

Appeal Decision

Hearing held on 28 August 2014

Site visit made on 28 August 2014

by P W Clark MA MRTPI MCMi

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

Decision date: 22 September 2014

Appeal Ref: APP/F0114/A/14/2218830

Land to the rear of King George's Road, Bath

- 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 Curo Places Ltd against the decision of Bath & North East Somerset Council.
 - The application Ref 13/03835/FUL, dated 6 September 2013, was refused by notice dated 20 January 2014.
 - The development proposed is the erection of 11 houses and 10 flats.
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Decision

1. The appeal is dismissed.

Procedural matters

2. The application was modified during its consideration by the Council. Further amendments were submitted with the appeal. These are minor in nature, intended to address points of objection, and do not give rise to new issues. No party would be prejudiced if I were to base my decision on the amended plans and so that is what I have done.
3. A unilateral undertaking was submitted at the appeal hearing. It provides for affordable housing and for payments to the local authority for the purposes of providing highway improvements and facilities for education and open space.

Main Issues

4. There are six, not all deriving from the council's reasons for refusal. They are the effects of the proposal on;
 - The living conditions of residents of numbers 1, 7 and 8 King George's Road
 - The character and appearance of the area
 - The safety of pedestrians using the highway
 - The potential supply of allotments
 - Ecology and protected species
 - The supply of housing

Reasons

Living conditions

5. There is a considerable difference in level between the site and the parking courtyard from which access would be taken. To achieve the access would involve the demolition of numbers 5 and 6 King George's Road, which currently form one half of a block of four maisonettes, the construction of a new gable end to the truncated block, including the insertion of two new windows to flats 7 and 8, and the formation of a steep ramp into the site.
6. Although the existing parking courtyard from which access is taken is sloped, nevertheless, its northern end is still raised about 0.5m above ground level. The proposal would not seek to regrade the existing car park to follow the contours more closely but would instead add an elevated ramp to its end.

(i) Outlook and privacy – numbers 7 & 8

7. At its closest, this ramp would be about 2.4m from the corner of the retained block at a height of about 1.8m above ground level. As seen on site, the nearest affected existing windows would be those to a living room. Drawings show additional windows to be inserted equally close to the new ramp into the exposed gable end. The drawings indicate these to be to a kitchen but, in the position shown, they would form an additional window to the living room.
8. The existing windows are on an elevation which faces the public realm and so it is already possible to look down to the lower flat or across at the first floor flat at 7 and 8 King George's Road from the existing car park at a distance of about 9m but the new access would bring a greater number of cars and pedestrians much closer to the retained flats. The new flank windows would be obscurely glazed at ground level but not at the first floor which would be more or less level with the ramp. The Council accepts that planting within the 2.4m could provide adequate privacy but I am not convinced that it would grow sufficiently quickly or densely in the short term. If it did, it would restrict the daylight received by the residents, particularly of the lower flat.
9. Railings with no parapet are proposed to guard the edge of the ramp in order to minimise its effect on outlook from and daylight to the retained flats. It would pass the Building Research Establishment's 45 degree rule of thumb test for daylight but clearly, such an expedient demonstrates the constricted circumstances of this proposal and would be negated if the intended planting grew sufficiently high and dense to afford privacy.

(ii) Noise and disturbance – 7 & 8

10. The appellant points out that noise attenuates with distance. But, in this case, there is very little distance. Although it would be possible to require by condition that the new gable end and inserted windows be constructed to provide noise insulation, existing windows would not be so protected.
11. Within the immediate vicinity of the site, numbers 11-26 Lansdowne View front directly onto the road and many properties on King George's Road estate front directly onto footpaths or abut roads and parking areas with no intervening landscape buffer or other acoustic or visual protection but these examples do not also demonstrate the difference in level proposed here. Reference was made in general terms to precedents such as basements in the historic centre

of Bath but I am not persuaded that conditions which might be found acceptable for eighteenth century servants quarters should be replicated for twenty-first century living conditions and so I find that the arrangement proposed on this site would be unacceptable.

