

# Appeal Decision

Site visit made on 9 April 2024

**by K Reeves BA (Hons) MA MRTPI**

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

**Decision date: 19 September 2024**

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**Appeal Ref: APP/D0121/W/23/3331866**

**62 Beach Road, Weston-super-Mare, North Somerset BS23 4BE**

- The appeal is made under Section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
  - The appeal is made by Mr M Aziz against the decision of North Somerset Council.
  - The application Ref is 23/P/0996/FUL.
  - The development proposed is creation of 2no new dwellings/holiday lets including alterations to the roof and reduction in the footprint of the existing rear structure.
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## Decision

1. The appeal is dismissed.

## Application for Costs

2. An application for costs was made by North Somerset Council against Mr M Aziz. This application is the subject of a separate Decision.

## Preliminary Matter

3. A revised National Planning Policy Framework (the Framework) was published on 19 December and updated on 20 December 2023. This decision is based on the current Framework and has taken account of any representations made on the Framework's revisions.

## Main Issues

4. The main issues are:
  - the effect of the proposed development on the character and appearance of the area, with particular regard to the Greater Weston Conservation Area and trees;
  - whether or not the proposed development would provide satisfactory living conditions for future occupants, with regard to outlook, light, noise, light disturbance and privacy; and
  - whether the proposed development would comply with local and national planning policy which seeks to steer new development away from areas at the highest risk of flooding.

## Reasons

### *Character and appearance*

5. The appeal site consists of a large semi-detached building within the Greater Weston Conservation Area (the CA). The Greater Weston Conservation Area Appraisal and Management Plan (December 2018) explains that the CA has four constituent parts. The site is located within the Sea Front area. This part of the CA is characterised by the formality of its expansive Beach Lawns edged by large hotels, B&Bs and Victorian houses looking across the bay. The significance of the CA is derived, in part, from its overall quality of construction, alignment of buildings on plots and consistency of materials in most streets. The architecture of the townscape is dominated by classical villas and limestone Gothic villas with elaborate detailing.
6. The site is adjacent to Clarence Park, an historic park that was laid out in the late 19<sup>th</sup> Century. Clarence Park is designated in the development plan as a Local Green Space. The site is located close to trees that are beyond the boundary wall of the property within Clarence Park. The trees form an important part of the verdant backdrop of the properties along Beach Road and an integral feature within the adjacent park. They contribute positively to the character and appearance of the CA.
7. There is a detached single storey outbuilding at the rear of the appeal site. The building is understood to be present on historic mapping and the appellant has not disputed the Council's assertion that it seems to date from 1902. The pitched roof of the outbuilding is in keeping with the traditional appearance of other outbuildings along Beach Road. Whilst the outbuilding also has a substantial flat roof area, that roof is not overtly visible from the public realm. As such, the outbuilding is considered to make a neutral contribution towards the significance of the CA.
8. The proposal would involve the construction of new external and internal walls and significantly expanding the roof area of the building to create a second storey. The gable ends would be clad with timber cladding.
9. Given that the prevailing character and appearance of the outbuildings along Beach Road are buildings with simple dual pitched roofs, the alteration of the existing roof form to a higher ridge with a flat roof on top would result in a discordant and jarring introduction into the roofscape at the rear of the properties.
10. I acknowledge that the appeal building is not overtly visible from public viewpoints, but the development would be easily readable down the driveway due to the proposed increase in the massing of the roof area and the ridge height of the building. Additionally, the increase in scale of the pitched roof and its incongruent form would be perceptible from within Clarence Park. Moreover, the use of timber cladding on the gable ends would not be reflective of the finishing materials of the surrounding built form and would only serve to exacerbate the harm.
11. The Council is concerned that the appeal building is located within the Root Protection Area of the nearby trees. The appellant has provided arboricultural reports for 68 and 69 Beach Road. They contend that the

reports demonstrate that boundary walls of those properties have prevented the roots from the trees in the adjacent park from entering those respective properties, and the same would apply to the trees adjacent to the appeal site. However, neither report is specific to the appeal site, nor do they give an appropriate assessment of the impact of the proposal on the specific trees in close proximity to the site.

