



Appeal Decision

Site visit made on 26 October 2023

by **J J Evans BA(Hons) MA MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 14 November 2023

Appeal Ref: APP/Q3305/W/22/3313740

Land to the north of Wookey Hole Road, Wells, 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 Land Allocation Ltd against the decision of Mendip District Council.
 - The application Ref 2022/0617/OUT, dated 4 March 2022, was refused by notice dated 24 June 2022.
 - The development proposed is outline planning application for residential development including means of access with all other matters reserved.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The application was submitted as an outline, with consideration at that stage only for means of access, with all other matters being reserved. The drawings submitted with the original application show the position of the proposed access and also the layout for 50 dwellings and its associated landscaping (reference Indicative Site Layout drawing number MP-05). A further layout and landscaping drawing was submitted for the appeal (reference Landscape Masterplan drawing number 21-19-LVIA-GR-5C). Both these drawings have been described as indicative by the appellant. The Council have considered these matters as indicative, and for the avoidance of doubt I have determined the appeal in the same way.
3. The description of development in the heading above has been taken from the original application form. In Part E of the appeal form it is stated that the description of development has not changed, but the Council have altered the description of development to refer to the scheme being for up to 50 dwellings. Neither of the main parties has provided written confirmation that a revised description of development has been agreed. Accordingly, I have used the one given on the original application.
4. The appeal site is within the catchment of the Somerset Levels and Moors Ramsar and within the consultation zone for the North Somerset and Mendip Bats Special Area of Conservation (SAC). The Conservation

of Habitats and Species Regulations (2017) (the Regulations) require the decision maker to undertake an Appropriate Assessment where there are likely to be significant effects both directly and indirectly from the proposal, either alone or in combination with other schemes, and this duty falls to me as the competent authority. I shall return to this below.

5. During the appeal the appellant provided a completed Unilateral Undertaking (UU), securing amongst other things, on-site affordable housing, public open space and wetland mitigation, health service and education contributions, and a travel plan. I have taken into account the UU and also the associated comments made by the parties in reaching my decision.

Main Issues

6. The main issues in this case are:

- the effect of the proposal upon the character and appearance of the area, including having regard to the effect upon the setting of the Mendip Hills Area of Outstanding Natural Beauty and upon existing trees;
- the impact of the proposal upon protected species in the area and upon the integrity of the Somerset Levels and Moors Ramsar site and upon the Mendip Bats Special Area of Conservation; and
- whether the proposal would make adequate provision for surface water management.

Reasons

Character and Appearance

7. The appeal site comprises part of a large field to the north of Wookey Hole Road. The land slopes up towards the north, and the field has been subdivided with the eastern part being used for arable and the other section laid to grass. Notwithstanding this subdivision, as identified by the previous inspector (appeal ref: APP/Q3305/W/20/3257000), the site is distinct from the built-up area of Wells as it visually relates to the rural areas that encircle the city. Woodlands, trees, and mature mixed native species hedges are a feature of the area, and hedges and trees delineate the southern and eastern site boundaries. Beyond the trees to the east is the Underwood Business Park, whilst lower down the hillside and to the south of Wookey Hole Road are residential estates, some of which are currently under construction.
8. The site is within the Underwood Special Landscape Feature (SLF) which is a landscape of local value that extends from the built edge of Wells to the Mendip Hills Area of Outstanding Natural Beauty (AONB). The Council's Assessment of Special Landscape Features document (2012) identifies the SLF as being valued as a prominent, scenic and dramatic backdrop to the city and to the AONB. Beyond the SLF, the Mendip Hills

dominate the landscape. The abrupt rise of these hills to the north of the city is a distinctive feature of the area. The uniquely recognisable skyline, and the striking nature of the hills with their dominating relationship over the lower land and slopes, are all part of the special qualities of the AONB and positively contribute to the local identity of the area.

