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## Appeal Decision

Site visit made on 4 October 2019

**by Thomas Bristow BA MSc MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 16 October 2019**

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**Appeal Ref: APP/D0121/W/19/3230061**

**Mendip model racing circuit, Summerways Bridge, Accommodation Road, Bleadon, Weston-super-Mare BS24 0AP**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 as amended against a refusal to grant outline planning permission.
  - The appeal is made by Mr Colin Sandford of C and A Sandford Ltd., against the decision of North Somerset Council.
  - The application Ref 18/P/4956/OUT, dated 26 November 2018, was refused by notice dated 17 April 2019.
  - The development proposed is the erection of industrial buildings for B1 and B8 use.
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### Decision

1. The appeal is dismissed.

### Preliminary matters

2. The proposal is in outline with matters of access, appearance, landscaping, layout and scale reserved for future consideration ('reserved matters'). I have therefore treated as illustrative any indications in respect of reserved matters (on supporting plan DJS/IND/002, or in other documents). Considered in that context, the proposal is for 1,000 sqm of floorspace.
3. Each proposal must be determined on its merits in accordance with the development plan unless material considerations indicate otherwise. In this instance the development plan includes policies of the North Somerset Core Strategy (adopted initially on 10 April 2012, the 'CS') and of the Sites and Policies Plan Part 1 (adopted 19 July 2016, the 'SPP'). I have also had regard to various other material considerations including the National Planning Policy (updated 19 February 2019, the 'NPPF'), the Planning Practice Guidance ('PPG'), and other Council documents as referenced subsequently.
4. The appellant requested that the case be dealt with via hearing, albeit that the appeal proceeded via written representations.<sup>1</sup> I am satisfied that what I have read and seen is an appropriate basis upon which to determine the appeal, without disadvantage to any party.

### Main issues

5. The main issues are:
  - i. whether or not the appeal site is previously developed land,

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<sup>1</sup> Pursuant to section 319A of the Town and Country Planning Act 1990 as amended.

- ii. whether or not the appeal site is an acceptable location for the development proposed with regard to its proximity to services and facilities,
- iii. the effect of the scheme on the character and appearance of the area,
- iv. whether or not the proposal would be acceptable in respect of the vulnerability of the appeal site to flooding, and
- v. the effect of the proposal on ecology.

## Reasons

Whether or not previously developed land ('PDL')

6. Subject to various criteria being met, SPP policy DM54 supports the redevelopment of PDL in the countryside for business uses. Similarly NPPF paragraph 117 sets out how strategic policies should seek to make as much use of brownfield land as possible.<sup>2</sup> The appellant indicates that, up until around 1973, part of the land occupied by the circuit was used as a demolition tip.<sup>3</sup> Since then I understand that the appeal site has been used for parking provision. There is a promotional photograph of the site dating from around 2000 showing that use. Bleadon Parish Council has expressed support for 'the provision of employment uses on this brownfield site'.
7. However there is a distinction between the appeal site and circuit. The former is a broadly level strip of land alongside Accommodation Road which is, as paragraph 2.2 of the Flood Risk Assessment ('FRA') puts it, 'managed grass' amounting to approximately 1550 sqm. That contrasts with the varied character of the wider circuit. The circuit comprises miscellaneous buildings, extensive hard surfacing, and a storage compound associated with a commercial gas concern. Brownfield land is defined in the glossary to the NPPF. I accept that within those terms, two underground gas storage tanks here might be classified as permanent structures (albeit that plan DJS/IND/002 shows that they occupy a very small proportion of the appeal site).
8. There is no visual indication of any permanent structure, fixed surface infrastructure, or of materials related to demolition at the appeal site. There is no robust evidence before me of their presence here historically, or of relevant permissions or consents. Any such features have, in any event, blended, or been made to blend, into the natural landscape. Use of land for parking of vehicles is not within the definition of PDL, nor does that necessarily entail physical changes resulting in land being classifiable as brownfield. On the basis of the evidence before me, the overwhelming majority of the appeal site cannot reasonably be described as PDL.

Acceptability of location

9. CS policy CS20 seeks to provide at least 10,100 additional employment opportunities over the plan period across North Somerset. It also sets a requirement of enabling around 114 ha of employment land to come forward in pursuit of that aim. Being positively-worded, as reasoned by the inspector in

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<sup>2</sup> Except where doing so would conflict with the approach in other NPPF policies.