12. Whilst the plans show that the rear and side walls of the existing building would be retained, they also show the demolition of existing walls and the construction of a new external front wall. Additionally, shower rooms would be installed at the rear of both dwellings, and these are likely to require underground works to serve them.
13. Given such, insufficient information has been submitted to convince me that the proposed development can be accommodated within the site while protecting existing trees in the adjacent park. Further, the increase in scale and height of the existing building and the need to provide sufficient light to the proposed living accommodation may result in pressure for trees to be regularly pruned or felled. The potential future loss or damage of the trees would harm the significance of the CA.
14. The proposed development would therefore fail to preserve or enhance the character or appearance of the CA. In terms of the harm to the CA, the Framework advises that when considering the impact of development on the significance of designated heritage assets, great weight should be given to their conservation.
15. Given the scale and nature of the proposals, I consider that the degree of harm would be less than substantial, which the Framework indicates should be weighed against the public benefits of the proposal.
16. Turning to the proposal's benefits, it would contribute dwellings towards the housing stock in the district. However, even whilst acknowledging the seemingly fluctuating nature of the housing supply situation in the district and the Council's historically poor housing delivery record, two additional units would not make a significant difference to the housing supply situation and is a benefit that attracts moderate weight.
17. I also acknowledge the intention for the dwellings to be 'accessible housing' for people with mobility difficulties. While the provision of this type of housing would appear to be enabled by the development plan, I have not been provided with evidence that there is a lack of this type of housing in North Somerset and that the proposal would meet an identified need. Further, a flood refuge area is up a flight of stairs and therefore would not be easily accessible for people with mobility difficulties. I am not convinced that the housing would therefore be truly accessible. Accordingly, I afford limited weight to the dwellings being 'accessible housing'.
18. There would also be associated social and economic benefits through providing support to the local economy (including during the construction phase) and local community facilities. However, such contributions would be limited given the small-scale nature of the development under consideration.

19. The above stated benefits are therefore insufficient to outweigh the less than substantial harm to the CA.
20. The appellant has referred me to residential development permitted and constructed at the rear of 69 Beach Road. While the photographs provided by the appellant indicate that that building is visible from Clarence Park, I have not been provided with the background to that development, namely the make-up of the site prior to the development taking place. Further, the overall form of that development appears to be more traditional than the development proposed. As such, the development is not directly comparable and, in any event, I am judging the appeal on its own individual merits.
21. For these reasons, I conclude that the proposed development would cause unacceptable harm to the character and appearance of the area, having regard to the effect on trees, and would fail to preserve or enhance the character or appearance of the CA. Consequently, the proposal would conflict with Policies CS5, CS9 and CS12 of the North Somerset Core Strategy (2017) (CS), Policies DM3, DM5, DM9 and DM32 of the Development Management Policies Sites and Policies Plan Part 1 (2016) (SPP Part 1) and Policy SA5 of the Site and Policies Plan Part 2: Site Allocations Plan (2018), which collectively seek, in part, to achieve high quality design, maintain and enhance North Somerset's character, conserve the historic environment of North Somerset, only grant development that adversely affects designated Local Green Space in very special circumstances and safeguard, improve and enhance the existing network of green infrastructure.
22. Additionally, the proposal would fail to comply with the Framework's historic environment policies and the Framework's requirement for development to add to the overall quality of the area, be visually attractive as a result of good architecture and be sympathetic to local character and history, including the surrounding built environment.
23. Policy DM39 of the SPP Part 1 has been referenced in the Council's reasons for refusal. The policy relates to the conversion of dwellings and other buildings, including extensions and outbuildings, to form self-contained accommodation. Given that the proposal would involve the reconstruction of large parts of the appeal building, I do not consider that it would constitute a conversion. As such, I do not identify conflict with Policy DM39.
24. Additionally, Policy CS4 of the CS and Policies DM8 and DM10 of the SPP Part 1 are referred to in the reasons for refusal. Policies CS4 and DM8 relate to the conservation of biodiversity and Policy DM10 seeks to protect and enhance North Somerset's landscape. I do not identify conflict with Policies CS4, DM8 and DM10.