9. Vehicular access to the housing would be from Wookey Hole Road, close to the western boundary of the site with a separate pedestrian access onto this road near the eastern side. The illustrative layouts show open space and / or wetlands to the north, with the housing concentrated below. Irrespective of these layouts, the provision of so many houses in a concentrated group would appear conspicuously disruptive in a rural area characterised by agricultural fields and woodlands.
10. This harm would be particularly apparent due to the elevated nature of the site. The field is above the level of the public highway and slopes steeply upwards towards the north. Even with the retention of much of the existing boundary hedges and trees and the possible set-back of the houses away from the public highway, the slope of the land is such that it would make the development intrusively visible within the area. This harmful impact would be apparent from lower down the hillside, from approaches into the city, and also from higher land, such as from Arthur's Point and Lime Kiln Lane.
11. The appellant describes the appeal site as having a good degree of enclosure, albeit gaps would be created within the hedge along the public highway allowing views of the site from lower down the hillside. This hedge is a distinctive local feature, and its sinuous, leafy continuity contributes to the character and appearance of the SLF as well as verdantly defining the extent of the city. The elevated position of the site when combined with the nature of the slope is such that even with the retention of the hedge, development would appear unacceptably intrusive.
12. The houses would be near a business park, but the park forms a distinct contained edge to the built-up area of the city, particularly so as many of the units are set into the hillside. This, along with the mature hedges and trees bounding the business park serves to clearly segregate it from the nearby expansive open areas. Despite the scale of the development having been reduced from that considered by the previous Inspector, that proposed would still extend over a large area, and would be noticeably more extensive than the business park and the other groups of housing to the north of the road. As regards the housing estates to the south, these houses are much lower down the hillside than the appeal site, and this positioning has the effect of mitigating their visual impact within the surrounding area.
13. Furthermore, the totality of the impact of the development of the site would be readily apparent from a range of public and private views,

including at night, as lighting would be introduced far up the hillside into an essentially dark area. The housing and its associated roads and infrastructure would have a conspicuous, urbanising impact. Whilst appreciating the illustrative nature of the layouts, the loss of openness to the setting of the city would not only be affected by the presence of the houses, but also by the changes of the slope required from engineering works, including for the proposed wetland areas. The scheme would harmfully erode the expansive, open nature of the setting to the city, at the same time as reducing the spacious separation that exists between the business park and the ribbon development of houses to the west of the site along Wookey Hole Road.

14. Extensive landscaping is proposed in the Landscape and Visual Impact Assessments (2021 & 2022). However, such measures would take many years to ameliorate the intrusive nature of the site, if ever. Landscaping may provide some mitigation but cannot be relied upon in perpetuity to screen a development for its lifetime. This would be a particular concern given the attractive and extensive panoramic views available to future residents over the city and Somerset Levels.
15. The National Planning Policy Framework (the Framework) requires that development within the settings of AONBs should be sensitively located and designed to avoid or minimise adverse impacts on the designated area. The Planning Practice Guidance explains that land within the setting of an AONB often makes an important contribution to maintaining their landscape and scenic beauty, as is the situation with the case before me. The appellant has pointed out that the site is set away from the AONB boundary by approximately 300m. Nevertheless, the scenic and distinct separation that exists between the AONB and the edge of the city are an important element of the open, rural setting to the AONB. This separation has the effect of framing and emphasising the Mendip Hills, and this impact would be harmfully eroded by having development extending high up the hillside and well above the existing northern edge of the city. The proximity of the site to the AONB and the prominence of the houses upon rising land would be such that the development would harmfully draw the eye, with the scenic setting and separation between the AONB and the city being unacceptably and prominently diminished.
16. *Trees.* Part of the distinctiveness of the landscape near the appeal site is the presence of numerous trees, areas of woodland and long, mixed native species hedges. The unique nature of the topography of the area with the repeated delineation of field boundaries with trees and hedges is an attractive feature of the landscape. The trees and hedges form often continuous leafy corridors and focal points in the landscape, and are attributes of the SLF that contribute to the positive setting of the city and the AONB. They are also important for providing often linking habitats for wildlife, including foraging and commuting corridors for bats. The long continuity of the mixed native hedge along the public highway

that forms part of the site boundary is a distinct local feature. It provides a defined green edge to the built-up area of the city, and the hedge and the trees near to the business park form a verdant edge that flows up the hillside, providing linkages with other hedges, trees and woodlands.

