
Appeal Decision

Hearing held on 8 January 2015

Site visit made on 8 January 2015

by R C Kirby BA (Hons) DipTP MRTPI

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

Decision date: 4 February 2015

Appeal Ref: APP/F0114/A/14/2227733

The Royal High School, Hope House, Lansdown Road, Bath BA1 5ES

- 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 Hope House Developments LLP against the decision of Bath & North East Somerset Council.
 - The application Ref 13/04235/FUL, dated 27 September 2013, was refused by notice dated 5 September 2014.
 - The development proposed is residential development for the erection of 58 no dwellings, including the conversion of Hope House, and associated infrastructure and parking following the demolition of the existing school buildings.
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Decision

1. The appeal is allowed and planning permission is granted for residential development for the erection of 58 no dwellings, including the conversion of Hope House, and associated infrastructure and parking following the demolition of the existing school buildings at The Royal High School, Hope House, Lansdown Road, Bath BA1 5ES, in accordance with the terms of application Ref 13/04235/FUL, dated 27 September 2013 and subject to the 22 conditions in the attached Schedule.

Procedural Matters

2. The description of development above has been taken from the appeal form as during the course of the planning application, the original proposal for 57 dwellings was amended to include an additional dwelling. I have determined the appeal on the basis of the amended plans considered by the Council.
3. A completed Unilateral Planning Obligation (UPO) dated 8 January 2015 was submitted at the Hearing. I have considered the content of this later in my decision.
4. The Council adopted the Bath and North East Somerset Core Strategy in July 2014. At the Hearing the Council advised me that there were no policies within this document relevant to the appeal proposal. The appellant did not dispute this. I have therefore determined the appeal on the basis of the policies referred to in evidence by both main parties as contained within the Bath and North East Somerset Local Plan Including Minerals and Waste Policies (Local Plan), and the National Planning Policy Framework (the Framework).

5. It was agreed at the Hearing that the appeal site can broadly be divided into 2: the upper site which is accessed from Lansdown Road and occupied by Hope House and its environs, and the lower site which is accessed off Park Street Mews. I have referred to the 2 parts of the site accordingly throughout my decision.
6. Since the Hearing, the Council has granted planning permission for 54 dwellings including the conversion of Hope House, and associated infrastructure and parking on the upper site. This approved scheme is the same as that before me on the upper site. Listed building consent has also been granted for the works to Hope House. In reaching these decisions, the Council will have considered local residents' and others' concerns about the proposal. Whatever my decision on this appeal, the scheme on the upper site can be implemented. However, as the appeal before me is for the whole site, I am obliged to consider the proposal in its entirety.

Main Issue

7. A Statement of Common Ground (SCG) was agreed prior to the Hearing between the 2 main parties. In light of the SCG, and the refusal reason set out within the decision notice, the main issue in this case is whether the design and appearance of the 4 new dwellings on the lower site would serve to preserve or enhance the character or appearance of the Bath Conservation Area.

Reasons

8. The appeal site is located within the Bath Conservation Area and Bath World Heritage Site. Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires me to pay special attention to the desirability of preserving or enhancing the character or appearance of a conservation area. In this respect, national policy on heritage assets, which includes conservation areas, listed buildings and World Heritage Sites is set out in the Framework. At paragraph 131, it sets out matters which should be taken into account including sustaining and enhancing the significance of the heritage asset and the desirability of new development making a positive contribution to local character and distinctiveness. It further advises at paragraph 132 that great weight should be given to the asset's conservation.
9. At paragraph 134, the Framework advises that where a development would lead to less than substantial harm, this harm should be weighed against the public benefits of a proposal. The appellant considers that Policy BH.6 of the Local Plan should only be afforded limited weight in my decision as it is more restrictive than paragraph 134 of the Framework. However, Policy BH.6 is a saved policy, and whilst it does not include a weighing up clause, it is in broad conformity with the Framework in respect of conservation areas. I therefore attach substantial weight to it in my decision, along with the Framework.
10. Bath Conservation Area covers a large area and includes the historic core of the city. It is characterised by attractive Georgian architecture and town planning within a landscaped setting. Large areas of woodland and open ground are features of the area. The topography of the city is distinct and buildings respond to this feature by following contours, often overlooking open ground with panoramic views from them across the city.

