



Appeal Decision

Hearing Held on 8 October 2019

Site visit made on 8 October 2019

by M Bale BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 3 December 2019

Appeal Ref: APP/D0121/W/19/3228291

32-34 Birnbeck Road, Weston-super-Mare BS23 2BX

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
 - The appeal is made by Susan Steel against North Somerset Council.
 - The application Ref 18/P/3335/FUL, is dated 25 May 2018.
 - The development proposed is demolition of existing guest house and 1no. self-contained flat and erection of a new four-storey building comprising 10no. new self-contained flats.
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Decision

1. The appeal is allowed and planning permission is granted for demolition of existing guest house and 1no. self-contained flat and erection of a new four-storey building comprising 10no. new self-contained flats at 32-34 Birnbeck Road, Weston-Super-Mare BS23 2BX in accordance with the terms of the application, Ref 18/P/3335/FUL, dated 25 May 2018, subject to the conditions in the attached schedule.

Procedural matters

2. The appeal results from the failure of North Somerset Council to determine the application within the prescribed period. The Council's appeal statement indicates that had the application been determined, the application would have been refused for one reason. This reason would have centred on the alleged harm to the character of the Great Weston Conservation Area that would result from the demolition of the existing substantial Victorian Villa.

Main Issues

3. The main issue is the effect of the proposal on the character and appearance of the Great Weston Conservation Area and its significance.

Reasons

4. The Great Weston Conservation Area covers a significant part of Weston-super-Mare and represents the development of the town as a Victorian seaside resort. Whilst there are variations in style and detailing, the Victorian architecture that defines the appearance of the area is prevalent throughout. The site is within the Sea Front character area as defined in the Great Weston Conservation Area Appraisal and Management Plan (CAA). The CAA confirms that the seafront is characterised by the long sweep of Weston Bay, with hotels, institutions and

blocks of flats facing the Bristol Channel. The significance of the area is largely due to the high presence of Victorian architecture related to the rapid growth of the town at that time, and that the resulting appearance has come to define the town and the way that it is viewed.

5. The appeal site, which I understand to have once been two semi-detached dwellings, now appears from Birnbeck Road to be a large villa sitting within a row of similar grand buildings. Although not defined within the CAA as having strong group value or making a very positive contribution to the conservation area, these buildings nevertheless are a cohesive group that individually and collectively contribute positively to the overall character of the area.
6. The site and its neighbours have undergone significant alteration in the past, some of which detract from their individual character and present some harmful elements in the area. This contributes to the CAA identifying the street as a whole to have low integrity and need significant attention. However, these matters are not so detracting as to prevent the building making a positive contribution to the character and appearance of the area and, being a substantial Victorian property, its significance. Indeed, when viewed from Birnbeck Road the property at the appeal site appears to have been less heavily altered than many of its neighbours.
7. There is no dispute that, subject to the imposition of appropriate planning conditions to address matters of detail, the proposed building would respect the character and appearance of the conservation area. At the hearing the Council confirmed that if this were a vacant site, it would have a neutral effect on the heritage asset and its significance. I have no reason to disagree.
8. However, regardless of its design credentials, the new building would never be a piece of Victorian architecture and could not make the same contribution to the character and appearance of the conservation area as the existing historic building. Given the positive contribution that the existing building makes, its loss and redevelopment would harm the character and appearance of the conservation area and result in less than substantial harm to its significance.
9. The harm that I have identified would result in a conflict with Policy CS5 of the North Somerset Core Strategy 2017 (CS) and Policy DM3 of the North Somerset Development Management Sites and Policies Plan Part 1 2016 (DMP) that seek to ensure the conservation of the historic environment, giving particular attention to those aspects that define the distinctive character of North Somerset including the Victorian townscape and sea-front in Weston, secure the retention of existing buildings, avoiding harm and where possible enhancing the significance of conservation areas.
10. Accordingly, it would be desirable for the existing building to be retained as that outcome would preserve the character and appearance of the conservation area. However, there is no dispute that due to substantial alterations and investment required to bring the accommodation up to modern standards, the building cannot continue in its current use as a hotel.
11. At the hearing, the appellant explained that various options for alternative uses have been considered over recent years, but none of these would be viable. In particular, an appraisal has been provided about the viability of works to convert the hotel to apartments. The Council does not agree with this