(iii) Effect on number 1

12. The new access road would curve so as to wrap around the northern garden of number 1 King George's Road at a height above ground level shown as varying between 1 and 1.5m. Where this garden currently abuts the existing parking court, privacy is ensured by planting and by a 1.8m blockwork wall but the latter reduces in height to about 1m to the north where it does not presently face publicly accessible land and is succeeded by a fence. From the proposal's elevated ramp it would therefore be possible for any passer by to see clearly over the existing boundary enclosure, into the northern garden area and, at a distance of about 9-13m, into No1's conservatory extension.
13. Although the northern garden areas of number 1-4 (consecutive) King George's Road were originally designed as their frontages, no road has ever been built to provide access and so, in practice, these houses have been accessed from King George's Road to their south across what were originally intended as their rear gardens. Their northern gardens have become used as their private gardens. Although the proposal shows shrubs and fruit trees to be planted adjacent to the ramp, I am not convinced that this would provide adequate privacy in the short term, if at all, because of the time they would take to grow, the density of foliage, particularly in winter, and the elevated position of the ramp. No fence is shown proposed at the level of the ramp. The effects of the proposal on the privacy of number 1 would therefore be unacceptable.

(iv) The communal waste area

14. About 4m to the north of the northern garden of number 2 King George's Road and about 17m from its rear elevation would be the communal waste and recycling area serving the ten flats proposed. It would be slightly elevated out of the ground (by about 0.2m), supported by a reconstituted stone retaining wall topped with a 1m high stock proof fence comprising galvanised steel mesh topped with half-round rails.
15. Although it would be surrounded by shrub planting, it would be unroofed and so still be in clear view from the upper floors of numbers 1-4 King George's Road, as it would be also from the flats it would serve. Although such a facility is a necessity and it would be positioned as far from any dwelling, existing or proposed, as it is possible to be within the layout put forward, without greater aural and visual enclosure its effect on the outlook from and disturbance in use to both existing and potential future residents would be unacceptable.

(v) Conclusion – living conditions

16. Although each of the points listed above would not, individually, amount to a reason to dismiss this appeal, cumulatively they would produce an unsatisfactory outcome. I conclude that the effect of the proposal on the living conditions of numbers 1, 7 and 8 King George's Road would not be acceptable. The proposal would not comply with Local Plan policy D2(f) which requires development permitted not to harm neighbours' amenities.

Character and appearance

17. Much of the site is presently overgrown with brambles and similar vegetation. There are also a number of low, shrubby trees and fruit trees. None on site is regarded by any party as worthy of protection but a number of trees abutting the site are recognised as such and the proposal would make arrangements for them to be protected, which could be secured by condition.
18. The site is known to be contaminated and so a remediation programme would be necessary, which could be secured by condition. The appellant's consultants considered a clean cover solution, just over half a metre thick, but actually recommend a system using a non-rippable geotextile layer with cover just under half a metre thick. Either of these methods would require the site to be cleared, although it is proposed to provide root protection areas to the more significant trees which closely abut the site which would require adjustment (as yet undefined) to the measures required to deal with the contamination.
19. The site slopes steeply and it is proposed to regrade the site. Paragraph 4.1.1 of the Planning, Design and Access Statement explains that this is intended to give a more level access for disabled use. Unfortunately, this intention would be largely negated by the steepness of the access ramp into the site.
20. The drawings show that, as a result of the regrading, much of the development would be raised above existing ground levels by amounts varying from a minimum of 0.2m (immediately behind numbers 1 and 2 King George's Road) to as much as 2.8m (on the line of the northern elevation of the flats, immediately adjacent to the root protection area of the tree identified as tree T46), which is within approximately 6m of the northern boundary of the site.
21. In response to a written request for information following the closure of the hearing, the appellant advises that timber platforms and steps would overcome the difference in levels. These would be sizeable structures in order to overcome the near-storey height difference in levels. They would occupy a considerable proportion of the already small rear gardens of the flats. They are not shown on any of the application drawings so neither the Council nor any other potentially interested party has been made aware of them so as to be able to assess their significance or to provide me with evidence on which to form a judgement. These are not minor matters which could be covered by condition. In this respect the proposal is incomplete and so I am not able to assess the impact of these elements, which could be significant. In these circumstances, I am unable to allow the appeal.
22. Except where the proposal would be elevated to accommodate falling ground levels, it would comprise small terraces of two storied buildings, comparable to the surrounding area in form, scale and density. The extent of soft landscaping is shown to be about ten per cent less than that of a sample comparison drawn from the adjoining King George's Road estate. This estate itself has somewhat more car parking provision and so, less soft landscaping, than more historic areas in the neighbourhood. Although the development proposed would be approached through King George's Road which would form a transition zone to the development and so the contrast between the proposal and historic areas would be less noticeable when seen from the public realm, nevertheless, the contrast could not be hidden from the residents of Lansdowne View which surrounds the site on two sides.