11. The lower site is occupied by 3 tennis courts; the one closest to Hope House is proposed to be retained. The 4 new dwellings on this part of the site would be sited in a similar position to 2 of the tennis courts. They would be of a contemporary design and would be split level to take account of the gradient of the site. They would be 2 storeys in height on the front elevation, and single storey at the rear.
12. On my site visit, I observed that the lower part of the appeal site was not prominent from public vantage points, being contained between existing development and set back from Park Street Mews. The site is however visible from neighbouring properties. Within the vicinity of this part of the appeal site the area is of mixed architectural character and period. There are tall, imposing terraces on Park Street, 2 storey mews style development in Park Street Mews, semi-detached and modern, 2 storey detached properties in St James's Park and modern 3 storey flat roofed development off Great Bedford Street, opposite its junction with Park Street Mews.
13. Whilst being of a contemporary design, the new dwellings on the lower site would be of a terraced form, would be of a symmetrical design and would utilise a palette of materials that would reflect the character and appearance of the area. Whilst flat roofs are not a characteristic of the area, they are present on some buildings close to the site. Given the parkland setting of the appeal site and the utilisation of the site's contours, I consider that the flat, green roof proposed would not be prominent in the wider area. Indeed such an approach would ensure that the new dwellings would successfully integrate into their landscape setting.
14. Furthermore, the siting of the new dwellings would ensure that they would not encroach into the adjoining woodland and parkland which is an important feature of the conservation area, and visible in long and short term views of the site. The mature tree to the front of the tennis courts would remain and new planting would be provided to reinforce the landscape setting of the site. This could be secured by planning condition.
15. In light of the foregoing, I conclude that the new dwellings would be of a good design, would be visually attractive and would preserve the character and appearance of the conservation area. The proposal would sustain the importance of both the conservation area and World Heritage Site as heritage assets. There would be no conflict with Policies BH.6, D.2 and D.4 of the Local Plan or national planning policy relating to design, conservation areas and World Heritage Sites.

Other Matters

Upper Site and effect upon the Bath Conservation Area

16. Hope House and the landscape of the appeal site make a positive contribution to the conservation area and views of it are possible from Alexandra Park, where the appellant submits it can be seen as a green, well wooded area that runs into the development off Lansdown Hill. The modern buildings upon the upper site would be demolished and new blocks of buildings constructed. The new buildings would reflect the traditional terraced properties in the area and would respect the contours of the site. Hope House would be refurbished and

converted into residential units. In terms of the design and form of this aspect of the proposal, I consider that the character and appearance of the conservation area would be enhanced.

17. The trees upon the site are visible in both long and short distance views. The appellant's Tree Quality Survey has identified 42 individual trees for removal. The trees within the woodland and parkland would remain. Some of the trees to be removed were identified as having a category grading of B.
18. In the short term, the loss of trees upon the site would have an impact on the character and appearance of the conservation area. The new buildings would be more prominent than the existing buildings when viewed from St James's Park, and within the wider landscape as a result of the tree loss. However, subject to a suitable landscaping scheme to mitigate this loss, this impact would not be permanent. Such details could be secured by planning condition and further information could be provided as part of this detail to address local residents' concerns in respect of landscaping on sloping ground. Furthermore, the removal of buildings upon the site that are poorly designed and their replacement outweighs the short term harm that would be caused by the loss of trees. I therefore have no reason to reach a different conclusion to the Council that the loss of trees upon the site would not have an adverse effect upon the character or appearance of the conservation area.
19. In view of my findings, I conclude that the proposal would preserve the character and appearance of the Bath Conservation Area. No harm would be caused to the World Heritage Site. There would be no conflict with Policy BH.6 of the Local Plan or national planning policy relating to conservation areas and World Heritage Sites.

