



Appeal Decision

Hearing held on 18 April 2023

Site visits made on 17 and 18 April 2023

by Alison Partington BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22 May 2023

Appeal Ref: APP/Q3305/W/22/3313162

Land at Chapelfield, Oakhill, Radstock, Somerset BA3 5AU

- 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 Johnstone Land Company (Bristol) Limited, R Keen, T Keen, J Keen and K Keen against the decision of Mendip District Council.
 - The application Ref 2020/2603/FUL, dated 4 December 2020, was refused by notice dated 24 June 2022.
 - The development proposed is residential development of 26 dwellings, including 30% affordable housing, together with associated landscaping, parking, access, sustainable urban drainage system (SuDS) and any other associated infrastructure.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The application was amended before it was determined by the Council. The revised scheme reduces the number of dwellings proposed on the site from 29 to 26 as described in the banner heading above. These revised plans were subject to public consultation and so I have determined the appeal on the basis of them.
3. The application had five reasons for refusal. These included ones that related in full or in part to the principle of the development and highway capacity and safety. Before the hearing was held the Council confirmed that it would no longer be pursuing the matter of highway capacity and safety or the principle of development. I have determined the appeal on this basis.
4. On 1 April 2023 Mendip District Council merged with other councils in Somerset to form Somerset Council. However, the development plan for the area formally covered by the District Council remains in place until such time as it is revoked or replaced. I have determined the appeal on this basis.

Main Issues

5. The main issues in the appeal are the effect of the proposed development on:
 - The character and appearance of the area; and
 - The living conditions of the nearby residents with particular regard to privacy, outlook and loss of sunlight.

Reasons

Planning Policy Context

6. The appeal site is a grass field, that contains two small wooden stable type buildings in one corner. It lies outside, albeit adjacent to, the development limit for Oakhill as defined by the *Mendip District Local Plan Part I : Strategy and Policies 2006 – 2029 (adopted December 2014)* (LP) and so is defined as being in the countryside.
7. Core Policy 1 of the LP sets out the spatial strategy for the district and seeks to direct the majority of development to the five principal settlements in the area. Within this policy Oakhill is defined as a Secondary Village. These are villages that offer some services and public transport and are therefore considered to be appropriate for development aimed at meeting more localised housing, business and service needs.
8. Core Policy 2 of the LP indicates that in both the primary and secondary villages proportionate growth equating to 15% of the existing housing stock is envisaged as appropriate to enable local housing needs to be met. In Oakhill that equates to 40 dwellings over the plan period. To date 48 dwellings have been provided in the village.
9. In the open countryside, CP1 indicates that development is strictly controlled, but may be exceptionally permitted if in line with the provisions set out in Core Policy 4. The proposal would not accord with these. As such, the proposal would be contrary to the spatial strategy of the LP and would conflict with Policies CP1, CP2 and CP4.
10. However, it is not disputed that the Council cannot demonstrate a 5 year housing land supply, with the latest figures indicating that the district has between a 2.84 and 2.97 year supply. In such situations, the *National Planning Policy Framework* (the Framework), indicates that the policies are out-of-date and so the provisions of paragraph 11 dii) apply. This indicates that permission should be granted unless the adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework, taken as a whole.

Character and appearance

11. In relation to character and appearance the reasons for refusal refer to the design, layout and materials used in the development, the siting of the affordable housing within the proposal and the impact of the loss of the hedge. I shall deal with each of these in turn.

Design, layout and materials

12. The appeal site is bound on 3 sides by residential development with the fourth side, which is adjacent to a field, having a row of tall Leyland Cypress trees along the majority of its boundary. The proposed development would be accessed from Chapelfield and would comprise a mix of detached, semi-detached and short terraces. An area of open space would be provided in the north east corner.
13. The village of Oakhill is largely a linear village focussed along High Street. Housing in the village is extremely varied. Although predominantly comprising

2 storey properties, detached, semi-detached and terraced houses are evident. The majority front the highway, but some are perpendicular to it, and whilst some are set in relatively large plots, others are on much smaller plots and some directly abut the highway. A wide range of materials are also used in the village, and whilst local stone is the most common building material for traditional older buildings, brick, reconstituted stone and render are common on more modern housing.