- appraisal, disputing the appellant's overall projected sales values and the existing use value of the site.
12. In response, an appraisal from the Council¹ produced evidence of the values of recently sold properties in converted buildings, calculated an average cost of those apartments per floor area, added a premium based upon the seafront location, level access to the town centre, new condition of the apartments and their generous size, and then multiplied by the total floor area of the converted building.
 13. By contrast, the appellant has taken the Council's list of recent sales, discounted the largest and smallest, as well as those apartments with parking and gardens, then taken an average price for the one and two bedroomed apartments and multiplied by the number of apartments. The appellant contends that this methodology is justified on an assumption that the number of bedrooms has a greater role to play in value than the overall size of a property.
 14. In a second appraisal², the Council adopted the average price of the sampled flats in the area and added a blanket premium across the development, based on the same reasons outlined above, to estimate an average projected price for each of the flats.
 15. There was dispute at the hearing as to whether parking could be provided for any apartments in the existing converted building. Whilst there is no firm evidence as to how such could be achieved, the plans for the appeal proposal show 8 parking spaces to the rear accessed from a service lane. Following the demolition of a rear annexe to the building in any conversion, there is no compelling evidence as to why such provision could not be replicated in a conversion scheme as the same area of land would appear to be available. It may also be possible to provide some parking at the front of the site. Such would add a premium to the development over and above the appellant's stated values which discounted parking.
 16. However, if I were to accept either of the Council's methodologies, I see no compelling justification for the premiums that have been applied to the values. The selected properties in the sample were a wide range of apartments including some with access to garden space and some with parking. The possible conversion of the existing building would not provide garden space and the sample already includes some with parking. Whilst sea views would be available from the site, elsewhere outlook would be compromised by the ground levels which would have a significant overbearing effect to the rear of the lower floors, especially if parking were provided. Furthermore, some of the sample properties also benefit from sea views and so to some degree this is accounted for within the average.
 17. In light of the above, I do not find the Council's projected sales values to be robust. Whilst there may also be some shortcomings in the appellant's values, especially given the lack of account for parking, the Council's figure would not have to fall far to all but eliminate the stated indicative return or residual land value.

¹ Dated 26 June 2019, submitted with the appeal statement

² Dated 1 October 2019, submitted alongside the Statement of Common Ground

18. The Council's overall position and suggested indicative return is based upon the existing use value of the site (EUV) being nil. Whilst this is strongly contested by the appellant, my findings in respect of projected sales values mean that a change in this regard would not affect my overall findings as it already represents the most profitable scenario.
19. Even if I am wrong about the sales values, based upon the Council's assessment of viability with high sales values and a nil EUV, there would still be a very small residual land value remaining. The Planning Practice Guidance³ (PPG) indicates that a viable development must account for a premium for the land owner, being a minimum return at which a reasonable land owner would be willing to sell.
20. At the hearing, the Council did not contest the appellant's assertion that the calculated indicative return would not be a sufficient incentive to sell nor suggest such a position was unreasonable, preferring to argue that a good developer return and positive residual value together showed a viable development. However, with regard to the PPG⁴ I see no good reason to conflate these matters. Ultimately, if the residual value is too low, then the incentive to sell would not exist, the development would be unviable and would not proceed. There is no evidence before me that any other form of development that could allow the retention of the existing building would be more viable, and so I conclude that an ongoing viable use for the building is not available.
21. Against this background, the proposal would bring 10 units of accommodation into an area where there is an undisputed shortfall in housing land supply. The Town Centre Regeneration Supplementary Planning Document 2017 encourages regeneration of the area, including the introduction of higher quality housing. I accept that many of the benefits suggested by the appellant linked to these matters could also be achieved through the conversion of the existing building to flats. Indeed, the CAA and designation of the area by Historic England as a Heritage Action Zone seek to promote a strategy of heritage-led regeneration that favours retention and renewal of the historic environment. However, in light of my findings in respect of viability, such heritage-led regeneration and associated new housing delivery would not occur at this site.
22. The harm that I have identified to the character and appearance of the conservation area and associated conflict with the development plan receives great weight in my decision. However, whilst giving special attention to the desirability of preserving the existing building and its contribution to the character and appearance of the area, I find that the public benefits would outweigh the less than substantial harm to the significance of the conservation area. The proposal would, therefore, comply with Paragraph 196 of the National Planning Policy Framework (the Framework). As there is no realistic prospect of retaining the building, these benefits, and compliance with the Framework, indicate a decision other than in accordance with the development plan.

