
Appeal Decision

Site visit made on 21 July 2020

by Janet Wilson BA (Hons) BTP MRTPI DMS

an Inspector appointed by the Secretary of State

Decision date: 30th July 2020

Appeal Ref: APP/Q3305/W/20/3252558

Garage Court, Green Lane, Frome BA11 4JX

- 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 the Aster Group against the decision of Mendip District Council.
 - The application Ref 2019/3018/FUL, dated 18 December 2019, was refused by notice dated 9 April 2020.
 - The development proposed is the erection of a dwelling.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The name of the appellant is given on the planning appeal form as Ms Tracey Hancock of the Aster Group, whereas the name appearing on the application form lodged with the Council is Mr Alex Keely of the Aster Group. As the right of appeal rests solely with the original applicant, I have proceeded on the basis that the Aster Group are the appellants in this case.
3. The Councils' reasons for refusal refer to the 2012 version of the National Planning Policy Framework (the Framework). The version in force at the time the decision was issued was the 2019 version. Any references in this decision refer to the 2019 version of the Framework.
4. Several references are made in evidence to an appeal decision¹ dating from 2005 with which comparisons are made. It is clear from the evidence that whilst this appeal proposes to utilise the same access as that in the 2005 it relates to a different plot of land albeit immediately to the east of the present appeal site. I have had regard to that decision in reaching my findings.
5. The Council cited design in their first reason for refusal. Their evidence makes clear that the design and materials were acceptable in that they responded to the local context and would maintain the character and appearance of the surrounding area. To that effect I have taken the reference to design, as referring to the effect on the living conditions of adjacent units which I will address below.

¹ APP/Q3305/A/05/1181545

Main Issues

6. The main issues are the effect of the development on: a) the living conditions of the occupiers of No.35 Green Lane (No.35); and b) the effect on highway safety.

Reasons

Living conditions

7. The proposed dwelling would have a plan form twice the depth of the adjacent dwelling, it would be located close to No.35 with a gap of just over 6 metres from the side elevation of No.35 which has a sizeable window to a habitable room on the first floor. This proximity, coupled with the depth of the side elevation would create a dominant and overbearing effect on the occupiers of No.35 which, whilst it would not cause any loss of privacy due to the absence of any openings, would have an excessively dominant impact. This would cause a significant loss of outlook which would be harmful to the living conditions of the occupiers of No.35.
8. I have had regard to the appellants comment regarding the principle of right to light however this is not the issue here, it is the proximity of the proposed mass and scale of the side elevation in relation to a habitable room at No.35 and the effect that this would have in relation to both outlook from and a dominant impact upon the adjacent dwelling. I note that the appellant has drawn a conclusion that the window concerned is argued to be a hallway based on a interpretation of 'handing' a layout to No.37. However, from what I have seen on site I remain unconvinced that the side window serves an ancillary rather than a habitable room.
9. Consequently, the development would conflict with Policy DP7 of the Mendip District Local Plan: Part 1 Strategies and Policies 2006-2029 (2014) (The Local Plan) and advice contained within the Framework. These policies amongst other things seek to ensure that development protects the amenity of users of neighbouring buildings and provides a satisfactory environment for current occupants.

Highway safety

10. The site currently accommodates 7 garages, the appellants advise that these are not used for parking but for storage and their size means that they are not of a sufficient size to accommodate modern cars. The existing access serves the use of these garages as storage facilities as confirmed by the Aster Group who let them out. I saw on my visit that the access also serves No.35 where parking spaces are accessed from the garage court rather than directly from Green Lane. The access also serves an area of green space to the rear of the appeal site and a pedestrian footway which connects Green Lane to Delmore Road. The development would appear to maintain both these though I have no evidence that this is a public right of way. In practice the access if the proposal were to proceed would serve two dwellings the green space and the pedestrian thoroughfare.
11. Visibility to the south from the access is unimpeded other than by parked cars however suitable visibility can be achieved in this direction. Not so in a northerly direction which is severely limited by the boundary wall to Ecos Court and where visibility of around 8 metres could be achieved against a normal

standard of 40 metres. The wall is not in the ownership or control of the appellants and there is no opportunity to improve visibility in this direction. The appellants argue that there have been no recent traffic collisions in this location whereas the Council report a high degree of concern from local residents regarding lack of safety at this access. Local representations also reflect similar concerns. I also note the access is in close proximity but offset to the junction of Albion Place with Green Lane which means that there is the propensity for further traffic manoeuvres to contend with.

