



Appeal Decision

Site visit made on 6 July 2023

by Laura Cuthbert BA(Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25 July 2023

Appeal Ref: APP/D0121/W/22/3308912

28-30 High Street, Portishead, North Somerset BS20 6EN

- 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 Nick Stone against the decision of North Somerset Council.
- The application Ref 22/P/1652/FUL, dated 1 July 2022, was refused by notice dated 7 September 2022.
- The development proposed is Erection of two semi-detached dwellings, following demolition of existing outbuilding.

Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are:
 - Whether the proposal would provide satisfactory living conditions for future occupants, with respect to privacy, outlook, noise and light;
 - The effect of the proposal upon the living conditions of the occupants at 28-30 High Street and 32c-32e High Street, with respect to privacy, outlook and light; and
 - The effect of the development on highway safety, with specific regard to visibility.

Reasons

Living Conditions of Future Occupants

3. The appeal site consists of a parcel of land situated to the rear of 28-30 High Street, within the town centre of Portishead. There is an existing large, dilapidated stone outbuilding situated along the southern boundary and the site is enclosed with a high stone wall along all the boundaries. There is also a second smaller dilapidated outbuilding towards the rear of the site, which is surrounded by a large area of overgrown vegetation.
4. The Portishead Working Mens Club (WMC) is situated to the west of the appeal site, at a higher ground level, with the building and its associated beer garden positioned immediately next to the western boundary of the appeal site. The first floor and part of the ground floor of Nos 28-30 has recently been granted prior approval for 3 flats¹.

¹ Planning Ref - 21/P/2983/CM2A Prior approval for change of use of first floor and part of ground floor from commercial, business and service (Use class E) to 3no. self-contained flats (Use Class C3)

5. The rear habitable windows of the new flats within Nos 28-30 are situated approximately 10.75m and 15.4m from the front windows of the proposal. Paragraph 3.2 of the Supplementary Planning Document Residential Design Guide - Section 1 (January 2013) (the SPD) recommends that there should be a distance of 21m between a proposed upper floor window and existing habitable room windows in order to preserve privacy. Due to the positioning of the windows, whilst the sight lines might not be direct, there would still be a high degree of intervisibility between the proposal and Nos 28-30. Consequently, given that the proposal would fall significantly short of the 21m guidance, it would result in an unacceptable level of overlooking to the future occupants and would not achieve an adequate level of privacy.
6. Furthermore, the close relationship with the rear of Nos 28-30 would also mean that the future occupants would have a poor outlook, due to the proximity of Nos 28-30, which would have an unacceptable overbearing effect. The backland, town centre location of the proposal would not be sufficient to allow substandard accommodation in terms of privacy and outlook. The roof of the outrigger on the rear of Nos 28-30 would also not be sufficient to mitigate any harm in regard to privacy or outlook.
7. Owing to its close relationship with the WMC building and the higher ground level of the WMC, it is considered that the WMC would have an unacceptable overbearing effect upon the outlook from both the back gardens and rear windows of the proposal. Whilst I note that the windows on the rear elevation of the proposal have been angled away to avoid any potential intervisibility with the WMC, it is not considered that this would be sufficient to overcome the harm to outlook that I have identified.
8. I note that the WMC is a fully licenced premises which can be open late into the evening. On my site visit, I saw that their beer garden and outdoor smoking area would be situated directly to the rear of the proposal, approximately 6m from the proposal's rear elevation. Due to the proximity of the beer garden and smoking area, it is considered that the noise nuisance from these areas would be materially harmful to the living conditions of future occupants. This would be most noticeable in the late evenings when future occupants would be more sensitive to any noise disruption.
9. I acknowledge that due to the height differences between the site and the WMC, that direct views from the beer garden of the WMC down to the proposal would be obscured. However, there is also a handful of windows on the upper floors of the WMC which overlook the appeal site. I have been advised that the main window of the WMC which would overlook the appeal site serves a busy stairwell. It is a relatively large clear glazed window, which would still allow for direct views towards the proposal. Consequently, the privacy of future occupants would be materially harmed.
10. The car park associated with the WMC is situated to the rear of 32 High Street, and not directly behind the appeal site. Whilst there would be some impact from headlights associated with the cars manoeuvring within the car park, it is not considered that this would be significant. Any light infiltration would not materially harm the living conditions of the future occupants.
11. I note that there would be a bedroom window on the southwest elevation of plot 1 which would be close to the dwellings at 32c-32e High Street. However, as this window would be on the second floor of plot 1, and the roof of Nos 32c-

32e is hipped, sloping away from the proposal, this bedroom window would still benefit from an acceptable outlook, allowing for views over the top of the roof of Nos 32c-32e.