Effect upon listed buildings

20. Hope House is grade II listed. There are several listed buildings within the vicinity of the appeal site, including grade II listed buildings at Nos 1-9 Lansdown Place West and Nos 1-16 Lansdown Place East. There are grade I listed buildings at Nos 1-20 (consecutive) Lansdown Crescent. Section 66(1) of the Planning (Listed Building and Conservation Areas) Act 1990 requires that when considering whether to grant planning permission for development which affects a listed building or its setting, special regard shall be had to the desirability of preserving the building or its setting, or any features of special architectural or historic interest which it possesses.
21. Local residents are concerned that the new development would be more prominent in the wider landscape as a result of the proposed tree loss and as a consequence the setting of listed buildings within the vicinity of the site would be adversely affected. The Council do not share this view. Indeed it considers that the removal of modern buildings around Hope House, the replacement buildings and the refurbishment of Hope House would significantly enhance the listed building and its setting. Furthermore, the Council consider that the scale and siting of development on the site would be such that there would be no intrusion on the setting of listed buildings adjoining the site in Lansdown Place East.

22. I have no reason to reach a different conclusion to the Council in this respect, and note that English Heritage raised no objection in respect of the impact of the proposal on listed buildings within the area. I therefore conclude that the significance of listed buildings within the area would be sustained and enhanced by the proposal. The proposal would preserve Hope House and its setting, and the setting of listed buildings within the vicinity of the appeal site. There would be no conflict with national planning policy set out within the Framework in this respect.

Living conditions

23. Concerns have been raised by local residents that the use of the car parking area to Unit C would result in noise and disturbance to residents whose properties back onto the site in St James's Park. Whilst the proposal would introduce vehicular activity into an area where there is none at present, the access and parking area is located away from the party boundary. I have not been provided with substantive evidence that the comings and goings of vehicles from this area would be discernible above the noise of vehicles using both the residential roads and through roads within the area. Furthermore, I am satisfied that the visual impact of car parking could be mitigated through appropriate landscaping.
24. Local residents have expressed concern that the appeal proposal would result in a loss of privacy to the private garden areas and rooms of dwellings which back onto the appeal site. In respect of the lower site, whilst the new dwellings would be visible from the garden area and first floor windows of neighbouring properties, they would be sited at a lower level than them. Accordingly, I am satisfied that there would be sufficient separation distance to ensure that a loss of privacy would not occur to neighbouring occupiers, including those at No 1 The Butty Piece, from where I viewed the appeal proposals. Furthermore, there would be no windows in the side elevation of the new dwellings on the lower site, such that the privacy of occupiers in Park Street or St James's Park would not be adversely affected.
25. I observed on my site visit that units B and C would be visible from both the rear gardens and rear rooms of properties in St James's Park which back onto the site. Unit C would have accommodation over 3 storeys and 4 storeys in part; unit B would range in height from 2 storeys to 3. The new buildings would be at higher level than the existing neighbouring properties and would have more windows on the elevation facing towards St James's Park than the existing school buildings. The Council has calculated that unit B would be 25 metres from the rear of neighbouring dwellings. This distance is not disputed by local residents. Unit C is located further away from neighbouring dwellings than unit B.
26. The Council consider that the relationship of the proposal to existing development would not be unusual and that the separation distances fall within the parameters generally found acceptable. From my observations, and having particular regard to the levels of the site relative to neighbouring development and the distance between, I am satisfied that the privacy of neighbouring occupiers would not be adversely affected by the proposal.

27. At the Hearing there was some discussion over the use of an area for outdoor space above unit 26, within unit C. It is not clear from the submitted drawings the extent of this area. Given its location and future use, a loss of privacy to neighbouring gardens could occur. The extent of this outdoor area could be controlled by a suitably worded planning permission to protect the living conditions of residents of Nos 33 and 34 St James's Park.
28. The removal of trees between the new buildings and the boundaries of properties in St James's Park would result in the new buildings being more prominent in the outlook from both the rear gardens and from rear windows of neighbouring properties than the existing buildings. However, whilst this may be the case, I am satisfied that there would be sufficient distance between both the houses and gardens of properties in St James's Park to ensure that the new buildings would not be unduly prominent or overbearing on the outlook from them.
29. I therefore conclude that the proposal would not be harmful to the living conditions of occupiers of neighbouring properties in terms of privacy and outlook. A good standard of amenity would be provided for all existing and future occupants of land and buildings, in accordance with the core planning principle of the Framework.