12. Whilst the number of vehicles involved in using this access at the present time is limited due to the size and nature of the lock up garages the alteration to accommodate a new dwelling with all the attendant traffic movements would lead to an increase in daily movements. This increase would lead to a greater risk to highway and pedestrian safety and particularly so where visibility is so limited.
13. The appellants evidence says garages are too small to be used for cars therefore traffic use of the access would be lower and vehicle trip generation associated with the site would in all probability be equal or less to that of the potential existing use on the site. I find that this is a moot point, the evidence suggests the storage use of the site would result in very occasional use which would be very different to the daily comings and goings associated with a three bedroomed house.
14. The appellants traffic survey information shows that vehicular movements over a 7-day period in December indicate a maximum hourly flow of 333 two-way movements and with average speeds of around 23 miles per hour past the site. Given the proposal would fall so far short of the visibility requirement of 40 metres, in a northerly direction, the use of this access to serve an additional dwelling would create a serious risk to highway and pedestrian safety especially given the volume and speed of traffic on Green Lane.
15. Reference has been made by the appellants to the manual for streets which says that unless there is local evidence to the contrary a reduction in visibility below recommended levels will not necessarily lead to a significant problem. Whilst I note this reference, the Framework also makes it clear that development should only be prevented or refused on highway grounds if there would be an unacceptable impact on highway safety.
16. In this case the visibility from the access towards the north is so severely restricted that there would be an increased risk to highway safety with increased use of the access. Whilst the policy situation is different to that in place in 2005 when the appeal was dismissed there appears to be no change to the circumstances of the access on the site. I share the concerns regarding highway safety identified in the earlier appeal and in the more recent planning refusals. That safety concern would not be overcome by this proposal and there would remain a substantive risk to highway safety by the use of this access for a new dwelling alongside the other pedestrian and vehicular uses which would remain to be served by this access.
17. Taking all of the above into account, the proposal would be prejudicial to highway and pedestrian safety and would conflict with Policy DP9 of the Local Plan and to the aims of the Framework which seek to ensure that safe access to development is provided in the interests of highway safety.

18. I have had regard that the parking spaces would be accessible and that a swept path analysis demonstrates that vehicles could turn within the site to be able to enter and leave in forward gear. However, this would not alter my view in relation to the safety of the access given the lack of visibility in a northerly direction from the site.

Other matters

19. My attention has been drawn to a planning application² similar to this appeal scheme which was refused in 2019 and the fact that this submission seeks to overcome identified reasons for refusal. Nonetheless I have considered this scheme on its own merits and have come to a decision based on the evidence before me.
20. I note that the appellants take issue with the introduction of an additional matter in the reasons for refusal in relation to the overdevelopment of the site. Though frustrating for the appellants this does not alter the principal issues of the effect on the living conditions of adjacent occupiers or the matter of highway safety. It does not alter my findings in relation to the main issues.
21. My attention has been drawn via the highways statement to several appeals elsewhere in Mendip District and in other locations³. These cite examples of where Inspectors have allowed appeals where situations have been held not to significantly affect highway safety and where Inspectors have concluded that the addition of one residential dwelling is unlikely to result in an unacceptable impact on highway safety. I note that in a number of those situations' visibility was only slightly constrained or the arguments related to the marginal increase in the use of an existing junction and I cannot be certain that the cases cited are comparable such that they are examples where I would be bound to reach the same conclusion.
22. I note that the highway authority referred to standing advice and did not specifically object to the proposal this position does not alter my findings in relation to the main issues which I have considered on their own merits.

Conclusion

23. The starting point for any planning decision is Section 38(6) of the Planning and Compulsory Purchase Act 2004 which requires decisions to be made in accordance with the development plan unless material considerations indicate otherwise. On the evidence before me there are no material considerations which would lead me to a decision other than in accordance with the development plan.
24. Consequently, for the reasons given above and having taken all other matters into account the appeal is dismissed.

Janet Wilson

INSPECTOR

² Council reference 2019/1473/FUL

³ APP/Q3305/W/19/3242457, APP/Q3305/W/19/3230478, APP/W0340/W/16/3154951, APP/W0340/A/14/2215453