23. The balance between hard and soft landscaping would be the result of a relatively high provision of car parking. Although not exceeding the limits of Local Plan policy T26 which would allow up to 37 spaces, the 31 proposed would be considerably more than local car ownership rates suggest would be needed. Even so, the extent of soft landscaping resulting from the intrinsic efficiency of the layout would remain at more than one third of the site. That represents a quantitatively reasonable provision of soft landscaping, which can be required by condition. However, in terms of the public appearance of the scheme, nearly all the soft landscaping would be hidden behind the buildings proposed. What would be seen from the public domain would be a somewhat bleak layout dominated by car parking and the prominently sited communal waste area.
24. Adding to these criticisms, the matters which remain to be resolved, such as the reconciliation between the Root Protection Areas of trees and the need to add half a metre of soil to address decontamination issues, clarification of the position and effect of the windows to be inserted in the exposed gable ends of the existing flats and the detail of the platform and steps needed to deal with the storey height difference between the levels of the ground floor flats and their intended gardens, mean that the scheme has not been sufficiently resolved for me to be able to come to an informed conclusion on the way it would impact on the character and appearance of the area. This uncertainty means that the appeal must be dismissed because I am unable to conclude that it would be acceptable and that it would comply with Local Plan policies D2 and D4. Amongst other matters, these require a high quality development to respond to the local context without being dominated by car parking.

Highway safety

25. Access to the site would be taken from an existing parking courtyard which is crossed by a route for pedestrians to and from local schools, shopping facilities and railway station and, reportedly, for cyclists accessing the nearby Linear Park path and cycleway. Extracts from a photographic survey show 56 persons, mostly schoolchildren, crossing the car park in 23 minutes in the late afternoon of 7 January 2014. A local resident reported that she had counted 200 children using the route within an hour and a quarter early in a morning.
26. These figures, provided by third parties, are not part of any more extensive survey, averaged to eliminate fluctuations caused by the circumstances of a particular day or time but, nevertheless they are not contradicted by any information from any other source. I therefore take them as indicative of a well-used pedestrian route. They suggest that at peak times, the car park is crossed by a pedestrian every thirty seconds or so.
27. The Council's assessment of the traffic generated by the development proposed suggests that there would be a car accessing the development on average once every seven and a half minutes. These figures do not support the idea that there would be any great conflict between the volumes of pedestrian and vehicular traffic. The situation would be comparable with many other locations in the area where a well-used pedestrian route is crossed by a minor access. Although the ramp accessing the development would exceed the gradient of 5% recommended for pedestrians in paragraph 6.3.27 of manual for Streets (MfS), a drawing showing a long section through the access demonstrates that

there would be good intervisibility between pedestrians crossing the parking courtyard and vehicles leaving the development.

