



Appeal Decision

Site visit made on 1 August 2017

by K Taylor BSc (Hons) PGDip MRTPI

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

Decision date: 10th August 2017.

Appeal Ref: APP/D0121/W/17/3174144

43 Orchard Street, Weston-Super-Mare BS23 1RH

- 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 & Mrs R Monelle against the decision of North Somerset Council.
 - The application Ref 16/P/2710/F, dated 3 November 2016, was refused by notice dated 24 March 2017.
 - The development proposed is described as 'two storey extension to rear of both 43 and 45 Orchard Street to convert existing 4 bedroom flat to two 2-3 bed apartments above existing retail units'.
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Decision

1. The appeal is dismissed.

Procedural matter

2. Although not mentioned in the description on the application form, the development includes alterations to the front of the building to provide an additional entrance door. I have taken this into account.

Main Issues

3. The main issues are:
 - whether the proposal represents an appropriate form of development having regard to its Flood Zone location and the provisions of the development plan policies and the National Planning Policy Framework (the Framework);
 - the effect of the development on the living conditions of the occupiers of nearby houses in Hopkins Street having regard to privacy; and
 - the effect of the development on the living conditions of the future occupiers of the flats having regard to the proposed internal arrangements of rooms.

Reasons

Flood risk

4. The appeal site falls within Flood Zone 2, with part of it in Flood Zone 3. The Framework and the Planning Practice Guidance (the PPG) indicate that a sequential approach should be used in areas known to be at risk of flooding. Only where there are no reasonably available sites in Flood Zone 1 should sites in Flood Zone 2, and subsequently Flood Zone 3, be considered.

5. The appellants suggest that it is not necessary to apply the sequential test because the site already contains residential accommodation and conversion of part of the ground floor to residential accommodation has already been approved. I have not been provided with any details of that scheme. However the Council's evidence is that this related only to No.45 and I have no evidence to contradict this. The development would incorporate extensions and alteration to the rear of No.43 which would form part of the residential accommodation.
6. Minor development, as described in the PPG, does not require the application of the sequential test. However the development does not fall within the scope of the definition. It involves the creation of an additional flat and part of the extension would be utilised as residential accommodation. Development and subdivision that would create a separate flat is specifically excluded from the definition. The appellants suggest that the flat was previously divided into two. However there is nothing in national policy or in the PPG to suggest that this factor, in itself, means that the sequential test should be waived.
7. Based on the evidence before me I must conclude that the sequential test needs to be applied. I have been provided with no evidence to show that no other sites in Flood Zone 1 are available for residential development. Hence the requirements of the sequential test have not been met.
8. I therefore conclude that the proposal would not represent an appropriate form of development for its Flood Zone location. It would conflict with Policy CS3 of the North Somerset Council Core Strategy, and Policy DM1 of the North Somerset Council Development Management Policies: Sites and Policies Plan Part 1 (the DMP). These Policies seek to ensure vulnerability to flood risk is taken into account and to steer development to areas at lower risk of flooding by only permitting development in Flood Zones 2 and 3 where it complies with the sequential test. It also fails to comply with the Policies within the Framework and the guidance in the PPG.
9. I recognise that the first floor areas in each flat would provide a refuge in the event of flooding and note that the appellants suggest that flood mitigation and evacuation plans could be secured. However these factors would only become relevant if it were first established that the proposal complies with the sequential test.

Privacy

10. The appeal building backs on to the rear of properties in Hopkins Street, which are two storey terrace houses. The rear yard area at the appeal site, and the rear gardens in Hopkins Street, are short and therefore the backs of properties are generally located fairly close to one another. At first floor level the appeal building is L shaped, there is a kitchen and bathroom window in the rear projection which are close to the boundary and the houses to the rear.
11. The two rear bedrooms are set some way back from the boundary. Views from the bedroom windows look into the rear garden and conservatory of one of the houses in Hopkins Street, and towards its small rear first floor windows. However there is a reasonable degree of separation and these views are fairly typical of tightly packed terrace development.

