



Appeal Decision

Hearing Held on 24 and 25 January 2023

Site visit made on 9 February 2023

by Y Wright BSc(Hons) DipTP MSc DMS MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21 April 2023

Appeal Ref: APP/Q3305/W/22/3292838

E 380808 N 153852 Land at Church Lane, Rode, Frome, Somerset

- 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 Waddeton Park Limited against the decision of Mendip District Council.
 - The application Ref 2021/0071/OTS, dated 8 January 2021, was refused by notice dated 27 August 2021.
 - The development proposed is outline planning permission for the erection of up to 49 dwellings, formation of vehicular accesses, open space, landscaping and associated works. Change of use of agricultural land to public open space, community allotments and orchards.
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Decision

1. The appeal is dismissed.

Procedural matters

2. The planning application to which the appeal relates was submitted in outline form with all matters reserved except for access. A masterplan was submitted with the planning application, but I note that this is for illustrative purposes only. Nevertheless it shows how the layout of a scheme might look on the site, taking account of the local green space designation. I consider the appeal on this basis.
3. The Hearing sat for two days and was held virtually. I carried out an unaccompanied site visit on 9 February 2023.
4. Following Judicial Review proceedings into the Mendip District Local Plan Part II Sites and Policies (2021) (LP2), a High Court Judgment was handed down on 16 December 2022. This results in five policies relating to site allocations being removed from LP2. The rest of the plan remains as adopted policy. Copies of the Judgment and Order were submitted as part of the appeal and implications for the case were discussed during the hearing. I refer to this matter where relevant within my decision.
5. An agreed statement of common ground (SoCG) was submitted which sets out the matters of agreement and disagreement between the two main parties.
6. In seeking to address the Council's fourth reason for refusal regarding demonstrating an adequate water drainage strategy, the appellant has

submitted further information. The Council has confirmed in their statement of case that the Lead Local Flood Authority considers the details are now acceptable. The Council has therefore withdrawn this reason for refusal.

7. A revised site location plan and illustrative masterplan have been submitted by the appellant showing other land in their ownership marked in blue. Further detailed plans have also been submitted relating to the access junction and the passing place on Church Lane. I am satisfied that the interests of parties would not be prejudiced by my taking these plans into account. I have considered the appeal on this basis.
8. Planning obligations have been set out in the form of a dated and signed Section 106 unilateral undertaking, which was received on 9 February 2022, after the Hearing closed. I refer to this legal agreement within my decision.

Main Issues

9. I consider the main issues are:
 - Whether the proposed development would be in a suitable location having regard to the development plan's spatial strategy and national policies;
 - The effect of the proposal on the character and appearance of the site and surrounding area including in relation to landscape;
 - The effect of the proposed development on the setting of nearby listed buildings and the character or appearance of the conservation area; and
 - Whether the proposal makes adequate provision for any necessary planning obligations arising from the development.

Reasons

Suitability of the location

10. The spatial strategy for the District for the period 2006-2029 is set out within Core Policy 1 of the Mendip District Council Local Plan Part 1: Strategy and Policies (2014) (LP1). This seeks a sustainable distribution of development by focussing most growth on the five principal market towns of Frome, Glastonbury, Shepton Mallett and Wells. In the rural parts of the District, and in accordance with the defined settlement hierarchy, the policy seeks development to meet local needs within the villages. Rode is identified within the strategy as a primary village.
11. LP1 Core Policy 2 defines the housing requirement for the District and sets out the amount of growth to be distributed within the various settlements. It provides minimum housing figures for the towns and an overarching figure for all the villages (primary, secondary and other). Table 8 in the supporting text of the policy indicates that the housing requirement for Rode is 65 dwellings. This is based on a proportionate approach to growth in the villages of around 15% of the existing housing stock. The Rode Neighbourhood Plan (2017) (RNP) clarifies that local needs for market and affordable housing will be met through existing planning permissions. I note that since the start of the plan period 81 dwellings have been completed in Rode or have extant consent which exceeds the minimum requirement. I will return to this point shortly.

