
Appeal Decision

Site visit made on 14 June 2022

by Helen O'Connor LLB MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15 June 2022

Appeal Ref: APP/D0121/W/22/3290335

14 Rushmoor Lane, Backwell, North Somerset BS48 3BN

- 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 Dr Hugh Pratt against the decision of North Somerset Council.
 - The application Ref 21/P/0862/FUL, dated 10 March 2021, was refused by notice dated 9 July 2021.
 - The development proposed is described as 'Replace a large garage with a grandparent house at bottom of garden'.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are:
 - The effect of the proposal on the character and appearance of the area including the impact on trees, and;
 - The effect of the proposal on biodiversity having particular regard to trees.

Reasons

Character and appearance

3. The appeal site lies within an outcrop of dwellings lining the eastern side of Rushmoor Lane. The proximity of agricultural land, playing fields and prevalence of trees and hedgerows gives a peripheral, spacious and verdant feel to this part of the settlement of Backwell. There is a discernible building line to the section of dwellings at the northern end of the lane within which the appeal site is situated. This is reinforced by the regularity of the grain of plots on a broadly similar north-east/south-west axis between the lane and the playing fields to the rear. Hence, although there is some variety in the form of dwellings and length of plots, coherence is derived from these underlying factors. An impression of order is also derived from the distinction in hierarchy between the more public front elevations of the dwellings facing the lane in contrast to the secondary role of outbuildings and more private gardens, which are generally located to the side and rear of the dwellings. Overall, this results in a pleasant, ordered, semi-rural character and appearance to the area.
4. 14 Rushmoor Lane is a semi-detached dwelling which forms part of the settlement pattern for the northern section of lane as described above. The

appeal site comprises part of its rear garden upon which there is a single storey detached garage and area of lawn. Its general appearance is commensurate with its subordinate role within the plot. Access is derived from a lane to the rear of the row of dwellings close to a hedgerow containing several mature trees adjacent to the playing fields. As such, the appeal site accords with and reinforces the positive qualities identified and hence, makes a modest positive contribution to the character and appearance of the area.

5. The proposal would remove the garage and introduce a detached house into the north-eastern corner of the garden land of No.14. The proposed siting of the house close to the rear boundary, with no road frontage and behind the existing row of dwellings would be at odds with the established settlement pattern. The proposed structure would be noticeably larger than the present garage and would appear as a primary residential building in its own right. This would erode the ordered distinction between the location of primary and secondary buildings, their relationship to one another and Rushmoor Lane. Consequently, the siting of the proposal would have a discordant effect on this part of Rushmoor Lane.
6. Moreover, it is not clearly explained how the form of the dwelling would be sympathetic to the surrounding context. The L shaped footprint, proportions and detailing would generally convey a sub-urban domestic appearance. However, the absence of a road frontage combined with the proposed placement and varied design of doors and windows would mean that the resultant building would lack an obvious principal elevation. Accordingly, the orientation of the building relative to its surroundings would appear somewhat confused. Consequently, the design proposed would lack identity and appear adrift from the otherwise legible context. Therefore, it would fail to be sympathetic to local character and history, including the surrounding built environment and landscape setting as required by paragraph 130 c) of the National Planning Policy Framework (the Framework).
7. Although I accept that the building would be inobtrusive relative to Rushmoor Lane, due to its height and proximity to the rear boundary, it would be seen from the adjacent recreation grounds. In addition, it would be visible from the rear of nearby dwellings.
8. Policy DM9 of the North Somerset Council Development Management Policies, Sites and Policies Plan, Part 1, July 2016 (SPP1) states that development proposals affecting trees should demonstrate that the retention, protection and enhancement of tree canopy cover has been considered throughout the design and development process. It requires that the future growth of tree canopy and roots should be fully accounted for in the design. This is broadly consistent with paragraph 131 of the Framework which states that existing trees should be retained wherever possible.
9. The appellant confirms that there are no trees on the appeal site. However, the red line showing the appeal site is largely restricted to the footprint of the proposed dwelling, with the remainder of the grounds of No.14 edged in blue. Nevertheless, I observed the presence of mature trees within the blue land, with those close to the rear boundary generally making a positive contribution to the natural features and verdancy of the area. The submitted proposed layout drawing reflects the presence of trees close by, although in the absence of a tree survey, it is not confirmed that the circular canopies shown are an

accurate portrayal of the extent of the trees. Furthermore, root areas are not clearly denoted.