³ Paragraph 10-013-20190509

⁴ Ibid.; Paragraph 10-114-20190509; Paragraph 10-116-20190509

Other matters

23. The proposal seeks to provide some parking accessed from a service lane to the rear of the site. This lane also gives access to a number of other properties, including those at 4 Atlantic Road South which has particularly limited visibility onto the lane. However, there is an existing access onto the lane from Birnbeck Road alongside the site, which would be largely preserved in its current form and would provide an option to egress to the public highway without passing the 4 Atlantic Road South car park. Whilst traffic in that direction would not be prevented, there is no substantive evidence that there would be a significant increase in traffic as a consequence of the development.
24. Beaufort Hall nursing home adjoins the site. Its access is situated alongside that for to the rear of the appeal site, but with regard to the lack of objection from the Local Highway Authority, I find that no harmful conflict in vehicle movements would arise. Whilst there may be some potential for noise disturbance to the nursing home during the construction phase, there is no substantive evidence that this would be harmful or require particular control through planning conditions. There is also no particular evidence that noise from a completed development would be greater than that from the existing hotel use.
25. There are some listed buildings within the area, including those at Knightstone Island that are seen in context with the sweeping bay that includes the appeal site. However, given the distance and that the new building in itself would not harm the character and appearance of the area, I find that the settings of these building would not be harmed.

Appropriate Assessment

26. The above considerations indicate that circumstances are present that could lead to planning permission being granted. The Council's list of suggested conditions indicated that certain conditions were required in order to mitigate the effect on European Nature Conservation Sites.
27. At the hearing, the Council confirmed that the sites in question are the Severn Estuary Special Protection Area (SPA), Ramsar Site and Special Area of Conservation (the European Sites). To aid my understanding of the sites, their features of interest, and the potential significant likely effects, I was provided with documents⁵ relating to an Appropriate Assessment (AA) under the Conservation of Habitats and Species Regulations (CHSR) 2010⁶ that was carried out in respect of a nearby development site at the Bayside Hotel.
28. On the basis of the evidence available, the European Sites can be seen to include wading and wetland bird habitats, particularly Redshank, which is a qualifying interest feature of the SPA. Construction activities at the site could generate disturbance to wading and wetland birds using the European Sites and associated habitats as a result of noise and vibration during construction works. At other development sites in the vicinity, a particular cause for concern has been the need for percussive piling.
29. Construction methods for the proposed development have not yet been finalised. If percussive piling was found to be necessary, then the available

⁵ Listed under item 3 at the end of my decision

⁶ As was in force at the time, now superseded by the CHSR 2017

evidence indicates that significant likely effects from the development on the features of interest at the European Sites cannot be excluded without mitigation. Appropriate Assessment under the CHSR is therefore required. As the competent authority in respect of this decision, I have carried this out on a proportionate basis with regard to the evidence before me.

30. Elsewhere, including at the Bayside Hotel planning conditions have been used to control the times of year at which percussive piling could take place and that this was found to avoid significant likely effects on the European Sites and their features of interest.
31. I have consulted with Natural England as the Statutory Nature Conservation Body in respect of the proposals. They have confirmed that, as with the Bayside Hotel site, the main potential effects associated with the appeal site proposals are likely to relate to noise and disturbance during construction. Natural England are satisfied that two conditions relating to the control of construction activities are likely to be sufficient to avoid or reduce potential impacts such that there will be no adverse effects on the integrity of the European Sites.
32. Therefore, following appropriate assessment, I conclude that subject to suitable mitigation via planning condition, likely significant effects can be excluded and the integrity of the European Site would not be harmed.