12. Therefore, for the reasons given above, whilst I have found no harm to the living conditions of the future occupants in respect of light, the proposal would be harmful to the living conditions of the future occupants, with respect to privacy, outlook and noise. It would be contrary to Policies CS3 and CS12 of the North Somerset Core Strategy (Core Strategy) (January 2017) and Policies DM32 and DM27 of the North Somerset Council Development Management Policies Sites and Policies Plan (Part 1) (Sites and Policies Plan) (July 2016). These policies, in combination, seek to ensure that the design and layout of proposals should not prejudice the living conditions of future occupants, with regards to, amongst others, loss of privacy, overlooking or overbearing impact.

Living Conditions of Existing Occupants

13. There are 3 existing residential properties situated to the south of the appeal site, accommodated within a L-shaped development to the rear of 32 High Street, known as Nos 32c-32e. As already noted above, there are also 3 residential units within Nos 28-30.
14. Due to the distance of only 10.75m and 15.4m between the proposal and rear windows of Nos 28-30, it is considered that the proximity of the windows serving the appeal proposal would cause significant overlooking to Nos 28-30. Consequently, the privacy of Nos 28-30 would be materially harmed.
15. Given the presence of the existing large outbuilding, it is not considered that, on balance, the outlook of Nos 28-30 or the light they currently enjoy, would be materially harmed. However, whilst the existing large outbuilding already has an impact on both the outlook and light for the residential units in Nos 28-30, the existing outbuilding does not currently affect the privacy enjoyed by the occupants of Nos 28-30. Therefore, whilst I acknowledge the position of the outbuilding, this would not be sufficient to overcome the harm I have identified to the privacy enjoyed by Nos 28-30.
16. The proposal would be positioned tight on the southern boundary, shared with Nos 32c-32e. There are no windows in the elevation of Nos 32c-32e situated closest to the proposal. There are 2 lounge windows and 2 bedroom windows situated in the other northern elevation of Nos 32c-32e.
17. There would be 2 windows in the south-west elevation of the proposal, facing towards Nos 32c-32e. I note that the appellant states that the first floor level window would be obscure glazed which would prevent any overlooking from this window. Due to the positioning of the second floor bedroom window, any overlooking of Nos 32c-32e would be at such an obscure angle that the privacy enjoyed by the occupants of Nos 32c-32e would not be materially harmed. Furthermore, the upper floor front windows of the appeal proposal would overlook the yard to Nos 32c-32e. However, this would be at an oblique angle and would only overlook an open parking area. Therefore, the privacy currently enjoyed by Nos 32c-32e would again be preserved.
18. In regard to outlook and light, the proposal would only project approximately 2m from the front elevation of Nos 32c-32e. The approved plans for Nos 32c-32e that I have been provided with show that the nearest windows to the

shared boundary are approximately 4 metres away. Given the distance and relationship with these windows, the outlook and light currently enjoyed by the occupants of the dwelling of Nos 32c-32e closest to the shared boundary would not be materially harmed.

19. Regarding the impact on the lounge windows situated on the other northern elevation of Nos 32c-32e, due to the siting, obscure angle, and distance of the proposal, taking in to account the impact of the existing outbuildings, it is not considered that the proposal would materially harm the outlook and light enjoyed by this dwelling. Therefore, the outlook and light currently enjoyed by the occupants of Nos 32c-32e, would not be materially harmed.
20. Therefore, for the reasons given above, whilst I have found no harm to the living conditions of Nos 32c-32e, with respect to privacy, outlook and light and no harm to Nos 28-30 with respect to outlook and light, the proposal would harm the living conditions of the occupants at Nos 28-30, with respect to privacy. It would conflict with Policies DM32 and DM37 of the Sites and Policies Plan and with the guidance within the SPD. Together, these policies and the SPD ensure that development does not prejudice the living conditions of occupiers of adjoining properties through loss of privacy, overlooking or overbearing impact.

Highway Safety

21. The appeal site is accessed via an existing vehicular access from the High Street, which runs to the northern side of Nos 28-30. The existing access is narrow and enclosed with buildings either side. There is a zebra crossing on the High Street close to where the access joins it. A Domino's Pizza takeaway lies to the north of the access, with a bus stop on the High Street directly in front. There is an outdoor seating area associated with the Tapas Bar next door to Domino's. The tarmacked area to the front of Nos 28-30 and its neighbouring properties is circa 4.8m wide, with a marked out 'footway' approximately 2m wide immediately alongside High Street. High Street is a busy road with both pedestrians and vehicular movements due to its town centre location. It is on a bus route and is subject to a speed limit of 20mph.
22. I acknowledge that the proposal would increase the vehicle movements associated with the existing access and that it would increase the risk of conflict between road users. However, the number of movements associated with the 2 dwellings would be small. It would not result in a 'significant intensification' as alleged by the Council. I note the 'Technical Note on Access'² (TNA) provided by the appellant concludes that the proposal would generate zero vehicular movements during both the AM and PM peak periods, which would not have a detrimental effect on either the capacity or the safety of the local highway network. The TNA also states that the proposal would generate around eight vehicle movements daily (07:00 hours to 19:00 hours) at an average of less than one vehicular movement per hour, with seven pedestrian movements, three public transport trips, and one cycle trip on a daily basis.
23. I acknowledge the concern of the Council that if there was conflict between vehicles entering and exiting the site, a vehicle might have to reverse on to the zebra crossing, which could block the zebra crossing and the bus stop. However, the TNA has calculated that the risk of conflict between 2 vehicles

² Prepared by Highgate Transportation

meeting on the narrow access would be very low, with a 99.7% chance that there would be no events within a typical peak hour. The probability of one peak hour having a conflict occurrence is 3 in 1,000, or once every eight months (based on ten peak hours in a week). Therefore, it is considered that any vehicle conflict would have a very minimal impact on the highway safety of the local highway network.