<sup>3</sup> I use 'the circuit' as shorthand for the land around and owned/ operated in conjunction with the appeal site.

appeal Ref APP/D0121/W/18/3208105, CS20 does not expressly preclude development in certain locations.

10. At a strategic level the CS and SPP seek to better align jobs growth with residential development. That is to improve low levels of economic activity, in recognition that there is significant out-commuting from North Somerset, and as historically employment provision has not kept pace with housing development. Similarly the NPPF sets out that significant weight should be placed on the need to support economic growth, recognising that flexibility is required in responding to circumstances in rural areas.<sup>4</sup>
11. However policy CS20 seeks to guide development in accordance with a settlement hierarchy, such that the scale of development is aligned with the size and function of towns and villages, thereby increasing the sustainability of settlements and reducing out-commuting. Similarly NPPF paragraphs 103 and 104 set out how planning should actively manage patterns of growth to promote walking, cycling and public transport, and to support an appropriate mix of uses across an area (thereby minimising journey times).
12. The Council states that the appeal site falls some 1,000 metres to the west of the nearest village of Bleadon, loosely centred around the Church of St Peter and St Paul on the opposite side of Bridgwater Road (A370). That does not appear to be disputed. Bleadon is defined in the CS as an 'infill village'. That is a category beneath Weston-super-Mare, Clevedon, Nailsea, Portishead and nine larger 'service villages' in the settlement hierarchy.
13. There is some development extending westwards of the A370 by the River Axe relative to the centre of Bleadon. Nevertheless, and notwithstanding occasional non-agricultural uses dotted about,<sup>5</sup> the surroundings of the appeal site are strongly rural in character. As detailed subsequently the surrounding landscape is characterised principally by a patchwork of good-sized fields.
14. There is generally sufficient space for two vehicles to pass in opposite directions at the same time along Accommodation Road. There is also a relatively wide verge affording some informal refuge for pedestrians from oncoming traffic. However there is neither a dedicated footway nor street lighting between the appeal site and around the A370. There are also several tight turns nearby, where visibility is limited by established hedgerows and trees. Whilst drivers may moderate their speed accordingly, nevertheless in this location Accommodation Road is subject to the national speed limit.
15. The walking or cycling route between the appeal site and Bleadon, or other more populous areas, is consequently unwelcoming. It is likely to dissuade all but the hardiest of individuals, particularly during inclement weather or outside of daylight. There is no indication that the appeal site is served by accessible or regular public transport. The Council sets out that it would take an hour or so to reach the site solely via public transport and walking from Weston-super-

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<sup>4</sup> Including at paragraphs 80 and 84.

<sup>5</sup> Notably the railway to the west, sewage treatment works off Wayacre Drove and Lymsham Concrete Supplies.

Mare. In that context the proposal has the clear potential to generate a number of private vehicular movements.

16. I accept that smaller business units are likely to relate more closely to the local economy than would be the case of larger-scale provision. However there is no substantive evidence before me of business needs here. Nor is there any information regarding market dynamics of associated employment space availability and provision. The absence of such undercuts the appellant's argument that the scheme would reduce out-commuting; it may, for example, be that needs for smaller employment sites are more acute elsewhere, and that the proposal would be geographically mismatched with such.
17. I therefore conclude that the proposal is not an acceptable location for the development proposed. It has not been demonstrated that the proposal would be located so as to meet a particular local need to positive effect with regard to travel patterns. By contrast the proposal entails the potential for additional vehicular movements to a location distant from nearby services, facilities and settlements (and associated carbon emissions). That is in conflict with the relevant provisions of CS policy CS20 and NPPF paragraphs 103 and 104.

#### Character and appearance

18. As set out above, the appeal site is a broadly level strip of land alongside Accommodation Road. There is a drainage ditch between the two. The roadside boundary is demarcated by established vegetation punctuated by semi-mature trees. Trees here are shown on the promotional photograph from 2000 referred to above. I am told trees along the site frontage were planted as a requirement of a previous permission.<sup>6</sup> There is, however, no substantive arboricultural evidence before me in order to evaluate the effects of development pursuant to SPP policy DM9.<sup>7</sup>
19. The Council's Landscape Character Assessment Supplementary Planning Document (adopted 25 September 2018, the 'LCA') describes how the appeal site falls within character area 'A5, Bleadon Moor'. Key characteristics of that area are given as a flat lowland, predominantly of open mixed grazing land, criss-crossed by a network of drainage channels and hedgerows. Notwithstanding that the LCA identifies the circuit as an 'urban influence', in so far as the appeal site is open, natural and bounded by vegetation and trees, it is largely consistent with that surrounding characterisation.
20. Boundary trees serve a valuable role in reducing the visual prominence of the various buildings and structures of the circuit; there is only fleeting visibility of such at present. The openness of the appeal site means that development is well-set back relative to Accommodation Road, noted in the LCA to be the 'single road through the area'. That maintains a relative sense of spaciousness.

