of Bath and North East Somerset Council.
  - The application Ref 17/02942/OUT, dated 20 June 2017, was refused by notice dated 7 November 2017.
  - The development proposed is the residential development of up to 10 dwellings with associated new vehicular access, car parking, associated infrastructure and landscaping following demolition of existing dwelling and outbuildings.
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### Decision

1. The appeal is dismissed.

### Procedural Matters

2. The planning application the subject of this appeal was made in outline, with all matters save access reserved. The appellant confirmed at the Hearing that drawing P01 Location Plan, and drawing SK02 Access Arrangements, are to be considered at this stage; the other drawings only illustrate how a scheme might be developed at the reserved matters stage.
  3. The Council's decision notice describes the proposed development as the erection of 10 dwellings, rather than up to 10 dwellings, which is the description in the application form. I have considered this appeal on the basis of the development sought by the appellant, and can see no prejudice to interested parties from this.
  4. The parties agreed, in advance of the Hearing, firstly that the Council's reason for refusal concerning biodiversity could be addressed by a planning condition requiring mitigation and compensation of reptile habitat. I have no reason to disagree. Second, there is no dispute that the Council is able to demonstrate a five-year supply of deliverable housing sites.
  5. Since the Council determined the planning application the new National Planning Policy Framework has been published. The Council would now seek affordable housing on a 10-dwelling scheme. Both parties were given the opportunity after the Hearing to provide their evidence on this matter, in writing.
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## **Main Issues**

6. The main issues are therefore:

- the effect of the demolition of the building as a non-designated heritage asset;
- the effect of the proposed development on the character and appearance of the area;
- the effect of the proposed development on the living conditions of surrounding occupiers; and,
- whether the proposed development should include affordable housing.

## **Reasons**

### *The demolition of the building*

7. While the existing building is not included on a local list, during its consideration of the planning application the Council identified it as a non-designated heritage asset, concluding that its loss would not be justified by the proposed development.
8. Policy CP6 of the Core Strategy 2014 (CS) seeks to protect and enhance the historic environment. Policy HE1 of the Council's Placemaking Plan 2017 (PMP) says that non-designated heritage assets should be conserved having regard to their significance, that great weight will be given to the conservation of the District's heritage assets, and that proposals will be weighed against the public benefit.
9. The National Planning Policy Framework (the Framework) defines a heritage asset as a building identified as having a degree of significance meriting consideration in a planning decision, because of its heritage interest. It requires a balanced judgement to be made, having regard to the scale of any harm or loss, and the significance of the non-designated heritage asset.
10. Little evidence was submitted on the significance of the building. However, from what I saw and heard, like many houses in Midsomer Norton, it was probably built at around the turn of the last century. There is no doubt that this is a fine house. With its entrance and its principal, well-lit rooms containing fireplaces and picture windows overlooking the valley, it turns its back to the road and stands as close to the street wall to maximise its aspect to the landscape beyond. In contrast to the rougher, hewn local stone on its rear and flank elevations, the principal elevation and its openings are finished in a finer, local, dressed stone, with ornamented bays.
11. Though it may once have occupied a far more spacious plot, the low-pitched, hipped slate roof of this house reflects the materials and detailing and the grandeur of its contemporaries closer to the centre of Midsomer Norton. While it retains aesthetic interest, despite the brick extension which undermines its value in the street scene, and while its form and plot is different to its contemporaries, it is hardly a rare example of the housing of the industrial era in which the village developed.
12. The mid-century brick extension, described as being built to provide space for the distribution of wages to local workers has an appealing communal link to

the past, but it has little more value than that. There is no evidence that the land behind the house had a landscape value, and no suggestion that the house is a landmark.

13. There is some archaeological interest in the isolation of this house, on the periphery of the village, and in the way it was sited to maximise the view of the valley, compared to its contemporaries within the village. Attractive as the Council's supposition is, that the house was for an important figure in the Norton Hill Colliery, who wanted to live somewhat apart from the workers' houses, while overlooking the Somerset and Dorset railway serving the mine, it is unsupported by evidence. I acknowledge that the earliest owner of the house was sufficiently well-known to warrant places being named after him. However, the appellants' research shows him to be a steam roller contractor rather than a mine director. The associative and social value of the house is inconclusive.
14. While I recognise that the house has aesthetic and archaeological interest, on the evidence before me, its significance as a non-designated heritage asset is low. I return to this in the planning balance, but turn now to the scheme to replace it, and its effect on the character and appearance of the area.

