



Appeal Decision

Site visit made on 7 September 2021

by B Davies MSc FGS CGeol

an Inspector appointed by the Secretary of State

Decision date: 19 October 2021

Appeal Ref: APP/D0121/W/21/3271728

59-61 Meadow Street, Weston-super-Mare, BS23 1QL

- 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 G Gerourgiou against the decision of North Somerset Council.
 - The application Ref 20/P/0829/FUL, dated 8 April 2020, was refused by notice dated 11 September 2020.
 - The development proposed is the conversion of the first and second floor to create 4 no. 2-bed flats and 2 no. 1-bed flats and reconfiguration of the ground floor commercial unit.
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Decision

1. The appeal is dismissed.

Main issues

2. The main issues are:
 - whether the development would provide adequate living conditions for future occupants and the neighbours at No 46 Orchard Street with respect to privacy,
 - whether the development would provide adequate living conditions for future occupants with particular respect to outlook, daylight, space, noise, disturbance and odour, and
 - whether the proposal meets the requirements of local and national policies with regard to flood risk.

Reasons

Background

3. The appeal site comprises an imposing, 3-storey building in a densely populated area near the centre of Weston-super-Mare. The ground floor contains a furniture shop and the top 2 floors are now in a state of complete disrepair, having most recently been used for retail storage.
4. It is proposed to convert the top 2 floors into 6 flats. This would require new windows to be inserted on both sides and to the rear of the building. The stairwell would be moved to the centre and an atrium inserted above this. The flats would be accessed via an alley to the west of the building, behind the rear elevation of properties along Orchard Street.

5. Previous applications to convert the upper floors into flats have been refused for similar reasons as the appeal before me. I understand that the main difference between the current and previous application¹ is that it incorporates details in regard to the viability of the scheme.

Privacy

6. A window associated with Bedroom 1 of both Flats 3 and 6 would look directly into main living area windows of the flats at No 46 Orchard Street at a distance of approximately 1.2 metres. This would result in an unacceptable level of privacy for the occupiers of all of these rooms.
7. I acknowledge that the windows already exist and that it is possible to look into No 46 Orchard Street from the stairwell of the host building. However, the most recent use of the upper storeys was for storage, which I would expect to be a less intensive use than that proposed. In addition, the time spent on the stairs would be fleeting compared to that spent in a bedroom and the opportunities for intervisibility therefore much lower. I conclude that the harm to living conditions would be much greater if the windows were associated with bedrooms rather than a stairwell.
8. The upstairs floors of the appeal site have been disused for a considerable time, in addition to having previously been used for storage rather than for dwelling in. For this reason, I give limited weight to the suggestion that the perception of a lack of privacy in the flats at 46 Orchard Street has already been established.
9. The lack of privacy in main living areas of No 46 Orchard Street, and Flats 3 and 6 of the development would cause an unacceptable level of harm to the living conditions of the occupiers, in conflict with Policy DM32 of the Sites and Policies Plan Part 1 (July 2016) (SSP), which aims to ensure high quality design and places.

Outlook, light and space

10. The bedroom in both Flats 2 and 5 would not have an external window. Instead, they would be furnished with double doors opening onto the light well below the atrium, adjacent to the staircase. Although details have not been provided, the walls between the bedrooms and stairwell would need to be sufficiently opaque to ensure privacy. In the absence of evidence to the contrary, I conclude that light penetration into the bedrooms of both flats is likely to be low, and lower Flat 2 in particular. Neither room would have any outlook and, overall, the space would feel oppressive.
11. The main living area in Flats 2 and 5 would only be lit by a small window facing west across the alleyway towards the rear of Orchard Street. This would result in a low level of daylight and outlook in the main living area. When added to the harm caused by the lack of an external window in the bedroom, this would contribute to a poor standard of living overall.
12. The second bedroom of both Flats 3 and 6 would only be lit by a small, obscured window onto the atrium. This would result in a poor level of light and an absence of outlook from the rooms. In addition, the external windows of Flat 3 would face the walls of adjacent buildings at less than 2 metres distance,

¹ 18/P4989/FUL

resulting in poor levels of light and outlook. Overall, I conclude that the poor level of daylight and outlook in both flats would result in an oppressive internal living environment for occupants.

13. In addition, the bedrooms opening onto the atrium in Flats 2, 3, 5 and 6 would not have a source of ventilation, which, although not specifically referred to in local policies, I consider to be integral to healthy living conditions. I note that discussion has taken place regarding mechanical ventilation of rooms, but no details are before me and hence I cannot determine whether this would deliver acceptable living conditions. The appellant has offered to accept a pre-commencement condition in this respect, but in the absence of confirmation that a workable solution would be possible I find that the imposition of a condition would not be suitable in this case.
14. I appreciate that the site is tightly constrained by other buildings and that a degree of creativity may be required to secure its re-development. The light well produced by the atrium is an innovative idea and would introduce some light to an otherwise dark building. However, I am not persuaded that as designed this is sufficient to secure a minimum standard of living in respect of acceptable light for future occupants.
15. The floorspace of Flats 2 and 5 is less than 50 m² and therefore less than the Nationally Described Space Standard (DCLG, March 2015) for a 1-bedroom flat. The shortfall may be small, but the allowance is a nationally established minimum space to create acceptable living conditions and I give this considerable weight. The proposal does not meet this standard and for this reason, I conclude that the size of the living space provided would result in harmful conditions for future occupants.
16. The level of light, ventilation, outlook and floorspace in some of the flats would lead to poor living conditions for future occupants. I conclude that the proposal is in conflict with Policy DM32 of the SSP, which requires that design and layout should not prejudice the living conditions for the occupiers of the proposal.