14. The existing houses on Chapelfield, have a greater degree of consistency in terms of their design, layout and materials. They consist of 2 storey houses with attached garages set on modest plots and constructed from reconstituted stone. The proposed development would continue the row of detached houses along the southern side of the road, and the private drive serving 3 dwellings to the west of the open space would be similar to the arrangement of No 12 and 14 Chapelfield. The materials for the houses and garages would match those found on Chapelfield and so would not appear out of keeping.
15. The detached houses located closest to the existing houses on Chapelfield would have parking either provided to the front or the side of the property with just a small area of front garden. Many of the occupiers on Chapelfield have also converted their modest front gardens into parking areas, and so this would not necessarily look out of place.
16. However, at the top end of the proposed cul-de-sac there would be much less in curtilage parking and more shared parking areas either at the side of houses or at the ends of the various arms of the cul-de-sac. Front gardens on properties in this part of the development would be very small. Notwithstanding the small area of planting proposed to the front of plots 13-15, and the proposed use of different materials to differentiate the shared surface and private drives, this area would be dominated by hardsurfacing of one form or another. This would not only provide an unattractive environment for occupiers but would be out of keeping with the character of the wider area.
17. The density of development varies in the village. The eastern end of High Street, where a number of the older properties and buildings immediately abut the footway, has a more enclosed denser character. In contrast, the western end of High Street, in the vicinity of the appeal site, has a more open, less dense appearance as the houses are set back from the road. This is despite the fact that many front gardens have been turned into parking areas.
18. The density of the proposed development would also vary becoming denser towards the western end, as detached houses are replaced by more semi-detached houses and terraces. This to a certain extent reflects the fact that the density of the existing housing on Sunnymead, which takes the form of short terraces, is greater than the detached houses on Chapelfield. Nevertheless, even including the area of open space to be provided on the site, the density of the development would be significantly greater than the surrounding area.
19. Whilst development plan policies do require a mix of housing sizes to be provided, the development on Sunnymead shows that smaller terraced houses can still be provided whilst maintaining a less dense and more open character. This appears largely due to the provision of modest front gardens. In contrast, the very limited size of front gardens proposed in the appeal scheme, would create a development whose density would be out of character.

20. The Council do not have any adopted separation distances. Nonetheless, the over-development of the site is also seen in the fact that a number of properties would only maintain a short distance to the gable end of other houses that directly face them.
21. All in all, I consider that the design and layout of the proposal would create an incongruous development that would not respect the existing character and appearance of the surrounding area.

Siting of Affordable Housing

22. The proposed development would provide 8 affordable housing units, the type and mix of which were agreed with the Council. Whilst these would all be located within the western end of the development, in what would be a modest sized scheme, it is to a degree inevitable that the affordable housing would be located in relatively close proximity to each other. Moreover, there is nothing in the design and materials proposed for the affordable housing that would make them readily apparent or different from the market housing. Given this, I am satisfied that the siting of the affordable housing would not in itself, be harmful to the character and appearance of the area.

Loss of the hedge

23. The proposed development would result in the removal of the row of Leyland Cypress trees along the southern boundary. Trees and hedging around the edge of the village and within the surrounding countryside are predominantly native varieties, with the occasional non-native species. As such, the size of the current 'hedge' along the southern boundary and its non-native character, means that it is at best a neutral feature in the landscape and it offers limited biodiversity opportunities.
24. The Design and Access Statement states that the southern boundary would be marked by a landscape buffer with a mix of native hedgerow and trees to provide not only ecological enhancements but an attractive rural edge in keeping with the character of the rest of the settlement edge. However, whilst there is a degree of discrepancy in some of the landscaping details shown on various plans, at the hearing the appellant indicated that the southern boundary of the development would constitute mainly a 1.8m high close boarded timber fence with only a short stretch of native hedging provided to the side of plot 18 and the adjacent parking spaces.
25. This would create a very hard edge to the development and would in my view, be far less sympathetic to the character of the settlement edge than the existing row of trees. Nor would it help the development integrate into the surrounding countryside. Whilst views of the boundary treatment would be limited from outside, it would be visible in long range views from viewpoints 4 and 5 as well as in places along the adjacent public right of way.
26. It was suggested by the appellant at the hearing that a more traditional boundary wall could be provided instead of fencing and that climbing plants could be utilised to grow over either a wall or a fence. However, this is a significant change to what is shown in any of the plans or documentation, and my determination of the appeal is on the basis of the plans before the Council when they determined the application.

