
Appeal Decision

Site visit made on 15 June 2020

by Helen O'Connor LLB MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15 June 2020

Appeal Ref: APP/D0121/D/20/3244938

28 Oldmixon Road, Weston-Super-Mare BS24 9QA

- 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 A Papa-Adams against the decision of North Somerset Council.
 - The application Ref 19/P/2813/FUH, dated 12 November 2019, was refused by notice dated 6 January 2020.
 - The development proposed is the erection of a detached garage.
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Decision

1. The appeal is dismissed.

Procedural Matter

2. In my heading above I have used the full name of the appellant given on the appeal form in preference to the information given on the planning application form, as this only refers to a surname.

Main Issues

3. The main issues are the effect of the proposal on:
 - The character and appearance of the area having regard to the impact on trees and the Mendip Hills Area of Outstanding Natural Beauty (AONB), and;
 - Biodiversity and protected species having regard to the North Somerset and Mendip Bats Special Area of Conservation.

Reasons

Background

4. The appeal site forms part of the substantial grounds of 28 Oldmixon Road, a detached dwelling which is positioned a considerable distance from the road. As such, the proposal for a further detached garage building, albeit of a considerable size for a domestic garage, would be used in association with the dwelling and I have not seen evidence to suggest otherwise.

Character and appearance

5. The appeal site is located within the AONB and is categorised as within the River Yeo Rolling Valley Farmland in the North Somerset Council, Landscape

Character Assessment Supplementary Planning Guidance, September 2018 (SPG). The special and sensitive character of the AONB is derived in part from the underlying limestone landform and the pattern of combs, gorges and grasslands shaped by that geology. At the point nearest to the appeal site, having regard to the SPG and my own observations, the prevailing character of the landform is gently undulating pastoral land with boundary hedgerows. In addition, a notable area of woodland lies some distance to the south of the site. Paragraph 172 of the National Planning Policy Framework (the Framework) stipulates that great weight should be given to conserving and enhancing landscape and scenic beauty in the AONB.

6. The grounds of 28 Oldmixon Road are substantial and lie mostly adjacent to agricultural land. There is significant established tree cover along the side and rear boundaries of the site with intermittent tree planting, orchard, grass and garden planting covering the majority of the remaining area as well as the presence of some large greenhouses. Accordingly, notwithstanding the presence of the existing dwelling and garage, the overall character and appearance of the site is rural, verdant and spacious. However, as the established planting along the boundaries largely shields the site from wider views, its contribution towards the appearance of the AONB, although positive, is primarily derived from the presence of the tall boundary tree cover.
7. The proposal would introduce a detached garage building onto an area of land used as a vegetable plot. Although relatively large in footprint, it would be proportionate to the overall grounds such that the prevailing spacious verdant character would not be undermined. Furthermore, the design approach taken would mean the building would have a simple, functional form reminiscent of a small agricultural building. The limited height, restricted openings and use of olive green profiled metal sheeting for the walls and cement fibreboard roofing would assist in keeping the appearance of the building unobtrusive.
8. The building would be located to the front of the dwelling and therefore, in closer proximity to the road. Nevertheless, the dwelling is set deep into the plot well away from other dwellings and as such, there is no clear building line established. It follows that no obvious settlement pattern would be harmed, and the plot has its own individual identity more akin to a small holding whereby the layout is more rural and informal. Furthermore, its considerable distance from the road combined with the shielding from planting along the boundaries would prevent the development from being easily seen from public areas. In these circumstances the general design approach taken towards the location, form and materials would be appropriate to the context and would not have a wider impact on the special character of the AONB.
9. Nevertheless, I do have concerns regarding the likely impact on a nearby mulberry tree and silver birch. At my site visit these trees appeared to be fairly mature and in generally good health and therefore, made a positive contribution to the verdant and natural appearance of the site. The eastern end of the proposed garage would be between and in close proximity to these trees. Furthermore, the plan¹ shows some alterations to ground levels near to the trees and the construction of a retaining wall. Although the plan shows these works as affecting only a small part of the canopy of the mulberry tree, neither the root protection areas nor canopy spreads appear to have been

¹ Drawing 2366 03 Revision A

informed by a tree survey prepared by an appropriately competent person. In particular, I observed the mulberry tree to have a branch situated low on the trunk leaning towards the proposed siting of the garage as well as an irregular overall shape that would affect the canopy. It follows that there is a reasonable basis to doubt whether the tree positions, circular root protection areas and crown spreads are accurately shown on the plans and therefore, I am not assured that it is fully shown that their retention is realistic as stipulated in policy DM9 of the North Somerset Council, Development Management Policies, Sites and Policies Plan Part 1, July 2016 (SPP).

