
Appeal Decision

Site visit made on 29 November 2017

by Jonathan Tudor BA (Hons), Solicitor (non-practising)

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

Decision date: 11 January 2018

Appeal Ref: APP/Q3305/W/17/3181356

Land adjacent to 32 Bekynton Avenue, Wells, Somerset BA5 3NF

- 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 St Marys Bay Ltd against the decision of Mendip District Council.
 - The application Ref 2017/0443/FUL, dated 20 February 2017, was refused by notice dated 18 May 2017.
 - The development proposed is erection of three dwellings and associated vehicular access.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The address used in the banner heading above is taken from the appeal form, as it more accurately described the location than the address given in the planning application form.
3. An updated version of Somerset County Council's 'Highways Development Control - Standing Advice' (SA) was published in June 2017, after the date of the Council's decision to refuse the application. However, the Council advises that the changes from the previous version, cited in their decision notice, are minor and do not substantively alter the position in relation to the proposal. Relevant extracts from the updated version have been provided by the Council and the appellant has had the opportunity to comment upon them.

Main Issues

4. The main issues are the effect of the proposed development on:
 - the living conditions of future occupiers, with particular regard to outdoor amenity space;
 - highway safety, with particular reference to pedestrian and vehicular visibility from the access to Plot 3; and,
 - the character and appearance of the area, including a protected tree.

Reasons

Living conditions

5. The appeal site is located at the junction of Bekynton Avenue and Bedford Road. It comprises a grassed area and the remains of an old garage building

and driveway. The western part of the site is dominated by a large copper beech tree which is subject to a Tree Preservation Order (TPO). The land slopes from the north down to Bekynton Avenue.

6. It is proposed to construct a short terrace of three dwellings of two-storeys, which would be built into the sloping bank, with car parking to the front. The Council has expressed concern that the proposed outdoor living or garden space to the rear of the three dwellings would be small and cramped. In particular, Plot 2 would only provide an area about 3.4 metres deep by 4.6 metres wide, which has not been specifically disputed. Indeed the appellant accepts that *'the external space adjacent to each property is quite small'* but submits that it is acceptable and sufficient to accommodate bin stores and a small sitting area. Given the limited space, it is likely, particularly in the case of Plot 2, that the proposed bin store would be situated close to any sitting area, which would not be a favourable arrangement. Even if the bins could be relocated, it would still be a cramped space in which to accommodate washings lines, garden furniture and the like.
7. Whilst the appellant submits that some apartment blocks offer less external space, the proposal is for two storey houses with two bedrooms, which may appeal to small families. Although the constraints of the site, including its size, gradient and the space taken by the protected tree, are recognised, most other properties in the area, including adjacent bungalows and the two storey semi-detached houses opposite, appear to offer more reasonable and usable levels of private outdoor space. The gardens would also face north, limiting direct sunlight which would be likely to be diminished further during the summer months by the presence of the large tree. Therefore, I consider that the amount and nature of the private outdoor living space would be inadequate.
8. Although there would be some shared amenity space available around the copper beech tree, that area is away from Plots 2 and 3 and is on an exposed corner. It would not be private without fencing, which would itself have a negative effect on views of the tree and the character of the area. That space is also likely to be in heavy shade from the tree for much of the summer. Therefore, it is not likely to form an appealing or usable additional space which would sufficiently address the limited nature of the private garden areas.
9. Policy DP7 of the Mendip District Local Plan 2006-2029 Part 1: Strategies and Policies (MDLP)¹ says that high quality design which results in usable, durable, adaptable, sustainable and attractive places will be supported. Amongst other things, the policy advises that proposals for new development should demonstrate that they *'provide a satisfactory environment for current and future occupants.'* The supporting text of that policy also encourages the use of assessment techniques in Building for Life standards, which are not mandatory but suggest that it is a good idea to ensure that rear gardens are at least equal to the ground floor footprint of a dwelling, which is not the case in the proposed scheme.
10. Overall therefore, I conclude that the proposed development would not provide acceptable living conditions for future occupiers, with particular regard to inadequate outdoor amenity space. It follows that the proposal would be contrary to policy DP7 of the MDLP in failing to provide a satisfactory environment for future occupants. It would also fail to accord with similar aims

¹ Adopted 15 December 2014

expressed in the fourth bullet point of paragraph 17 of the National Planning Policy Framework (the Framework)², which requires high quality design and a good standard of amenity for existing and future occupants of land and buildings.