17. The Framework emphasises the importance of trees and the contribution they make to an area, and the scheme has been supported by a Tree and Hedgerow Survey (2019), including a tree constraints plan. It may be the case that conditions could protect the trees, as suggested by the appellant, and BS5837 – Trees in Relation to Design, Demolition and Construction makes some allowance for disturbance to the roots and crowns of trees during construction works. In this instance the protection of the existing trees and hedges would be an important aspect of maintaining the character and appearance of the area, particularly as the proposal relies on existing trees and hedges to ameliorate visual impact of the development. Trees self-optimize to their location, and they would have adapted to the slope of the land and to the proximity of the road and business park. The above referenced survey makes generic recommendations but provides little specific detail as to the circumstances of this site, including with regard to the extent of root and canopy protection areas.
18. The presence of these trees and hedges makes an important contribution to the local identity and distinctiveness of the area, and also towards the habitats that support protected species. Consequently, their presence and protection should be an integral consideration in the development of the site, particularly on a sloping site where engineering works would be needed. I have noted the previous Inspector's comments relating to the hedge, and also those of the appellant with regard to the current scheme, including that the trees would be sufficiently separated from any proposed dwellings, landscaping and footpaths. However, there are a number of constraints regarding this site which should inform development, and one of these is the presence of the trees and hedges. As a result of the lack of information before me relating to the potential impact of the scheme, I am not convinced that conditions would be sufficient to protect nearby trees during construction nor ensure their long-term health and vitality, and thereby the positive contribution they make to the area.
19. For these reasons the proposal would have a harmful and unacceptable impact upon the character and appearance of the area. The scheme would adversely affect the setting to Wells, and would erode the qualities of the SLF and also those of the setting of the AONB. The suggested conditions would not mitigate this harm, and the scheme would be contrary to Policies DP1 and DP7 of the Mendip Local Plan (2014) (LP). These policies seek amongst other things, development that is appropriate to local context and that contributes to the maintenance and enhancement of local identity, including recognising

the contribution trees and hedges make, thereby reflecting objectives of the Framework. In addition, the scheme would fail to accord with LP Policy DP4, which requires that proposals do not compromise the setting of the AONB, nor the specific qualities of an SLF.

Protected Species and Habitats

20. The site is within the catchment of the Somerset Levels and Moors Ramsar, a habitat site designated for its internationally important wetland features, including invertebrate species. Natural England have confirmed that the scheme has the potential to increase nutrient loads, particularly phosphorous, into the catchment, thereby putting the Ramsar at risk from the effects of eutrophication.
21. From the evidence before me, including the previous Inspector's comments on this matter, waste water from the site could directly and indirectly enter the wetlands via the catchment. The development and its future occupiers would be likely to have a significant effect upon the integrity of the Ramsar, whether alone or in combination with other plans and schemes. The Regulations require the decision maker to undertake an Appropriate Assessment where there are likely to be significant effects upon the Ramsar, and this duty falls to me as the competent authority.
22. At the appeal stage the appellant has proposed on-site wetland mitigation to allow the development to be phosphorous neutral. An illustrative layout drawing shows a position and the extent of the wetland, whilst the UU refers to details for its maintenance and management arrangements. I will return to the matter of the impact of the proposal upon the Ramsar later.
23. The site is also within a consultation zone for the North Somerset and Mendips Bats SAC, which is internationally important for its Greater and Lesser Horseshoe bats. The SAC contains a range of maternity and hibernation sites and the landscape surrounding the SAC is important for providing foraging habitats. The appeal site is not in the SAC, but it is within the landscape surrounding it that contributes to supporting the bats. Horseshoe bats follow routes through woodland and hedges, avoiding gaps in canopies and well-lit areas. Consequently, the creation of gaps in hedges as would occur with the appeal scheme, along with the provision of external lighting could all impact upon the bats and therefore affect the integrity of the SAC. Natural England have advised that a bat survey is required, and that it must be demonstrated that the proposal would not result in a net loss of habitat for horseshoe bats, including through the introduction of artificial lighting.
24. The appellant has provided an updated bat survey report (2022) that has found the horseshoe bats continue to utilise the site boundary hedges and trees for foraging and commuting. These features link with the woods to the north of the site that also provide good quality habitat for a range of bats. The report recommends the imposition of the

conditions from the Council's 2020 Appropriate Assessment, which include external lighting conditions, replacement habitat, native species hedges, and a Landscape and Ecological Management Plan.

