



# Appeal Decision

Site visit made on 31 August 2022

**by Alexander O'Doherty LLB (Hons) MSc MRTPI**

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

**Decision date: 29 November 2022**

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**Appeal Ref: APP/D0121/W/22/3296247**

**Fimra, Hutton Moor Lane, Weston-super-Mare BS24 8RX**

- 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 Jo Ashley against the decision of North Somerset Council.
  - The application Ref 22/P/0061/FUL, dated 3 January 2022, was refused by notice dated 15 March 2022.
  - The development proposed is construction of a two bedroom dwelling.
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## Decision

1. The appeal is dismissed.

## Main Issues

2. The main issues are:
  - the effect of the proposal on the character and appearance of the area;
  - whether or not the proposed development would be at an unacceptable risk of flooding;
  - the effect of the proposal on trees and biodiversity;
  - the effect of the proposal on the living conditions of the future occupiers of the proposal, in relation to noise from the adjacent railway line;
  - the effect of the proposal on the living conditions of the existing occupiers of Fimra, and on the future occupiers of the proposal, in relation to outlook, light, privacy, and private amenity space; and
  - the effect of the proposal on the potential future capacity enhancements of the nearby railway line.

## Reasons

### *Character and appearance*

3. The appeal site comprises part of the garden of Fimra, a chalet bungalow situated on Hutton Moor Lane. Hutton Moor Lane crosses a railway line and near this point towards the site is an extensive array of park homes, which then gives way to detached and semi-detached bungalows leading towards the site.
4. Those nearby bungalows are situated in elongated plots, and due to their orientation and generously-sized front garden / parking areas, and the separation distances between the buildings, a sense of spaciousness exists on

this part of Hutton Moor Lane. This contrasts with the denser form of development comprised of park homes, further up Hutton Moor Lane, which are commonly on small plots with small private amenity areas.

5. The proposed new dwelling would be sat within the widest part of a triangular-shaped plot. I have taken account of the size of the site in terms of its hectareage and the floor area of the proposed new dwelling, but due to the shape of the plot and the size of the proposed new dwelling within it, the property would appear noticeably cramped within its plot in comparison to the nearby bungalows, particularly when viewed from Hutton Moor Lane. Furthermore, much of the space around the proposed new dwelling would be taken up by a parking area which would likely be dominated by cars at times, which would exacerbate this effect. It follows that the proposal would undermine the established pattern of development in the vicinity, referred to above, which is an important part of the character of the area.
6. Additionally, the existing outbuilding positioned adjacent to the boundary fence with Hutton Moor Lane is not a prominent feature in the street scene and therefore its removal would not provide any material improvement to the appearance of the street scene.
7. The appellant has referred to a planning permission relating to a development at 264 Milton Road, including the size of both the dwellings and the resulting plots. However, as no plans have been provided it has not been possible to make a meaningful comparison with the proposal before me, in terms of the overall layout of that scheme and the position of the dwellings relative to other properties on Milton Road. Hence, this matter does not change my findings on this main issue.
8. I therefore find that the proposal would have an unacceptable and harmful effect on the character and appearance of the area. It would conflict with Policy CS12 of the North Somerset Core Strategy (adopted 2017) (Core Strategy) which provides that, amongst other things, proposals of all scales will be required to demonstrate sensitivity to the existing local character already established in an area and should take the opportunity to enhance the sense of place and local identity through a well thought out design. The proposal would also conflict with Policies DM32 and DM37 of the Development Management Policies: Sites and Policies Plan Part 1 (adopted 2016) (DMP) which provides that, amongst other things, the design and planning of development proposals should demonstrate sensitivity to the local character, and the setting, and enhance the area taking into consideration the existing context.

#### *Flood risk*

9. The site is situated within Flood Zone 3, which is an area defined in the Planning Practice Guidance as being at a high risk from flooding<sup>1</sup>. I am mindful of paragraph 159 of the National Planning Policy Framework (the Framework) which provides that, amongst other things, inappropriate development in areas at risk of flooding should be avoided by directing development away from areas at highest risk (whether existing or future).
10. The Development and flood risk issues: Development Management Advice Note (2019) (Advice Note) provides that, amongst other things, development

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<sup>1</sup> Paragraph 7-078-20220825

proposals within Flood Zone 3 must have gone through a sequential testing process unless certain circumstances apply. However, in relation to the site I have not been referred to any circumstances which might fall within those specified within the Advice Note.