Highway Safety

11. Two car parking spaces fronting onto Bekynton Avenue would be provided for each of the three dwellings. That road is unclassified, subject to a 30 mph speed limit, and in a residential area. I place significant weight on the professional standing advice provided by the relevant highway authority, Somerset County Council, with regard to safe and suitable access arrangements.
12. The SA states that there should be pedestrian visibility splays of 2.4 metres by 2.4 metres, as illustrated in the Appendix 11.2 of that document. Following my site visit, I find that I concur with the District Council's opinion that suitable pedestrian visibility would not be available eastwards, certainly from the easternmost of the two parking spaces allocated to Plot 3. Visibility would be obstructed by the existing brick side wall of the adjoining property at 32 Bekynton Avenue, which is supplemented with a higher wooden fence further east. Consequently, there would be a significant risk that a pedestrian traveling west on the pavement would not be seen by a driver of a car emerging, including in reverse, from the parking space. Similarly, there would not be sufficient visibility for pedestrians of emerging vehicles. Even allowing for the 30 mph speed limit, for the same reasons, the vehicular visibility splay eastward from Plot 3 would also be insufficient. That situation would endanger pedestrian and vehicular safety.
13. No evidence has been provided of any proposal or agreement for the adjoining wall or fencing behind it to be lowered. Rather, the appellant submits that, as vehicles travelling from the east would be on the opposite side of the carriageway, visibility from the Plot 3 parking spaces would be sufficient. However, as indicated in Appendix 11.1 of the SA, the relevant calculation is from the nearside carriageway edge unless there are physical features in the centre of the road preventing vehicles crossing the centre line.
14. Moreover, there were a number of vehicles parked along the southern side of the carriageway at the time of my site visit. That would lead vehicles traveling from the east on Bekynton Avenue to move to the centre or other side of the road. Nor was there a marked centre line. Although I appreciate that my site visit only represents a snapshot in time, as there are no parking restrictions along that part of the road and the driveways of the adjacent houses are relatively modest, I consider it likely that such roadside parking would continue. Therefore, I do not find the appellant's submission in that respect persuasive.
15. A previous approval for a dwelling on the site with an agreed visibility splay is referred to by the appellant. However, that related to a single dwelling and I have not been provided with full details, such as plans, relating to that consent. Therefore, I am unable to ascertain if the access and parking associated with that scheme is in the same position as that proposed for Plot 3 in the appeal

² Published March 2012

before me. Consequently, I give the previous approval limited weight in relation to highway safety matters.

16. Given the high priority which must be placed on highway safety, the alleged existence of other poor accesses, with insufficient pedestrian and vehicular visibility, in the area would not justify creating another such access.
17. It is also suggested by the appellant that the response of Somerset County Council Highways Department, in referring the District Council to its SA, indicates that the highway authority did not have any serious concerns about the proposal. However, in its introduction the SA specifically states that: *'The direction to use Standing Advice does not mean that there is no highway reason for objection to an application, but rather that it will be for the Local Planning Authority to determine whether or not a proposal complies (or can be conditioned so as to comply) with the advice, and therefore whether or not planning consent should be granted.'* Therefore, it is clear that no such inference should be drawn.
18. I have considered whether this aspect could be satisfactorily addressed by means of a suitable condition. However, my understanding is that the relevant obstructions to visibility are not within the site or the control of the appellant. Moreover, the relevant owner has indicated an unwillingness to agree for the wall or fencing to be lowered and has objected to the proposed development. The Planning Practice Guidance (PPG)³ indicates that such conditions should not be used where there are no prospects at all of the action in question being performed within the time limit imposed by the permission. Given that the indications are that an appropriate agreement is not in prospect and the appellant has not suggested otherwise, in my judgement, it would not be appropriate to impose such a condition.
19. The above factors lead me to conclude that the proposal would harm highway safety, with particular reference to pedestrian and vehicular visibility from the access to Plot 3. Therefore, it would conflict with policy DP9 of the MDLP, which seeks to ensure that proposals make safe and satisfactory provision for the parking of motor vehicles.

