



## Appeal Decision

Hearing Held on 21 November 2017

Site visit made on 21 November 2017

**by Gareth W Thomas BSc(Hons) MSc(Dist) PGDip MRTPI**

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

**Decision date: 13<sup>th</sup> December 2017**

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**Appeal Ref: APP/D0121/W/17/3176151**

**Land to the east of Brinsea Road, Congresbury BS49 5JJ**

- 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 Strongvox Ltd & Mrs M Meaker against the decision of North Somerset Council.
  - The application Ref 16/P/1707/O, dated 30 June 2016, was refused by notice dated 23 February 2017.
  - The development proposed is for residential development comprising of up to 24 dwellings, associated parking, landscaping and construction of access from Brinsea Road.
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### Decision

1. The appeal is dismissed.

### Procedural matters

2. The application was made in outline only, with all matters reserved for future approval save for means of access. An illustrative layout plan was submitted as part of the outline submissions that indicated how up to 24 dwellings could be accommodated on site along with a surface water drainage feature and landscaping. I have determined the appeal on this basis.
3. At the Hearing, a signed unilateral undertaking (UU) was submitted that included, inter alia, the provision for on-site affordable housing together with financial contributions towards education provision, allotment and open space provision, off-site sports and sustainable travel. I deal with the matter of the UU later in this decision.

### The appeal site and its surroundings

4. The appeal site comprises a sloping field that is located to the south of Congresbury and immediately beyond its settlement boundary. Congresbury itself is a large village that has expanded from its original core at the crossing of the River Yeo, along the route of the B3133 and also the route of the A370, which passes the village to its north. The expansion heading south along the B3133 extends to the axis formed by the east-west routes of Silver Street and Venus Street as they join the B3133 Brinsea Road. The dwellings immediately to the north of this axis are at a slight elevation and are prominent in the views along the approach road into the village.

5. My attention was drawn to an appeal decision<sup>1</sup> relating to a larger housing scheme on land on the opposite side of Brinsea Road, which was dismissed in 2015. The Inspector explained that there had not been any substantial development south beyond this axis, which in effect, “forms the natural boundary to the elevated village before the land falls away to the lower lying expanse of the Somerset Levels”.

### **The proposed development**

6. The proposal would see the creation of a vehicular access along the site frontage to the B3133, which would serve a mixed housing scheme of up to 24 detached, semi-detached and terrace dwellings, including seven affordable housing units, together with an area of open space in the form of a community orchard along the southern boundary. The scheme would require a surface water drainage balancing pond that would also be located towards the south-west of the site. Provision would be made for a new 2m wide footway along Brinsea Road to its junction with Venus Street, which would also necessitate off-site works to be undertaken at this point to enable the junction to operate safely and efficiently.

### **Planning Policy**

7. The development plan for the purposes of this appeal is the saved policies of the North Somerset Replacement Local Plan (March 2007) (the ‘NSLP’), the Sites and Policies Plan Part 1: Development Management Policies (July 2016) (the ‘DMP’) and the North Somerset Core Strategy (January 2017) (the ‘NSCS’).
8. The NSCS covers the period 2006-2026 and was originally adopted in April 2012. Following a legal challenge to policy CS13 (housing requirement), this policy together with other policies flowing from the housing requirement was remitted back to the Planning Inspectorate and was subsequently re-adopted in 2015 following an increase in the minimum housing requirement. This was followed by the re-adoption of the other policies of the NSCS in 2017.
9. Policy CS13 establishes a minimum housing requirement across the District of 20,985 dwellings for the plan period. The distribution of housing across the District’s settlements is defined by policy CS14, which establishes Congresbury as one of a number of Tier 3 Service Villages where a significant proportion (around 10%) of new housing will be delivered. Policy CS32 states that “new development within or adjoining the settlement boundaries of the Service Villages of...Congresbury...which enhances the overall sustainability of the settlement will be supported” where it meets certain criteria. Policy CS32 proposes a two-tier approach to development. The policy advises that housing proposals for greater than 25 dwellings should be brought forward as allocations either within the Site Allocations document or as part of a Neighbourhood Plan. For sites below the 25 threshold, the basic criteria of policy CS32 is applicable, subject to criteria.
10. Paragraph 49 of the National Planning Policy Framework (the ‘Framework’) requires housing applications to be considered in the context of the presumption in favour of sustainable development. This is set out in paragraph 14 of the Framework and indicates that where relevant housing

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<sup>1</sup> APP/D0121/W/15/3004788

supply policies are out of date, planning permission should be granted unless any adverse impacts of so doing would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework as a whole. Paragraph 7 of the Framework establishes the three dimensions to sustainable development: economic, social and environmental.