Other character and appearance issues

27. Although not mentioned in the reasons for refusal, the Council's appeal statement raises various concerns regarding the incorporation of sustainable design and construction into the proposal. These include the lack of any documentation regarding water efficiency measures and sustainable construction techniques that would be incorporated into the scheme, how it would make efficient use of materials, and the fact that the scheme would provide no on-site renewable energy generation. However, I am not persuaded that aspects such as these have a significant impact on the character and appearance of the scheme which was the reason for refusal.
28. At the hearing it was disputed whether or not the proposal would provide pedestrian access through to Sunnymead. However, whilst this may improve the permeability of the scheme, given that the services and facilities in the village are all at the eastern end of the village, the desire of future residents to walk westwards is likely to be limited. Moreover, the provision of such a route is not fundamental to the acceptability of the scheme with regard to its character and appearance.

Conclusion on character and appearance

29. Bringing these points together, whilst I am satisfied that the siting of the affordable housing and the proposed materials would not be detrimental to the character and appearance of the area, by way of the scheme's design and layout and the inadequate boundary treatment to the southern edge of the development, I consider the proposal would unacceptably harm the character and appearance of the area. Therefore, it would be contrary to Policies DP1 and DP7 of the LP which, amongst other things, require developments to enhance local identity and distinctiveness and have a scale, mass, form and layout that respects the local context. It would also be contrary to the Framework which indicates that developments should be sympathetic to local character.

Living Conditions

30. The dwelling on plot 26 would be taller and positioned slightly forwards of No 21 Chapelfield whose lounge window is located closest to the boundary with the site. Nevertheless, although located to the west of the existing house, any overshadowing caused by the proposal would be limited and not sufficient to adversely impact on the living conditions of the occupiers of No 21. Furthermore, given the distance the proposed house would be from the boundary, the outlook from the lounge window would not be adversely affected.
31. Despite the slight difference in levels between the appeal site and Chapelfield, the proposed boundary fence would be sufficient to prevent any overlooking into the rear garden of No 21 from the ground floor windows or garden of the dwelling on plot 26. A condition to ensure that the proposed bathroom window on the side elevation has obscure glazing and is non-opening below 1.7m would be sufficient to ensure that this caused no loss of privacy. Some views into the rear garden would be possible from the first floor rear windows but these would be at an acute angle and would be no greater than the views into the garden of No 21 that are possible from the first floor windows on No 19.

32. The main outlook of the windows on the rear elevation of No 21 are to the south, looking over the rear garden rather than westwards towards the appeal site. Whilst there is a full height window on the dining / kitchen area that faces towards the site, the primary outlook of that room is to the south, especially as a log burning stove is located in front of the side facing window. The rear elevation of the proposed dwellings would not project beyond the rear elevation of No21 and so would not impact on the outlook of these windows.
33. Whilst the reason for refusal only refers to the living conditions of the occupiers of No21, third parties also raised concerns in this regard for occupiers of the properties along High Street which are set at a lower level than the appeal site. These dwellings have relatively long rear gardens that are set at a higher level than the house, some of which contain outbuildings close to the boundary with the site. The distances that would be maintained between the main rear elevations of these houses and the proposed dwellings would be sufficient to prevent a loss of privacy to existing occupiers. It would also ensure the proposal did not adversely impact on the outlook from the windows on the rear elevation of the existing dwellings, even if it would change the view from them.
34. The current boundary treatments of these properties to the site varies in type and height. The proposed boundary fence would be higher than some of these current treatments but given the length of the rear gardens that the existing houses have it would not cause an unneighbourly sense of enclosure nor an unacceptable level of overshadowing to the gardens. The fence would prevent overlooking of the gardens from the ground floor windows and gardens of the proposed dwellings. Whilst views of gardens would be possible from the first floor windows, any loss of privacy would be no greater than already exists from their neighbouring properties.
35. The proposal would increase the traffic movements along Chapelfield, but this would not be to the degree that any noise and disturbance this would cause would detrimentally impact on living conditions. Moreover, whilst people using the open space and their gardens would generate some noise, I consider the noise levels would continue to be well within the levels normally considered to be acceptable.
36. It was also suggested that the removal of the row of trees could increase the ability to hear traffic from the A37 to the south of the site. However, there is no evidence to suggest that the existing houses along the south of Chapelfield and to the south of them, or at the end of Sunnymead who at present are not screened by the row of trees, experience undue noise and disturbance from the traffic using this road. As such, I am not persuaded that the removal of the row of trees, would have an unacceptable adverse impact in this regard.
37. As a result, I consider that the proposed development would not have an unacceptable impact on the living conditions of nearby residents with particular regard to outlook, privacy and sunlight. Accordingly, there would be no conflict with Policy DP7 of the LP, which, amongst other things, seeks to protect the amenity of existing occupiers.