10. Moreover, the North Somerset Council, Biodiversity and Trees Supplementary Planning Document, December 2005 (BTSPD) advises applicants to undertake a tree survey in accordance with BS 5837:2005. Notwithstanding the age of the document and that the standards have been subsequently updated and revised, it reinforces the approach in policy DM9 in the SPP in relation to development that affects trees and woodlands. Furthermore, it is broadly consistent with the approach in paragraph 170 b) of the National Planning Policy Framework (the Framework) which requires planning decisions to enhance the natural and local environment by, amongst other things, recognising the benefits of trees and woodland. Therefore overall, it is of considerable weight.
11. My attention is drawn to paragraph 33 of the Framework which states that policies in local plans and spatial development strategies should be reviewed at least once every 5 years. However, the BTSPD is a supplementary planning document and does not form part of the development plan². Therefore, as it is not part of a local plan or spatial development strategy, it is not shown that the advice in paragraph 33 is applicable.
12. Although the appellant indicates that the canopy of the mulberry tree has been reduced, it is nevertheless appropriate, and requisite as part of policy DM9 of the SPP, to take full account of the future growth potential of all nearby trees. It is not shown that this has been done.
13. I have considered whether a condition might overcome my concerns and I am referred to an example imposed by the Council in relation to a reserved matters permission reference 19/P/2231/RM which required protective fencing to be erected and prohibited activity in the root protection areas. However, based on the limited information provided, I am not aware how close the development was to trees which inhibits a direct comparison with the case before me. Moreover, some of my concerns relate to the accuracy of root protection areas shown on the submitted plans which prevent a proper assessment of the impact on the trees. Therefore, until the impact is understood, it would not be appropriate to use a condition as the siting of the development would have been permitted.
14. I acknowledge that the trees are not specifically protected but this does not render them unworthy of retention nor immaterial to my decision. Their loss would result in harm to the rural and verdant appearance of the site, which although limited in extent, based on the information provided would be unnecessary and unjustified.

² Defined in s38 Planning and Compulsory Purchase Act 2004

15. Accordingly, I find that the proposal would result in limited harm to the character and appearance of the area due to the likely adverse impact on existing nearby trees. Therefore, it would conflict with policy CS4 of the North Somerset Council, Core Strategy, January 2017 (CS) which, amongst other matters, seeks to encourage the retention of trees. Additionally, it would be contrary to policies DM9 and DM10 of the SPP which, amongst other things, seek to protect trees and require development to carefully integrate with the natural environment.
16. I did not find that the development would be harmful to the AONB, hence there would be no conflict with policy CS5 of the CS or DM11 of the SPP which seek to safeguard the AONB's special scenic qualities. Neither does the evidence before me show that the site forms part of a network of green infrastructure or that the proposal would be harmful to it. As such, there is no conflict with policy CS9 of the CS. Furthermore, aside from the impact on the trees, there would be no harm arising from the location, form and appearance of the proposed building. Therefore, the proposal would accord with policy CS12 of the CS and policies DM32 and DM38 of the SPP which primarily seek built form to be of a high quality design.
17. Finally, although the Council also refers to policy DM1 of the SPP in the second refusal reason on the decision notice, as this relates to flooding and drainage, I have seen no evidence to suggest that the proposal would conflict with this policy in relation to this main issue.

Biodiversity and protected species

18. The site lies within an identified consultation zone (Band B) due to its proximity to the North Somerset and Mendip Bats Special Area of Conservation (SAC), a habitat recognised under the Conservation of Habitats and Species Regulations 2017 as being of international importance for horseshoe bats and their habitat. All species of bats are protected species. The appeal site is relatively close to woodland to the south, contains limited built form and lighting and notable hedgerow and tree cover, which makes it suitable habitat to support foraging and commuting bats.
19. Recent caselaw³ requires the decision maker, when considering the effect that a proposal may have on such a European Site, to consider mitigation within an Appropriate Assessment rather than at screening stage.
20. In the absence of mitigation measures and using a precautionary approach, the development would result in the loss of a small area of the habitat and may increase the degree of artificial lighting which may affect bat activity. As such, I cannot rule out the potential risk of a significant effect on the internationally important interest features of the SAC and no specific information is presented to show otherwise.
21. The North Somerset and Mendip Bats Special Area of Conservation Guidance on Development: Supplementary Planning Document, January 2018 states that proposals within the Bat Consultation Zones should commission an ecological consultant at an early stage to identify and assess any impacts the proposals may have⁴. Furthermore, if insufficient information is submitted to

³ People over Wind and Sweetman v Coillte Teoranta ECLI:EU:C:2018:244

⁴ Paragraphs 3.5-3.6, page 16

assess the application in accordance with the Habitats Regulations, the application is likely to be considered unacceptable.

22. In the absence of specific evidence to show the likely degree of harm, or any necessary mitigation measures, I conclude that it has not been demonstrated that the proposed development would have no materially harmful effects on a protected species or the SAC. I therefore find that the proposal would be contrary to policy CS4 of the CS and DM8 of the SSP which, amongst other matters, seek to promote biodiversity and preserve protected species and their habitats.

Other matters

23. The appellant points out the associated cost of commissioning tree and ecology reports. Be that as it may, this would not justify permitting a development where the likely impact in relation to those matters had not been properly assessed and may result in unacceptable harm.

Conclusion

24. For the reasons given above, I conclude that the appeal should be dismissed.

Helen O'Connor

Inspector