



Appeal Decision

Site visit made on 12 June 2024

by Juliet Rogers BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 08 July 2024

Appeal Ref: APP/Y3940/W/23/3332246

Land opposite 16 St Thomas Passage, Trowbridge, Wiltshire BA14 8SE

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by Mr Terry Gillman of T J Gillman Property Ltd against the decision of Wiltshire Council.
 - The application Ref is PL/2023/01950.
 - The development proposed is two bungalows with 3no. off-road parking spaces.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. Since the Council determined the application a new version of the National Planning Policy Framework (the Framework) came into effect. During the appeal, the main parties have had the opportunity to provide further comments on the revised Framework and, where received, I have taken them into account in my decision. I am satisfied no party would be prejudiced by determining the appeal accordingly.
3. Additionally, the Council has commenced its consultation of the Local Plan Review Publication Plan¹, in accordance with Regulation 19 of the Town and Country Planning (Local Planning) (England) Regulations 2012. The emerging Local Plan² is at an early stage which means the policies therein attract no weight in my decision. However, on the basis that it is supported by a policies map and proposed allocations towards meeting the Council's housing needs, the Framework requires the Council to identify a minimum of four years' worth of housing. I will return to this matter later.
4. I have removed details that aren't acts of development from the description in the banner head above.

Main Issues

5. The main issues are the effect of the proposed development on:
 - protected species, most notably badgers; and
 - the parking conditions in the area and, consequently, the safety of users of the surrounding highway network.

¹ Wiltshire Local Plan Pre-Submission Draft 2020-2038 (Regulation 19) dated September 2023

² Wiltshire Local Plan review

Reasons

Protected species

6. There is no dispute between the main parties that there is the presence of a protected species on and surrounding the site. Surveys undertaken in 2018 and 2021 before being updated in June 2023 during the determination of the planning application confirm the presence of badgers in the area, including active setts, foraging areas and frequently used routes.
7. The latest survey shows a reduced amount of activity when compared with previously observed presence on the site. However, it is not conclusive if this is as a direct result of the construction of the adjacent development or representative of typical fluctuating activity levels over time. Nonetheless, the latest survey confirms that one sett located close to the boundary of the site remains active and has unobstructed entrances. It is asserted that this sett does not extend under the wall on the site boundary, instead extending into the garden associated with the Vicarage, although the precise location of the sett and its tunnels and chambers is not mapped. As one of the proposed bungalows would be sited close to this site boundary, there is potential that construction works associated with the proposed development would have a detrimental effect on the sett and the badgers that use it.
8. The 2018 and 2021 surveys also identify that the site was being used for foraging as well as a route between the sett and other foraging areas in the nearby park. However, these activities were not present at the time of the most recent survey although, again, it has not been demonstrated that this is a permanent change.
9. Badgers and their setts (including the tunnels and chambers where they live) are protected by the Protection of Badgers Act 1992 (the Badgers Act) and the Wildlife and Countryside Act 1981 (the Wildlife Act) for their welfare and against illegal cruelty. Following the standing advice from Natural England (NE), developments should avoid effects on badgers, where possible. Where this is not possible, mitigation or compensation measures should be implemented.
10. As part of the appeal scheme, a badger gate is proposed in one of the site boundaries close to the previously mapped badger route. However, between the sett and this gate, the proposed dwellings would be located such that badgers would need to navigate around the built form. In the absence of a separate corridor similar to that located to the rear of the adjacent development, it can not be guaranteed that this route would be available in perpetuity.
11. The garden areas for the proposed development could provide suitable badger foraging but given the opportunity for this activity due to the existing overgrown condition of the site, I am not persuaded that foraging areas would be increased. Whilst the removal of the existing security fence to part of the site boundary may provide badgers significantly more scope to come and go from the site, there is no evidence before me confirming the presence of badgers beyond this boundary. Nor have areas which would be attractive for foraging been identified in this direction.

12. Based on the evidence before me, it has not been demonstrated that the construction or occupation of the proposed development can be achieved without causing an offence set out under Section 3 of the Badgers Act. This is the case even if the appellant's ecology specialist has said they have never seen a planning application refused on the grounds of badgers being present on a site.
13. I conclude that the proposed development has the potential to cause harm to protected species, most notably badgers, contrary to the requirements of the Badgers Act and the Wildlife Act, as supported by Circular 06/2005³, and Policy 50 of the Wiltshire Core Strategy (the Core Strategy). Policy 50, amongst other things, requires all development proposals to incorporate appropriate measures to avoid and reduce disturbance of sensitive wildlife species and habitats throughout the lifetime of the development. It would also conflict with the Framework which aims to protect and enhance biodiversity by identifying the hierarchy of wildlife-rich habitats.

