

**BATH AND NORTH EAST SOMERSET COUNCIL**

**Development Management Committee**

**6<sup>th</sup> June 2018**

**UPDATE REPORT AND OBSERVATIONS RECEIVED SINCE THE  
PREPARATION OF THE MAIN AGENDA**

**ITEMS FOR PLANNING PERMISSION**

<b>Item No.</b>	<b>Application No.</b>	<b>Address</b>
1.	17/02588/EFUL	Parcel 4234 Combe Hay Lane Combe Hay Bath

**Update:**

South Stoke Parish Council have sought a Legal Opinion given their concerns that a piecemeal grant of planning permission in advance of the agreement of a comprehensive masterplan for the wider allocation may prejudice the deliverability of that wider allocation in accordance with the Placemaking Principles.

A full copy of the Legal Opinion is available to Members of the Committee.

The Legal Opinion concludes that it would be dangerous for the Committee to rely on and adopt the recommendation to approve. The Opinion states that the Application does not meet the minimum requirements laid down in Policy B3a. It is not in compliance with the development plan which gives rise to a presumption that the Application be refused. Without the support of that site specific policy, it is hard to see how the Application can meet the “major development” test in paragraph 116 of the NPPF or that there are any other material considerations capable of outweighing the “great weight” which must be given to the conservation of the AONB and the heritage setting of the Bath WHS. If permission were granted on the basis of the officer’s recommendation, it is likely that an interested party would have good prospects of succeeding in a judicial review challenge to that decision.

In response to each of the issues raised in the Legal Opinion:

**1. Failure to reach clear conclusion on whether development is in accordance with the development plan.**

The application is in breach of Policy B3a in a number of ways, giving rise to a presumption that permission will be refused. The most critical breaches are:  
(i) the application is not accompanied by a comprehensive masterplan capable of being agreed and of providing detailed guidance for subsequent planning applications.

(ii) contrary to Placemaking Principle 5 and the policy concept diagram the Application does not propose sufficient additional tree planting along the southern

boundary to ensure screening of the Site from views to the south; nor does it avoid or minimise detrimental impacts on the Cotswolds AONB.

(iii) contrary to Placemaking Principle 6, the Application does not establish an acceptable southerly extent of development so as to conserve the significance of the Bath WHS. The proposal is also contrary to other policies in the Core Strategy including Policy CP6 (Environmental Quality)

### **Officer Response**

Core Strategy Policy B3a sets out the requirements that need to be met to enable development of the Odd Down strategic site allocation. Being site specific these Placemaking Principles take priority over the Core Policies. In assessing the application consideration has been given to the representations received from statutory consultees as well as other respondents including those from Officers of the Council.

In terms of the 'breaches' set out in the Legal Opinion and summarised above:

(i) When considering whether development proposals accord with the development plan it is necessary to make this judgement with regard to the development plan as a whole. In other words, a proposal does not have to accord with every policy in the development plan or every element of every policy however the recommendation to approve or refuse an application must be based on a balanced and reasoned assessment of the proposals against the development plan as a whole.

Placemaking Principle 2 requires the preparation of a comprehensive Masterplan to be agreed by the Council. A masterplan for the strategic allocation has been submitted and it is considered that it provides an appropriate framework against which to assess the current application. In the light of issues raised by the Council and consultees the masterplan has been the subject of further assessment and amendment by the applicant.

The Committee report identifies areas where the masterplan complies with the Placemaking Principles as well as those where it does not fully comply. Whilst not all elements of the masterplan are capable of agreement at this stage it is considered that approval of the current application would not prejudice the form or extent of buildings on the remainder of the allocation nor would it prejudice the development of the wider site. Further iterations of the masterplan, to be submitted with future application(s) for future phases of the development, will need to address the identified issues and shortcomings.

The masterplan as it relates to the current application site does not include additional green infrastructure to the north of the southern tree belt as specified in the Placemaking Principles and shown on the Concept Diagram. It is evident from the information submitted with the application however that the existing southern tree belt partially screens the development and that it is generally the buildings towards the northern edge of the site (on the higher ground) that will be visible. Growth of the existing southern tree belt will in time provide further screening of the development and the application has been amended to further reduce its visibility in views from the south and its overall impact. The amendments include removing two buildings from the scheme, reducing ridge heights on some buildings, re-orientating and creating larger gaps between others. In addition large specimen trees are proposed

for the tree planting to the south of northern row of buildings. In the light of these changes the masterplan as it relates to the current application site is considered to be acceptable. At a net density of 33dph against 35-40dph in Policy B3a, 171 homes is not considered to be an excessive quantum of development for the site.