Highway safety

30. The appellant submitted a drawing showing the swept path of both a fire engine and refuse vehicle along the new access from Park Street Mews to serve the 4 dwellings on the lower site. The Highway Authority considered that the proposal was acceptable on highway safety grounds. Furthermore, it considered that the amount of car parking proposed for the larger scheme was acceptable. In the absence of substantive evidence to demonstrate otherwise, I have no reason to reach a different conclusion to the Highway Authority or Council that the proposal would not result in harm to highway safety.

Ecology

31. Whilst noting concerns in respect of the effect of the proposal on ecology, I am satisfied that suitable measures could be taken to mitigate and enhance biodiversity on the site, including planting buffers and a control on external lighting. Such matters could be controlled by planning condition.

Drainage

32. Wessex Water raised no objections to the proposal. Whilst noting the concerns of local residents in respect of these matters I am satisfied that sustainable drainage measures could be adopted on the site and this could be secured by planning condition.

Unilateral Planning Obligation

33. The obligations contained within the UPO are not in dispute. However, I am obliged to consider whether the contributions are in accordance with paragraph 204 of the Framework and the statutory tests set out in regulation 122 of the Community Infrastructure Levy Regulations 2010.

34. Policy HG.8 of the Local Plan requires affordable housing to be provided on sites of 15 or more dwellings. Although the Core Strategy requires a contribution of 40% of the dwellings to be affordable, the Council is satisfied that the provision of 35% is acceptable in this case, given the type of accommodation that would be provided (residents over 55 years old) and the negotiations that have taken place over a length of time. The UPO makes provision for 20 dwellings to be affordable and I am satisfied that this provision is necessary to make the development acceptable in planning terms.
35. Policy T.24 of the Local Plan requires a safe and convenient access for pedestrians to be provided. A pedestrian crossing would be provided close to the Lansdown Road access to the site which would allow pedestrians to cross this busy road safely. The obligation also makes provision for a financial contribution to be paid to monitor the effectiveness and operation of the pedestrian crossing, and upgrade it if deemed necessary. Given that the residential use of the scheme would increase the number of daily pedestrian movements to and from the site, I am satisfied that this obligation is reasonable and necessary and linked to a specific deliverable scheme. The contribution sought therefore meets the statutory test.
36. The Council's Planning Obligations Supplementary Planning Document (SPD) sets out formulas for the provision of children's services and life long learning, green space and play, and sport and recreation. Policy SR.3 of the Local Plan relates to the provision of recreational facilities to meet the needs of new development. Whilst an element of open space would be provided on the site, I am satisfied that the obligations in respect of contributions towards allotment provision and formal green space are necessary given the shortage in open space in this part of Bath, and the additional demands that future occupiers of the scheme are likely to place on such facilities.
37. The financial contribution towards education provision, education land acquisition, youth services and lifelong learning comply with Local Plan Policy CF.3 and the guidance within the Planning Obligations SPD. At the Hearing, the Council told me that there was a need within the area for primary and youth provision. A new primary school is planned at Ensleigh which is within walking distance of the appeal site. The financial contribution would be pooled with other money to provide this facility. The contribution to youth provision would be used for services within the city and the lifelong learning contribution would provide books and staff at Bath library. Such facilities and services will enhance and improve the places in which people live their lives. The contributions are reasonable and necessary and comply with the statutory tests.

Conditions

38. The Council has suggested a number of conditions it would wish to see imposed in the event that the appeal was allowed. I have considered the suggested conditions below, in addition to an additional condition discussed at the Hearing in respect of the boundary treatment above unit 26 in unit C, in accordance with the advice on conditions within the Planning Practice Guidance (PPG).