11. The parties agreed that the Council cannot presently meet the five year deliverable housing land supply required by the Framework. Indeed the Council has persistently failed to deliver the requisite housing supply for the last nine years in a row. Consequently, relevant policies for the supply of housing are out of date and paragraphs 49 and 14 are engaged. A tilted balance in the presumption in favour of sustainable development therefore applies in line with paragraph 49 of the Framework. In the context of a housing undersupply position, the provision of up to 24 dwellings would make a very positive contribution towards boosting the supply of housing in line with the aims of paragraph 47 of the Framework. This is a matter to which I attach considerable weight.
12. Given the agreed position, I consider that saved policy H4 of the NSLP that identifies a settlement boundary for Congresbury is not consistent with the Framework and in any event, is a policy that is relevant to the supply of housing. Although the Council has not referred to this policy in the reasons for refusal, along with policy CS14 of the NSCS these policies nonetheless set the policy context for the application of the tilted balance.

### **Main Issues**

13. Consequently, the main issues in this appeal are:
  - whether the appeal site is an appropriate location for the proposed development having regard to its accessibility to local services and facilities by alternative modes of transport other than the private car; and
  - the effects of the proposed development on the character and appearance of the area.

### **Reasons**

#### *Whether an appropriate location*

14. There is no dispute between the parties that Congresbury as a Service Village is relatively sustainable in the meaning of NSCS policy CS32 having a reasonable level of services and facilities that serves the wider rural area. From what I saw during my separate visit to the village and what I heard at the Hearing, I consider that it does have a good range of everyday services and facilities, including those listed in the text to policy CS32. This is also consistent with Inspector Schofield's observations who set out the issue which is also in dispute in this appeal, namely the degree to which services and facilities may be regarded as readily accessible from this part of Congresbury that also contains this appeal site.
15. Although I am not crystal clear as to Inspector Scholfield's reasoning in terms of the weight that he gave to policy CS32, from my interpretation, it was the element of the policy that set out to determine the degree to which Congresbury is sustainable as a location for future growth that was his principal

concern. I would agree that this is a matter for the Site Allocations Plan process, which has yet to be examined and which has raised a number of unresolved objections. Notwithstanding, the criteria to policy CS32 appears consistent with the Framework and as the site is below the 25 dwelling threshold, represents an entirely plausible way of aiding the assessment of the site's sustainability in terms of location.

16. The agreed statement of common ground sets out the main areas of disagreement in terms of the criteria to policy CS32, most notably whether the location would maximise opportunities to reduce the need to travel and encourage active travel modes and public transport and; whether safe and attractive pedestrian routes to facilities within the settlement are available within reasonable walking distance.
17. As with the appeal development on land on the opposite side of the road, the current appeal scheme would also provide a footway connection from the site access on the B3133 but on the opposite side of the road up to Venus Street, where it would link in to the footway heading northwards to the main village centre or by turning right and proceeding through the residential streets, including Venus Street and Park Road/Homefield Road. However, the most convenient and direct route would be along the B3133, which from observation and through the evidence of the Council and third parties is a busy road. I found that Inspector Schofield's description in paragraph 35 of his decision remains apt.
18. The footways on both sides of the B3133 are narrow in many places with heavy lorries and other larger vehicles passing in very close proximity. The appellant argued that the footway on the eastern side of the carriageway is notably more commodious as it does not include some of the narrower pinch points or obstructions when compared to the western footway. However, it is not continuous for all its length with a 120m length near the village hall requiring pedestrians to either walk along the carriageway or cross over the road to the footway on the western side. The appellant's Road Safety Audit (RSA) pointed out that the width of the footway is generally between 1.3m and 2.2m although this narrows to 0.9-1.0m in places. It would be unreasonable for people to be expected to step out into the highway or to cross the road altogether where the footway narrows. Further, the footway would be even less appealing to users in inclement weather given the nature of traffic and the footway character.
19. The alternative route for pedestrians wishing to access the local shopping centre would be to use the route through Park Road/ Homefield Road which emerge onto the B3133 in close proximity to the shopping parade. They are far quieter than Brinsea Road and footways are of adequate width for their entire length. However, these routes are somewhat convoluted by comparison with the pedestrian route from the end of Homefield Road, which is unlit with overhanging branches of trees adding to a sense of isolation for walkers. The RSA recognises that the main desire line for future occupiers of the development accessing services and facilities in the village would be along Brinsea Road.
20. I would also agree with Inspector Schofield in his assessment of the available routes to facilities at the northern end of the village, including the school. I also find that the route through the recreation ground would be unappealing to