Character and appearance

20. The proposal comprises a modest terrace of three dwellings of contemporary design which would be set back from the road. Visually, the site would still be dominated by the protected copper beech tree on its western part. Although two storeys, the houses would have shallow roofs and be built into the existing bank, with only the upper floor visible from the rear. The first floors would slightly overhang the ground floor and they would have extensive glazing within grey finish aluminium window frames. Although the roof would have a zinc covering and some parts of the elevations would be cedar clad, the use of brick and white render would provide a reference to other development along the road.
21. As the appeal site is on a corner with Bedford Road it would also physically be separated from the bungalows to the west, with the copper beech tree providing a further visual break. The tree would partially obscure views of the development from the west, particularly when in leaf. There would also be a

³ Paragraph: 009 Reference ID: 21a-009-20140306

- reasonable separation distance from the adjacent bungalow at 32 Bekynton Avenue. Therefore, whilst the two storey front elevations of the new dwellings would face the road, they would not be seen juxtaposed with neighbouring buildings.
22. The Framework advises, in paragraph 60, that: *'Planning policies and decisions should not attempt to impose architectural styles or particular tastes and they should not stifle innovation, originality or initiative through unsubstantiated requirements to conform to certain development forms or styles'*. Although the houses would be of more contemporary design than much of the development in the area, the corner location of the site combined with the presence of the copper beech tree provides a visual detachment from the immediate surroundings. Therefore, given their scale, design and position set back from the road, they would not appear prominent or discordant.
23. There are semi-detached and detached bungalows on the north side of Bekynton Avenue with some two storey dwellings beyond. To the rear of the site are two short rows of single storey garages which face each other. The back and side elevations of the utilitarian garage block in an elevated position already appears incongruous in the street scene. Opposite, as the land slopes down, are two storey semi-detached houses. Therefore, there are various forms and structures in the immediate vicinity. In that context, it seems to me an appropriate site for a modern development which attempts to respond to the topography.
24. Whilst the houses on the south side of the road are fairly evening spaced, the pattern of development on the north side is not as regular. The parking provision to the front of the dwellings would contrast to some extent with the low boundary walls and soft landscaped front gardens of other properties. However, many of the houses opposite have driveways adjoining each other so the site of vehicles parked at right angles to the road is not unfamiliar in the area, albeit that the parking would be more extensive in front of the proposed terrace. In that context the parking arrangement would not cause significant visual harm.
25. Concern has also been expressed about the possible effect of the development on the copper beech tree. It is an attractive specimen and can be seen from various public vantage points. I agree with the Council that it makes a positive contribution to the character and appearance of the area, as recognised by its protection under a Tree Preservation Order (TPO).
26. Whilst no tree survey was submitted, it is not clear to me if such a survey was requested by the Council prior to determination. The appellant advises that they had assumed that an arboricultural report submitted in connection with a previous consent would still be relevant and submit that the proposal would be no closer to the root protection area than the previously approved scheme. A tree protection zone is also shown on a submitted plan⁴, although no explanation is provided. In the circumstances, I am satisfied that the matter could be dealt with by means of a suitable condition, which has been accepted by the appellant.
27. I conclude, therefore, that the proposal would not harm the character and appearance of the area. Consequently, it would not conflict with policies DP1

⁴ Drawing No. J183/02A

or DP7 of the MDLP, insofar as they hold that proposals should recognise the contribution of street scenes and trees to local identity and distinctiveness and be of a scale, mass and form appropriate to the local context.

Planning Balance and Conclusion

28. The proposal would lead to some economic uplift during construction and from future occupiers. It would also contribute to the supply of housing in an appropriate residential area. However, as the proposal is for just 3 small dwellings that contribution would be relatively limited. These modern dwellings would also be energy efficient.
29. The appellant describes the dwellings variously as starter units, entry level homes and affordable housing. However, they would be market housing and there would be no other formal mechanism or agreement to secure their affordability. Although the appellant refers to a demand for such housing in the area, based on discussions with estate agents, no independent evidence of such a housing need has been provided. Neither has it been suggested that the Council is not meeting its housing land supply targets.
30. Although I have not identified harm to the character and appearance of the area, subject to a condition concerning the protected tree, the limited benefits of the proposal would not outweigh the inadequate living conditions for future occupiers and the significant risk to highway safety.
31. For the reasons given above, and having regard to all other matters raised, I conclude that the appeal should be dismissed.

Jonathan Tudor

INSPECTOR