In reaching a conclusion on the current application an appropriate assessment has been undertaken and a balanced and reasoned conclusion has been reached on whether the application should be approved or not. It is considered that the lack of a masterplan that can be agreed at this stage does not amount to a departure from the development plan as a whole and is not of such significance that the current application cannot be determined or approved. Approval of the current application will not prejudice the comprehensive development of the wider strategic allocation and not having an agreed masterplan is not a sufficient reason to refuse planning permission.

(ii) In assessing whether detrimental impacts on the Cotswolds AONB have been avoided or minimised consideration has been given to the retention of existing trees on the site and additional tree planting within the development, the layout and design of the development, the nature and scale of the impacts as well as the specific characteristics of the site.

Whilst the application does not propose additional tree planting along the southern boundary it is evident from the submitted information that the existing southern tree belt partially screens the development. More particularly those buildings on the site that are visible are generally towards the northern edge of the site on the higher ground. Based on the submitted evidence it is considered that despite additional tree planting not being proposed along the southern boundary of the site, impacts on the Cotswolds AONB have been reduced to an acceptable level. Management and growth of the existing southern tree belt will, in time, further screen the buildings.

(iii) A similar assessment has been undertaken in respect of the southerly extent of development, with particular attention to the strong presumption against development that would result in harm to the Outstanding Universal Value of the WHS, its authenticity or integrity. The southerly extent of the development has been informed by a Landscape and Visual Assessment and as noted above amendments have been made to the layout of the development to seek to address issues of visibility and reduce the impact of the development.

Based on this assessment and the details of the application it is considered that the southerly extent of the development is acceptable and that the significance of the Bath WHS will be conserved.

## **2. Erroneous Approach to NPPF 116.**

Exceptional circumstances for major development in the AONB need to be demonstrated and the Application assessed against the tests in paragraph 116 of the NPPF. While it is clearly open to the Committee to conclude that a scheme which complied with Policy B3a could show exceptional circumstances, and to rely on the Examination Inspector's assessment, Policy B3a does not itself remove the allocated area from the AONB. The Inspector's conclusion that exceptional circumstances were met was dependent on compliance with the Placemaking Principles. If the

Application is not compliant with Policy B3a, then the Committee must assess whether exceptional circumstances exist for itself.

### **Officer Response**

The Committee report acknowledges that the application site remains in the AONB and an assessment has been undertaken of the impact of the development on the character and special qualities of the AONB.

In concluding that there were exceptional circumstances for major development in the AONB, albeit there would result in a moderate adverse impact on its special qualities, the Core Strategy Inspector took into account the Council's approach to where built development should take place, noting that built development would be pulled back from the more sensitive parts of the plateau where it could have a wider adverse impact.

That assessment related to the allocation as a whole whereas the current application relates to only part of it. The application is also accompanied by a detailed scheme and associated landscape assessment work that was not available at the Core Strategy. Whilst the "additional green infrastructure" indicated on the Concept Diagram does not form part of the proposed development, new tree planting is provided elsewhere within the application site. This is considered to have an equal and potentially more beneficial mitigating effect in terms of limiting visibility of the development and minimising detrimental impacts on the AONB. Accordingly it is considered that the development is in general compliance with Placemaking Principle 5.

The Application has been assessed against the tests set out in para. 116 of the NPPF. Notwithstanding changes to the development parameters from those taken into account by the Core Strategy Inspector the exceptional circumstances for major development still apply. The development will deliver new dwellings at a highly sustainable location of which 40% would be affordable and there are no acceptable alternative sites in Bath which could replace the contribution to housing that this site would make. In addition detrimental impacts on the environment, landscape that will arise have been appropriately mitigated and recreational opportunities enhanced. The need for housing and the benefits of additional housing in this location in Bath are considered to outweigh the localised harm to the AONB.

### **3. Failure to identify material considerations capable of justifying departure from the development plan.**

The report fails to specify material considerations capable of justifying departure from the presumption that decisions should follow the development plan.