- most users, particularly at night, with the result that the route would be unlikely to be well used.
21. The appellant's evidence pointed to Brinsea Road being fairly extensively used by cyclists. However, the survey information was criticised by one member of CRAG who pointed out that the figures of 67 and 73 cyclists were grossly inflated by cycling clubs who meet at the Ship & Castle and pass through the village on their rides to the Mendips. This was not disputed by the appellant. Furthermore, Inspector Schofield whilst noting that alternative routes to Brinsea Road were possibly more attractive for cyclists, he was nevertheless dismissive of alternative routes generally. I have no reason to take a different view and that Brinsea Road would remain as the preferred route to accessing the services and facilities of the village. This route is not particularly commodious for cyclists.
  22. In terms of public transport, the Council confirmed that the nearest bus stop is within 250m of the site, which is served by two bus services that are operational for only one day a week each and once in each direction outside peak times. I share the Council's view that these services make only a negligible contribution to the sustainability credentials of the appeal site. The main bus services that link Congresbury with Bristol and Weston together with other principal towns and villages would involve a 1200m walk to the northern part of the village according to the Council's calculations. The North Somerset Highways Design Guide specifies that walking distances to bus stops within urban areas should generally be no more than 400m and in other locations or where this is not possible, the walking distance should be no more than 600m.
  23. Although the appellant argues that the evidence submitted as part of the appeal scheme on the opposite side of the B3133 differs substantially from that submitted in this appeal, I would agree with my Inspector colleague in his decision that policy CS32 as well as other Council policies relate to the strategic location of development whilst the Framework's approach to the location of development is multi-faceted with an emphasis given to the proximity of sites to services and facilities. In this regard, I consider that there are direct comparisons to be made between the two schemes notwithstanding the different numbers of dwellings involved.
  24. Clearly, Congresbury as a Service Village is capable of additional housing growth and that development on the settlement edge would be preferable as a means of delivering housing growth. However, the Framework sets out that planning decisions should take account of whether safe and suitable access can be achieved for all people (paragraph 32); that new development generating significant movement should be located where the need to travel is minimised and the use of sustainable transport modes can be maximised. This also includes the need for new development to be designed where practical to give priority to pedestrian and cycle movements and have access to high quality public transport facilities. The appeal scheme would also conflict with policy CS32 and with the Framework in these regards.

#### *Character and appearance*

25. Occupying approximately 1.39 ha, the appeal site is located on the southern edge of Congresbury and comprises a single field used for pasture. Although not protected by any formal landscape or other designations, there is agreement between the parties that the appeal site is located within landscape

character type (LCT) J: Rolling Valley Farmland and, following the subdivision of the LCT within the North Somerset Landscape Character Assessment 2005 Supplementary Planning Document, within the sub-set landscape character area (LCA) J2: River Yeo Rolling Valley Farmland.