11. Whilst the appellant has referred to the proposal's compliance with Policy SA2 of the Site Allocations Plan: Sites and Policies Plan, Part 2 (2006-2026) (adopted 2018), and I note in this regard that the site is within a settlement boundary, the Advice Note requires that evidence needs to be submitted to demonstrate that there are no reasonably available alternative sites within an area of lower flood risk which can accommodate the proposal. In this respect, whilst reference has been made to a search for similar readily available sites, no details of the search area covered or the Flood Zones involved in the search area has been provided, meaning that the evidence required by the Advice Note has not been provided. The Advice Note mentions that if no such evidence is submitted then permission will normally be refused.
12. The submitted Flood Risk Assessment mentions that the adjoining land has already undergone a flood risk sequential test. However, the Council have stated that Fimra was constructed in 1961, and this has not been disputed by the appellant. In this context, no supporting documents have been put forward to demonstrate when the sequential test might have been passed for Fimra or any other nearby property, nor what the planning policy context was at that time.
13. Measures have been put forward which are intended to reduce flood risk, including the use of onsite surface water soakaways, the finished floor level of the dwelling proposed to be set at approximately 600mm above the surrounding ground level, and measures relating to flooring, external walls, electrical sockets, and external door openings. Nevertheless, these measures do not obviate the requirement for the sequential test to be passed. Additionally, the proposed inclusion of these measures do not, of themselves, adequately demonstrate that the proposed new dwelling would be safe during a range of flood events, or that they would be adequate in relation to any increased risk of flooding due to climate change over time.
14. Reference has been made to planning application Ref 13/P/0683/O and a planning permission for a number of houses on the land directly to the south of Hutton Moor Lane. However, whilst of some relevance, those approvals do not negate the requirement for the sequential test to be passed for the appeal site, as required by planning policy. Moreover, few details have been provided to illustrate the site-specific circumstances with respect to any potential flood risk issues and any mitigation measures in place and accordingly I consider that those examples do not demonstrate that the proposed new dwelling would not be at an unacceptable risk of flooding. As such, these examples do not change my findings on this main issue.
15. I therefore find that the proposed development would be at an unacceptable risk of flooding. The proposal would conflict with Policy CS3 of the Core Strategy which provides that, amongst other things, development in Zones 2 and 3 of the Environment Agency Flood Map will only be permitted where it is demonstrated that it complies with the sequential test set out in the Framework and associated technical guidance. The proposal would conflict with Policy DM1 of the DMP which provides that, amongst other things, all

development must consider its vulnerability to flooding, taking account of all sources of flood risk and the impacts of climate change.

16. The proposal would also conflict with chapter 14 of the Framework which seeks to, amongst other things, meet the challenge of climate change and flooding.

*Trees and biodiversity*

17. The evidence before me indicates that no Tree Preservation Orders are in place with respect to the site, which means that any trees on site could be felled at any time. Nevertheless, I must assess the proposal on the basis of the currently prevailing circumstances.
18. In this respect, I saw an apple tree in the garden of Fimra on my site visit. A much taller tree was present near the fencing adjacent to Hutton Moor Lane, which is quite prominent in the street scene. A number of shrubs were present on the other side of the site, near the fencing adjacent to the railway line.
19. The tall tree positively contributes to the character and appearance of the area by complementing the verdant nature of the street scene. All of the trees and shrubs on site provide an intrinsic biodiversity value. As such, whilst taking account of the red line boundary, which does not encompass the whole of the garden of Fimra, in the absence of an arboricultural report it has not been demonstrated that the proposal would not harm the root protection area of the tall tree, thereby potentially resulting in its loss which would consequently harm the character and appearance of the area.
20. Few details have been provided to accurately quantify the extent to which the proposal could potentially impact on biodiversity. Considering the presence of the trees and shrubs identified above, and the close proximity of the proposed new dwelling to them, on a balance of probabilities I consider that the proposal would be likely to result in adverse impacts on biodiversity.
21. I therefore find that the proposal would have an unacceptable and harmful effect on trees and biodiversity. The proposal would conflict with Policies CS4, CS5, CS9, and CS12 of the Core Strategy, which collectively provide that, amongst other things, the biodiversity of North Somerset will be maintained and enhanced by promoting native tree planting and well targeted woodland creation, and encouraging retention of trees, with a view to enhancing biodiversity.
22. The proposal would conflict with Policies DM8, DM9, DM10 and DM32 of the DMP which collectively provide that, amongst other things, development proposals must take account of their impact on local biodiversity and identify appropriate mitigation measures to safeguard or enhance attributes of ecological importance. The proposal would also conflict with the Biodiversity and Trees Supplementary planning document (adopted 2005) which provides that, amongst other things, applicants are expected to provide an arboricultural method statement for works that may affect trees.