12. In line with Core Policy 1, decisions about housing provision in the rural areas have been made through the subsequent allocation of sites within LP2. Whilst the appeal site was considered as part of the site allocation process for this plan, it was not allocated. It therefore lies outside the development limits for the village and, in planning policy terms, is in the open countryside. In such circumstances the policy states that development will be strictly controlled but may exceptionally be permitted in line with Core Policy 4. Whilst I recognise that Rode is a sustainable settlement, and that the appeal site is close to village services and facilities, the development would not accord with the policy exceptions.
13. The Council acknowledges that it is unable to demonstrate a five year supply of housing land, based on the local housing need figure. Accordingly the policies related to the delivery of housing are out of date and the presumption in favour of sustainable development applies, as defined in paragraph 11 of the National Planning Policy Framework (the Framework). I will consider this further as part of my planning balance.
14. However, whilst the policies may be out of date, it does not follow that they are inconsistent with the Framework's policies or do not carry any weight. Indeed, paragraph 219 of the Framework states that due weight should be given to them according to their degree of consistency with the Framework. LP1's overall spatial strategy to focus most development in the main towns and seek proportionate growth in the rural areas, is a sustainable pattern of development that accords with the Framework's objectives. Accordingly I give LP1 Core Policies 1, 2 and 4 substantial weight.
15. As a result of the LP2 Judicial Review and the removal of five site allocations in the north-east of the District, the housing land supply has been reduced and further sites will need to be found. The Council is required to 'review and reconsider site allocations to meet the district wide requirement for the additional 505 dwellings' set out within LP1. The decision as to where this housing should be located within the District, will therefore be determined by the Council. Whilst I recognise that this will likely require sites being brought forward from outside existing settlement development limits, it does not follow that these must come forward in other north eastern parts of the District, such as Rode. Neither does it prevent suitable sites from coming forward for development elsewhere in the District in the interim.
16. I recognise that the RNP identifies a need for housing for older people within the village but it includes policies within it to deliver this, albeit that I was informed during the hearing that the Murfield House allocation has not as yet come forward. Nevertheless, as there is no five year housing land supply, the provision of market, affordable and age-restricted housing carries weight in favour of the scheme. I consider this further as part of the planning balance later in my decision. I focus here on the suitability of the location.
17. Whilst it is clear that the housing requirement is a minimum, and the 15% growth level is a guide, the provision of 81 additional dwellings already exceeds the 65 dwelling figure defined by the spatial strategy. The appeal scheme would increase this by up to a further 49 dwellings. Overall, this cumulative growth would result in Rode's housing stock increasing by around 30% since the start of the plan period. This would be significantly higher than the

proportionate 15% envisaged by the spatial strategy, which, in my view, would result in an excessive amount of unplanned development in this location.

18. I acknowledge that some other primary villages have delivered growth above the level in LP1, some to higher levels than the proposed 30% housing growth in Rode. However, development in other primary villages will have been determined based on the specific circumstances and factors relevant to each individual settlement. I do not have sufficient evidence to determine whether these villages are directly comparable to Rode and even if they were I must determine this appeal on its own merits.
19. Based on the above, I conclude that the proposed development would conflict with the spatial strategy and distribution of development set out within the development plan and therefore would not be in a suitable location. Accordingly the proposal would be contrary to LP1 Core Policies 1, 2 and 4.