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<sup>6</sup> Albeit that there is no definitive information in that respect, or as to what was in place previously.

<sup>7</sup> The supporting text to which refers to applying the approach in British Standard 5837:2012, Trees in relation to design, demolition and construction- Recommendations, as does the Council's Biodiversity and Trees Supplementary Planning Document (adopted December 2005).

21. I acknowledge that the scheme is in outline and that a sensitive approach to reserved matters, appearance and landscaping in particular, may serve to moderate the effects of the development proposed. However, as set out above, the proposal is to accommodate 1,000 sqm of floorspace within an appeal site area of 1,550 sqm. That necessarily means that the building or buildings proposed would need to be set close to Accommodation Road. Whilst the drainage ditch may have impeded tree root growth into the appeal site, there is no evidence before me as to whether the theoretical root protection area of trees would be transgressed (or the actual extent of their root systems).
22. With the exception of a compound and Lympsham Concrete Supplies some distance away and development close to the A370, I was unable to identify any development of comparable scale or proximity to Accommodation Road as is likely to result from the proposed scheme. In my view the proposal therefore has the clear potential to result in an uncharacteristic urbanising presence, detrimental to the character of the countryside. In the absence of arboricultural evidence in particular, I am unable to conclude that mitigation by way of retaining or augmenting screening could reduce effects to acceptable levels.
23. The proposal therefore conflicts with the relevant provisions of CS policies CS5 and CS12, SPP policies DM10 and DM32, and NPPF paragraph 170(b). In brief, and amongst other things, those policies seek to ensure that all development is sited and designed so as to integrate appropriately with its surroundings, including that recognition is given to the intrinsic character and beauty of the countryside (irrespective of whether or not that is formally protected).

#### Flooding

24. The FRA sets out that access to the circuit is around 5.90m above ordnance datum (AOD). It also notes how the site changes in level from around 6.30m to 7.60m AOD, and that the units proposed would be set a maximum of 0.15m higher than ground level. There are two watercourses around the circuit, a rhyne around the northern boundary, and an open drainage ditch along the site frontage. The latter leads to a culvert running beneath Accommodation Road.
25. The FRA explains how the scheme would likely lead to a change in impermeable area from 6,790 sqm to 7,232 sqm, some 6.5% in those terms. It is not clear how 1,000 sqm floorspace would be accommodated within the 442 sqm figure resulting from subtracting one from the other; that may be as the proposal is in outline. There is no objection to the scheme from the Axe Brue Internal Drainage Board, albeit they are of the view that there are limited details as to how appropriate drainage provision would be implemented. Whilst the FRA contains certain details regarding proposed measures, paragraph 2.4 equally notes that ground conditions in this location are likely to result in 'poor to moderate permeability'.
26. The appeal site falls wholly within defended flood zone 3. That is an area with a relatively high risk of flooding, with a 1 in 200 or greater annual probability (also expressed as a 0.5% annual exceedance probability, 'AEP'). The principal risk in respect of flooding is where there is an exceedance event, or sea

defences protecting the Bleadon Level fail. In the event of an exceedance event with defences intact, the FRA forecasts that the site would be unaffected. However, the FRA sets out that, were defences to fail, flood levels may reach a depth on site of around 1.49m to 1.78m.