Granting permission contrary to Policy B3a would run a substantial risk of distorting the comprehensive delivery of the wider allocation. The Applicant appears to intend a level of development across the allocation which cannot be delivered without an unacceptable ("severe") impact on the envisaged access point. This may lead to parts of the site becoming undeliverable which will have its own knock-on effects for the delivery of necessary and desirable infrastructure. Further, by creating variations in density and design, the grant of permission will reduce the ability of developers to

mitigate the identified dangers to heritage assets, landscape designations and ecology.

### **Officer Response**

In the absence of a detailed scheme and associated assessment of its impact on heritage assets, landscape designations, ecology or the local highway network it is not possible to reach a definitive conclusion on whether future phases of the development can (or cannot) be adequately mitigated. In addition, no conclusion can be reached on the absolute number of dwellings that could be accommodated within the strategic allocation. Masterplan by their nature involve high-level assessments and proposals and further iterations of the masterplan now would not enlighten us on these points which ultimately can only be established once a detailed scheme has been worked up and assessed in the context at that time.

The Committee report has identified where there is compliance or non-compliance with the development plan and it is considered that the national guidance has been appropriately applied in the assessment of the application. The site is allocated for housing development and the proposals accord with the Core Strategy in this respect although development is proposed at a density slightly below that set out in Policy B3a. Extrapolating the 171 homes proposed in the current application to the allocation as a whole would result in a higher total number of homes than envisaged in Policy B3a however the allocation of the site for 300 dwellings was a conservative estimate and the Core Strategy Inspector made clear this was not a cap if all the Placemaking Principles can be met. Ultimately the number of new homes on the allocation as a whole will be determined by the detailed assessment that will accompany future applications and one outcome might be that not all of the allocation is developed if it is demonstrated that such a scale of development would give rise to significant harm that could not be mitigated to an acceptable degree. However that judgement cannot yet be made and the development of 171 homes as proposed in the current application is not considered to prejudice future applications nor pre-judge their form or content.

It is considered that when assessed in the light of development plan policies as a whole the proposed development is in overall compliance with the development plan does not amount to a departure.

### **Conclusion**

When assessed against the development plan as a whole partial non-compliance is not considered to be of such significance as to render the application a departure from the development plan, nor to outweigh the presumption in favour of sustainable development.

The Council has had regard to s.38(6) of the Planning and Compulsory Purchase Act 2004 and it is concluded that the proposals are in general accordance with the development plan and there are no material considerations that would lead to a different conclusion. Accordingly the application is recommended for approval.

### **Consultation Responses**

The main report omitted reference to 2 letters of support for the planning application. Bath Chamber of Commerce are keen to see the delivery of new housing in order to support continued economic development. They note that great care has gone in to the consultation and design process which they believe to have been a model of its kind and that the high proportion of affordable housing will contribute greatly to the positive impact this development will have on the local community. The other letter of support is on the grounds of the chronic housing shortage in the city which pushes up rents and property prices and pushes out young professionals and business investment since employees cannot afford to live here. Proposals that are sensitive to the area such as the current application should be encouraged.

One other respondent noted that the Phase 1 is acceptable within itself however the surrounding main roads and the cut-throughs via other villages and lanes are already at the limit of their capacity and in their present form could not cope with the extra demand particularly from phases beyond Phase 1 on top of that from Mulbery Park/Foxhill.

A further objection has been received from Combe Hay Parish Council on the following grounds that (i) the masterplan is not acceptable (due to impact on the highway) and therefore Placemaking Principle 2 has not been met and the Phase 1 application cannot be accepted; (ii) concerns regarding rat-running have not been properly addressed as although the new site access onto Combe Hay Lane is likely to deter traffic from using Combe Hay Lane it is likely to encourage drivers to find alternative routes through the lanes; (iii) the cumulative impact is not acceptable as the analysis completely ignores the effect of growth and permitted development on the queue length and uses only the incremental contribution from Phase 1 in judging the impact.

An additional objection has been received on the grounds on (i) loss of Green Belt; adverse impact on AONB; (ii) impact on World Heritage Site and South Stoke village; (iv) impact on already congested road system; (v) alternative housing sites being developed in the centre of Bath; (vi) other brownfield sites in Bath available for housing; (vii) Phase 1 is beginning of potentially much bigger development that could involve more roads and severe traffic disruption.