As responsibility lies with me as decision maker to undertake an Appropriate Assessment, I will return to the matter of the impact of the scheme upon the SAC later.

25. As well as horseshoe bats, the bat survey has found that the site is important for a variety of other bat species. Bat activity is concentrated along the boundary hedges and trees, and the bat survey report acknowledges the importance of maintaining such green corridors. The presence and use of protected species is a matter that should be assessed so as to inform the nature of any scheme. Circular 06/2005 – Biodiversity and Geological Conservation makes it clear that the presence of a protected species is a material consideration when development is being considered.
26. The existing boundary trees and hedges are of importance to a wide range of bats, not just the horseshoes, and given this, measures to protect the trees would be necessary. The previous inspector considered the ecological impact of how the loss of some of the hedge could be addressed through conditions requiring new planting, a stance that is reiterated with the proposal before me. Such measures and habitat creation would be a benefit of the scheme, although what is not clear is the impact of the development upon the boundary trees to the east. It might be that the houses could be kept away from the trees, but neither this nor tree and hedge protection measures have been provided. Whilst appreciating the outline nature of the scheme, given the importance of the site to protected species, how measures to protect, conserve and enhance the development for them remains unclear.
27. The requirements of the Framework are that the planning system should contribute to and enhance the natural environment and minimise impacts upon biodiversity. Such objectives should be integral to informing a proposal, but it remains unclear as to how this could be successfully accommodated into the development. Given this, the proposal would fail to accord with LP Policies DP5, DP6, and DP8 which require amongst other things, that development does not have adverse environmental impacts, and the protection, conservation and possible enhancement of internationally and nationally designated habitat areas and species, thereby reflecting objectives of the Framework.

Surface Water

28. The scheme proposes a variety of drainage measures, including permeable paving for private drives, green roofs, and rainwater harvesting. The illustrative site layout drawings show a bunded collection basin in the south-east corner of the site, and there could also be a sizeable wetland area constructed to the north of the houses.

29. The appellant proposes that drainage and ongoing maintenance would be resolved through conditions, with the preference for infiltration of surface water to the ground, and if this is not viable, the alternative would be connection to a nearby culverted watercourse. However, the circumstances of this case are such that the matter of drainage would need to be addressed rather than left as conditional requirements so as to ensure that development could take place without impacting upon the integrity of the Ramsar, as well as ensuring that water would not discharge from the site into other land.
30. The appellant's Flood Risk Assessments (2022) suggest further infiltration and drainage surveys and assessments are undertaken, including of the culvert. Such matters could be addressed through conditions and the UU proposes wetland management and maintenance measures, also subject to subsequent approval. Notwithstanding this, there remain a number of uncertainties in this case, and it does not follow that conditions could overcome them. This is particularly so given the size of the proposed wetland and collection basin which would be near houses, both existing and proposed, the steep nature of the slope, and that the site is close to a public highway. On the basis of the evidence before me there could be a risk to people and property if these measures were not resolved, and this would include a long term risk if maintaining operational efficiency could not be ensured.
31. Taken as a whole, there are uncertainties surrounding the drainage of the site, and the scheme would fail to accord with the requirements of LP Policies DP8 and DP23. These policies require amongst other things, that development assesses environmental impact and risks, and incorporates appropriate water management measures to reduce surface water run-off and ensure it does not increase flood risk elsewhere. Such objectives reflect those of the Framework, including the incorporation of sustainable urban drainage systems unless there is clear evidence that this would be inappropriate, and that flood risk is not increased elsewhere.

Other Matters

32. Local residents have raised a number of matters, including highway safety and traffic concerns, the creation of a precedent, that there have been numerous applications for development on the site, and that the scheme would be phase one of a larger development. As regards the latter three issues, it is the case that each application and appeal has to be considered on its merits. Of the planning concerns raised, following my findings on the main issues, I have no need to consider them further.
33. The appellant has referred to the Council's consistency of decision making as issues have arisen with the current appeal that were not issues with the previous application and appeal. This would be of concern to the appellant, but I am obliged to consider the appeal on the

basis of the evidence before me, and consistency matters have to be pursued by other means separate from the appeal process.