27. I acknowledge, were that latter scenario to occur, a wide area would be flooded. The use proposed, B1/B8, remains within the 'less vulnerable' categorisation in the PPG.<sup>8</sup> Nevertheless the proposal would result in a significant increase in built development, and reduction in area of land available for infiltration. Consequently there is no dispute that, with reference to CS policy CS3 and NPPF paragraphs 157 and 158, the sequential test is applicable. The aim of the sequential test is to steer new development to areas with the lowest risk of flooding, through an assessment as to whether or not preferential, reasonably available sites exist.
28. In general terms it is not disputed that there is demand for small-scale business premises, and that the establishment of such would assist in ensuring a balanced mixture of development at a macro level. However the sequential test undertaken in the FRA has been confined to a limited area around Bleadon, Uphill and Lympsham. That is premised on the appellant's position that the proposal would provide for local employment opportunities, redressing the balance with housing development allowed, or being considered, nearby.<sup>9</sup> However, as reasoned above, there is no substantive evidence in support of that premise. By consequence, in my view, the approach to the sequential test in the FRA has been based on an unjustified, unduly limited geography.
29. I note that the Council's 'Development & flood risk issues' guidance document of November 2016 explains that the area of search in respect of the sequential tests will be North Somerset-wide unless 'it can be demonstrated with evidence that there is a specific need within a specific area'. That essentially aligns with the approach in the PPG, which explains that 'the area to apply the sequential test across will be defined by local circumstances, relating to the catchment area for the type of development proposed'.<sup>10</sup>
30. Moreover, in my view, there are three shortcomings with the FRA. Paragraph 4.1.2 of the FRA sets out that nine comparable sites 'advertised as being available (for sale)' were assessed. That inevitably represents a snapshot in time, and may not capture similar sites where, for example, permission has been granted. Secondly the FRA explains, but provides only limited detail as to why, all other sites identified with a lower flooding vulnerability were 'discounted for reasons of planning issues, access and environmental impact'. Thirdly the change in impermeable area of 6.5% stated to result from the proposal relates to the circuit as a whole, not to the appeal site; introducing 1,000 sqm of employment floorspace on a site of a site of around 1550 sqm would represent a substantially greater uplift. In my view the FRA therefore underplays the potential implications of the scheme.

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<sup>8</sup> PPG Reference ID: 7-066-20140306.

<sup>9</sup> Including ongoing appeal Ref APP/D0121/W/18/3211789.

<sup>10</sup> Reference ID: 7-033-20140306.

31. Moreover there is no indication that the existing figure for the impermeable area across the circuit has been uplifted to account for planning permission secured in 2018 for the siting of five holiday lodges (Ref 18/P/3165/FUL). That permission relates to a different location where the site varies from around 6.10m AOD to 7.60m AOD, with the lodges intended to be set a minimum of 0.6m above natural ground level. Therefore in those terms, any holiday lodges implemented pursuant to that permission would be set higher than the lowest level intended for a building within the appeal site. Moreover there is little detail of the planning considerations relevant to that permission.<sup>11</sup>
32. It has therefore not been demonstrated that proposal would be acceptable in respect of flooding vulnerability. That is in conflict with the relevant provisions of CS policy CS3, the approach in NPPF paragraph 158, with regard to the Council's guidance and the PPG referenced above.

### Ecology

33. The appeal site falls within an area where development may adversely affect horseshoe bats, consultation 'zone C' as defined in The North Somerset and Mendips Bats Special Area of Conservation ('SAC') Guidance Supplementary Planning Document' ('SPD'). The SPD explains how landscapes outside of the SAC, which is designated pursuant to the Habitats Directive,<sup>12</sup> are important in providing foraging habitat. The Habitats Directive is incorporated into domestic statute via the Conservation of Habitats and Species Regulations 2017 (the 'Habitats Regulations'), with all species of bats being defined as protected under associated schedule 2. NPPF paragraph 170(d) notes how planning should minimise impacts on, and provide net gains for, biodiversity including by establishing 'coherent ecological networks'. In the abstract development may adversely affect wildlife corridors directly, through loss of natural features, or indirectly, for example via disturbance resulting from illumination.
34. CS policy CS4 'Nature conservation' similarly sets out how development should maintain and enhance provision for biodiversity, with SPP policy DM9 'Trees and Woodlands' more broadly seeking to provide appropriate protections for the retention of natural features (including with reference to the aims of CS4). CS paragraph 3.57 makes specific reference to horseshoe bats. I am also required by statute to have regard to conserving biodiversity.
35. The appellant explains that, at the point that application Ref 18/P/4956/OUT was made, there was 'no indication' that potential effects on bats needed to be considered. However I understand that the SPD was adopted on 9 January 2018, and that potential effects to natural features, which may affect horseshoe bats, is identified as a trigger indicator that a wildlife report is required (with reference to the Council's local list).<sup>13</sup>

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<sup>11</sup> Noting that there is a different policy context to visitor and tourist facilities (chiefly CS policy CS22).

<sup>12</sup> 92/43/EEC.

