

Appeal Decision

Site visit made on 23 July 2021

by S Edwards BA MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 08 September 2021

Appeal Ref: APP/D1265/W/21/3273862

15 Cranford Avenue, Weymouth DT4 7TL

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by AJ Developments against the decision of Dorset Council.
 - The application Ref WP/19/00603/FUL, dated 10 September 2019, was refused by notice dated 18 February 2021.
 - The development proposed is sever land and erect 3 no 3 bedroom houses with undercroft parking.
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Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by AJ Developments against Dorset Council. This application is the subject of a separate Decision.

Preliminary Matters

3. The revised National Planning Policy Framework (the Framework) published on 20 July 2021 sets out the Government's planning policies for England. Policies within the Framework are material considerations which should be taken into account for the purposes of decision-making from the date of its publication. The parties were given the opportunity to comment on this matter, and I have had regard to the updated Framework in determining this appeal.

Main Issues

4. The main issues are:
 - The effect of the proposal on the character and appearance of the area;
 - Whether the proposal would provide satisfactory living conditions for future occupiers of the development, with particular regard to the size of the accommodation and outdoor amenity space;
 - The effect of the proposal on the living conditions of the neighbouring residents, with particular regard to outlook and privacy; and
 - Whether the proposal would be suitably located, having regard to national and local planning policies which seek to steer new development away from areas at risk of flooding.

Reasons

Character and appearance

5. The appeal site comprises a detached property set within a spacious and verdant corner plot, which lies prominently within the street scene. The surrounding area is primarily residential in character, and includes properties of varying sizes and designs. Along Cranford Avenue, buildings are typically set back from the road, and the degree of separation between buildings gives the area a relatively spacious and pleasant suburban feel. This contrasts to some extent with the purpose-built block of flats known as Willow Court, which is set closer to the frontage along the access route leading to Lodmoor carpark.
6. As a result of the proposal, part of the site would be severed to enable the creation of a terrace of three dwellings. By reason of their significant width, three-storey scale and massing, the dwellings would evidently exceed the capabilities of the plot, and result in a contrived form of development which would appear incongruous and overwhelmingly dominant within the street scene. Additionally, it would erode the spaciousness of the appeal site which presently characterises the site to an unacceptable degree.
7. The proposed development would be constructed within proximity to the road frontage and would occupy a significant proportion of the plot. This, together with the vehicular access to the undercroft parking area and associated visibility splays, would leave very limited scope for the inclusion of meaningful landscaping to soften the visual impact of the proposal. The provision of additional planting is all the more so critical that an important part of the vegetation contributing to the character and appearance of the area would be lost to make way for the construction of the proposed terrace.
8. The appellant has drawn comparisons between the appeal scheme and Willow Court to justify the scale and siting of the proposal. However, this three-storey development sits within a considerably larger plot, and its design is appropriately articulated to reflect the changes in level across the site. For these reasons, and despite its proximity to the appeal site, I am not therefore certain that parallels can be made between Willow Court and the proposal before me.
9. I appreciate the concerns raised by the Council in respect of the proposed materials. However, as noted within the appellant's submissions, the area includes a wide palette of materials, and the use of clay effect tiles and red bricks may therefore be acceptable. Had the development been considered acceptable in all respects, the imposition of a condition requiring details/samples of the materials may have been considered necessary, to ensure that they reflect the area's local distinctiveness.
10. Given the above, the appeal scheme would cause unacceptable harm to the character and appearance of the area. It would therefore conflict with Policies ENV10 and ENV12 of the West Dorset, Weymouth and Portland (WDWP) Local Plan 2015, but also paragraphs 130 and 134 of the Framework. These require development proposals to contribute positively to the maintenance and enhancement of local identity and distinctiveness, and achieve a high quality design, notably by complementing and respecting the character of the surrounding area.