Noise, disturbance and odour

17. The western elevation, in which most of the windows would be located, faces the rear of Orchard Street. This tightly constrained area contains a condenser unit at the back of a small supermarket and a restaurant flue, in addition to at least 2 chimneys.
18. No assessment of the effect on the living conditions of the occupants of the appeal site with respect to noise, disturbance and odour has been provided by the appellant. In the absence of this, and given the proximity, constrained space and nature of the equipment, I conclude that harm to living conditions from noise, disturbance and odour to future occupants is likely to be caused.
19. The appellant has provided letters² from the owner of Nos 42-44 Orchard Street, committing to contacting their tenant regarding re-siting of the condenser unit. While I do not doubt the positive intention behind this, I am unable to give this any weight because it relies on the actions of a third party. In addition, it is not obvious that an alternative location for the unit would be readily available, given the constraints of the space. It has therefore been

² Salamis Enterprises, 5 September 2020 and 11 January 2021

necessary for me to reach a conclusion on this main issue based on the position of the condenser unit now.

20. The appellant has offered to accept a pre-commencement condition requiring an assessment of the noise and odour to establish whether movement of the equipment is necessary. I cannot pre-empt the findings of such an investigation, in particular that there would be a workable solution to any harm identified and for this reason such a condition would not be appropriate. Similarly, a Grampian style condition would not be suitable because I cannot be confident that the actions that may be required would be achievable.
21. For the above reasons, I conclude that the flue, condenser units and chimneys along the rear of Orchard Street have the potential to cause harm to the living conditions of the occupiers of the proposed flats in respect of noise, disturbance and odour. Therefore, and to this extent, I cannot conclude that the proposal would accord with Policy DM32 of the SSP, which seeks to protect the living conditions of future occupants.

Flooding

22. The appeal site is within Flood Zone 2 and Tidal Flood Zone 3A. Policy DM1 of the SPP requires that all development considers its vulnerability from all sources of flood risk and the impacts of climate change up to 100 years ahead on residential or mixed use sites. Paragraph 167 of the Framework also states that a site-specific flood risk assessment should be provided for all development in Flood Zones 2 and 3.
23. Paragraph 167 sets out specific requirements for the flood risk assessment and I have considered the information submitted in this context. No information has been provided to demonstrate that the development is appropriately flood resistant, that it incorporates sustainable drainage systems, that any residual risk can be safely managed, or that safe access and escape routes are included, if required.
24. I am, however, satisfied that as no external changes or alterations to drainage are proposed, the flood risk would not be increased elsewhere. I also accept that the most vulnerable development is located in the area of lowest flood risk because the residential use is on the highest floors.
25. The appeal site is located in a vulnerable location with respect to flooding and it has not been demonstrated that it would be made safe for its lifetime, in conflict with the requirements of Policy DM1 of the SPP, and paragraphs 159 and 167 of the Framework.

Other matters

26. Reducing the number of flats would potentially increase the standard of living provided in relation to light, ventilation, outlook and space. The appellant states that the only viable option is for 6 flats and I have reviewed all of the information submitted in relation to this. I have no reason to doubt the overall budget costs provided. However, the viability of the scheme is based on parameters for borrowing that are specific to this appellant at one bank, and the number of flats required is related to the repayments on this loan.
27. While it is of benefit that the appellant is offering to privately invest in the building in a short time scale, insufficient information has been provided to

demonstrate that all reasonable options for funding have been explored and that 6 flats is the only alternative. Even if I had found the viability information had fully justified the need for 6 flats, this would not have overcome my overall conclusion in respect of the main issues.

28. The largely blank, rear wall of the Grade II listed Woodspring Museum is immediately behind the host building and the site is located in the Great Weston Conservation Area (CA). The external alterations to the host building would be small scale and not visually intrusive. I am satisfied that the alterations would preserve the setting of the listed building and the character and appearance the CA.
29. I note that the Council has raised concerns that the layout of Flats 3 and 6 would not meet Building Controls in terms of fire safety standards. While I consider this capable of being a material consideration, I have not considered it further because I am dismissing the appeal for other reasons.

Planning balance and conclusion

30. The undisputed evidence is that the local planning authority can demonstrate 4.4 years' housing land supply. There is therefore a shortfall in the required 5 year supply of deliverable housing sites. However, the presumption in paragraph 11 of the Framework is disengaged because I have found that there is a clear reason for refusal in respect of flooding risk. Notwithstanding this, I give very positive weight to provision of 6 flats in a highly accessible location where there is a shortfall of housing.
31. The architecture of the frontage is impressive and makes a positive contribution to the CA. There would be benefits to both the CA and the commercial viability, character and appearance of the area from retention and reuse of this attractive and prominent building, the upper floors of which appear to have stood empty for some time.
32. However, I have found that there would be significant harm to the living conditions of neighbours in respect of loss of privacy. The proposal would also result in a poor standard of living for future occupants with respect to light, outlook, ventilation, noise, disturbance and odour. In addition, it has not been demonstrated that the site would be safe from flooding for its lifetime. These concerns significantly outweigh the benefits of the scheme.
33. I conclude that the proposal would conflict with the local development plan when read as a whole. There are no other considerations that would lead me to determine other than in accordance with this and the appeal should therefore be dismissed.

B Davies

INSPECTOR