#### *Living conditions*

25. Both dwellings would have one bedroom that would be served by a single window in the front elevation of the building. The rest of the floor space would be given over to open plan living with a bathroom at the rear of the building. The open plan living area would also be served by a single window in the front elevation and two rooflights in the flat roof.

26. Given that the window serving the main rooms in the dwellings are in the western elevation, they would not benefit from direct sunlight for approximately half of the day. Whilst this may not be much of an issue for a bedroom, the large floor space of the open plan living area means that there would be a significant reliance on the rooflights to provide sufficient light to the room for the first half of the day. The presence of the large trees within Clarence Park would logically reduce the light entering the living area through the rooflights.
27. The layout would involve the occupiers of one of the dwellings walking closely past the bedroom window of the other dwelling. Conversely, the occupiers of the latter dwelling would need to walk past the windows of the other dwelling to access the external laundry room. As such, the future occupiers of both dwellings would not be afforded a sufficient level of privacy. Additionally, the windows of one of the dwellings would face directly towards an external wall of the main building at the site and this would provide inadequate outlook for future occupiers.
28. The laundry room could potentially be soundproofed to prevent noise disturbance experienced by future occupiers and the use of the existing driveway to park vehicles would not lead to a materially harmful noise impact due to the physical separation of the parking area from the dwellings. Vehicles being parked in the spaces shown on the plans could lead to light disturbance to one of the dwellings as the headlights of vehicles would shine directly towards the windows of that property. However, given that the headlights would be on during hours of darkness, the blinds or curtains in the dwelling are likely to be drawn, therefore preventing unacceptable light disturbance.
29. Drawing my findings together, I conclude on this issue that the proposed development would not provide satisfactory living conditions for future occupants, with regard to outlook, light and privacy. Consequently, the proposal would conflict with Policies CS3, CS12 and CS14 of the CS and Policy DM32 of the SPP Part 1, which collectively seek, in part, to not prejudice the living conditions for the occupiers of the proposal. The proposal would also conflict with the Framework insofar as it requires a high standard of amenity for future users of development.
30. The Council's first reason for refusal refers to Policy CS15 of the CS, which seeks to ensure a genuine mix of housing types. The proposal is for two dwellings that are of a similar scale and internal layout. I cannot foresee that a meaningful mix of housing types can be achieved as part of this quantum of development. Accordingly, I do not identify conflict with Policy CS15.

### *Flooding*

31. The appeal site is within Flood Zone 3 (high probability of flooding). The site benefits from flood defences, but climate change results in the development having a predicted annual flooding chance of 1 in 200 over the proposed development's lifetime. The Environment Agency's stated design flood level is 9.33 metres above Ordnance Datum.
32. The Framework and the Planning Policy Guidance (PPG) aim to steer development to areas with the lowest probability of flooding through a

sequential test. This is reflected in Policy CS3 of the CS. Development should not be permitted if there are reasonably available sites appropriate for the proposed development in areas at a lower risk of flooding.