Character and appearance

20. The appeal site is around 5.79 hectares in size and consists of two open agricultural fields separated by a tall hedgerow. It is bounded to the north, east and west by existing development with a range of boundary features including trees, hedgerows, walls and fences. It wraps around Hillview Farm to the north. The southern boundary runs alongside the narrow lanes of Church Lane and Clay Lane, and wraps around two existing detached residential properties fronting on to Church Lane. Open countryside extends in a south/south westerly direction on the other side of Church Lane directly opposite the site and beyond existing village development.
21. The appeal site gently slopes in a southerly direction and a public right of way (PROW) crosses the site from Marsh Road in the north to the Church Lane/Clay Lane junction in the south. Walking along the footpath from a high point off Marsh Road provides long distance expansive views of the surrounding landscape over the surrounding development, particularly in southerly and westerly directions. The openness of the eastern field can be glimpsed from the PROW through gaps in the adjacent hedgerow.
22. At my site visit I saw that the character of the site is distinctly open and rural when compared to adjacent development which is visible by varying degrees when walking along the PROW. Some views of properties are obscured by boundary features and the sloping nature of the site and the surrounding area. The agricultural buildings to the north are particularly noticeable as they are at the highest point in the site and the site boundary wraps around them on three sides, but such views would not be uncommon in a countryside setting. There are also some filtered views of development in a south/south easterly direction, including the new Church Farm development. The topography of the site with its sloping domed landform and prominent field trees makes it identifiable to some degree, from viewpoints in the wider landscape. The extensive long distance views from the PROW over the wider landscape are visually prominent.
23. The two main parties agree that the site is not a valued landscape in the context of paragraph 174 of the Framework and I concur with this assessment. Whilst in agricultural terms the fields may be unremarkable, they nevertheless make a significant contribution to the landscape setting of the village and are clearly valued by local residents. In my view, despite the surrounding

development, the openness and rural nature of the site, its large size and sloping and domed landform and the extensive long distance views, means it makes an important contribution to the character of the countryside setting of the village and forms an integral part of the wider landscape.

24. The significance of the character of the site is further enhanced by the designation of most of the western part of the appeal site, known locally as Browns Ground, as a local green space (LGS) under Policy 12 of the RNP. As stated in the RNP the key features of the LGS are its openness, the landscape views it provides and its recreational use. The policy states that 'Proposals for development of land designated as Local Green Space that does not enhance the valued features of the Local Green Space will not be permitted except in very special circumstances'.
25. In accordance with the illustrative masterplan, the majority of the proposed dwellings would be located on the eastern field with an access road off Church Lane. The western field would retain the PROW and include the provision of public open space, enhanced access, allotments and an orchard. The key features of the LGS would therefore be retained to a large degree and recreational access increased. However, part of the access road would be built within the LGS area which would reduce the openness of this part of the site, albeit to a small degree.
26. Whilst design and layout are reserved matters, the concentration of urban form on the eastern field, as indicated on the illustrative masterplan, would result in this part of the site becoming extensively developed, notwithstanding the density proposed. In my view, aspects of this development would inevitably be visible from the PROW and some surrounding development, even with the proposed retention of most trees and hedgerows and the provision of additional landscaping.
27. I recognise that travelling along Church Lane and Clay Lane there are currently limited views into the site due to the dominant hedgerow boundary. However, the proposed addition of three dwellings along Church Lane and their access points, together with the passing bay and main access into the site, would result in the loss of some hedgerow, the addition of further prominent urban form and would increase views of the development from the lane. This would considerably change the character of Church Lane in particular.
28. Overall, I am of the view that the introduction of built form within the site would adversely harm its existing openness and erode its contribution to the rural character and appearance of the village and surrounding area. Whilst the provision of a large area of public open space, the retention of some existing trees and hedgerow boundaries, and additional landscaping measures may go some way to lessen the impact of the proposal, some views of the development through and into the site would still be particularly prominent.
29. I therefore conclude that the proposal would represent an intrusive form of development into an undeveloped rural site which would result in the permanent erosion of open countryside in this location. It would also reduce the openness of the LGS to a small degree which adds to its negative impact. This would result in substantial material harm to the rural character and appearance of the site and the wider landscape setting of the village. It would therefore be contrary to LP1 Policy DP1 which requires, amongst other things, for development to contribute positively to the maintenance and enhancement

of local identity and distinctiveness, and Policy DP4 which seeks development that protects the quality of the local landscape and its setting.

30. Despite the proposal being in outline only and design related matters being reserved, I find that it would also not accord with Policy DP7 in its wider context which requires well-designed places. Whilst not specified in the reasons for refusal, I also find that the proposal would be contrary to Policy 12 of the RNP.