26. From my site visit, I agree with the appellant that the key elements comprising the meandering River Yeo and local drainage features (rhynes) fall outside the appeal site. The landscape is distinct from the more open and intensively farmed landscape of the appeal site to the west of Brinsea Road and does not have the extensive open views that drop significantly towards the Levels. Rather, I agree that the site sits within the peri-urban context being bounded to the north by the irregular and harsh urban form of Venus Street and to some extent to the east and south by residential development.
27. I also agree with the appellant that the visual envelope is limited to the site, the land immediately surrounding it and to the roadside and the immediate approaches into the village. Nevertheless, the appeal site as it rises towards the urban edge shares a similar elevation at this point as the appeal site to the west and, whilst the slope of the present appeal site is less severe, both sites combine to provide a gradual transition from the elevated settlement above to a loose scattering of roadside development and open countryside beyond. I agree with Inspector Schofield's analysis that there is no sense of arrival to Congresbury from the south until one has passed the appeal sites on each side of Brinsea Road and entered the village immediately beyond the Silver Street/Venus Street axis.
28. Whilst accepting that the Council does not have any policy that prevents coalescence of the settlement proper and the ribbon of development along Brinsea Road, the development of the appeal site would create a substantial block of development, including roadside development of a wholly urban character that would undermine the gradual transition described above. In this respect, the role that this site also plays would be seriously undermined and would have a significantly adverse effect on the character and appearance of the area. It would therefore be in serious conflict with policies CS5, CS12 and CS32 of the NSCS and policy DM10 of the Council's DMP. These policies amongst other things seek to ensure that new developments protects and enhances the character and distinctiveness of the area, considers the existing context of the site and its surroundings and demonstrates sensitivity to the existing local character, enhancing the sense of place and identity whilst integrating into the natural environment. I have no reason to believe that Reserved Matters could not be designed so as to meet with policy DM32 of the DMP.

#### Other matters

29. Presentation of representations was made by several local residents at the Hearing. Much of the commentary related to issues of highway safety and convenience together with the effects on the landscape. In addition, concerns were expressed by occupiers of houses along Venus Street in particular who pointed out that the mature hedgerow along the road frontage would need to be grubbed in order to provide a footway. This would in the opinion of some local people reduce privacy levels and increase noise from traffic. It is true that occupiers of the nearest properties on Venus Street and Nomis Park have enjoyed a relatively open aspect onto the appeal site for many years.

However, in the event of planning permission being granted for the appeal development, matters of landscaping and screening could be the subject of appropriately worded conditions, which would in my view satisfactorily protect the living conditions of occupiers of neighbouring properties. I do not consider that the removal of the roadside hedgerow would lead to unacceptable noise levels.

30. A signed Unilateral Undertaking was presented to the Hearing, which the Council acknowledged would satisfy its policies towards the provision of affordable housing (Policy CS16 of the NSCS) and infrastructure provision (Policies CS25, CS27 and CS34 of the NSCS and Policy DM71 of the DMP). Although I attach considerable weight to the provision of affordable housing as explained later in this decision, the contributions for other infrastructure provision would only be necessary to make the development acceptable in planning terms and thus this aspect of the UU is a neutral factor in the case rather than a benefit. Given that I am dismissing the appeal on the substantive issues, I need not consider this matter in any further detail

### **Planning Balance**

31. In my reasoning above, I have afforded weight to relevant policies in the Core Strategy and The Sites and Policies Part 1: Development Management Policies. However, as I have found that policies contained in the development plan relating to the supply of housing are out of date, it is necessary for me to also consider the proposal against the planning policies in the Framework including the tilted balance in paragraph 14.
32. Having regard to both national and local policies, I have found that the appeal site would not constitute an appropriate location for the development proposed. This is notwithstanding that the harm caused is not a highway safety point but rather an attractiveness point. I have also found that the proposal would cause harm to the character and appearance of the area. I give significant weight to these harms despite the allegation by the appellant that the Council has not approached development proposals in a consistent manner following the grant of permission at Venus Street. The development approved at Venus Street would not in my view have the same degree of impact on the character and appearance of the area and would overall be better connected to the village services and facilities.
33. Nevertheless, the appellant has stated that the appeal scheme would provide a number of benefits and I weigh these in the planning balance, taking account of the three strands of sustainable development in paragraph 7 of the Framework.
34. In terms of the social benefits, the scheme would deliver additional housing, both market and affordable (secured by obligation), in a sustainable village and in line with the Framework's aim at paragraph 47, and Government policy, of significantly boosting the supply of housing. There is an acceptance that the release of additional greenfield sites will be necessary to meet the Council's shortfall and this is evidenced in Congresbury where planning permission has been granted for residential development on a number of sites in the northern sector of the village. Although the Council claims that the deficit in housing supply will be likely to be remedied shortly, I am required to pay due regard to the undisputed shortfall in housing supply as well as the need for affordable housing in the district. I give this benefit substantial weight.