Other Matters

Setting of Listed Building

38. The appeal site lies within the setting of the Grade II listed former United Reform Church, which has now been converted to 2 dwellings. The appellant's Heritage Statement indicates that the significance of the building is principally as an elaborately decorated late 19th century ecclesiastical structure and as a local landmark. There is no evidence of any historical association between the appeal site and the church, although at one stage it would have formed part of the rural backdrop in views of the church from High Street.
39. The Council's Conservation Officer has indicated that the provision of the area of public open space in the north-east corner means that the development would not cause any harm to the heritage assets significance. This open space would enable views of the building from the site. Nothing I have seen or read leads me to conclude differently to the Conservation Officer in this regard.

Highways

40. The proposal would provide parking for both residents and visitors. The number of spaces would broadly accord with the parking requirements and so would not be likely to encourage car ownership rather than the use of active or public transport. The width of the access road would be similar to the existing carriageway on Chapelfield. Given the residential environment and the limited length of the road, I am not persuaded that the width would be likely to encourage vehicles to speed.
41. The various services and facilities in the village are located to the east of the site. To access them people would need to travel along High Street, which along this stretch does not have continuous footways and is in places narrow. Nonetheless, forward visibility is generally good, traffic movements are light and vehicle speeds are slow due to parked cars and the width of the road.
42. Whilst the accident record shows one accident along this stretch of High Street in the last 5 years, I am not persuaded that the road is inherently unsafe. I consider that future occupiers would still be prepared to walk this route to access the services at the eastern end of the village, as I observed existing residents doing during my site visits.
43. The proposal would increase traffic movements along High Street and using the various nearby junctions with the A37 and the A367 to enter and exit the village. The Parish Council has raised concerns regarding the visibility and thus the safety of some of these junctions. Nonetheless, despite the accident data, there is no evidence that the Highway Authority considers them to be unsafe to use or that they propose action to limit the use of them. Moreover, they have raised no objection to the proposal.
44. Whilst the development would increase traffic movements, given the number of houses proposed the level of increase would not be such as to make the use of High Street,, or these junctions inherently less safe. I also consider that the development would be provided with a safe and suitable access and would not have an unacceptable impact on highway safety.
45. I note that the village does not have a shop and very limited employment opportunities. Nevertheless, the village is classified as a secondary village, and

thus has a level of facilities considered appropriate to enable some residential development to take place. This includes a regular bus service that would enable future occupiers to access employment and shopping opportunities in the larger settlements nearby.

46. The Parish Council questioned whether a refuse vehicle would be able to turn without using the private drive. A swept path analysis for such a vehicle was provided for the original proposal for 29 dwellings which had the same road layout as proposed in the revised scheme. The Highways Authority considered that was satisfactory but, in any case, the suggested conditions require a revised swept analysis to be provided to confirm this would still be the case.

Ecology

47. The appeal site lies within Band C of the Bat Consultation Zone for the Mells Valley Special Area of Consultation which is designated for its Greater Horseshoe Bat feature. The application was accompanied by an Ecological Appraisal. On the basis of the evidence submitted the Council's ecologist indicated that a Habitats Regulations Assessment was not required as current bat activity would already be influenced by the residential development surrounding the site on 3 sides. In addition, the District Level Licensing scheme would be used with regard to Great Crested Newts and so ensure the development would not cause harm to this protected species. There is no evidence before me that would lead me to come to a different conclusion in respect of these matters.