*Living conditions: noise*

23. The proposed new dwelling would be situated close to an existing railway line. The Council have mentioned that this is a main line railway line, and this has not been disputed by the appellant.

24. No Noise Impact Assessment or other technical evidence has been provided to quantify the levels of noise which currently emanate from the railway line. I recognise that in certain circumstances planning conditions can be imposed to require noise mitigation measures, such as an acoustic fence and acoustic glazing, to be installed on a site.
25. However, in this case, considering the close proximity of the site to the main line railway line, the lack of technical evidence in relation to the baseline level of noise at the site and the levels of noise produced by passing trains means that it is uncertain whether the noise mitigation measures suggested by the appellant would adequately mitigate noise to a level that would prevent harm to the living conditions of the future occupiers of the proposed new dwelling. Given this uncertainty, it has not been demonstrated that the condition suggested by the appellant would adequately overcome this potential harm caused by noise from the railway line.
26. I therefore find that the proposal would have an unacceptable and harmful effect on the living conditions of the future occupiers of the proposal, in relation to noise from the adjacent railway line. The proposal would conflict with Policy CS3 of the Core Strategy which provides that, amongst other things, development that, on its own or cumulatively, would result in harm to amenity will only be permitted if the potential adverse effects would be mitigated to an acceptable level by other control regimes, or by measures included in the proposals, by the imposition of planning conditions or through a planning obligation.

*Living conditions: outlook, light, privacy, and private amenity space*

27. The appellant has mentioned that, under the proposal, Fimra would retain a garden of approximately 7 metres deep. The proposed new dwelling would be positioned adjacent to the remaining garden for Fimra, meaning that it would result in a tall and wide mass in close proximity to the rear elevation of that property.
28. As such, the proposal would not comply with the '12 metre test' given in paragraph 2.2 of the Residential Design Guide – section 1: Supplementary Planning Document (2013) (Residential Design Guide) which provides that, amongst other things, developments that result in a distance of less than 12 metres from a 2-storey side wall of a building to a main elevation of a dwelling with windows will normally result in a significant loss of light and overbearing impact and in such circumstances would be refused planning permission.
29. Consequently, although the gable of the proposed new dwelling would face Fimra, which is the elevation with the least impact, due to its mass and scale in close proximity to Fimra, the proposed new dwelling would obscure much of the outlook from the rear windows of Fimra, particularly those at ground floor level which are closest to the boundary with Hutton Moor Lane. Additionally, considering its width and height in close proximity to Fimra, and the path of the sun, the proposed new dwelling would be likely to unduly reduce the levels of sunlight received to those same windows, particularly during the afternoon and the early evening in summer, and cause an undue reduction in the daylight received to those windows throughout the day. Hence, the proposal would make the affected habitable rooms at Fimra much less pleasant to use, which would harm the living conditions of the occupiers of that property.

30. Reference has been made to the 45 degree test, but as paragraph 2.1 of the Residential Design Guide mentions that the test is not to be used for windows which are opposite the proposed development, and considering the distance between the proposed new dwelling and Fimra, the 45 degree test is not instructive in this instance.
31. Upon completion of the proposed development, some of the windows on the rear elevation of Fimra would overlook the rear garden of the proposed new dwelling. However, as Fimra would retain a garden of approximately 7 metres deep it would comply with the '7 metre privacy test' given in paragraph 3.2 of the Residential Design Guide. Considering this, and that some of the windows on the rear elevation of Fimra would not be directly facing the rear garden of the proposed new dwelling, I consider that the proposal would not harm the living conditions of the future occupiers of the proposed new dwelling, with respect to privacy. Illustration F in the Residential Design Guide refers to direct overlooking of neighbouring gardens, which would not occur due to the distance mentioned above, and therefore that illustration does not change my findings.
32. The Council have referred to the amount of private amenity space that would result for each dwelling. I have not however been referred to any particular standards with regards to this. As mentioned above, the resulting garden for Fimra would be approximately 7 metres deep and as its width would be retained I consider that the amount of garden space remaining for that property would be adequate. With respect to the proposed new dwelling, the triangular shape of the plot would constrain the use of the garden somewhat but it would still offer a functional and usable space. As such, I consider that the proposal would not harm the living conditions of the occupiers of Fimra or the future occupiers of the proposed dwelling, with respect to the provision of private amenity space.
33. I note that the intention is for the appellant to remain living in Fimra, and for a family member to reside in the proposed new dwelling. However, this matter would not alter the harms identified above.
34. I therefore find that the proposal would have an unacceptable and harmful effect on the living conditions of the existing occupiers of Fimra, with respect to outlook and light. The proposal would conflict with Policies DM32 and DM37 of the DMP which collectively provide that, amongst other things, the design and layout of proposals should not prejudice the living conditions of adjoining occupiers through overshadowing or overbearing impact.
35. The Council referred to Policy CS12 of the Core Strategy in their decision notice. As this policy relates to achieving high quality design and place-making it is not directly relevant to this main issue. This matter does not however change my findings.

