



Appeal Decision

Site visit made on 19 September 2023

by J White BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13th October 2023

Appeal Ref: APP/V3310/W/23/3318117

Rear of 27-28 Cornhill, Bridgwater TA6 3AY

- 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 Cornhill One and Cornhill Two Ltd against the decision of Sedgemoor District Council.
 - The application Ref 08/21/00120, dated 31 July 2021, was refused by notice dated 9 September 2022.
 - The development proposed is erection of a four storey building to contain 8no. flats.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. Since the Council made its decision, on 5 September 2023, a revised version of the National Planning Policy Framework (the Framework) has been issued. However, the only substantive revisions relate to national policy for onshore wind development in England, and I am satisfied that the changes to national planning policy do not materially affect this appeal. I have taken the Framework into account in reaching my decision.
3. I have used the description of development as it appears in the decision notice and the appeal form as it most clearly describes what is proposed.
4. Sedgemoor District Council has merged with other Councils into Somerset Unitary Authority, with the individual development plans remaining relevant. As Sedgemoor District Council made the decision on the original application, I have referred to that name above.
5. As part of the appeal, the appellant has submitted revised plans which were not before the Council when it determined the application. The revised plans include the installation of solar panels on the roof of the proposed building. The Council has been able to comment on these plans as part of the appeal process, and I do not consider that the minor change would materially alter the nature of the scheme or result in prejudice to any party. In these circumstances, I have taken the amended plans into consideration.

Main Issue

6. The main issue is the effect of the proposed development on the operation of the solar panels on the neighbouring property at 6-8 York Buildings (No 6-8).

Reasons

7. The appeal site lies within Bridgwater's town centre and behind 27-28 Cornhill. From Kings Place the site is viewed amongst a range of tall buildings and car parking areas. The appeal site sits to the southeast of No 6-8, which has solar panels installed on a southeast facing roof slope.
8. A High Court ruling¹ established that "*interference with the solar panels is a material planning consideration by reason of the part played by them in addressing (however modestly, on an individual scale), issues of climate change*". Even though there are differences between this case and the appeal scheme, the case establishes that mitigation of climate change is a legitimate planning consideration in the public interest, and that even individual micro-generation schemes are in the public interest.
9. Further to this, Chapter 14 of the Framework establishes the way in which local planning authorities should help meet the challenge of climate change. This includes ensuring new development takes account of, amongst other things, layout, building orientation and massing to minimise energy consumption.
10. Although the Overshadowing Assessment initially submitted with the planning application concludes the appeal scheme would '*not have a negative impact on the neighbouring roof amenity*', it relates to a scenario dealing with a garden or amenity space and not for the effective use of solar panels generating electricity. Consequently, a shadow movement study of the existing situation and proposed development were submitted. Whilst the study assessment considers the percentage of lighting and hours of lighting for both existing and proposed scenarios, the assessment is flawed as it seeks to establish compliance with a standard designed to consider garden and amenity spaces, not whether the solar panels would be able to continue to be effective, and the assessment considers the whole roof area rather than the specific location of the panels. There is little substantive evidence to demonstrate that the solar panels would be able to continue to be effective.
11. Therefore, based on the evidence before me, given the orientation of the solar panels and the relative position of the appeal site, I judge that there would be overshadowing, and I am unable to draw clear conclusions on the extent. As such, taking a precautionary approach to the issue, it is not demonstrated that there would be adequate levels of sunlight reaching the solar panels and I am not satisfied that the proposal would not significantly undermine the ability of the panels to generate electricity.
12. The appellant suggests that solar panels could be installed at the appeal site as means to mitigate the loss of generating capacity in the panels at No 6-8. In this case, however, there is insufficient detail to determine that the proposal with solar panels installed on its roof would generate sufficient levels of energy to mitigate the loss of renewable energy generated at No 6-8, and reduce greenhouse gas emissions of the proposed development in accordance with national and local policies.
13. My attention has been drawn to the planning history of the site and the most recent planning permission granted for essentially the same development in 2017, reference 08/17/00212 (the 2017 permission). Nonetheless, that

¹ McLennan, R v Medway Council & Anor [2019] EWHC 1738 (Admin) (10 July 2019)

permission was granted prior to the installation of the solar panels at No 6-8. I am also cognisant that the previous planning permission has lapsed. There has therefore been a significant material change in circumstances.

14. Whether or not the neighbour was aware of the planning history of the appeal site, including the previous planning permissions for development on the site, prior to installing the solar panels does not affect the merits of the appeal scheme. In any case, I am told that the solar panels were installed at No 6-8 in September 2021, after the 2017 permission had expired.
15. Consequently, for the reasons above and in the absence of satisfactory evidence to the contrary, the proposed development would have a harmful effect on the operation of the solar panels on the neighbouring property at 6-8 York Buildings (No 6-8). As such, the appeal scheme would be contrary to Policies S4 and D4 of the SLP which, amongst other things, seek to mitigate the causes of climate change and maximise the generation of energy from renewable sources. I also find conflict with Chapter 14 of the Framework which seeks to minimise energy consumption.

Other Matters

16. The appellant has identified that the Council has not found harm with regard to safety of highway users, design, landscape impact, on-site biodiversity, trees and hedgerows, living conditions, heritage assets (including the character and appearance of the Bridgwater Central and Docks Conservation Area), or the risk of flooding. However, these are ordinary requirements for new development, and these do not represent a positive benefit that weighs in favour of the appeal scheme.
17. Even if I were to consider the appeal scheme would contribute to protecting and enhancing the quality of the natural and built environment of the site, the benefits are limited by the scale of the proposal.
18. The appellant has provided details of a range of benefits associated with the development. These include that the appeal site is located in an area with good accessibility to a range of goods and services and would comply with the strategy for the delivery of housing across the development plan area. The appeal scheme would make a positive contribution towards meeting the housing needs of the area, on a previously developed site. There would also be benefits arising from the construction period and future spend of occupants giving support to local services and facilities.
19. However, for the above reasons, I am unable to conclude that the appeal scheme would not significantly undermine the ability of the existing solar panels to generate electricity. As such, there is conflict with Policies S4 and D4 of the SLP, even allowing for the need for new housing recognised elsewhere in the plan and the location of the appeal site.

Planning Balance and Conclusion

20. The starting point for any planning decision is Section 38(6) of the Planning and Compulsory Purchase Act 2004 which requires decisions to be made in accordance with the development plan unless material considerations indicate otherwise.

21. Despite the acknowledged benefits identified by the appellant, I am not persuaded that the proposal would not significantly undermine the ability of the existing solar panels to generate electricity. As such, the proposal would conflict with the development plan and the Framework when taken as a whole.
22. There are no material considerations identified, either individually or in combination, that are of such weight to outweigh the identified harm and associated development plan conflict. Therefore, for the reasons given above, I conclude that the appeal should be dismissed.

J White

INSPECTOR