35. The appellant pointed to the economic benefits that would arise from the development, including from construction jobs and future spending from new households on local shops and services. However, there was little assessment of the likely contribution that up to 24 dwellings would make or whether the contribution would directly benefit Congresbury itself in terms of sustaining the shops and services that currently exist there. Overall therefore, I give this benefit limited weight.
36. The appellant has highlighted an absence of environmental and landscape designations as well as there being no allegations of any harm to the built and natural environment. There are ecological benefits arising from the development, which was accepted by the Council. Furthermore, the development can proceed as there is an absence of site-specific or technical problems. However, I consider these to be mitigating factors rather than benefits as such. Accordingly, the weight that I can attach to these is limited.
37. However, judged on the evidence, the appeal site would not provide an easily accessible location relative to local services and facilities and would not maximise opportunities to reduce the need to travel and encourage active travel modes and public transport. As highlighted above, the proposal would be harmful to important functional and visual attributes of the appeal site and consequently have a significant adverse effect on the character and appearance of the area.
38. Overall, the substantial environmental harm arising from the development would significantly and demonstrably outweigh the socio-economic benefits that have been identified and would therefore fail to meet the requirement for sustainable development that runs through decision-taking.

### **Conclusion**

39. For the reasons given above therefore, I conclude that the appeal should fail.

*Gareth W Thomas*

INSPECTOR

**APPEARANCES:**

**For the Appellant:**

Christopher Boyle QC instructed by Pegasus Group

Mr Alex Bullock	Pegasus Group
Michelle Berrington BA(Hons) MSc MCIT MIHT	Director TPA
Clare Brockhurst BSc(Hons) DipLA FLI	Tyler Grange
Simon Tannahill	Strongvox Homes

**For the Council:**

Peter Wadsley of Counsel instructed by the Solicitor for the Council

Emma Schofield BA (Hons) MA MRTPI	Principal Planning Officer
Natalie Richards	Planning Policy Officer
Mr K Carlton	Landscape Officer
Ms J. Lower,	Highways Officer
Hayley Morrish	Administration Officer

**Interested Parties:**

Councillor Tom Leindorfer	North Somerset District Council
Arthur Hacking	Vice Chairman, Congresbury Parish Council
Mary Short	Chair, Congresbury Residents Action Group (CRAG)
Alison Knight	Local Resident and CRAG member
Liz Fishbourne	Local Resident and CRAG member
Jeanette Jones	Local Resident and CRAG member
Louise Wood	Local Resident and CRAG member
Terry Holden	Local Resident and CRAG member
Vivienne Tomkins	Secretary, CRAG
Judy Ashley	Yatton and Conglesbury Wildlife Action Group
Robin Lea	Local Resident and CRAG member
Susan Hibberd	Local Resident and CRAG member
Dr Moya Wilson	Local Resident and CRAG member

**DOCUMENTS SUBMITTED AT THE HEARING:**

- Document 1: Copy of letter of notification of appeal hearing dated 20 October 2017 together with list of those notified
- Document 2: Revised sustainability matrix table
- Document 3: Missing page from Appendix 5
- Document 4: Map showing contours, PROW and NE Traditional Orchards HAP
- Document 5: Statement of Vivienne Tomkinson
- Document 6: Statement of Alison Knight
- Document 7: Statement of Liz Fishbourne/Miss Grave
- Document 8: Statement of Mr T Holden
- Document 9: Statement of Dr Moya Wilson
- Document 10: Statement of Susan Hibberd
- Document 11: Statement of Judy Ashley
- Document 12: Unilateral Undertaking