*Future capacity enhancements of the nearby railway line*

36. Part of the appeal site is within 10 metres of the railway line referred to above. Although the Council have not referred to any specific railway enhancement projects, statistics have been provided showing a year-on-year increase in train passenger numbers for this railway line since 1997 (excepting the 2003 to 2004 period where data is missing, a slight reduction in the 2018 to 2019



period, and the 2020 to 2021 period which appears to relate to the ongoing coronavirus (COVID-19) pandemic).

37. Considering this general upward trend in passenger numbers, whilst the appellant has mentioned that there are 2 lines on the relevant section of the railway, it is reasonable to presume that at some point in the future the railway line may need to be enhanced, potentially by the provision of additional tracks.
38. In this context, considering the proximity of both the site and the proposed new dwelling to the railway line, the proposal would conflict with Policy DM22 of the DMP which provides that, amongst other things, development within the 10 metres corridor will be permitted if it would not prejudice future capacity enhancements.
39. The appellant has referred to planning permissions being granted for dwellings within 10 metres of the railway<sup>2</sup>. However, the Council have mentioned that all these applications are not located within the safeguarded area with respect to Policy DM22, and that they are adjacent to a single-track branch line rather than the main line, and this has not been disputed by the appellant. As such, those examples are not directly comparable with the appeal proposal.
40. Reference has also been made to Nos 74 to 80 Hutton Moor Lane, which the appellant has stated are dwellings adjacent to the railway line. However, as no plans have been provided, which might show the approximate distances of the dwellings from the railway line, it has not been possible to make a meaningful comparison with the appeal proposal. As such, my findings on this main issue remain unchanged.
41. I therefore find that the proposal would prejudice potential future capacity enhancements of the nearby railway line. The proposal would conflict with Policy DM22 of the DMP, the relevant parts of which have been summarised above.

### **Other Matters**

42. It is common ground that the Council is currently unable to demonstrate the necessary forward supply of housing sites, as required by the Framework. As such, I would consider the most important policies out-of-date and be taken to the provisions of paragraph 11 d) ii. of the Framework in that planning permission should be granted for the proposal unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.
43. The proposal would provide benefits by way of creating one new dwelling in an established and accessible residential area. Consequently, the proposal would support the Government's objective of significantly boosting the supply of homes, and would provide a contribution to housing choice and mix in the local area. The proposal would provide work for construction professionals. The future occupiers of the proposed new dwelling would likely provide contributions to nearby services and facilities in economic terms, and to the social life of the local area.
44. A number of measures have been identified to assist with energy and water efficiency, including (amongst others) the use of photovoltaic panels, low

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<sup>2</sup> 20/P/0014/RM, 10/P/0426/F, 00/P/2112/F, 14/P/0156/F

energy lighting, and the use of fittings with lower flow rates. It is intended that materials and construction methods are used which would have a low environmental impact. A Site Waste Management Plan is intended to be used, to reduce waste, and an area for general waste and recyclable storage would be incorporated in the development. Sustainable drainage methods, such as new hard surfaces being of a porous material, are intended to be installed on site.

45. All these matters would be in compliance with a number of the Council's development plan policies, and relevant paragraphs of the Framework. However, the scale of the positive impacts of the various economic, social, and environmental benefits as summarised above would be directly linked to the quantum of development involved in this appeal, which is one dwelling only. I therefore consider that all these benefits, when considered cumulatively, provide only limited support for the proposal. Therefore, collectively all these would amount to limited weight in favour of the proposal.
46. The proposal would give rise to adverse impacts in relation to the character and appearance of the area, the risk of flooding, trees and biodiversity, the living conditions of the future occupiers of the proposal (in relation to noise from the adjacent railway line), the living conditions of the existing occupiers of Fimra (with respect to outlook and light), and the potential future capacity enhancements of the nearby railway line, in the terms I have described above. The combined effect of these adverse impacts would be considerable and therefore I ascribe substantial weight to them, as a group.
47. Setting the substantial weight of the adverse impacts of the proposal against the limited weight I afford to the benefits I have found, it is clear that the adverse impacts of the proposal would significantly and demonstrably outweigh the benefits, when assessed against the policies of the Framework taken as a whole. The appeal scheme would not therefore be sustainable development for which the presumption in favour applies.

### **Conclusion**

48. 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.

*Alexander O'Doherty*

INSPECTOR