10. The proposal would demolish the existing garage and introduce a larger house. This would involve works to foundations, and it is reasonably foreseeable that such ground works could harmfully impact the root systems of nearby mature trees. In the absence of accurate survey information to show otherwise, such harm cannot be ruled out. It further follows that the extent of such harm cannot be quantified so it is unclear whether appropriate or sufficient mitigation could be secured to ensure their long term protection.
11. Additionally, the proposed parking layout¹ provided shows a notable space for parking and turning outside of the red line, with the Council suggesting a larger turning area would be necessary but could be achieved by a condition. To be effective, it is likely that this area would be hard surfaced or at least compacted. The drawing indicates the area's proximity to large trees such that it would be mostly within the canopy denoted. Based on the information before me, there is little evidence to show that the impact of such an arrangement on the trees has been fully considered. As such, I have concerns that there would be an adverse compaction of the roots of established trees due to the presence of parking and turning areas and the likely frequent use by vehicles. In turn, this could have detrimental implications for their longer term health and future growth potential.
12. Ultimately, these factors may threaten the shape, vigour or longevity of trees that positively contribute to the character and appearance of the area. The appellant contends that the ecological assessment² provided contains sufficient information to demonstrate that trees would not be harmed. The report states that the proposals would only affect the garage and a section of lawn which would necessitate the removal of an odd bush, no trees and the minor trimming of a fruit tree. Nevertheless, the report does not purport to amount to an arboricultural assessment or tree survey. Moreover, it also appears to be confined to an assessment of the red edge site and does not expressly consider the presence of roots underground, nor the implications arising from the proposed parking arrangements. On this basis, I do not consider it fulfils the requirements of policy DM9 of the SPP1.
13. Advice in the Council's Biodiversity and Trees, Supplementary Planning Document, December 2005 (SPD)³ states that it is essential that trees are considered at an early stage and prior to the submission of a planning application. Applicants are strongly recommended to seek advice from a suitably qualified arboriculturalist. Accordingly, I cannot agree with the appellant's deduction that by not requesting an arboricultural report during the planning application, the Council must have considered they had sufficient tree information.
14. In coming to my view on this main issue I have taken account of the analysis⁴ of the 18 properties along Rushmoor Lane provided by the appellant. Nevertheless, my findings regarding the character and appearance of the area consider the entirety of the evidence before me, including my own

¹ Drawing number 999/3750/4

² Ecological Assessment Report prepared by Greena Ecological Consultancy dated 14 May 2021

³ Section 3, Trees and Development

⁴ Table 1, Appellant's Statement of Case

observations. As such, the table provided would not lead me to a different view.

15. My attention is drawn to a development for two dwellings recently permitted at 106 Church Lane, Backwell⁵ which the appellant considers to be similar to the appeal proposal. However, there are marked differences between that proposal and the one before me. I observed that Church Lane is some distance from the appeal site, in a less peripheral location and so would not be seen in contiguous views with it. Given the unique nature of land, the surrounding context to that property is different. For example, the relevant section of Church Lane does not appear to have such a pronounced building line or concentration of trees. Furthermore, the dwellings in that case would replace an existing dwelling as well as a garage. The submitted street elevation drawing also demonstrates that they would maintain a street frontage. Consequently, the variances between the proposals mean that they are not directly comparable, and hence, the development permitted carries little weight.
16. Comparisons are made with the size of a detached garage at 22 Rushmoor Lane which I also noted at my site visit. However, based on the information provided and my observations, that building has a secondary function and does not constitute a separate dwelling. This distinguishes it from the circumstances of the appeal proposal. Other recent appeal decisions⁶ have been provided by the appellant as examples of where Inspectors have permitted backland development. Notwithstanding the absence of plans, they each concern locations a considerable distance from North Somerset. It follows that the respective Inspectors were considering different contexts and development plan policies by comparison to the appeal site. Whilst I do not doubt there are other contexts where backland development might be appropriate and/or may receive policy support, this general point has little bearing on the specific analysis of the case before me.
17. Accordingly, I find that the proposal would have a harmful impact upon the character and appearance of the area, including trees. Therefore, it would conflict with policy CS12 of the North Somerset Core Strategy, January 2017 (CS) and policies DM9, DM32 and DM37 of the SPP1. Policies CS12 and DM32, amongst other matters, seek development that achieves a high quality design and placemaking that is sensitive to existing local character. Policy DM37 generally permits residential development in existing residential areas provided it does not adversely affect the character of the area. One of the seven criteria listed in this regard specifically refers to the siting of the building and layout respecting the existing street scene.

