



Appeal Decision

Site Visit made on 9 November 2021

by Alison Fish BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 04 February 2022

Appeal Ref: APP/D0121/W/21/3279097

8 Albert Road, Portishead BS20 6PP

- 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 Mr M David against the decision of North Somerset Council.
 - The application Ref 20/P/3135/FUL, dated 15 December 2020, was refused by notice dated 15 March 2021.
 - The development proposed is described on the application form as a proposed new dwelling.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The National Planning Policy Framework (the Framework) was revised on 20 July 2021. Insofar as it is relevant to this appeal, I have taken the Framework into account in reaching my decision.
3. The Council has made reference in its submissions to the National Design Guide (October 2019) which sets out the characteristics of well-designed places and demonstrates how good design can be achieved in practice. The Council has not drawn my attention to any specific elements of that guide but I have been mindful of its content in reaching my decision.
4. The Council makes reference to a Supplementary Planning Document, 'Residential Design Guide Section 2: Appearance and character of house extensions and alterations' (adopted April 2014). However, this provides advice and guidance in relation to the extension of existing dwellings and as such is not directly relevant to the scheme before me.

Main Issues

5. The main issues are:
 - The effect of the proposal on the character and appearance of the area;
 - The effect of the proposal on the living conditions of the occupiers of the neighbouring property at 9 Albert Road in respect of outlook; and
 - Whether or not the appeal site is an acceptable location for the development proposed with regards to its vulnerability to flooding.

Reasons

Character and Appearance

6. The appeal site is located in an area of traditional detached and semi-detached houses constructed principally of stone with red tile roofs, surrounded by more recent twentieth century housing. Generally, houses are set back in their plots with on-site parking behind low stone boundary walls on the frontage. This results in a sense of openness and there is established planting in the gardens which gives the area a pleasant feel.
7. The appeal site forms part of the rear garden of 8 Albert Road which is a spacious corner plot on the junction of Albert Road with Victoria Square. An existing access from Victoria Square would provide the proposed dwelling with parking for two vehicles on-site. The proposed dwelling would front on to Victoria Square, have a traditional appearance and utilise external materials and clay roof tiles to match those found in the locality.
8. The dwelling would be positioned in the plot such that the front elevation would be in-line with the front elevation of the adjacent property, 42 Victoria Square. It would therefore be set back behind the side elevation of the host dwelling, retaining the boundary wall and hedge planting along the Victoria Square boundary. Opposite the appeal site is an access into Victoria Court and an access to other properties on Victoria Square. As such, there are no properties located opposite the appeal site. This results in an increased sense of openness, such that a new dwelling could be accommodated on the appeal site without diminishing the feeling of space to an unacceptable degree.
9. The setting back of the property in the plot would, however, result in an area at the rear which would be unusable for recreation purposes. The main garden area for the appeal property would therefore be located at the side and front of the plot. The plans indicate a separate area on the site for bike and bin storage. The plans also indicate the retention of the wall and hedge along the boundary with Victoria Square which would provide privacy to the garden area for the appeal property. Whilst the existing properties on Albert Road have generous size gardens, many of the properties on Victoria Square (including some of the more traditional housing) have more limited outside space. As such, I do not consider the garden space which would be provided for the appeal property (nor the garden space retained for the host dwelling) would be significantly different to or out of keeping with a number of properties on Victoria Square.
10. Accordingly, I find that the proposal would not result in harm to the character and appearance of the area and that it complies with Policy CS12 of the North Somerset Core Strategy adopted January 2017 (CS) and Policies DM32 and DM37 of the North Somerset Development Management Policies Sites and Policies Plan Part 1 adopted July 2016 (DMP) insofar as they require a high standard of design in all new developments, respecting the character of the site and its surroundings. I also find that the proposal complies with paragraphs 130 and 134 of the Framework in respect of well-designed proposals which are sympathetic to local character.