39. A condition is necessary to ensure that the development is carried out in accordance with the approved plans. In the interests of protecting archaeological heritage, a condition is necessary requiring the implementation of a programme of investigation. In the interests of preventing pollution a condition requiring further investigation in respect of contamination of the site is necessary. A construction method statement condition is necessary to ensure that the development respects the living conditions of local residents and highway safety.
40. In order to protect trees on the site, a condition is necessary requiring protective fencing to be erected. Further details of the entrance wall are necessary to ascertain whether the Yew Tree can be retained. In the interests of the character and appearance of the area and the setting of listed buildings, conditions are necessary to control materials for the buildings and hard surfacing areas, to restrict certain permitted development rights, to provide landscaping and to prevent birds nesting on the roofs of the buildings.
41. Conditions are necessary to enhance ecology upon the site and to control external lighting. In the interests of sustainability, conditions in respect of sustainable drainage and a new resident's pack are necessary. A condition controlling the gradient of the access drive is necessary in the interests of highway safety, as is a condition requiring the parking areas and garaging to be kept available for the parking of vehicles. In order to protect the living conditions of residents of St James's Park, a condition is necessary in respect of the extent of the use of the roof top area above unit 26 in unit C. However, some of the Council's suggested conditions have been amalgamated and reworded in accordance with the guidance within the PPG.

Conclusion

42. For the above reasons, and having regard to all other matters raised, the appeal is allowed.

R C Kirby

INSPECTOR

APPEARANCES

FOR THE APPELLANT

Mr Martin Hanson
Mr Alan Pearce
Mr Greg Beale
Mr Nigel Reynolds

Hope House Developments
Alder King LLP
Planning Heritage Ltd
Michael Aukett Architects

FOR THE COUNCIL

Mr Mike Muston
Ms Helen Haynes

Planning Consultant
Education Officer

INTERESTED PARTIES

Councillor Patrick Anketell-Jones
Mr Michael Lloyd
Miss Linda Gamlin
Miss Alice Leonard
Mr Laurie Coombs

District Councillor
Local Resident
Local Resident
Local Resident
Local Resident

DOCUMENTS SUBMITTED AT THE HEARING

1. Unilateral Planning Obligation dated 8 January 2015
2. Design Context Statement with Supporting Images

DOCUMENTS SUBMITTED AFTER THE HEARING

1. Planning Obligations Supplementary Planning Document
2. Copy of Planning Permission Ref 14/04184/FUL
3. Copy of Listed Building Consent Ref 13/04185/LBA

SCHEDULE

CONDITIONS

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the approved plans listed in Appendix 1 of the Statement of Common Ground between Hope House Developments LLP and Bath and North East Somerset Council, dated December 2014.
- 3) No development shall take place within the site until a programme of archaeological work has been implemented in accordance with a written scheme of investigation which has been submitted to and approved in writing by the local planning authority.
- 4) No development shall take place until a site investigation of the nature and extent of contamination has been carried out in accordance with a methodology which has previously been submitted to and approved in writing by the local planning authority. The results of the site investigation shall be made available to the local planning authority before any development begins. If any contamination is found during the site investigation, a report specifying the measures to be taken to remediate the site to render it suitable for the development hereby permitted shall be submitted to and approved in writing by the local planning authority. The site shall be remediated in accordance with the approved measures before development begins.

If, during the course of development, any contamination is found which has not been identified in the site investigation, additional measures for the remediation of this source of contamination shall be submitted to and approved in writing by the local planning authority. The remediation of the site shall incorporate the approved additional measures.
- 5) No site works or clearance shall be commenced until fencing for the protection of any retained tree has been undertaken in accordance with British Standard 5837:2005. The fencing shall be maintained until all equipment, machinery and surplus materials have been removed from the site. Nothing shall be stored or placed in any area fenced in accordance with this condition and the ground levels within those areas shall not be altered, nor shall any excavation be made, without the written approval of the local planning authority.
- 6) No development shall take place, including any works of demolition, until a Construction Method Statement has been submitted to, and approved in writing by, the local planning authority. The approved Statement shall be adhered to throughout the construction period. The Statement shall provide for:
 - i) a timetable for the commencement of development, including ground works and demolition
 - ii) the parking of vehicles of site operatives and visitors
 - iii) details of deliveries including storage arrangements and timings
 - iv) traffic management

