



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/21/3289824

Uphill Wharf, Uphill Marine Centre Campsite, Uphill Way, Uphill, North Somerset BS23 4XR

- 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 and Mrs Gameson against the decision of North Somerset Council.
 - The application Ref 21/P/1303/FUL, dated 29 April 2021, was refused by notice dated 24 November 2021.
 - The development proposed is the demolition/removal of existing static caravan, workshop and tent on site. Extension and alterations to existing warden's accommodation and toilet block to include 2 storey extension to North East with canopy to South East, rear extension to North West and revised balcony to South West. Ridge height increased with provision of 6 no rooflights on South East elevation and 3 no rooflights on North West elevation. Provision of a chandlery/shop at ground floor within the extended building.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. In my heading above I have based the description of development on that given on the appeal form and decision notice rather than the planning application form as these include reference to the removal of structures.

Main Issues

3. The main issues are (1) whether the site provides a suitable location for the proposal having regard to flood risk and the associated local and national planning policies, and (2) the effect of the proposal on the character and appearance of the area.

Reasons

Flood risk

4. The appellant does not dispute that the appeal site lies within Flood Zone 3a and therefore, has a high probability of flooding. Policy CS3 of the North Somerset Council Core Strategy, January 2017 (CS) generally states that development in this zone will only be permitted where it is demonstrated that it complies with the sequential test set out in the National Planning Policy Framework (the Framework) and associated technical guidance and, where applicable, the exception test. Likewise, policy DM1 of the North Somerset

Council Development Management Policies, Sites and Policies Plan Part 1, July 2016 (SPP1) requires all development to consider its vulnerability to flooding taking account of all sources of flood risk and the impacts of climate change. It stipulates that exceptions to national policy on flood risk will not be permitted.

5. This accords with advice in the risk based sequential approach to the location of development outlined in the Framework and Planning Practice Guidance (PPG) which refer to the sequential and exception tests. In combination, they explain how these should apply to development proposals as part of a stepped approach to managing flood risk. The aim of the sequential test is to steer new development to areas with the lowest risk of flooding. However, if development is necessary in higher risk areas, then it should be made safe for its lifetime without increasing flood risk elsewhere. If these steps are not followed, then broadly speaking development should not be permitted.
6. The appeal site concerns Uphill Wharf which, amongst other things, is in operation as a marina providing access to the sea and dry dock facilities. In addition to office and toilet block provision, there is established residential accommodation at the site described as warden's accommodation in the original planning permission¹. This is primarily housed in the roof space of the existing building and amounts to approximately 84m² of floor space². However, I observed at my site visit that usable living space in the bedrooms was much reduced due to the constrained height of the roof slope.
7. The proposal seeks to significantly increase the extent and comfort of living accommodation by extending the footprint and raising the ridge height of the existing building. The resultant building would also include upgraded office and toilet block facilities as well as a chandlery shop. There is no dispute between the parties with regards to the extent or provision of office, shop or sanitary facilities to serve the marina users. Neither, given the established residential accommodation, is there any fundamental disagreement that there is an essential need to live at the enterprise which addresses the sequential test. Rather the chief area of difference relates to the proposed scale of that dwelling and whether it would remain ancillary to the marina operation. This has implications for the operation of the exception test.
8. Paragraph 163 of the Framework states that if it is not possible for development to be located in areas with a lower risk of flooding, the exception test may have to be applied. The need for the exception test will depend on the potential vulnerability of the site and of the development proposed in line with the Flood Risk Vulnerability Classifications contained in the Framework. Table 3 of the PPG³ indicates that development classified as water compatible would be appropriate within Flood Zone 3a, whereas more vulnerable residential buildings would need to pass the exception test.
9. Water compatible development includes essential ancillary sleeping or residential accommodation for staff required by uses listed within the category, subject to a specific warning and evacuation plan. Uses listed include docks, marinas and wharves and water-based recreational uses.