12. Views from the kitchen window are currently largely obscured by a tall evergreen tree located in a neighbouring garden. However if that were not there, this window would allow significant views of the rear of the houses in Hopkins Street at close quarters.
13. The development would result in two bedroom windows being located close to the rear of the houses in Hopkins Street. Taken together with the existing kitchen window; this would result in a significant degree of overlooking, reducing the degree of privacy experienced by the occupants of those dwellings.
14. The proximity of the windows to the rear of the neighbouring properties and the boundary falls below that recommended in the Council's Supplementary Planning Document: Residential Design Guide – Section 1 – Protecting living conditions of neighbours. Although the existing kitchen window currently falls below these standards, rather than suggesting to me that this is acceptable it emphasises the need to prevent increasing the degree of overlooking.
15. Requiring that these windows contain obscure glazing up to 1.7m would result in an oppressive living environment for the occupants of the flat. This would not therefore be a suitable solution. The appellants suggest this has taken place in other developments. I have not been provided with any details of this, but in any event I do not consider it to be an acceptable solution. I note that there are other local examples of rear walls and windows located in closer proximity to the houses to the rear. I do not have any details of the circumstances that led to granting permission in those cases, nor do I have full details of those schemes. In any event they would not justify development that would further erode the privacy of properties in Hopkins Street.
16. I conclude that the development would result in a harmful loss of privacy for the occupiers of nearby houses in Hopkins Street. It would be contrary to Policies DM32 and DM39 of the DMP. These policies seek to ensure development does not prejudice the living conditions of adjoining occupiers through loss of privacy and overlooking.

Internal arrangements

17. The living and dining area for the flat in No.45 would be located in the centre of the property. It would be an open plan space connected to the kitchen. Although the kitchen would have a window, the only main living room space for this flat would be located a long way from it. It would be a space that received little natural light. This would be a poor internal environment and result in inadequate living conditions for the future occupiers of this flat. The existing flat has a living room in this location. However it is one of two lounges with the other, larger, lounge being a well-lit room benefiting from two windows. Therefore the occupiers of the current flat have access to a main living space that is not oppressive.
18. I conclude that the development would result in unacceptable living conditions for the future occupiers of the flat at No.45. It would be contrary to Policy DM39 of the DMP, which seeks to ensure that a satisfactory standard of accommodation and living conditions are provided for the future occupiers of the development.

19. The residential unit in No. 45 would have a room at ground floor level with no windows. This is marked as a home office on the plans and would also provide access to a bathroom and bedroom. This is a small room that would also function as a corridor. The proposed flat would not be so small that this room would be an essential living space. Therefore I do not consider that, in itself, this would result in the flat providing substandard living accommodation. Ultimately the use of this space would be down to the individual occupiers, but a number of suitable uses could be carried out in this area, such as storage, a utility room, or an occasional home office space. The flat in No.43 would have windows to serve all bedrooms and main living spaces and would provide an adequate living environment.
20. Although I have found these aspects of the development acceptable, it would not mitigate or outweigh the harm that would result from the location of the living room in the flat at No.45. Nor would the adequate floor area in each flat mitigate the harm.

Other matters

21. Due to its design the scheme would not result in harm to the character or appearance of the area. It also would not increase impermeable surfaces on the site and therefore it would not have any significant effects on surface water flooding. These factors indicate a lack of harm in their particular respects but do little to weigh in favour of the development.
22. The development would result in the use of previously developed land and allow the further optimisation of the site, the opportunity could be taken to improve the energy efficiency of the building and incorporate some low carbon technology. The site would provide accommodation that could be used as family homes within the town centre and in a location that is close to services, facilities, and public transport, helping to boost the supply of family homes and minimise the need to travel by private vehicles. These are benefits of the development and there is conformity with a number of development plan policies in respect of these matters. I attach moderate weight to these benefits.

Conclusion

23. I have found there to be a number of benefits associated with the proposal. However none of these factors, either alone or in combination, would outweigh the fact that the development would not comply with planning policies that seek to steer development away from areas at medium and high risk of flooding. The harm to the living conditions of neighbouring residents and the future occupiers of the flat at No.45 adds further weight against the development. When considered in the round, the harm is sufficient to mean that the proposal fails to comply with the development plan when taken as a whole. I therefore conclude that the appeal should be dismissed.

K Taylor

INSPECTOR