24. Vehicles exiting the site would have to pull out on to the wide tarmacked area, the first half of which is not public highway, in order to see any other road users. However, once they have pulled out, they would then have acceptable sightlines as they crossed over the footpath towards the dropped kerb onto the High Street. At the point vehicles would meet the public highway, intervisibility between the access and the High Street would be satisfactory, allowing drivers, pedestrians, and other road users plenty of time to respond accordingly.
25. Any vehicles leaving the site are also likely to be travelling at a very slow speed given the narrow nature of the access. Furthermore, it is an existing access, so pedestrians already have to be vigilant of cars using the access when crossing in front of the access point. I also observed that pedestrians tended to keep to the marked out 'footway' area next to High Street, partly due to the outdoor seating area further along High Street which encourages pedestrians to keep to the marked footway. Therefore, whilst the required visibility splay cannot be achieved immediately, it is considered that given that visibility can be achieved at the point that vehicles would meet the public highway, highway safety for all road users would not be harmed.
26. There is an area of hardstanding to the front of the Domino's takeaway on which customers or delivery drivers may park. However, due to the low volume of movements associated with the proposal and the peak times associated with the Domino takeaway, any conflicts between the different users would be very minimal. They would not have a detrimental effect on either the capacity or the safety of the local highway network.
27. Furthermore, I observed that High Street is characterised by regular narrow vehicle access points on to High Street, including that which serves No 32. The proposal would be in keeping with this context. I also note the accident data provided by both parties. However, these appear to be related to users of the zebra crossing itself, rather than as a result of movements associated with the existing access. It is not considered that the proposal would exacerbate any existing road safety issues on the highway network.
28. The Council have drawn my attention to a number of appeal decisions in support of their case. However, I do not have the full details of what was before these Inspectors. Nevertheless, I have considered this appeal proposal on its own merits and concluded that the proposal, in the particular circumstances that apply in this case, would not harm highway safety.
29. Therefore, I conclude that the development would not harm highway safety, with specific regards to visibility. The proposal would be in accordance with Policy DM24 of the Sites and Policies Plan which states that development will be permitted provided it would not prejudice highway safety or inhibit necessary access for emergency, public transport, service or waste collection vehicles.

Other Matters

30. Both the Council's Statement of Case and Delegated Report comment on the harm the 'cramped' development would have on the character and appearance of the area. However, the harm to the character and appearance of the area is not mentioned in the reasons for refusal. I have found due to the layout of the proposal, it would harm the living conditions of both future and existing occupants. However, the tandem development, with the proposal situated in the rear yard of Nos 28-30, would not in itself be uncharacteristic to the immediate setting. Most notably, there is a tandem development at No 32 and 62 High Street. However, the lack of harm to the character and appearance of the area would be insufficient to overcome the harm identified above.

Planning Balance and Conclusion

31. Although the parties agree that the Council is unable to demonstrate a five-year supply of deliverable housing sites, there is disagreement regarding the extent of the shortfall. Whichever figure I use, Paragraph 11 of the Framework is engaged, which states that permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole, or there are specific policies in the Framework which indicate that development should be restricted.
32. I have found no harm to highway safety, with specific regards to visibility. However, the proposal would result in harm to the living conditions of the future occupants and the living conditions of the existing occupants at Nos 28-30. Harm to which I ascribe substantial weight since it would be long lasting. As such it would be contrary to the aims of the Framework to ensure development would create places that would have a high standard of amenity for existing and future users.
33. Turning to the benefits, the proposal would provide a limited amount of short-term employment through the construction of the development. The future occupants would provide additional support to the vitality of the local community. The proposal would also replace a redundant outbuilding in a sustainable location. These benefits carry modest weight in favour of the development. The proposal would provide 2 dwellings, which would be a significant benefit and would help address the Council's housing shortfall.
34. Overall, I find that the adverse impacts of the proposed development would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework when taken as a whole.
35. In conclusion, although acceptable in some regards, there would be conflict with the development plan as a whole, as the proposal would be contrary to the relevant policies in relation to ensuring that development does not prejudice the living conditions of both future occupants and existing occupiers of adjoining properties. Considered in total, the material considerations referred to above do not outweigh the conflict with the development plan. The appeal should therefore be dismissed.

Laura Cuthbert

INSPECTOR