28. The Council's estimate of traffic generated by the development, which is not disputed, suggests that it would represent a 12% increase in the volume of peak hour traffic in the north-south section of Lansdowne View reported as currently up to 100 per hour by a local Community Speedwatch representative. Such a volume of traffic would be within the capacity of a shared surface street described in Manual for Streets to be safe for pedestrians and so would be well within the capacity of a conventional street such as Lansdowne View to provide safety for pedestrians, even allowing for its restricted width and single lane working under the railway which crosses at its lower end.
29. Formal parking restrictions are already in place in parts of the junction of Lansdowne View and King George's Road and advisory markings in other parts. Through the unilateral undertaking, the proposal would make financial provision for these to be formalised. I understand that the Council has a scheme in preparation. Subject to a condition requiring the development not to be occupied until this has been done, there is no information to demonstrate that any further highway improvement measure is necessary for the development to be acceptable in terms of safety to highway users, either in cars or on foot, but a Construction Method Statement would be required to show how highway safety would be maintained during the construction period.
30. The unilateral undertaking would also make financial provision for the installation of a pedestrian crossing further afield, on Shophouse Road at Twerton High Street, but I have no information to show that this would be necessitated by the development proposed. I cannot be sure that this provision would comply with the Community Infrastructure Levy (CIL) Regulations and so I take no account of it in reaching my conclusion that, for the reasons set out above, the proposal would have an acceptable effect on the safety of pedestrians using the highway. It would comply with policy T24 of the Bath and North East Somerset Local Plan including minerals and waste policies (the Local Plan), adopted in October 2007, which, amongst other matters, requires a high standard of highway safety.

Allotments

31. Part of the site was previously included within the Council's adjacent statutory allotment site, though never used for cultivation, apparently because of soil pollution concerns. Part of the site was previously used as private allotments and has been considered for acquisition by the Council for use as statutory allotments but rejected, apparently also because of concerns over the costs of overcoming soil pollution. All parties accept that such concerns could be overcome (and would be overcome through the current proposal) but at a cost which is viewed by the Council as excessive for allotment provision.
32. Nevertheless, the Councils' consideration of acquisition reinforces the submitted evidence which shows that there is a need for allotment provision both within Bath and, more acutely, within the ward where this site is located. The appropriateness of indicating need by ward, rather than by walking distance is disputed but is more objective than waiting lists at individual allotment sites which can be influenced by site circumstances rather than actual need.

33. I note that the entry for the site in the Council's Strategic Land Availability Assessment 2013 (the SLAA) identifies that the site is suitable for housing development subject to replacement land being available for 17 plots (potentially on recreation ground to the south). I therefore have no reason to dispute the figures provided by the Council's Parks and Green spaces department recording a need for 1.33 ha of allotment provision within Westmoreland Ward and for 123 sq m arising from the population housed by the development proposed.
34. As part of the Unilateral Undertaking submitted during the hearing, the development would provide an Open Space Contribution of £36,437.52 for the provision of open space and allotments and a sum of £34,585.14 for their subsequent maintenance. However, because this undertaking is unilateral, there is no parallel obligation on the Council to spend the money so as to resolve the objection to the proposal.
35. At the hearing the Council was unable to give me any indication that the money would be spent on more than upgrading existing facilities and third parties provided evidence that money received as a result of planning obligations elsewhere within the City remained unspent. I would therefore be unable to conclude that the proposal would have anything other than an adverse effect on the supply of land potentially available for allotments unless I were to impose a "Grampian" style condition requiring the prior provision of allotments as envisaged in the Council's SLAA. With such a condition in place the proposal would comply with Local Plan policy CF8 which requires that there be no loss of allotment land identified in the Local Plan (which this site is) unless an alternative is provided.