Conditions

33. A plans condition is required in the interests of certainty. Conditions in respect of materials and boundary treatments are required in the interests of the character and appearance of the area.
34. To avoid off-site surface water flood risk, a condition is required to implement a drainage scheme and seek approval of an ongoing management regime. The main parties agreed that the condition should secure surface water disposal via soakaway and that a version of a revised condition suggested by the Council's drainage specialist should be used.
35. To ensure adequate facilities for refuse disposal and cycle parking are provided, a condition is necessary to secure the construction of such facilities. Although the Council's initial conditions sought approval of details, it was confirmed at the hearing that those shown on the drawings were appropriate and I have amended the condition accordingly. In the interests of highway safety and to ensure adequate provision is made for traffic attracted to the site, a condition is required to secure the parking areas shown on the submitted plans.
- 36.
37. CS Policy CS2 requires that new development generates a proportion of its energy requirement from on-site (or nearby) renewable sources. Given a net increase in 9 dwellings is proposed, the Council confirmed at the hearing that 10% of the energy requirement would be appropriate. Paragraph 2.4 of the Weston-super-Mare Town Centre Regeneration Supplementary Planning Document 2017 requires electric car charging facilities to be provided. Furthermore, DMP Policy DM42 requires a proportion of dwellings to be accessible and adaptable to meet the changing needs of occupants over time. Conditions are necessary to secure these matters.

38. To prevent adverse effects on the locality during construction, and to prevent any adverse effect on the European Sites, conditions are required to secure a construction method statement and to prevent percussive piling at certain times of the year. Following agreement at the hearing, I have amalgamated the Council's two suggested conditions regarding a construction method statement and construction environmental management plan to cover all relevant matters.
39. The Council initially suggested a condition requiring the submission of a travel plan. However, at the hearing, it was confirmed that as adequate parking provision was being made at the site, such a condition is not necessary. Again, whilst a condition requiring the submission of a bird nesting and bat roosting strategy was also proposed, at the hearing such was confirmed as not necessary to allow the grant of planning permission. As I have no particular evidence regarding bat and bird usage of the appeal site, I have not imposed such a condition.
40. I have made some revisions to the Council's suggested conditions in the interests of clarity and to ensure compliance with the Framework and PPG.

Conclusion

41. With regard to the above, I conclude that the appeal should be allowed.

M Bale

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Heather Faulkner – Stokes Morgan Planning
Kit Stokes – Stokes Morgan Planning
Susan Steel

FOR THE LOCAL PLANNING AUTHORITY:

Dr Kate Hudson-McAulay – Conservation and Heritage Officer
Graeme Felstead – Principal Planning Officer
Harvey Purnell – Valuer
Roger Willmot – Service Manager – Strategic Developments

INTERESTED PERSONS:

A Davies
L Davies

DOCUMENTS SUBMITTED AT THE HEARING

- 1 Signed Statement of Common Ground
- 2 Email from James Wigmore, Lead Transport Planner, North Somerset Council concerning parking provision in respect of a proposal to convert the existing building
- 3 Documents concerning a Habitats Regulations Assessment in respect of a development at Bayside Hotel, Manilla Crescent, Weston-super-Mare (LPA Ref: 14/P/1791/F), comprising:
 - (a) Habitats Regulation Assessment by Sarah Dale dated 7 October 2014
 - (b) Letter from Natural England dated 15 December 2014
 - (c) Council's delegated officer report in respect of the proposal
 - (d) Council's decision notice
- 4 Appellant's agreement to the imposition of pre-commencement conditions