- v) loading and unloading of plant and materials
 - vi) storage of plant and materials used in constructing the development
 - vii) wheel washing facilities
 - viii) measures to control the emission of dust and dirt during construction
 - ix) a scheme for recycling/disposing of waste resulting from demolition and construction works
 - x) a scheme for the management of Japanese Knotweed
- 7) Prior to the commencement of development further details of the structural options for the re-instatement of the entrance wall adjacent to the Yew Tree shall be submitted to and approved in writing by the local planning authority. In the event that the tree is not retained, a replacement tree shall be planted in a location that has first been agreed in writing by the local planning authority.
- 8) Prior to the commencement of development, details of measures to control roof top nesting by gulls shall be submitted to and approved in writing by the local planning authority. The development shall not be occupied until the approved measures have been implemented on that part of the development.
- 9) No development shall take place until details of the implementation, maintenance and management of a sustainable drainage scheme have been submitted to and approved by the local planning authority. The scheme shall be implemented and thereafter managed and maintained in accordance with the approved details.
- 10) Details of external lighting shall be submitted to and approved in writing by the local planning authority prior to the commencement of construction of buildings on the site.
- 11) No construction work shall take place until samples of the materials to be used in the construction of the external surfaces of the buildings, walls, gates and railings hereby permitted have been submitted to and approved in writing by the local planning authority. The submitted details shall provide for a timetable of the planting of the green roof and proposals for its long term maintenance. Development shall be carried out in accordance with the approved details.
- 12) No construction work shall take place until full details of both hard and soft landscape works and a programme for implementation have been submitted to and approved in writing by the local planning authority. These works shall be carried out as approved. These details shall include existing and proposed finished levels or contours; means of enclosure; car parking layouts; other vehicle and pedestrian access and circulation areas; hard surfacing materials; retained trees, hedgerows and other planting; a planting specification to include numbers, species, size, density and positions of all new trees and shrubs.
- 13) The buildings shall not be occupied until the access roads, footpath and car parking areas have been drained and surfaced in accordance with details submitted to and approved in writing by the local planning authority. The car parking areas shall not thereafter be used for any purpose other than the parking of vehicles.

- 14) The garaging shall be retained for the parking of private motor vehicles associated with the dwelling and ancillary domestic storage and for no other purpose.
- 15) An ecological and landscape management and enhancement plan, including long term design objectives, specifications for long term wildlife friendly habitat management, management responsibilities and maintenance schedules for all landscape areas and communal areas, other than small, privately owned, domestic gardens, shall be submitted to and approved by the local planning authority prior to the occupation of the development or any phase of the development, whichever is the sooner, for its permitted use. The ecological and landscape management and enhancement plan shall be carried out as approved.
- 16) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any order revoking, re-enacting or modifying that Order), no lines, mains, pipes, cables or other apparatus shall be installed or laid on the site other than in accordance with details that have been submitted to and approved in writing by the local planning authority.
- 17) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any order revoking, re-enacting or modifying that Order), no extension, external alteration or enlargement of the dwellings hereby approved shall be carried out.
- 18) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any order revoking, re-enacting or modifying that Order), no garage or other free standing building, boundary fence or wall shall be erected within the curtilage of the dwellings hereby approved, other than those expressly authorised by this permission.
- 19) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (Amendment) (England) Order 2008 (or any order revoking, re-enacting or modifying that Order), no solar PV or solar thermal shall be installed on the dwelling houses hereby approved.
- 20) The gradient of the access shall not at any point be steeper than 1 in 12.5 for a distance of 10 metres from its junction with the public highway.
- 21) Before the dwellings are first occupied, new resident's welcome packs shall be issued to purchasers, the details of which shall be submitted to and approved in writing by the local planning authority.
- 22) Prior to the first occupation of Unit C, details of the location, height and materials of the boundary treatment above unit 26 and a timetable for implementation, shall be submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details and maintained thereafter.