Biodiversity

18. Policy DM8 of the SPP1 requires development proposals to take account of their impact on local biodiversity and identify appropriate mitigation measures to safeguard or enhance attributes of ecological importance. Encouragement is given to the retention of native trees and hedgerows on this basis. The SPD guidance also recognises the biodiversity value of trees and sets out objectives including avoiding adverse effects on wildlife species and habitats wherever possible.

⁵ Planning reference 20/P/2243/FUL

⁶ Referenced APP/D0515/W/21/3275338, APP/R5510/W/21/3284688 & APP/K0235/W/21/3278481

19. Although the ecological assessment provided found the habitat in the garden to be of low ecological value, it did refer to the dis-continuous native hedgerow immediately to the rear of the garage within the grounds of No.14, and that the site lies within a bat foraging zone. Given the proximity of the trees within the hedgerow to countryside and open land, they contribute to habitat likely to be suitable for supporting a range of birds, invertebrates and bats. Accordingly, it would be in the interests of biodiversity to ensure their retention in the long-term.
20. For reasons already outlined in relation to the first main issue, based on the evidence before me I am not assured that established trees along the rear boundary of No.14 near to the site would be adequately safeguarded from harm arising from the proposed development. In reaching this view I have considered whether planning conditions might be employed to make the development acceptable in planning terms. However, in the absence of an accurate tree survey, I am not sufficiently assured that mitigation measures would be able to fully surmount my concerns without having other knock on effects for the proposal overall.
21. Accordingly, I find that it is reasonably foreseeable that the proposal would adversely affect established trees near the site to the detriment of biodiversity in the local area. Therefore, in this respect the proposal would conflict with policies CS4 and CS9 of the CS which generally seek to conserve and enhance natural features and green infrastructure. In addition, it would be contrary to the measures outlined in policies DM8 and DM9 of the SPP1 that seek to protect and retain trees.

Other Matters

22. The appellant highlights that the proposal would be within the settlement boundary of Backwell and that the development plan policies do not prevent residential development in principle. He further points out that the Council does not raise objections in relation to transportation matters. Be that as it may, compliance with one development plan policy does not signal compliance with all, and the development plan should be read as a whole. The absence of harm in relation to other development plan requirements are neutral factors in the overall balance.
23. It is also put to me that the Council have been inconsistent in their decision making. Nevertheless, having considered the example cited at 106 Church Lane, there are notable differences that would distinguish it from the appeal proposal, which I have determined on its planning merits.
24. In coming to my findings, I have had regard to the representations submitted, one of which refers to the development as a tiny granny flat and points to major residential development being permitted in Backwell. I have based my considerations on the drawings before me which show a detached, albeit modest, house. I have considered the surroundings of the appeal site as presented in the evidence and my own observations. On the preliminary information provided it is not shown that the allocation or approval of major residential development elsewhere in Backwell would alter the context of the appeal site such that it would avoid or negate the harm I have identified.

Planning balance and conclusion

25. Although at the time it made its decision, the Council acknowledges that it could not demonstrate a 5 year supply of deliverable housing sites, it now states that it can. Reference is made to a 5.6 years supply of such sites and I have not seen evidence to show otherwise. In these circumstances, planning law requires that applications for planning permission be determined in accordance with the development plan, unless material considerations indicate otherwise⁷.
26. The proposal would provide an additional dwelling in a reasonably accessible location which would assist in boosting the overall supply and mix of housing in the area. It would also be beneficial to the appellant and his family by potentially allowing him to downsize. Furthermore, there would be economic benefits associated with the construction. Even so, the extent of the benefits accruing from a single dwelling would be limited and therefore, they attract a commensurate amount of weight in favour of the proposal.
27. Balanced against that is the harm that would result to the character and appearance of the area and concerns regarding the long term impact on trees. The Framework stipulates that the creation of high quality, beautiful and sustainable buildings and places is fundamental to what the planning and development process should achieve⁸ and seeks to retain existing trees wherever possible. Therefore, the conflict with development policies identified in relation to these matters, which are broadly consistent with the Framework in these regards, attracts significant weight. As such, the benefits identified would be insufficient to lead me to find other than in accordance with the development plan.
28. Therefore, for the reasons given above I conclude that the appeal should be dismissed.

Helen O'Connor

Inspector

⁷ Section 38(6) Planning and Compulsory Purchase Act 2004 and section 70(2) of the Town and Country Planning Act 1990.

⁸ Paragraph 126