Ecology and protected species

36. An initial ecological appraisal conducted on behalf of the appellant is now accepted as inadequate. However, it is the proposed development which is being considered for approval, not the appellant's consultants' reports. Whilst recognising their deficiencies, there is no information before me to go beyond the initial comments of the Council's ecologist which advise that the site does not contain rare habitats or species but has a general ecological value to local wildlife such as reptiles, birds and bats which must be accurately recognised.
37. Subsequent investigation has confirmed local residents' reports of badger activity on site. However, I note the council ecologist's advice that the signs observed appear to be concentrated along the northern boundary adjacent to the railway line and the potential sett entrances observed are all single hole and likely to be outliers or subsidiary setts. She does not dispute the appellant's ecologist's suggestion that badgers are likely only to use the site in conjunction with connecting habitat within allotments, the railway corridor, gardens and amenity grassland to the south and beyond and that there is suitable connecting habitat to allow badgers to move into these areas and to find alternative foraging, sett building and commuting habitat.
38. For these reasons, I take the view that the development would not result in the loss or deterioration of an irreplaceable habitat. I note the intention of the developer to apply for licences to deal with the badger setts identified and I concur with the view of the Council's ecologist that with conditions requiring mitigation measures and limits to lighting to the north of the development, the effects of the proposal on ecology and protected species would be acceptable.

39. With such conditions in place I conclude that the development would have an acceptable effect on ecology and protected species. It would therefore comply with Local Plan policy NE12 which requires compensation provision for the loss of elements of wildlife value.

Housing

40. The Council's recent adoption of its Core Strategy confirms the findings of paragraphs 80-88 of the report of the Inspector who examined the plan that there is a more than five year supply of housing land available. That housing land supply includes this site but the Council argues that the identified supply is so great that it does not depend upon this site being developed.
41. The appellant claims that although the Council's housing supply is adequate for the plan area overall, shortfalls within Bath City are balanced by provision elsewhere. I have no information to substantiate that point. What I do find compelling are the comments made in paragraphs 89 and 99 of the Core Strategy Inspector's report to the effect that the Council's SLAA demonstrates a robust basis for delivery in the short and medium term but only a just adequate supply over the whole plan period. Provision over the whole plan period is tight with no flexibility to accommodate changed circumstances.
42. I therefore conclude that the effect of the proposal on housing supply is a matter which cannot be discounted. The proposal would contribute to the delivery of the housing supply set out in the Council's Core Strategy.

Conditions and other matters

43. As already noted, a Unilateral Undertaking makes provision for affordable housing and for payments to the local authority for the purposes of providing highway improvements and facilities for education and open space. These have been calculated in accordance with the Council's standard formulae and so can be seen to be proportionate. The necessity of the provisions for highway improvements and for open space has already been discussed.
44. Evidence is provided by the Council's education department of the effect the development is likely to have on the provisions of various levels of education in the area. This convinces me that it is necessary for the development to make a contribution. The Council currently has no specific project or projects on which the money would be spent to resolve the problem but, as was pointed out, there is a statutory requirement to make provision and children will have to be educated as they present themselves so further investigation is not required for me to conclude that this element of the Undertaking would meet the CIL regulations.
45. The affordable housing provision would be in one of two forms, depending on the finance available to the developer. One would simply comply with the Council's policy for 35% of dwellings to be affordable. The other would provide for 100%. Because there is no certainty that more than a policy-compliant provision would be made, I cannot ascribe any additional benefit from these provisions but simply note that the provision is necessary to comply with the Council's policy, related and proportionate, and so complies with the CIL regulations.
46. A Statement of Common Ground makes suggestions for eighteen conditions. Were I to allow the appeal, the necessity for conditions requiring compliance

with plans and for the provision of parking restrictions, tree protection, soil decontamination, and noise insulation of the exposed gable end of numbers 7 and 8, replacement allotments, lighting restrictions and ecological mitigation measures has already been discussed.