Heritage assets

Listed buildings

31. Section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990 (as amended) places a statutory duty on decision makers to have special regard to the desirability of preserving a listed building or its setting or any features of special architectural or historic interest which it possesses, when considering relevant development proposals.
32. The Council considers that the proposal would adversely impact on the settings of several Grade II listed buildings that lie in close proximity to the site. I will consider these buildings in turn.
33. The Old Rectory backs on to the appeal site, with further open fields extending beyond Bradford Road to the front. On my site visit I saw that the curtilage to the rear of the property is wide in width and narrow in depth, with only a few metres distance to the appeal site boundary, providing relatively wide views over the site. The house and outbuildings extend almost the entire width of the curtilage.
34. I recognise that the heritage significance of the building lies in the quality of its design and materials which are mainly appreciated from Bradford Road. I also note that the evidence before me does not show a direct historical or functional connection between the Old Rectory and the appeal site. However, whilst views from the PROW within the site are limited by the central hedgerow, some rear aspects of the building can nevertheless be experienced. This, together with the historical undeveloped rural nature of the site, lack of screening and its exceptionally close proximity to the rear elevation, means it contributes to the building's character and how it is experienced to some extent, which in turn supports its significance.
35. As identified on the illustrative masterplan, the introduction of urbanising built form to the rear of the property would impinge on this rural setting, which would be harmful to the building's significance and result in a negative impact, albeit that the level of harm overall would be relatively low.
36. Whilst Nos 18 and 20 Bradford Road also back on to the appeal site they have much deeper rear gardens compared to the Old Rectory and are also narrower in width. There is no evidence before me of an historical or functional connection between the site and the properties. There are no views of the properties from the PROW and whilst there are some views of the appeal site from the buildings and curtilages, these are screened to some extent by existing trees.
37. Whilst I acknowledge that the appeal site has lain undeveloped as part of the rural landscape setting, immediately adjacent to the buildings over their

lifetime, on the basis of the above I consider it makes no material contribution to their significance. Whilst the development would change the rural aspect to the rear of these listed buildings, I am not persuaded that it would result in harm to their significance or how the assets are experienced.

38. As regards Clay Lane House, No 12 Church Lane and No 29 Church Lane there is no demonstrable evidence of historical or functional connections with the appeal site, or any meaningful intervisibility with the site in terms of their significance. Taking this into account and reflecting on the orientation, position and location of these buildings in relation to the appeal site, together with the level of existing screening and presence of any intervening built development, I do not consider that the rural aspect of the site materially contributes to their significance. In this context, whilst their settings would change I am satisfied that the development would preserve the features of interest for these listed buildings.
39. Overall, taking the above factors into account, I conclude that the development would fail to preserve the setting of the Old Rectory and therefore its significance. In my view this harm would be less than substantial, which carries great weight. It would also not be in accordance with LP1 Policy DP3 which supports proposals that 'preserve and, where appropriate, enhance the significance and setting of the District's Heritage Assets, whether statutorily or locally identified, especially those elements which contribute to the distinct identity of Mendip'.
40. Whilst I have found a lack of harm to the setting and significance of the other listed buildings, which would have a neutral preserving effect, this does not alter my conclusion.

Rode Conservation Area

41. The Planning (Listed Buildings and Conservation Areas) Act 1990 (as amended) places statutory duties on decision makers to have special regard to preserving or enhancing the character or appearance of a conservation area, when considering development proposals.
42. The Rode Conservation Area (RCA) consists of two separate areas: the Rode Village Area and the Frome Road Area. Both main parties agree that the site lies within the setting of the RCA. Whilst the statutory duty in relation to a conservation area does not refer to setting, the Framework clearly defines the significance of a heritage asset as deriving not only from its physical presence but also from its setting.
43. The appeal site lies between these two distinct parts of the RCA, but is not directly adjacent to it nor located within it. Except for the view of the Church of St Lawrence tower from the higher points within the appeal site, there is no meaningful intervisibility between the site and other buildings within the RCA. I see no reason why the layout and design of the scheme could not ensure that the views of the church could be retained as part of the consideration of reserved matters. Whilst the Rode Character Appraisal (2009) clearly sets out the defining characteristics of the RCA including reference to location and landscape setting, there is no specific mention of the appeal site in this context.

