
Appeal Decision

Site visit made on 18 December 2015

by Graham Dudley BA (Hons) Arch Dip Cons AA RIBA FRICS

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

Decision date:

Appeal Ref: APP/F0114/W/15/3023066

43 Upper Oldfield Park, Bath BA2 3LB

- 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 Landmark Developments Oakford House Limited against the decision of Bath & North East Somerset Council.
 - The application Ref 14/04547/FUL, dated 7 October 2014, was refused by notice dated 20 April 2015.
 - The development proposed is the erection of 14 residential apartments with parking and shared grounds (Revised Proposal).
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Decision

1. The appeal is allowed and planning permission is granted for 14 residential apartments with parking and shared grounds (Revised Proposal) at 43 Upper Oldfield Park, Bath BA2 3LB in accordance with the terms of the application, Ref 14/04547/FUL, dated 7 October 2014 and the plans submitted with it, subject to the conditions in Annex A.

Application for costs

2. An application for costs was made by Landmark Developments Oakford House Limited against Bath and North East Somerset Council. However, the appellant withdrew the application during the course of the appeal.

Main Issue

3. The main issue is the effect on the character and appearance of the surrounding area, including on the significance and special interest of the Bath Conservation Area and on the World Heritage Site.

Reasons

Character and Appearance

4. The development plan includes the Bath and North East Somerset Local Plan [LP] and the Bath and North East Somerset Core Strategy [CS].
 5. LP Policy BH6 notes that development within or affecting a conservation area will only be permitted where it preserves or enhances the character or appearance of the conservation area and this reflects Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990. CS Policy CP6 indicates that the council seeks opportunities to enhance the historic environment including the character and setting of designated and other
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- heritage assets. Where development has a demonstrable public benefit this will be weighed against any harm to the significance of the heritage asset and this reflects the aims of the National Planning Policy Framework [The Framework].
6. LP Policy D2 only permits development where the character of the public realm is maintained or enhanced and the development is of a high quality design. LP Policy D4 only permits development where it responds to the local context in terms of appearance. CS Policy B4 indicates that there is a strong presumption against development that would result in harm to the Outstanding Universal Value of the World Heritage Site, its authenticity or integrity, which applies equally to development in its setting. Any public benefits will be weighed against the level of harm.
 7. The Bath Conservation Area is very large and has areas with different characters and appearance. I consider that the significance and special interest of the conservation area relates to the historical development, style and design of buildings and their relationship to each other, and the layout of the various streets. In the vicinity of the appeal site the design of the buildings makes an important contribution to the character and appearance of the area, with the semi-detached buildings of similar design and age, following the curve of the road and down the hill.
 8. There is a change in character and appearance beyond the appeal site with the doctor's surgery appearing as a lower building, breaking the rhythm of the street created by the houses higher up. Opposite is the school which is a large scale structure on a more open site and in an attractive modern contemporary design.
 9. Planning permission was granted for a residential scheme at the appeal site around 2007, but changes have been made in relation to that, and there is a difference between the parties as to whether that planning permission was commenced or is now extant. It is not for me to decide whether that is the case or not, but I acknowledge that permission is a material consideration. The appellant also has submitted subsequent planning applications. The one in April of this year was for a scheme generally similar to that now built and this was refused. An amended scheme was approved in October. The application before me is generally as built. However, it is also relevant to consider what has been previously been approved.
 10. The appeal building has been constructed with a modern design, but with a general arrangement aimed at respecting the street scene and particularly the properties further up the road and results in an attractive and well designed building. However, I have considered the height and scale, particularly in relation to the properties up the hill. There is a pleasant and important stepping down of the buildings following the slope of the road. At the appeal site this changes, with the height of the building being at a similar height to the adjacent building, yet with its base lower. This, combined with the other dimensions of the building, results in a larger building than those up the hill.
 11. The original 2009 approved scheme was smaller, without the raised section of the roof in the middle and inset side wings at roof level and to my mind that was a more in keeping scheme than now produced, being a little less high and bulky. However, since then the scheme from October 2015 has been approved. This has a raised central roof section, but the upper side 'wings' are inset. I am

- satisfied, given the state of construction of the existing building, that the approved scheme would be implemented should this appeal be dismissed.
12. In terms of the roof, the difference between the appeal scheme and approved 2015 scheme is not great. There is one small raised section and some additional features. While the council find this cluttered, overall the impact of the proposed roof in relation to the approved roof is minimal. While I find that the 2009 scheme was a better design, that is now not going to be achieved. The difference between the appeal scheme and approved 2015 scheme is so small that I do not find its impact in terms of the overall design of the building would be material.
 13. I accept that there would be increased width at roof level of the appeal scheme in comparison with the approved scheme, because of the change to the 'wings' and this adds some additional bulk to the building. However, the actual increase is small and in comparison with the overall bulk of the building negligible and would be little noticed in distant views from the World Heritage Site. The impact on the design of the increased width is also masked to some extent by the change of materials from stone to slate and a small step maintained between the stone and slate element. The resulting relationship of these roof 'wings' with the remainder of the building is good and still results in a well designed, modern building appropriate to the location.
 14. Overall, I conclude that the proposal would preserve the character and appearance of the conservation and would not result in harm to the Outstanding Universal Value of the World Heritage Site. The outstanding universal value relates to, amongst other things, Roman Archaeology, Hot Springs, Georgian Town Planning, Georgian Architecture and the Green Setting and while the building can be seen in wider views, it would have no material effect on these important values of the World Heritage Site.
 15. A number of the responses to the appeal refer to the development being constructed without planning permission. However, that is not a matter that weighs in the balance as it is not unlawful. However, there is also no advantage to having constructed the building, the application being considered on its merits. I find it strange, with a developer and experienced architect, that this course of events has occurred and acknowledge that interested parties have found the process unsatisfactory. However, taking the building as constructed, I find the result is acceptable, so it is reasonable to grant planning permission. The fact that I and others found a previous scheme better does not mean that a subsequent scheme is unacceptable.
 16. In terms of the National Planning Policy Framework, the building would be socially beneficial, providing accommodation, and economically its construction has provided work locally. Sustainable development is made up by 3 roles, economic, social and environmental. The proposal would fulfil the social, economic and environmental roles and on balance would be sustainable development. The proposal accords with LP Policies D2, D4 and BH6 and CS Policies CP6 and B4.
 17. Conditions are reasonable and necessary in relation to landscaping, hard surfacing and boundary features and protection of existing trees and for requirements for the details of vents, flues and window, doors, to safeguard the character and appearance of the area. Conditions relating to use of the access to Junction Road, parking and turning are necessary to maintain