47. Other conditions would be needed to require submission and approval of details which are missing or are only indicative in the submitted application, such as drainage details and the materials to be used in external finishes. Further conditions could require that essential elements which are shown on the drawings be provided before the dwellings are occupied. However, not all the conditions suggested would deal with all the deficiencies of the scheme (such as the effect on the living conditions of number 1 King George's Road) and there remain some inconsistencies and missing details, noted in paragraph 24 above, which would not be covered by conditions.
48. Through custom and practice, tenants of the existing allotments which remain adjacent have gained access to their plots across the site, reached along a roughly made up private driveway opening from Lansdowne View to the north of numbers 11-26. This is said to be level, which it generally is, apart from a short length immediately at its entrance which surveys show to be as steep as 1:5.5 in parts. By contrast, the development would provide for a surfaced path at a gradient less steep (though admittedly over a longer distance) which would provide access to the car parking area in King George's Road. Nevertheless, the path simply leads on to the ramp which, as already noted, would be steeper than the gradient recommended for pedestrian use in MfS. Although this is not a ground of refusal and is not, of itself, such an overriding objection as would require the appeal to be dismissed it is a further factor illustrating the unsatisfactory nature of the present scheme.

Conclusion

49. This is a scheme which has evolved considerably, both during its consideration by the Council and subsequently. It may yet be capable of further refinement but that is a matter for the Council and the appellants. In terms of what is before me, there remain certain matters which are yet to be resolved and those which are resolved leave outstanding objections to the effect of the scheme on the living conditions of neighbours and on the character and appearance of the area. On the balance of consideration and despite its modest contribution to the supply of housing in Bath these matters require the appeal to be dismissed.

P. W. Clark

Inspector

APPEARANCES

FOR THE APPELLANT:

John Sneddon BSc (Hons) MRTPI	Director, Tetlow King Planning
Felicity Tozer MTP	Senior Planner, Tetlow King Planning
Craig MacDonald MSc MRTPI	Development Project Manager, Curo Places Ltd
Rob Delius BA (Hons) MA Architect RIBA	Head of Sustainable Design, Stride Treglown
Ian Monachino-Ayres DipTP	Director, IMA Transport Planning

FOR THE LOCAL PLANNING AUTHORITY:

Mike Muston BA (Hons) MPhil MRTPI	Director, Muston Planning
Councillor June Player	Ward Councillor
Councillor Eleanor Jackson	Chair of Housing and Major Projects Policy Development and Scrutiny Panel

INTERESTED PERSONS:

Dr Virginia Williamson	Bath & North East Somerset Allotments Association
Kirsty Pristo	Local resident
Sue Pristo	Local resident
Bill Oatley	Local resident
Helen Woodley	Local resident
Mike Hill	Local resident
Paul Marquis	Local resident
Trilby Breckman	Local resident
Carole Senior	Local resident
Chrissie Hamilton	Local resident
Claire Dustin	Local resident
Jenny Bakhoff	Local resident
Lesley Gillard	Local resident
Joyce Robinson	Local resident
Martin Bakhoff	Local resident
Jayne Parfitt	Local resident

DOCUMENTS submitted at the Hearing

1. Notification of date, time and place of Hearing
2. Drawing IMA-13-017 013
3. List of Saved Local Plan Policies not replaced by the adopted Core Strategy
4. Extract from; Representations on the Revisions to the Bath and North East Somerset Local Plan Revised Deposit Draft 2003
5. Bundle comprising photograph survey of pedestrians using King George's Road, letter from Ruth Ebdon and letter from Sharon Devine-King
6. Bundle of annotated photographs
7. Bundle of photographs
8. Report and decision relating to previous application on site
9. Extract from; Growing in the Community
10. Two plans comparing green area of site and of surrounding area
11. Draft minutes of the Allotments Forum 3.6.14
12. Drawing of pedestrian visibility sightlines along proposed access road
13. Drawings showing access approved at Waggon and Horses, London Road West, Bath
14. Copy of signed and dated Unilateral Undertaking
15. Bath and North East Somerset Supplementary Planning document; Planning Obligations

DOCUMENTS received (by agreement) following the Hearing

1. Comments by Dr Williamson on pedestrian access to retained allotments
2. Letter from Tetlow King Planning explaining relationship between root protection areas, ground levels and floor levels.
3. Letter from Tetlow King Planning responding to Dr Williamson's comments.