*The character and appearance of the area*

15. The appeal site lies at the threshold between two areas with different patterns of development. To one side, apart from the gap of the allotments, development tends to follow a linear pattern of generously spaced detached or semi-detached houses with long back gardens. To the other, the grain of development appears to tighten, to include terraces of houses including cul-de-sacs leading to second tiers of development behind.
16. I appreciate that the present development reflects something of the grain and siting of this looser, more peripheral pattern of development. However, the infill developments beside it, with their front building lines set so far back from the road, make the site something of an anomaly. Furthermore, the opposite side of the road is dominated by the large buildings and parking areas of the commercial estate. In this context, the suggested site layout would reflect the frontage character of development to one side of the site, and the cul-de-sacs leading to stepped terraces on the opposite side. This would not be incompatible with the patterns of development which surround the site, nor would it disrupt the spatial character of the area.
17. I understand the Council's concerns about overdevelopment. However, the layout suggests that up to 10 houses could be accommodated without appearing out of place with the surrounding development. Equally, the frontage houses could be designed as a pair and an individual house to diminish the effect of the opening for the access road. I agree that the layout appears to show the frontage houses uncharacteristically close to the Radstock Road; however there appears to be scope for adjustment which could be resolved at the reserved matters stage.
18. Similarly, the integration of the parking area into the landscape of the place will depend on the materials and detailed design, which are properly addressed later. There is no evidence that this amount of parking would preclude a successful integration with the landscape.

19. Overall, and given the outline nature of the proposal, I can identify no harm to the character and appearance of the area, and no conflict with CS policy CP6 and PMP policies D1, D2, and D4 which seek high quality schemes which reinforce context, contribute to local character and distinctiveness, and integrate parking into the street scene to create attractive and inspiring places to live.

*The living conditions of surrounding occupiers*

20. Whilst layout, scale and appearance are reserved matters, the illustrated layout indicates that houses sited towards the back of the site around a cul-de-sac are a likely solution. The Council is concerned about the potential for overlooking into the garden and back rooms of the neighbouring house, Quesnel, as well as the effect on the outlook of its occupiers.

21. However, the illustrated site plan indicates that a development could achieve distances between the new houses and the west boundary not uncharacteristic of housing in the built-up area, where a degree of mutual overlooking of back gardens is commonly accepted. The oblique angle between the suggested terrace and the house of Quesnel would diminish the opportunity to overlook into the house and garden. A landscaping condition to secure a denser screen of trees or shrubs along the boundary would further reduce the risk of overlooking. Furthermore, the appellant suggested that the rear elevations could be designed to direct views away from Quesnel.

22. Given the distances involved, the potential for screening on the boundary and mitigation in the design of the houses, a scheme of up to 10 dwellings, subject to the reserved matters, would not cause significant harm to the privacy or outlook of the occupiers of Quesnel.

23. No 46A stands to the other side of the appeal site and has a blind elevation within a few metres of the site boundary, alongside which part of the parking for the new houses would be formed. However, only 2 of these spaces are indicated to be alongside the back garden of No 46A, with the remainder sited alongside the front garden and flank wall of the house. Given this indicative siting generally away from the openings of No 46A and its back garden, the risk of noise and disturbance from car manoeuvring and access would not be significant. A dense boundary enclosure beside the area of car-parking which could form part of the landscape reserved matters would help to reduce noise from parking.

24. In these circumstances, I find no harm to the living conditions of surrounding occupiers, and no conflict with PMP policy D6 which protects the amenity of existing occupiers from significant harm to their amenities.

*Whether it should include affordable housing*

25. CS policy CP9 requires the development of small sites in Midsomer Norton, which it defines as those of 5 to 9 dwellings, to provide 15% of them, or a sum in lieu, as affordable housing. However, the Core Strategy dates from 2015, since when the revised Framework has been published. This<sup>1</sup> says that affordable housing should not be sought from developments that are not major, which it defines as 10 or more homes or sites of 0.5ha or more.

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<sup>1</sup> National Planning Policy Framework paragraph 63

26. Without any substantive evidence to relieve the weight of the very recent national planning policy, the lack of consistency of the small development part of policy CP9 with the Framework, limits the weight I can attribute it. In these circumstances, a development of 5 to 9 dwellings should not be required to provide affordable housing.
27. The same development plan policy stipulates that developments of large sites in Midsomer Norton, which it describes as those of 10 dwellings or more or sites greater than 0.5ha, should provide 30% of them as affordable housing. There is no conflict between this and the Framework<sup>2</sup>, which expects at least 10% of homes in major development to be available for affordable home ownership.
28. There are no submissions of viability to justify setting aside the development plan requirement to provide 30% affordable housing in a development of 10 dwellings. I acknowledge that the PPG<sup>3</sup> indicates that contributions for affordable housing should not be sought from developments of 10 dwellings or less, however, that was published in 2016. It does not outweigh the firm statement of government policy in the Framework, which is more recent, and to which I accord very significant weight.
29. The Council's SPD<sup>4</sup> indicates that for outline planning applications, the planning obligation should establish the broad requirement for affordable housing, with further submissions a requirement of the reserved matters stage. The right time to determine any reduction in the affordable housing against the existing house on the site would be at the reserved matters stage, when the floor space of the proposal is known.
30. I acknowledge that the site area is less than 0.5ha; however, policy CP9 sets the lower threshold of either the site area or the number of houses as triggering the requirement. The threshold trigger in Policy CP9 is gross rather than nett; that there is one dwelling already on the site does not therefore change its effect.
31. I have considered whether a planning condition requiring the appellant to enter into a planning obligation would make the development acceptable. However, the reconciliation of the size of the scheme, once known, against any vacant building credit should be straightforward. The proposed development is neither complex nor strategically important, and there is no clear evidence that the delivery of the development would be otherwise at serious risk. It does not meet the exceptional circumstances for a negatively worded condition as set out in the PPG<sup>5</sup>.
32. I appreciate that the Framework promotes the effective use of land and supports the important contribution that small and medium sites can make to the Government's objective of significantly boosting the supply of homes. However, it also recognises the importance of addressing the needs of groups with specific housing requirements.
33. I conclude on this issue that as the development could include 10 dwellings, the large sites section of policy CP9 applies. I appreciate that the number of