¹ Planning reference 228/A/81

² Council's delegated report, page 5

³ Paragraph: 067 Reference ID: 7-067-20140306

10. There is no further definition of ancillary sleeping or residential accommodation within the Framework or PPG. Neither does national or local policy stipulate a maximum size of such accommodation once the threshold of establishing an essential need is met. However, policy CS33 of the CS generally specifies that there will be strict control of development in areas of countryside to protect the character of the rural area and to prevent unsustainable development. Moreover, the term 'ancillary' indicates that the residential element would be a secondary or supporting use commensurate to its presence being predicated on the necessary operation of the marina. On that basis, it would be logical to find that the scale of the residential development has some bearing on whether it is ancillary.
11. Equally, it is foreseeable that the occupants of an essential dwelling may have a partner, children or dependent family and therefore, within reason, some consideration ought to be given to their needs to avoid the onerous imposition of cramped and uncomfortable living conditions. This requires a balance to be struck between providing a reasonable standard of residential accommodation yet ensuring it remains ancillary in nature. Accordingly, this requires a planning judgement to be made in the specific circumstances.
12. Having regard to the case before me, the resultant building would go beyond the scope of ancillary accommodation. This is due to a combination of the following factors. Firstly, the overall building (albeit including non residential floorspace) would more than double its floorspace⁴. Secondly, the analysis of resultant floorspace provided by the Council⁵ suggests that the increase in residential floorspace would be equivalent to roughly 242%, which is not challenged by the appellants. As such, this represents a very significant increase in the level of residential accommodation relative to the existing provision, as well as to the relatively modest size of the marina. Furthermore, the room dimensions shown for the lounge, play room, kitchen/dining space and some bedrooms are very generous and in excess of what would equate to a reasonable degree of comfort for family accommodation. Hence, whilst it is understandable why the appellants would seek to achieve less cramped and better laid out quarters, the magnitude of the development sought in this instance would be disproportionate.
13. On that basis, I am not persuaded that the proposal would comprise water compatible development for the purposes of Annex 3 of the Framework. Buildings used for dwelling houses are otherwise classed as 'more vulnerable' development, and hence, the exception test would be engaged. Paragraph 164 of the Framework sets out the criteria that must be demonstrated to pass the exception test, the first of which is that the development would provide wider sustainability benefits to the community that outweigh the flood risk. There is limited evidence before me to clearly justify the scale of the proposed dwelling on this basis. Whilst reference is made to economic benefits arising from the growth of the marina, this is not quantified nor obviously directly reliant on the specific size of the dwelling proposed.
14. The appellants assert that the floorspace is justified in the interests of the health and well-being of future occupants, as there is no outside private space associated with the dwelling. However, there is little before me to show that increased internal accommodation would be a fitting substitute for outdoor play

⁴ Planning application form, Question 18

⁵ Pages 5-6, Council's delegated report

space or private garden in this regard. In any event, having observed the general surroundings of the appeal site, I am not sufficiently assured that no suitable alternative opportunities exist for outdoor play or to access outside space for recreation and relaxation purposes. Accordingly, the proposal would fail the first criterion of the exception test which makes further consideration of the subsequent criterion unnecessary.

15. Consequently, the proposal would fail to accord with the approach to managing flood risk set out in the Framework and PPG. Therefore, the site would not provide a suitable location for the extent of residential accommodation proposed having regard to flood risk as it would conflict with national planning policies. In addition, for the reasons outlined it would be contrary to policies CS3 and CS33 of the CS, and policy DM1 of the SPP1.

Character and appearance

16. Uphill Wharf is slightly removed from the settlement of Uphill and set within a dynamic and dramatic landscape largely due to the distinctive interaction between land and sea. This incorporates the tidal patterns of the river, low lying salt marsh with cliffs and raised land beyond. Sited atop the elevated land are the listed Old Church of Saint Nicholas (Grade II*) and the remains of a windmill (Grade II) from which wide ranging panoramic views are possible. The marina comprises a contained component within the wider landscape with a concentration of boats, vehicles and collection of structures set beside a lake. The appeal building has a functional appearance and is of a modest scale and simple form. Read against the surrounding boats, the appeal building has a low-key presence, allowing the character of the marina and surrounding natural features to prevail.
17. The proposal would significantly increase the scale and overall height of the modest building. It would approximately double in width, thereby presenting an elongated elevation towards the lake that would have a much more obvious presence within the marina. In addition, the ridge height of the original building would be raised, and the roof would be half hipped incorporating a series of dormer windows and rooflights. Of note are three large, pitched roof dormer windows across the principal elevation and projecting balcony to the end elevation which would draw the eye. These factors would add considerably to the bulk and complexity of the structure, especially at the upper level making it more conspicuous.
18. Furthermore, it would emphasise features that are overtly domestic in character. Consequently, due to a combination of the proposed scale and form, the resultant building would no longer be as easily assimilated into its surroundings, nor have the restrained appearance of a functional structure. Rather, despite the attached shop and toilet facilities, it would primarily appear as a large dwelling somewhat incongruous and disproportionate to its immediate surroundings. This would be harmful to the established, distinctive character and appearance of the area, and would be discernible from footpaths and raised land nearby.
19. The appeal site would fall within the wider settings of the two listed buildings previously mentioned. In part, the significance of both arises from their aesthetic value and their prominence within the landscape. I have a statutory duty to give special regard to the desirability of preserving listed buildings or

their setting⁶. Whilst I have identified harm within the vicinity of the appeal site, the proposed building would not be so prominent so as to interfere with the higher status and prominence of the heritage assets within the wider landscape. Although it would be discernible in some views from the assets, it would be one small component of a panoramic backdrop. Consequently, the proposal would not result in harm to the significance of these designated heritage assets.