SCHEDULE OF 14 CONDITIONS

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: LP001; 108/3666/1; EP002; EP099; PP003; PP100 Rev A; PP110 Rev B; PP111 Rev A; PP112 Rev A; PP113 Rev A.
- 3) Prior to their installation and use on site, samples of the materials to be used in the construction of the external surfaces of the buildings and detailed sections and drawings at a scale of not less than 1:20 showing architectural detailing including profiles and jointing of external materials, quoins, cornices, windows, doors, soffits, parapets and eaves, shall be submitted to and approved in writing by the Local Planning Authority. For the avoidance of doubt, there shall be no UPVC windows installed on the site. The development shall be carried out in accordance with the approved details unless otherwise agreed in writing by the Local Planning Authority.
- 4) Prior to the occupation of any dwellings the boundary walls, railings, gate piers and fences shall be constructed in accordance with details which shall first have been submitted to and approved in writing by the Local Planning Authority and shall thereafter be maintained as such.
- 5) Surface water shall be disposed of via soakaways constructed in accordance with BRE Digest 365 Revised 2016. Prior to the occupation of the development hereby permitted, full details of a maintenance plan for the soakaways for the lifetime of the development shall be submitted to and approved in writing by the Local Planning Authority. The development shall not be occupied until the soakaways have been constructed and the all associated surface water drainage works have been completed and shall thereafter be so retained and maintained in accordance with the approved maintenance plan.
- 6) Prior to the occupation of any of the dwellings hereby permitted the refuse storage facilities shown on the approved plans shall be constructed, made available for use and shall thereafter be maintained as such.
- 7) The development hereby permitted shall not be occupied until measures to generate 10% (or a lower figure if agreed with the local planning authority) of the energy required by the use of the development through the use of micro renewable or low-carbon technologies have been installed on site and are fully operational in accordance with details that shall have been first submitted to and approved in writing by the Local Planning Authority. Thereafter, the approved technologies shall be permanently retained unless otherwise first agreed in writing by the Local Planning Authority.
- 8) The dwellings hereby permitted shall not be occupied until the parking area serving them has been constructed and the parking spaces marked out in accordance with the approved plans and these parking spaces shall thereafter be permanently retained and shall not be used except for the parking of vehicles in connection with the development hereby approved.

- 9) Prior to the occupation of any of the dwellings hereby permitted the cycle parking facilities shown on the approved plans shall be constructed, made available for use and shall thereafter be maintained as such.
- 10) No development shall take place until a Construction Method Statement has been submitted to, and approved in writing by, the Local Planning Authority. The approved Statement shall be adhered to throughout the construction period. The Statement shall provide for:
 - i) the parking of vehicles of site operatives and visitors
 - ii) loading and unloading of plant and materials
 - iii) storage of plant and materials used in constructing the development
 - iv) the erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate
 - v) wheel washing facilities
 - vi) measures to control the emission of dust and dirt during construction
 - vii) a scheme for recycling/disposing of waste resulting from demolition and construction works
 - viii) pollution control measures including effects on water quality, pollution from fuel use and storage and other potentially hazardous materials.
- 11) Percussion piling shall be confined to the period April to August inclusive to avoid disturbance to waders and wildfowl. No piling shall be undertaken during September to March inclusive unless a suitable method statement is submitted to and approved in writing by the Local Planning Authority.
- 12) No dwelling shall be occupied until details of electric car charging facilities for a minimum of 2 of the car parking spaces and the ducting for future charging facilities for a minimum of 40% of the car parking spaces, have been submitted to and approved in writing by the Local Planning Authority and fully implemented in accordance with the approved scheme. Such facilities shall thereafter be retained as such.
- 13) No development (including demolition) shall take place until a Level 2 Building Survey Record of the existing building in accordance with Historic England guidelines has been undertaken and the report submitted to and approved in writing by the Local Planning Authority.
- 14) Prior to the construction of the new building, details shall be submitted to and approved in writing by the Local Planning Authority which demonstrate at least 17% of the proposed dwellings to be constructed as accessible and sufficient to meet the needs of occupants with differing needs, including disabled people, as well as being constructed to allow adaptation to meet the changing needs of the occupants over time. To achieve this requirement, the accommodation should meet the standards contained in the Building Regulations 2010, Approved Document Part M 'Access to and use of dwellings': M4(2) 'Accessible and adaptable dwellings'. No dwelling specified in the submitted details as being constructed to meet this requirement shall be occupied until it has been constructed in complete accordance with the approved plans and specifications.