33. The appeal scheme does not meet the definition given for minor development in the PPG in this context nor does it constitute a simple change of use. As such, the proposal does not qualify for the Framework's exemption from the requirement to carry out the sequential test.
34. The sequential test is therefore required to establish whether there are reasonably available sites appropriate for the proposed development in areas with a lower risk of flooding. The flood risk assessment submitted with the planning application contained an inadequate consideration of the sequential test. The appellant has submitted a more in-depth sequential test assessment as part of the appeal, but it appears to relate to a different site in Weston-Super-Mare, 33 Sandford Road. However, it does contain an analysis of sites available within the town and I have considered this information accordingly.
35. Policy CS3 sets out that as the site is within the settlement boundary of Weston-Super-Mare, the area of search for reasonably available alternative sites for housing is limited to the town.
36. In the PPG, reasonably available sites are defined as those in a suitable location for the type of development with a reasonable prospect that the site is available to be developed at the point in time envisaged for the development. The PPG says that these could include a series of smaller sites and/or part of a larger site if these would be capable of accommodating the proposed development.
37. The second part of Policy CS3 sets out that to be considered reasonably available, the site should be owned by the appellant, for sale at a fair price or surplus and available publicly owned land. However, the PPG specifically says that such lower-risk sites do not need to be owned by the appellant to be considered reasonably available. Reasonably available sites can include ones that have been identified by the planning authority in site allocations or land availability assessments.
38. Given the inconsistency of the second part of Policy CS3 with the more up-to-date Framework and supporting PPG, I give greater weight to the latter over the former in the context of Paragraph 225 of the Framework.
39. The sequential test includes a list of potential alternative housing sites with extant planning permissions. The majority of the list of sites are within Flood Zone 3 and are therefore not in an area with a lower risk of flooding. The remaining four identified sites are understood to be within an area that has a lower risk of flooding and consists of three planning permissions for individual dwellings and a permission for three additional flats on a site with seven existing flats. The appellant has given various reasons as to why these sites are not reasonably available, including the permission being in outline only, the need to discharge pre-commencement conditions, the site not being for sale and not being comparable to the appeal site. However, these reasons do not remove the potential for these sites to be developed, and so are not compelling justification to discard these preferable sites.

40. The proposed development therefore fails the sequential test as set out in the Framework because there are reasonably available sites for residential development appropriate to the proposed development on land with a lower risk of flooding than the appeal site. This is regardless of whether the appellant owns the suggested alternative sites or not. It follows that there is no need to consider flood risk in this regard any further, including the application of the exception test.
41. On this basis alone, the proposed development fails the sequential test as set out in the Framework because there are reasonably available sites for residential development appropriate to the proposed development on land with a lower risk of flooding than the appeal site.
42. For these reasons, the proposal would not comply with local or national planning policy which seeks to steer new development away from areas at the highest risk of flooding. Consequently, the proposal would conflict with the first part of Policy CS3 of the CS, which only permits development where it is demonstrated that it complies with the sequential test set out in the Framework. The proposal would also conflict with Policy DM1 of the SPP Part 1, which seeks, in part, to discourage inappropriate development in flood risk areas.

### **Planning Balance**

43. The Council accepts it cannot demonstrate a five-year housing land supply. Following the revision of the Framework, where authorities meet the requirements of Paragraph 226 of the Framework, they only need to demonstrate a four-year housing land supply (4YHLS). Despite this, the Council cannot demonstrate a 4YHLS as they confirm that the current land supply is approximately 3.5 years.
44. In these circumstances, Paragraph 11(d) of the Framework states that permission should be granted unless the application of policies in the Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed or 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.
45. I have already concluded that the proposed development would cause unacceptable harm to the character and appearance of the area, having regard to the effect on trees, would fail to preserve or enhance the character or appearance of the CA and would not comply with local or national planning policy which seeks to steer new development away from areas at the highest risk of flooding. As such, the proposal conflicts with the development plan when taken as a whole.
46. The harm to the CA, which is not outweighed by the previously identified public benefits means that the heritage policies in the Framework provide a clear reason for refusing the development proposed. Paragraph 11(d)(ii) is not therefore engaged.

### **Conclusion**

47. For the reasons given above, the proposed development would conflict with the development plan and the material considerations do not indicate that

the appeal should be decided other than in accordance with it. As such, the appeal should be dismissed.

*K Reeves*

INSPECTOR