44. I accept that the development of the site would result in change within the setting of the RCA, and that this would be experienced by travellers using Church Lane, by walkers using the PROW through the site and by local residents with views of the site. I also recognise that experiencing a heritage asset is not just reliant on views alone. Nevertheless, as the appeal site does not directly border the RCA and there is limited intervisibility and the presence of some intervening modern development, I do not consider that the proposal would result in harm to the significance of the RCA.
45. Overall, I therefore conclude that the development would not lead to material harm to the setting of the RCA and therefore its character and appearance would be preserved. Nevertheless, this does not reduce the harm I have identified to the setting and significance of the Old Rectory Grade II listed building.
46. In considering the planning balance required by paragraph 202 of the Framework it is necessary to consider the public benefits of the scheme against the less than substantial harm to the significance of the heritage asset I have identified.

Consideration of public benefits, planning balance and overall conclusion on heritage assets

47. The proposal would result in market, affordable and age-restricted housing. I note that the minimum level of affordable housing sufficient to make the development acceptable would be 30% as this would be policy compliant. Nevertheless, for the purposes of the planning balance I take the higher 40% figure into account, as this is proposed by the development. I therefore find that, in circumstances where a Council does not have a five year housing land supply and in light of the imperative in the Framework to boost significantly the supply of housing, these benefits carry significant weight.
48. The provision of open space, recreational facilities, allotments, landscaping and the retention of most of the existing trees and hedgerows would be necessary to make the scheme acceptable in planning terms, in order to provide for the future occupiers of the development and to mitigate for any harm. Nevertheless, I recognise that some aspects, would also offer some wider community benefits, including through improved access to and use of a wider area of open space. Overall, these benefits carry some moderate weight.
49. The proposal would result in around a 50% increase in biodiversity net gain. I also note that some other biodiversity enhancements are proposed that are not included in this metric. However a large part of the site would remain low value in biodiversity terms, due in part to increased recreational access. On this basis and taking account of the site's low biodiversity value starting point, the enhancements would, in my view, be modest overall. This carries moderate weight as a public benefit.
50. The economic benefits, through the provision of temporary construction jobs and support for local businesses and facilities would weigh in favour of the proposal to a very modest extent.
51. I acknowledge that the site is unaffected by the issue of phosphates on the Somerset Levels and Moors Ramsar Site Special Protection Area, which affects

a large proportion of Mendip district. Nevertheless, this lack of harm has a neutral impact that carries no weight.

52. The planning obligations set out in the planning agreement include a range of other contributions that would be provided were the appeal to be allowed. Except for those already highlighted above I have not found it necessary to consider in detail the other contributions as these are intended to mitigate the effects of the development and render it acceptable in planning terms. They therefore do not constitute public benefits.
53. Taking account of the weight I have attached to the public benefits I have identified, I conclude overall that when they are taken as a whole, they outweigh the weight given to the less than substantial harm to the setting of the listed building.

Planning obligations

54. As outlined in my preliminary matters, a signed planning agreement has been submitted. This legal agreement provides for a range of contributions, including for education and health services, affordable and age-restricted housing, public open space and allotments, upgrades to affected parts of the highway network, and a travel plan. As such it overcomes the Council's fifth reason for refusal.
55. I have already considered those obligations which are public benefits under the Framework's paragraph 202 balance above. I also give them due regard within my overall planning balance later in my decision, in accordance with paragraph 11 of the Framework.