34. The Council have referred to the presence of listed buildings within the surrounding area, namely Model Farmhouse (grade II) and Glencot and terraces to the rear (also grade II). As required by Section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990, I have paid 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. These listed buildings are at some distance from the appeal site, being positioned within valleys that set them apart and conceal them. There are other houses, buildings, and land uses between them, along with hedges and trees. Taken as a whole, these circumstances are such that the scheme would not harm the settings of these listed buildings.

Planning Balance

35. The Council acknowledges it cannot demonstrate a five-year supply of deliverable housing sites. Consequently, Paragraph 11(d) of the Framework is engaged, whereby planning permission should be granted unless the adverse impacts of the proposal significantly and demonstrably outweigh the benefits.
36. The development would contribute towards the supply of housing, and this and the on-site provision of 40% affordable homes would be a significant benefit of the scheme. However, the UU trigger point for their provision is such that much of the open market housing would be constructed and occupied before the affordable units were constructed. Given this, I share the concerns of the Council with regard to the trigger and its impact upon the timing and delivery of these affordable homes, and consequently the weight to be attributed to this benefit is tempered. Further social benefit would also arise from the appellant's contribution to education and health services. Taken as a whole the scheme would provide significant social benefits.
37. Future occupiers of the homes would be near to the extensive range of services, facilities, and employment opportunities available in the city, and public open space would be provided on-site, thereby affording social and environmental benefits that would carry some weight. Further environmental weight would also accrue from the provision of various habitat areas and measures for protected species. There would be a time-limited economic benefit arising from the construction of the site, and there would be modest ongoing economic benefits from future occupiers using local services and facilities.
38. Weighing against these benefits would be the substantial environmental harms arising from the proposal. Additional high-quality homes would be delivered by the scheme, but in doing so the development would cause significant harm to the distinct character and appearance of the area. The qualities of the SLF would be eroded and diminished, as would

the setting of the AONB and that of the city. The absence of effective mechanisms to protect nearby trees and hedges and the contribution they make to the character and appearance of the area and bat habitats would result in further environmental harm. LP Policies DP1, DP4, DP5, DP6, DP7, and DP8 are consistent with the Framework, as the Framework also requires development to be sympathetic to local character, including recognising that trees make an important contribution to the character and quality of an area, and that proposals should contribute to and enhance the natural environment and minimise impacts upon biodiversity.

39. In addition, there would also be significant environmental and social harms arising from the uncertainties of the drainage of the site. LP Policies DP8 and DP23 reflect objectives of the Framework, which requires the incorporation of sustainable urban drainage systems and that flood risk is not increased elsewhere.
40. I have had regard to the Framework's requirement for significantly boosting the supply of homes, and the appeal cases cited by the appellant in support of this objective (ie appeal references APP/Q3305/W/21/3285335, APP/W3520/W/18/3209219, APP/P1560/W/3196926, and APP/M1005/W/17/3198996). From the evidence before me these examples are very different to the appeal case. None appear to be in areas where local and national landscape designations and their settings have been main issues, nor where protected habitats and species are a concern. Some are in very different areas of the country, and others were determined several years ago under different national policy. Given these differences, they do not create binding precedents for allowing the appeal.
41. Whilst a key aim of the Framework is to significantly boost the supply of housing, when read as a whole the Framework does not suggest this should happen at the expense of other considerations. The adverse environmental and social impacts in this case amount to cumulative harm which carries substantial weight, and this significantly and demonstrably outweighs the environmental and economic benefits, and even the weight that derives from the social benefits when assessed against the policies in the Framework as a whole. It follows that the presumption in favour of sustainable development does not apply.
42. Returning now to the impact of the proposal on the Ramsar and SAC, if I had come to a different conclusion, it would have been necessary for me to undertake Appropriate Assessments and further consideration of the likely effectiveness of mitigation measures. In doing so I would have had regard to the provisions of the UU and whether there would be significant effects arising from the proposal, either alone or in combination with other schemes, as I would have to be certain that the integrity of the protected sites would not be adversely affected. However, as I am dismissing the appeal for other reasons, these assessments have not been necessary.

Conclusion

43. For the above reasons the adverse impacts arising from the proposal would significantly and demonstrably outweigh the aforementioned benefits, and the suggested conditions would not overcome these substantial harms. Thus, for the reasons given above and having considered all other matters raised, the appeal is dismissed.

J J Evans

INSPECTOR

Richborough