Living Conditions of Neighbouring Occupiers

11. The appeal dwelling would be of a similar height to that of the host dwelling and 42 Victoria Square. The rear elevation of the appeal dwelling would be positioned approximately 2m from the side boundary of the rear garden of the adjacent property, 9 Albert Road.
12. Nine Albert Road is one of a pair of semi-detached houses. The back garden is flanked along the eastern boundary by the property's own rearwards extension and that of the attached neighbouring dwelling. This creates a solid boundary extending more than halfway along the eastern side of the garden.
13. Policy DM32 of the DMP states that the design and layout of development should not prejudice the living conditions of adjoining occupiers through loss of privacy, overlooking, overshadowing or overbearing impact. Policy DM37 of the DMP also requires that the living conditions of the occupiers and adjoining properties are not prejudiced. Paragraph 130 of the Framework seeks to ensure that a high standard of amenity is provided for existing users.
14. My attention has been drawn to the Supplementary Planning Document: Residential Design Guide - section 1 (protecting living conditions of neighbours) dated January 2013 (RDG1). Paragraph 2.1.3 of the document advises that 'A tunnelling effect can occur if a window or garden is flanked by extensions or new outbuildings on both sides. Particular care therefore needs to be taken in these circumstances to prevent an excessive loss of light or an overbearing cumulative impact.'
15. Despite the existing extension which bounds one side of the garden, I do not find that the erection of a dwelling on the other side of the garden would result in a 'tunnelling effect' which RDG1 is seeking to avoid. The appeal dwelling would be set back 2m from the boundary towards the end of the garden of number 9, such that only part of the garden would be bound by buildings on either side. Whilst it would have the effect of enclosing the garden beyond what it is at present, it would not create a tunnelling effect as the two buildings only overlap for a short distance.
16. In addition, the rear garden of number 9 is of a generous width and the property to the rear (39 Victoria Square) is well set back with planting on the boundary. The area of garden closest to the rear of number 9 would retain its open aspect. When taken together, I do not find that the appeal proposal would be overbearing or result in a loss of outlook to the rear garden of number 9 to the extent that it would result in an unacceptable impact on the living conditions of the occupiers of 9 Albert Road.
17. Consequently, I find that the proposal complies with Policies DM32 and DM37 of the DMP and the advice set out in RDG1 in respect of protecting the living conditions of neighbouring occupiers and paragraph 130 of the Framework in respect of the amenity of existing residents.

Flood Risk

18. The appellant's Flood Risk Assessment (FRA) identifies the site as within Flood Zone 3a. As defined in the Planning Practice Guidance (PPG) that zone is defined as having a 'high probability' of flooding, second only in terms of

potential vulnerability to the functional floodplain. Framework paragraph 159 states that inappropriate development in areas at risk of flooding should be avoided by directing development away from areas at higher risk. Framework paragraph 162 sets out the aim of the 'sequential test' (ST) in that context. That is to steer new development to areas with the lowest risk of flooding, and that development should not be permitted if there are 'reasonably available sites', appropriate for the proposed development, in areas with a lower risk of flooding.