20. Nevertheless, this would not justify the harm that I have identified. Furthermore, it would conflict with Principle One of the guidance contained in the Council's Residential Design Guide, Section 2, Appearance and character of house extensions and alterations, Supplementary Planning Document, April 2014 (SPD). In relation to scale this states that overly large extensions or buildings that harm the visual quality of an area will not be granted planning permission. For the reasons outlined, the proposal would also fail to be sympathetic to local character and history, including the surrounding built environment and landscape setting contrary to paragraph 130c of the Framework.
21. The removal of a static caravan, large tent and workshop are included as part of the proposal. I observed these structures to be relatively modest, of a functional and/or insubstantial appearance with their massing disaggregated within the marina compound. Any benefit derived from their removal would be limited and hence, would not entirely address or outweigh the harm I have identified. Accordingly, this factor attracts limited weight in favour of the proposal.
22. My attention has been drawn to three instances of development approved by the Council, namely, Slimeridge Farm⁷, Knightstone Island and the Premier Inn on Weston-Super-Mare sea front. The latter two examples are a considerable distance from the appeal site and concern different development to the one before me. Aside from demonstrating a general point that older buildings have been replaced, they are not directly comparable to the appeal proposal and are set within a different context. Therefore, they have little bearing on my determination.
23. The development at Slimeridge Farm, although closer to the sea, is north west of the appeal site and therefore, of more relevance. The appellants contend that the development permitted is more intrusive than the appeal proposal. Based on the limited information provided, I am not aware of all the circumstances that led to the approval. However, the appellants state that the decision was taken 8 years ago⁸ which on the face of it predates the current development plan policies and hence, it would have been considered in a different policy context. Even if there were similar policies in force then, the nature and immediate context of the property is different to the proposed form of the appeal building and its marina context. Given these differences, it is not shown that the development permitted in that instance is directly comparable to the proposal before me. As such, it attracts little positive weight and would not lead me to find otherwise on this main issue.

⁶ Section 66, Planning (Listed Buildings and Conservation Areas) Act 1990

⁷ Photographs and Proposed elevations plan 004

⁸ Page 2, Appellants' Appeal Statement

24. Accordingly, I find the proposal would be harmful to the character and appearance of the area and therefore, would conflict with policy CS12 of the CS and policy DM32 of the SPP1 which, in combination, seek development of a high quality design that is sensitive to distinctive local character. Furthermore, it would run counter to the thrust of policy CS33 of the CS, which seeks to strictly control development in infill villages, smaller settlements and the countryside in order to protect the character of the rural area.

Other matters

25. The proposal includes elements that would improve facilities and services for users of the marina, which could support further growth of the business. In turn this would be likely to make some wider contribution to the local economy through increased tourism and recreational activity. General encouragement is found in paragraphs 81 and 84 of the Framework for sustainable economic growth and business expansion. Hence, this is an important factor that weighs in favour of the proposal. In addition, the enlargement and improvement of the residential accommodation at the site would markedly improve the cramped living conditions for the appellants' family and would also benefit future occupiers of the site. Nevertheless, I am not assured that broadly similar benefits could not be achieved by development that avoids the extent of harm I have identified. This tempers the weight given to these benefits, which overall, attract moderate weight.
26. The appeal site is located close to Uphill Cliff Site of Special Scientific Interest which is part of the Mendip Limestone Grasslands Special Area of Conservation (SAC). It is also close to the Severn Estuary SAC, Special Protection Area and Ramsar Site. These are habitats respectively recognised under the Conservation of Habitats and Species Regulations 2017 as being of international importance for supporting rare plants and/or bird species. However, given the other substantive concerns I have found, it is not necessary for me to consider this matter further.

Planning balance and conclusion

27. The Council accepts that it is unable to demonstrate a 5-year supply of deliverable housing sites, and they refer to a figure of 4.8 years supply. In these circumstances footnote 8 of paragraph 11 of the Framework deems that the policies which are most important for determining the application are out-of-date. Paragraph 11 d) i) states that permission should be granted unless the application of policies in the Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed. Footnote 7 confirms that the Framework policies relating to areas at risk of flooding would provide a clear reason for refusing the proposal. Given my findings in this regard, the presumption in favour of sustainable development does not apply in this case.
28. Planning law requires that applications for planning permission be determined in accordance with the development plan, unless material considerations indicate otherwise⁹. The conflict with the relevant policies in the development plan are consistent with the approach to managing flood risk and the

⁹ Section 38(6) Planning and Compulsory Purchase Act 2004 and section 70(2) of the Town and Country Planning Act 1990.

importance given to achieving well-designed places outlined in the Framework. Hence, the conflict with the development plan policies with respect of those matters attracts significant weight.

29. The moderate weight given to the benefits arising from the proposal would not justify making the decision other than in accordance with the development plan. There are no other compelling reasons, including the provisions of the Framework, which outweigh this finding.
30. Therefore, for the reasons given above, I conclude that the appeal should be dismissed.

Helen O'Connor

Inspector