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<sup>2</sup> National Planning Policy Framework paragraph 64

<sup>3</sup> Planning Practice Guidance paragraph 031 Reference ID: 23b-031-20161116

<sup>4</sup> Planning Obligations Supplementary Planning Document 2015

<sup>5</sup> Planning Practice Guidance paragraph 010 Reference ID: 21a-010-20140306

dwelling is presently unknown. However, a planning obligation to secure affordable housing in the event that the development were for 10 dwellings is necessary to satisfy the requirement in the development plan, and to make the development acceptable in planning terms. Such an obligation would satisfy the 3 tests in Regulation 122(2) of the CIL Regulations 2010. Without it, the proposed development would be in conflict with CS policy CP9.

### **Other Matters**

34. The appellants claim that the house has been unoccupied since 2013 and that the costs to repair it make it unviable to let. Instead of continuing to pay for its security and Council tax, they intend to retain the land but dispose of these liabilities by demolishing the house.
35. While I am not convinced by the appositeness of this strategy, the lack of occupation of the building and the planning history strongly suggest that it is the appellants' intention to redevelop the site. Significantly, they have obtained a notice from the Council to confirm that its prior approval for the demolition of the house is not required. Notwithstanding the financial case for its demolition, I consider that there is a greater than theoretical possibility that the house will be demolished. In the circumstances, I accord this fallback position significant weight, and return to it below.
36. The Council has referred to appeal decisions in Swanley and Runcorn involving the demolition of non-designated heritage assets and the fallback of demolition. However, at Swanley<sup>6</sup> there was no substantive evidence to indicate a clear intention to demolish the building, whereas in this case, for the reasons above, I find the intention compelling. In the Runcorn case<sup>7</sup>, there were no plans under the prior approval process for demolition. The Inspector concluded that in any event the fallback would not justify the harm the proposal would cause. There are no meaningful parallels between those cases and this proposal.

### **Conclusions**

37. I have found that the outline proposal would not lead to harm to the character and appearance of the area, or to the living conditions of surrounding occupiers. These are neutral factors in the planning balance.
38. The existing building has some heritage interest, principally from its aesthetic and archaeological values, but overall, in my view, its heritage significance is low. Against it is the fallback position whereby the building could be demolished tomorrow, alongside the appellants' intention to redevelop the site. The loss of the building as a non-designated heritage asset therefore, is not a factor to which I can attribute more than a limited amount of weight.
39. Both parties agreed that the Government's objective of significantly boosting the supply of homes is a material consideration which should be afforded weight in the decision. A further important consideration is the contribution that small and medium sites like this can make to meet the housing requirement of the area, and the need to use land effectively to meet the need for homes. The Framework also indicates that decisions should support the development of windfall sites giving great weight to the benefits of using

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<sup>6</sup> Appeal Ref: APP/G2245/W/17/3184826

<sup>7</sup> Appeal Ref: APP/D0650/A/13/2210716

suitable sites within settlements, for homes. These housing supply factors weigh significantly in favour of the proposal.

40. Given that all but the matter of access is reserved, and noting the currency and voracity of the development plan's design policies, there is no reason why the final scheme should not equal the architectural quality of the existing building and its contribution to the distinctiveness of the area.
41. Taking these factors together, and while I note the development plan requires great weight be given to the conservation of the District's heritage assets, the social benefits of the additional housing would substantially outweigh the loss of the non-designated heritage asset. Accordingly, there would be no conflict with CS policy CP6 and PMP policy HE1 which require non-designated heritage assets to be conserved having regard to their significance, and for proposals to be weighed against the public benefit.
42. Notwithstanding this, the Framework recognises the importance of addressing the needs of groups with specific housing requirements. In this respect, the lack of any mechanism to secure affordable housing would conflict with the development plan and undermine the Council's approach to its provision and its ability to deliver housing for this group. This weighs heavily against the appeal. To this shortcoming, and the consequential conflict with the development plan as a whole, I attach more than significant weight. For this reason, and having regard to all other matters raised, the appeal is dismissed.

*Patrick Whelan*

INSPECTOR

### **Appearances**

#### For the appellant:

Dr Tom Rocke RTPI                      Planning Consultant

Mr John Moran RIBA                      Architect

Mr Biggin                                      Husband

#### For the Council:

Ms Tessa Hampden RTPI                      Senior Planning Officer, B&NES Council

Mr Adrian Neilson                              Principal Conservation & Design Officer B&NES Council

### **Documents submitted at the Hearing**

#### By the appellants:

1. Photographs of the existing building
2. Illustrated maps of local developments highlighting separation distances between dwellings
3. Summary of historical research into the previous occupiers of the building
4. Draft conditions