19. Similarly, Policy CS3 of the CS states that development in areas vulnerable to flooding will only be permitted subject to the sequential test. The FRA applies a sequential test in that context, using the Portishead settlement boundary specified via policy CS3. That to my mind represents an appropriate geography, noting the advice in the PPG in that regard, and notwithstanding that the FRA erroneously refers to the Thurrock Strategic Flood Risk Assessment. I would note that the onus is principally on an applicant to provide appropriate information in support of their proposal (section 62(3) of the Town and Country Planning Act 1990 as amended).
20. However, for two principal reasons, the FRA does not demonstrate that the ST has been passed in this instance. Firstly, there is no substantive information before me in support of the ambiguous statement in paragraph 8.3 that 'based on the findings of property searches in the local area, it is not thought reasonably available alternative sites are available at the time of publishing'. I cannot interrogate any supporting evidence, its robustness or comprehensiveness. The appellant's subsequent search of certain websites for housebuilding plots at appeal is inevitably a partial snapshot in time rather than compelling evidence.
21. There is no specific definition of 'reasonably available sites' in the Framework. Policy CS3 however contains some information in that regard, albeit that it sets out that 'sites are excluded [from that definition] where they have a valid planning permission for development of a similar character and scale and which is likely to be implemented.' However, Government Guidance (produced by the Environment Agency and Department for Environment, Food & Rural Affairs updated in February 2017) indicates that sequentially preferable sites may include those granted planning permission and 'windfall sites' (those that are not allocated in the local plan and do not have planning permission but that could be available for development).
22. The approach in Government Guidance, post-dating the CS, is similarly articulated in the Council's Development Management Advice Note on 'Development and Flood Risk Issues' dated November 2019 (DMAN). I accept that approach diverges somewhat from Policy CS3. Nevertheless, I give the approach in Government Guidance, as the latest iteration of the Government's position on this matter, significant weight. In that context it is unclear whether or how the FRA has considered other potentially 'reasonably available sites' such as might be identified through considering evidence supporting the Council's development plan, extant planning permissions, or windfall provision of housing.
23. I note the appellant's argument that, in summary, development of the site is only possible as it is owned by a family member (and also the corollary that the appellant explains that purchasing other sites to develop would be unfeasible).

Whilst I sympathise with the appellant's position, land ownership and planning are principally independent of one another. In my view the pragmatic approach advocated in the PPG to the sequential approach would not extend to assessing only land within a particular individual's control for this type of development (similarly policy CS3 is not limited in that respect either).

24. I therefore find that the proposal fails the sequential test, and as such it is not necessary to consider the exception test. I conclude that it has not been demonstrated that the proposal is acceptable with regard to its vulnerability to flooding and as such the proposal is contrary to Policy DM1 of the DMP which seeks to discourage inappropriate development in flood risk areas and Policy CS3 of the CS which requires compliance with the ST. The proposal is also contrary to the updated advice and guidance in the DMAN, PPG and paragraphs 159 and 162 of the Framework in respect of flood risk and carrying out the ST.

Other Matters

25. The appeal proposal includes on-site parking for two vehicles and I note that the host dwelling has the benefit of a garage and on-site parking from Albert Road. The Council have confirmed that the proposal complies with Policy DM28 of the DMP and having considered Policy CS11 of the CS together with the advice in the North Somerset Parking Standards Supplementary Planning Document (November 2013) I see no reason to disagree with this assessment.

Planning Balance

26. The appellant has set out a number of benefits that the appeal scheme would bring, including that it would lead to a reduction in carbon emissions through its location in a built-up area and that it would exceed statutory minimum requirements for energy efficiency. In addition, there would be an increase in attenuation on site, which would reduce the risk of surface water flooding to surrounding properties and the proposal would utilise brownfield land.
27. The provision of a new energy-efficient dwelling in a built-up area is desirable in terms of housing strategy but it would not in itself, result in a reduction in carbon emissions. The appeal site is a residential garden in a built-up area and therefore does not constitute brownfield land or 'previously developed land' as defined by the Framework. The appellants desire to increase opportunities for on-site surface water attenuation is recognised although the FRA only details an attenuation scheme to offset the effect of the development alone.
28. I also note that the appeal proposal has local support particularly in respect of the provision of a single family dwelling but nothing which has been put to me would outweigh the harm to people and property from flooding, which I have identified.
29. The Council cannot demonstrate a five year supply of deliverable housing sites. However, the application of policies at paras 159 and 162 in the Framework which protect areas at risk of flooding, provide a clear reason for refusing the development proposed.

Conclusion

30. For the reasons given above, having considered the development plan as a whole, the approach in the Framework, and all other relevant material considerations, I conclude that the appeal should be dismissed.

Alison Fish

INSPECTOR