Living conditions – Future occupiers

11. The Council is concerned with the standard of living accommodation which would be created for future occupiers of the development. In that regard, my attention has been drawn to the Technical Housing Standards - Nationally Described Space Standard¹ (NDSS), which reflects the Government's aspirations for design and amenity standards of a high quality. As detailed within the NDSS, the minimum gross internal floor area for three-storey dwellings comprising three bedrooms (5 bed spaces) should be 99 square metres.
12. Although I have been presented with no evidence that the Council has adopted these or any other standards, the liveability of the proposed dwellings constitutes an important consideration to establish whether a good standard of accommodation would be provided, having notably regard to the size and configuration of the units. The proposed dwellings would be 93.5 square metres and would fall short of the minimum floor area required by the NDSS. Two of the bedrooms would be constrained in size, and this would be exacerbated by the restricted floor to ceiling height in parts of the rooms.
13. The failure to meet the minimum space standards would undoubtedly result in the quality of the living environment for future occupiers being compromised. The deficiencies associated with the quality of the accommodation would be exemplified further by the constrained size of the plots, which would leave very limited space for the provision of usable amenity space, notably for outdoor furniture, washing lines, children's play equipment, etc.
14. The size of the rear gardens would therefore be wholly inadequate for three-bedroom dwellings, especially as they could reasonably provide accommodation for families. Furthermore, the usability of the amenity areas would be affected by the shade of the neighbouring trees which, despite being protected by a Tree Preservation Order, could be subject to additional pressure for recurrent tree works, in order to bring more sunlight into the gardens and the new dwellings.
15. For these reasons, the appeal proposal would fail to provide satisfactory living conditions for future occupiers of the development, with regard to the size of the living accommodation and outdoor space. The development would consequently fail to accord with Policy ENV16 of the WDWP Local Plan and paragraph 130 of the Framework, which require proposals to provide a high standard of amenity for existing and future users.

Living conditions – Neighbouring residents

16. The proposed dwellings would be sited within relative proximity to the boundary shared with no 14 Cranford Avenue (no 14), but there would be sufficient distance to ensure that the development does not appear overbearing. However, it is noted that the appeal scheme would include first and second floor windows serving habitable rooms, which would enable direct views into the rear garden of no 14, and from a modest distance.
17. The appellant suggests that the most used area of a garden is the part that is situated closer to the dwelling, and the bottom of the garden is thus less sensitive. However, this is contradicted by submissions made by the occupiers

¹ March 2015.

of no 14, which clearly show that this area is used for outdoor amenity purposes. Trees would provide very limited screening and it is therefore my view that the proposed arrangement would lead to a harmful loss of privacy for the occupiers of this neighbouring property, thus adversely affecting their enjoyment of their private amenity space.

18. The appeal scheme would cause unacceptable harm to the living conditions of the neighbouring occupiers of no 14, with particular regard to privacy. Subsequently, the proposal would conflict with Policy ENV16 of the WDWP Local Plan which, amongst other things, requires that developments do not have a significant adverse effect on the living conditions of occupiers of residential properties through loss of privacy.