Parking conditions

14. The proposed development incorporates car parking on the appeal site. These correspond with the car parking spaces allocated to Plots 1, 2 and 3 of the adjacent development⁴, on the site of 16 St Thomas Passage (No.16). If the appeal is allowed, the Unilateral Undertaking (UU) submitted by the appellant would prevent the Owner of No.16 from constructing Plots 1, 2 and 3. Notwithstanding any restrictions about building over the foul sewers located close to these plots, without this agreement in place, there is the potential for both the adjacent development and the bungalows to be constructed, irrespective of whether No.16 has now been sold.
15. In this circumstance, the future occupiers of the approved Plots 1, 2 and 3 and/or the proposed bungalows would not be provided with dedicated parking spaces and they would need to park their vehicles elsewhere. However, there are limited on-street parking spaces, either restricted or unrestricted, on the surrounding road network. This could also encourage drivers, to minimise inconvenience to themselves, to park in obstructive, illegal or potentially hazardous locations to the detriment of the safety of pedestrians, cyclists and other drivers in the area. It also has the potential to cause conflict with the occupiers of the dwellings already constructed nearby.
16. Consequently, based on the evidence before me, the use of a planning obligation is necessary to make the proposed development acceptable. I also find that the UU as currently worded is directly related to the proposed development and reasonably related in scale and kind to it. The Council have also confirmed the acceptability of its contents.
17. The Framework requires a planning obligation, including a UU, to be effective by meeting three tests. This includes being legally sound. Whilst it has been signed and witnessed, the submitted UU has not been dated. Therefore, it is unclear if the UU is complete, can take effect or is capable of being enforced. Consequently, I afford the UU no weight in my decision.

³ Circular 06/2005: Biodiversity and Geological Conservation – Statutory Obligations and their Impact within the Planning System

⁴ Council ref: PL/2021/09779 dated 8 March 2022

18. In the absence of a properly executed agreement, I conclude that the proposed development would harm the parking conditions in the area and, consequently, the safety of users of the surrounding highway network. As such, it would conflict with policies 61 and 64 of the Core Strategy which seeks to reduce the reliance on the use of private cars through the location of development, management of parking provision and the encouragement of sustainable transport options.

Other Matters

19. As the site is located within the Trowbridge Conservation Area (the TCA), I am required by Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the Act) to pay special attention to the desirability of preserving or enhancing the character or appearance of that area.
20. The significance of the TCA as a whole is principally derived from the historic role of the town centre with its various civic buildings, predominantly built with stone and brick. Built form is generally orientated towards the modestly sized streets which wind through the town, with archways or narrow mews streets providing access to a variety of courtyards and closely-knit buildings behind.
21. The appeal site is centrally located within the irregularly shaped block defined by St Thomas' Road, Union Street, Timbrell Street and York Buildings. St Thomas' Passage punches through this block from the St Thomas' Road/Union Street roundabout to Timbrell Street. It takes the form of a newly created mews street as part of the new development nearby before reducing in width to a walkway past the site and connecting to Timbrell Street via Arch Yard. The proposed development's orientation towards the built form around Arch Yard would reflect the close-knit pattern of buildings elsewhere in the TCA and, as a result, would preserve the character and appearance of the TCA.
22. My attention has been drawn to the Grade II Listed Verger's Cottage (19 York Buildings) adjacent to the site. Section 66(1) of the Act requires me to have special regard for the desirability of preserving a listed building or its setting or any features of special architectural or historic interest that it possesses.
23. The cottage is located within the grounds of St Thomas' Church, adjacent to the entrance gates and orientated towards the grassed area to the front of the church. As a result, I consider the significance/special interest of the cottage and its setting to be, in part, derived from its physical and functional relationship with the church and the quality of its architectural details.
24. While the proposed development would introduce a built form close to the cottage, its lower height and more diminutive scale would demonstrate a degree of subservience to the listed building and its setting. Therefore, the proposed dwellings would preserve the significance/special interest of the setting of the cottage.
25. Whilst there is a risk that, following this decision, the appeal site becomes a waste ground and potentially a location for unnecessary dropped litter or fly tipping, this does not outweigh the conflict I have found above. In addition, these are matters which are of concern to other authorities and legislation. Moreover, the options for the site are not binary as indicated by the Council's view that the principle of residential dwellings on the site has already been established.

26. The behaviour of the Council during the determination of the planning application, including concerning the site visit, is not a matter of this decision.

Planning Balance

27. As identified above, the Council is required to identify a minimum of four years' worth of housing given the stage reached by the emerging Local Plan. The evidence before me indicates that the Housing Land Supply exceeds this provision. As a result, the Council meets the relevant housing needs requirement and the presumption in favour of sustainable development set out in paragraph 11dii of the Framework, or the 'tilted balance' does not apply.

Conclusion

28. The proposed development conflicts with the development plan when considered as a whole, and there are no material considerations, either individually or in combination, that outweigh the identified harm and associated development plan conflict. Therefore, I conclude the appeal should be dismissed.

Juliet Rogers

INSPECTOR