<b>Item No.</b>	<b>Application No.</b>	<b>Address</b>
4.	18/00650/FUL	Highfields, White Cross, Hallatrow

Additional information has been submitted in response to the Highways objection, and the third reason for refusal. As such Highways DC has been consulted once again with the following comments, and assessment made:

*'It appears from drawing AD.02.Rev A that my concerns regarding the parking and bicycle storage have been addressed, but despite the evidence provided in terms of the sustainable location, the development is outside of the Housing Development Boundary. I understand that the proposed property sits on the A37 and is serviced by*

*a fairly regular bus service and the closest shop and primary school is located approximately one mile away in Farrington Gurney. And while this route is accessible via footway and crossing points, the footway is narrow in places and is not street lit, which means that any family travelling along this route is unlikely to use sustainable method of transport, particularly in the winter months when hours of darkness are lengthened.*

*The evidence provided by the applicant regarding the sustainable transport links relating to 16/04881/FUL is not relevant as this development location is within a self-sustained village. The initial application for this proposal (2004) was rejected on road safety grounds, not sustainability grounds.'*

Due to the above comments the third reason for refusal should read as follows:

The proposal is unable to facilitate the use of sustainable modes of transport due to the sites unsustainable location. The proposal is contrary to policy ST1 of the Bath and North East Somerset Placemaking Plan.

The plans list should also be altered to read as follows:

This decision relates to the following plans received 13th February 2018:

Drawing Number: AD/01- Proposed Floor Plans, Elevation and Sections

Plans received 1<sup>st</sup> March 2018

Drawing Number: AD/04- Existing and Proposed Sections and Site Plans

Plans received 29<sup>th</sup> May 2018

Drawing Number: AD/02 Rev A- Proposed Elevations and Site Plan

Drawing Number: AD/03 Rev A- Site Location, Block Plan and Additional Details

<b>Item No.</b>	<b>Application No.</b>	<b>Address</b>
10.	18/01253/LBA	6 Johnstone Street Bath

For clarification, in requesting the application be determined by committee Cllr Turner made the following comments;

- The work carried out is necessary to enable the building to be beneficially occupied and has not resulted in loss of historic fabric.
- The applicant has made a significant investment in the property and undertaken a high quality refurbishment from its previous HMO use.
- He supports the application.

Since the report was written three representations (two from one address) have been received and are available on the application file. Photographs submitted in support of the comments are also available on the application file. In summary the representations make the following comments;

- Another resident, with experience of owning a number of other grade I listed buildings worked closely with the Bath and North East Somerset Council during the renovation of her property in Johnstone Street which included repainting the stripped pine shutters on the ground, first and second floors as well as timber doors inside the building.
- Residents in Johnstone Street were horrified when the new owners left shutters stripped of paint and the matter was reported to the Councils planning Enforcement Team.
- The white blinds hung at the windows are not a satisfactory substitute for painting the shutters.
- Johnstone Street has a special importance as part of the Great Pulteney Street Masterplan and hundreds of visitors come down the street to admire the view and take photographs.
- It would be wrong, undemocratic and illogical for the owners of No 6 to fail to carry out their legal obligations.
- Why have the owners of No 6 not been forced to comply with the request to paint their shutters.
- There cannot be one rule for them and one for the rest of us.
- Johnstone Street is a heritage street in the heart of Bath and every house is listed to retain the appearance of the city.
- Whilst blinds hide the shutters at the front the ones at the rear are visible.

A letter from the applicants rebutting objections is also available on the file and in summary makes the following comments;

- Comments made are factually incorrect or make irrelevant assumptions.
- No 6 was purchased as their main home and has undergone two years of restoration.
- They have extensive experience of working with period and listed properties.
- All of the shutters have been restored and the ground floor and second floor rear shutters were left unpainted by choice.
- Where available guidance has been followed.
- None of the other residents in Johnstone Street have approached them with comments, guidance or suggestions.
- Submitting the application to leave the shutters unpainted is due process.
- No 4 Johnstone Street along with some other properties in Bath has stripped shutters.
- The blinds are not intended to deceive and were fitted into the reveals to keep the heat in.
- The comments make sweeping assumptions about the applicants and their property which are unnecessary and ill informed. The author has not introduced herself to them.



- Other residents have acknowledged the vast improvements they have made to the property.