Other matters

56. My attention has been drawn to several previous appeal decisions, though none relate to the appeal site. Overall, I consider they involve sufficient differences to the development before me that they are not directly comparable. In any case I must consider this appeal on its own merits.
57. I have carefully considered other concerns raised by local residents on matters including traffic and highway safety, living conditions for future occupiers and neighbouring residents, drainage, and the capacity of services and facilities to cope with the additional development. I note that the Highway Authority has not objected to the proposal and I have insufficient evidence before me to demonstrate that the traffic generated by the scheme would be unacceptable. A passing bay, travel plan and contributions towards highway improvements would be provided.
58. Matters relating to drainage and living conditions could be adequately dealt with by conditions and through the suitable design of the scheme as part of reserved matters. I have no substantive evidence before me to demonstrate that local services and facilities are at breaking point. Indeed, the planning agreement contains financial contributions towards some services including healthcare and education. There is no evidence that the services and facilities of the village are unable to accommodate the quantum of housing proposed.
59. Whilst I find no harm in relation to these matters the resultant neutral effect weighs neither for nor against the proposal.

Planning balance and conclusion

60. The duty in section 38(6) of The Planning and Compulsory Purchase Act 2004 enshrines in statute the primacy of the development plan. As an essential component of the 'plan-led' system, it is also reiterated in the Framework.
61. It is agreed that the Council is unable to demonstrate a five year housing land supply. Accordingly development plan policies which are most important for determining this appeal are out-of-date and paragraph 11 d) of the Framework applies. This presumption in favour of sustainable development states that permission should be granted unless one of the circumstances listed in sub sections i or ii of the paragraph is met.
62. Section d) i states that the presumption should not be applied if specific policies in the Framework indicate development should be restricted. Paragraph 202 constitutes a specific policy indicating that development should be restricted as indicated in footnote 9. In the circumstances, having carried out a paragraph 202 balance, I conclude that this does not provide a clear reason for refusing the development on the basis that there is less than substantial harm which is outweighed by the public benefits of the proposal.
63. Therefore I must now turn to paragraph 11 d) ii. This requires a balance to be undertaken whereby permission should be granted unless the adverse impacts significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole.
64. In this case I have concluded that the proposal would result in material harm to the character and appearance of the site and the surrounding landscape which attracts substantial weight; and considerable harm to the settlement pattern which carries significant weight.
65. I have already identified and weighted the benefits of the scheme. These extend to significant weight for the market, affordable and age-restricted housing provision; moderate weight for the provision of public open space and related facilities and biodiversity enhancements; and very moderate weight for the economic benefits.
66. Overall, I conclude that the accumulation of harm I have identified significantly and demonstrably outweighs the benefits of the proposal. Therefore, overall, the appeal scheme would not be compliant with the Framework when considered as a whole and would not be sustainable development. For the reasons given above, I conclude that the appeal should be dismissed.

Y. Wright

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Simon Steele-Perkins	Director, Waddeton Park (Appellant)
Thea Osmund-Smith	Barrister, No.5 Chambers
Rosie Dinnen	Director, Tetlow King Planning
Jamie Roberts	Principal Planner, Tetlow King Planning
Robert Sutton	Director, Cotswold Archaeology
Paul Reynolds	Consultant, Clifton Emery Design
Duncan Tilney	Partner, Stephen Scown LLP

FOR THE LOCAL PLANNING AUTHORITY:

Nikki White	Principal Planning Officer, Mendip District Council
Andre Sestini	Principal Planning Policy Officer, Mendip District Council
Jo Milling	Senior Planning Policy Officer, Mendip District Council
Jayne Boldy	Conservation Officer, Mendip District Council

INTERESTED PARTIES:

Cllr Barbara Lund	Councillor, Mendip District Council
Mark Reynolds	Context Planning for Rode Parish Council
Sasha Berezina	Context Planning for Rode Parish Council
Jim McAuliffe	Rode Parish Council
Peter Travis	Rode Parish Council

DOCUMENT SUBMITTED AFTER THE HEARING:

- 1 Planning agreement under Section 106 of the Town and Country Planning Act 1990 signed and dated 9 February 2023