highway safety. Conditions are reasonable and necessary for the provision of a welcome pack, cycle parking and transport plan and the Section 106 obligation is required relating to the car share scheme, to ensure the development is sustainable in transport terms. This is a sensitive location so it is reasonable to remove permitted development rights for satellite dishes, antennae, services and solar equipment.

Graham Dudley

Inspector

Annex A

1. Occupation shall not commence until a hard and soft landscape scheme has been first submitted to and approved in writing by the local planning authority. The scheme shall include details of all walls, fences, trees, hedgerows and other planting which are to be retained; details of the walls, fences and other boundary treatment, finished ground levels; a planting specification to include numbers, density, size, species and positions of all new trees and shrubs; details of the surface treatment of the open parts of the site; and a programme of implementation.
2. All hard and/or soft landscape works shall be carried out in accordance with the approved scheme. The works shall be carried out prior to the occupation of any part of the development or in accordance with the programme agreed in writing with the local planning authority. Any trees or plants indicated on the approved scheme which, within a period of five years from the date of the development being completed, die, are removed or become seriously damaged or diseased shall be replaced during the next planting season with other trees or plants of a species and size to be first approved in writing by the local planning authority. All hard landscape works shall be permanently retained in accordance with the approved details.
3. The protective fences erected around the pine tree on the Junction Road boundary, approved under Condition 4 of planning permission Ref: 07/02461/FUL, and discharged under application Ref: 11/05409/COND, which are located within Hayesfield School site, shall not be removed until the completion of the development. The area within the protected areas is to be kept clear of any building, plant, materials, debris and trenching, with the existing ground levels maintained, and there shall be no entry to those areas except for arboriculture or landscape works as otherwise approved.
4. The area allocated for parking and turning on the submitted plan shall be kept clear of obstruction and shall not be used other than for the parking and turning of vehicles in connection with the development hereby permitted.
5. Before the dwellings hereby approved are first occupied, a properly consolidated and surfaced access (not loose stone or gravel) shall be constructed, details of which shall have previously been submitted to and approved in writing by the local planning authority.
6. No occupation shall commence until the cycle parking indicated on the approved plans has been provided and shall thereafter be kept clear of obstruction and shall not be used other than for the parking of cycles in connection with the development.
7. The vehicle access/exit from Junction Road shall not be used other than for servicing and emergency vehicles.
8. Before the dwellings are first occupied, new residents' welcome packs shall be issued to purchasers which should include bus and train timetable information, including examples of fares/ticket options, information on cycle routes, a copy of the Travel Smarter publication, car share, car club information etc. The packs shall have previously been submitted to and approved in writing by the local planning authority.

9. No occupation shall commence until 1:50 scale drawings of the following are submitted and approved in writing by the local planning authority. Doors and windows, to include colour details of frames and lintel and cill details and any external vents and flues. The development shall be carried out in accordance with the approved details.
10. Notwithstanding the approved plans and the provisions of the Town and Country Planning (General Permitted Development) England Order 2015 (or any order revoking and re-enacting that Order with or without modification) no further satellite dishes or microwave antennae shall be attached to the building or erected within the site without the prior written approval of the local planning authority.
11. Notwithstanding the approved plans and the provisions of the Town and Country Planning (General Permitted Development) England Order 2015 (or any order revoking and re-enacting that Order with or without modification) no lines, mains, pipes, cables or other apparatus shall be installed or laid on the site other than in accordance with drawings first submitted to and approved in writing by the local planning authority.
12. No occupation shall commence until an elevation and 1:50 scale plans of the proposed front boundary wall and stone piers have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details prior to occupation of any part of the building.
13. Notwithstanding the approved plans and the provisions of the Town and Country Planning (General Permitted Development) England Order 2015 (or any order revoking and re-enacting that Order with or without modification) no further solar PV or solar thermal shall be installed on the building unless a further planning permission has been granted by the local planning authority.
14. The development/works shall only be implemented in accordance with the plans as set out in the following list. 492:S:001B, 492:5:000, 492:BR:02H, 492:BR:03H, 492:BR:04H, 492:BR:05H, 492:BR:06H, 492:BR:07H, 492:BR:08G, 492:BR:09H, 492:BR:12D, 492:BR:13H, 492:BR:14L, 492:BR:15L, 492:BR:16L, 492:BR:17L, 492:C:010, 492:C:011.