Planning Obligation

48. A signed and completed Section 106 agreement has been submitted. This secures the provision of 8 affordable housing units as well as the type and occupancy of the units. It also makes provision for financial contributions for off-site public open space, education and primary care health facilities. In addition, it requires the implementation of a Travel Plan, a Sustainable Urban Drainage Strategy and landscape and biodiversity measures, whose provisions are outlined in the obligation.
49. The Council have provided a detailed Compliance Statement, which together with various consultation responses, sets out how the section 106 agreement would meet the relevant tests contained in Regulation 122 of the Community Infrastructure Levy Regulations 2010 (as amended) and in paragraph 57 of the Framework.
50. From the evidence before me I am satisfied that all of the obligations in the Unilateral Undertaking are necessary, directly related to the development and fairly related in scale and kind. As such, it accords with the statutory tests.

Planning Balance and Conclusion

51. The appeal site is located in open countryside, albeit adjacent to the development limits for Oakhill and would conflict with Core Policies 1, 2 and 4 of the LP. In addition, the proposal would harm the character and appearance of the area, contrary to Policies DP1 and DP7 of the LP. I give significant weight to this conflict with the development plan.

52. However, as set out above, as the Council cannot demonstrate a 5 year housing land supply, the provisions of paragraph 11dii) apply. The size of the Council's shortfall in housing supply is substantial.
53. The proposal would provide 26 houses, and in accordance with Policy DP11, 8 of these would be affordable units. Given the size of the Council's shortfall in both the provision of market and affordable housing I would ordinarily give substantial weight to this provision and the contribution it would make to housing supply in the area.
54. Nonetheless, the LP indicates that to ensure proportionate growth, Oakhill should provide 40 houses over the plan period. To date 48 houses have already been provided in the village, with 6 years remaining of the plan period. A further 26 houses would mean that the village would have accommodated nearly twice that which was considered to be proportionate to its size. Moreover, there is no evidence to indicate that the proposal is designed to meet any specific localised need.
55. Whilst there is clearly a need for new housing to be provided in the district, the evidence indicates that there is not a specific need for this to be in Oakhill. I also note that a 'credit' scheme has recently been agreed that will enable a number of housing schemes to move forward that were affected by nutrient neutrality issues. This will have a positive impact on housing delivery across the wider district.
56. Given this, in this case, I only give moderate weight to the scheme's provision of new market and affordable housing. For the same reasons, I do not reduce the weight I give to conflict with the development plan.
57. The development would secure socio-economic benefits both through construction investment and by the contribution future occupiers would make to the local economy and to supporting local services. However, the former would be temporary and would not necessarily benefit the local area as there is no mechanism to secure the use of local contractors. Given the size of the scheme the latter would be modest in scale. As such, I give this benefit limited weight.
58. The proposal would create an area of public open space and make a financial contribution to the improvement of the existing open space in the village. This would largely benefit future occupiers and off-set the demand created by the development itself but would also be of some benefit to existing residents. I give limited weight to this.
59. In line with the requirement of the Framework the proposal would create biodiversity net gain, but as no metric has been provided at this stage to calculate the scale of the net gain, I only give this limited weight.
60. I have found that the proposal would not unacceptably harm the living conditions of nearby residents, would preserve the setting of the nearby Listed Building and would not be detrimental to highway safety. However, an absence of harm in all these regards is a neutral factor.
61. All in all, I consider that the adverse impacts of the proposal would be significant, whilst the benefits would be moderate. As a result, the adverse impacts would significantly and demonstrably outweigh the benefits when

assessed against the Framework as a whole and the presumption in favour of sustainable development is not engaged.

62. For the reasons set out above, I therefore conclude the appeal should be dismissed.

Alison Partington

INSPECTOR

Richborough Estates

APPEARANCES

FOR THE APPELLANT:

Christopher Stokes	Stokes Morgan Planning
Alex Madden	Thrings Solicitors
Marcel Watkins	Landscape Architect

FOR THE LOCAL PLANNING AUTHORITY:

Simon Trafford	Somerset Council
Funda Kemal	Architect and Urban Designer

INTERESTED PARTIES:

Mark Reynolds	Context Planning for Ashwick Parish Council
David Mason	D M Mason Engineering Consultants on behalf of Ashwick Parish Council
R Westell	Resident

DOCUMENTS SUBMITTED AT THE HEARING

1. Details from the latest Annual Monitoring Report showing dwellings and affordable dwellings built over the plan period submitted by the Council.
2. Part 2 of the Somerset County Council Parking strategy setting out Parking Standards and design submitted by the Council.
3. CIL Compliance Statement submitted by the Council.