<sup>13</sup> Under Article 11(3)(c) of the Town and Country Planning (Development Management Procedure)(England) Order 2015 as amended, with the onus being primarily on an appellant to justify a proposal (section 62 of the Town and Country Planning Act 1990 as amended). Notwithstanding that the appellant has separately made enquiries of the Council regarding the availability of the SPD.

36. SPD paragraphs 6.2 and 6.3 set out that an appropriately qualified individual should be engaged at an early stage to assess likely impacts of proposed development, that on-site surveys will be necessary in many instances, and that appropriate mitigation should be planned to address adverse effects. There is, however, no substantive evidence before me in that respect. As set out above the roadside boundary of the appeal site is demarcated by trees beside a drainage ditch. Here Accommodation Road and the surrounding landscape is rural in character, without street lighting. The development proposed has the potential to affect those features, which may have value as an element of an ecological network on account of their current characteristics.
37. The appellant indicates that effects on ecology could be dealt with via an appropriately-worded condition. There is some force in that argument as the proposal is in outline with landscaping a reserved matter, and, theoretically, as lighting could be designed so as to minimise illumination. However the development proposed would entail a significant proportion of the appeal site being developed, such that there would be limited flexibility in that respect.
38. I acknowledge that it may be possible to use a negatively worded condition to prohibit development authorised by the planning permission until a specified action has been taken (for example, the entering into of a planning obligation to mitigate ecological effects).<sup>14</sup> However the PPG elsewhere sets out that such an approach is unlikely to be appropriate in the majority of cases, suggesting that exceptional circumstances would be needed, particularly related to more complex development. The latter cannot be said to accurately describe the development proposed.<sup>15</sup>
39. Moreover, and as addressed also by the inspector in appeal Ref APP/D0121/W/18/3214721, paragraph 20 of the Government's Circular 06/2005 Biodiversity and Geology Conservation- Statutory Obligations and their impact within the planning system explains that it should be ascertained that a proposal would not have adverse effects on ecology before grant of permission. That approach aligns with the essence of Regulation 63, i.e. that before grant of permission where a likely significant effect on a European Site cannot be ruled out, an appropriate assessment must be undertaken (on the basis of proportionate evidence).
40. In the light of the lack of robust evidence before me, I cannot be satisfied that the proposal would appropriately safeguard ecology, nor can I ensure that would be the case via condition or obligation. I therefore conclude that it has not been demonstrated that the proposal would suitably safeguard ecology, in conflict with the relevant provisions of CS policy CS4, SPP policy DM9 and paragraph 170(d) of the NPPF.

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<sup>14</sup> PPG Reference ID: 21a-005-20190723

<sup>15</sup> Reference ID: 21a-010-20190723.

## **Other matters**

41. I acknowledge that the proposal would have some economic benefits in terms of enabling provision of employment space. Undoubtedly that would diversify the circuit, and be beneficial to the appellant in maximising productive use of the site. There would also be benefits in supporting employment during construction and operation, and supply-chain benefits. The proposal has received some local support and would, in the round, work towards the rebalancing of the local housing market relative to employment opportunities sought by the development plan.
42. However the benefits of 1,000 sqm of employment floorspace would inevitably modest, particularly set against the requirement in the CS (in respect of which there is no substantive evidence that delivery is faltering). Moreover neither the support for new economic development in the development plan nor NPPF is at the expense of ensuring that all development is appropriately located and integrates suitably with its environment. That would not be the case here, and there is a lack of justification for the particular location of the proposal. I note, only in so far as robust evidence may have carried weight in the appellant's favour, that there is no consideration of whether other areas within the circuit could be redeveloped to provide the same floorspace, or the extent to which the proposal would support ongoing viability.
43. The appellant avers that the Council has not engaged sufficiently positively and creatively with the aim of working towards a mutually-agreeable proposal. However the encouragement in that respect in NPPF paragraph 38 does not indicate that any proposal is capable of being rendered acceptable. Such concerns also relate principally to the handling of the application rather than the merits of the scheme. Therefore, based on the evidence before me, I am not of the view that the benefits of the scheme, or any other material consideration, are sufficient to outweigh the harm that would result.

## **Conclusion**

44. For the above reasons, having considered the development plan as a whole, the approach in the NPPF, and with regard to all other relevant material considerations, I conclude that the appeal should be dismissed.

*Thomas Bristow*  
INSPECTOR