Flood risk

19. The Framework seeks to prevent inappropriate development in areas at risk of flooding, having regard to all sources of flooding, and taking into consideration existing circumstances but also any future risks such as those associated with climate change. The appeal site currently lies within Flood Zone 1 for river and sea flooding, but is at risk of future tidal flooding when taking into account the predicted impact of climate change, as shown by the Council's Strategic Flood Risk Assessment. The wider site is also identified as being at significant theoretical risk of surface water flooding during severe or prolonged rainfall events (1:30/100/1000yrs).
20. Annex 3 to the Framework identifies dwellinghouses as a 'more vulnerable' form of development in relation to flood risk. Although there would be no living accommodation at ground floor level, this is nevertheless the main access route to and from the dwellings and flooding in this area would in all likelihood increase access and egress difficulties both for pedestrians and vehicles.
21. Consequently, a Sequential Test needs to be applied to the appeal scheme which, as stressed by paragraph 162 of the Framework, seeks to steer new development to areas with the lowest risk of flooding from any source. In accordance with national planning policy and guidance, proposals should therefore not be permitted if there are reasonably available sites appropriate for the development in areas with a lower probability of flooding.
22. Whilst the appellant's submissions suggest that the Environment Agency (EA) had no objection to the proposed development, this was however contingent on the outcome of the sequential test. It is not the EA's role to consider the extent to which the sequential test is satisfied in respect of the availability of sites for housing in areas with lower flood risks.
23. The appellant's Sequential Test focuses on sites located in Dorchester and Weymouth, which are included within the Council's Strategic Housing Land Availability Assessment (SHLAA). The appellant suggests that the construction of the appeal scheme on larger sites would fail to make efficient use of land to justify the selection of the appeal site. However, and in the absence of substantive evidence to the contrary, I see no reasons why parts of these sites could not be made available for development of the scale proposed, particularly if they are sequentially preferable in flood risk terms.
24. Furthermore, this approach does not take into account windfall sites which may not have been previously identified by the Council for housing. I have been

presented with a significant number of sites included within the SHLAA, but there is nevertheless limited information before me to demonstrate that the three proposed dwellings could not be accommodated on other similar sized windfall sites within an accessible location at a lower risk of flooding.

25. A number of sites have also been discounted by the appellant, because they are located further away from services and facilities, or because they are not 'available'. The national Planning Practice Guidance² advises that when applying the Sequential Test, a pragmatic approach on the availability of alternatives should be taken. Whilst full details have not been provided, the appellant's criteria appear unduly restrictive. In particular, several sites which might be sequentially preferable in flood risk terms appear to have been discounted, despite being located within the defined development boundaries of the settlements of Dorchester and Weymouth. Additionally, it is unclear whether the sites benefiting from planning permission have been implemented to ascertain whether they have become unavailable.
26. My attention has been drawn to extracts from an appeal decision³, but I have not been provided with full details of the circumstances of this particular case, and cannot therefore be certain that they represent a direct parallel to the proposal before me. This limits the weight which can be afforded to this consideration.
27. For the foregoing reasons, the Sequential Test has not satisfactorily demonstrated that there are no reasonably available sites appropriate for the proposed development in areas with a lower risk of flooding. The appeal scheme fails the Sequential Test, and it is therefore unnecessary for me to consider the Exception Test. Consequently, the development proposal would fail to accord with Policy ENV5 of the WDWP Local Plan which, amongst other things, requires new development to be planned to avoid risk of flooding where possible. It would also conflict with section 14 of the Framework and the national Planning Practice Guidance, which set out the approach to development proposals in areas at risk of flooding.

Other Matters

28. The Council accepts that it is presently unable to demonstrate a five-year supply of deliverable housing sites. The Council's submissions confirm that the extent of the shortfall is approximately 0.7 years. In such circumstances, paragraph 11 d) of the Framework, as directed by Footnote 8, advises that the policies which are most important for determining the application are considered out-of-date, and planning permission should be granted.
29. This presumption does not however apply where the application of policies in this Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed. As detailed in Footnote 7 to the Framework, such areas or assets of particular importance include areas at risk of flooding or coastal change. The proposal would be located in an area at risk of flooding, and the policies of the Framework in that regard provide a clear reason for refusing the proposal. The tilted balance set out in paragraph 11 of the Framework is therefore not engaged in this instance.

² Paragraph: 033 Reference ID: 7-033-20140306.

³ APP/E1210/A/13/2204087.

Conclusion

30. The appeal scheme would support the local economy, and make a contribution towards housing supply and choice. However, these benefits would be outweighed by the harm which I have identified. There are no material considerations, which indicate that the appeal should be determined, other than in accordance with the development plan. For the reasons detailed above, and having regard to all other matters raised, I conclude that the appeal should be dismissed.

S Edwards

INSPECTOR