



Appeal Decision

Site visit made on 18 January 2024

by Lewis Condé BSc (Hons), MSc, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15 February 2024

Appeal Ref: APP/D0121/W/23/3324203

Greenacres, Kenn Road, Clevedon, North Somerset BS21 6TT

- 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 Terry Mydlowski against the decision of North Somerset Council.
 - The application Ref 22/P/2860/FUL, dated 30 November 2022, was refused by notice dated 2 February 2023.
 - The development proposed is described as ground and first floor living accommodation with two bedroom.
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Decision

1. The appeal is dismissed.

Application for costs

2. An application for the award of costs has been made by North Somerset Council against Mr Terry Mydlowski. This is subject to a separate decision.

Preliminary Matters

3. The description of development in the banner heading above is taken directly from the original planning application form. The Council's decision notice instead referred to the development as 'Proposed erection of 1 no. self contained dwelling' and this description has also been used by the appellant on the appeal forms. I find this subsequent description to be a more accurate representation of the proposal and the appeal has been determined on this basis.
4. A revised version of the National Planning Policy Framework (the Framework) was issued on 19 December 2023. Both main parties were offered the opportunity to comment on the implication of the changes to national policy on the appeal proposal. Where received, comments have been taken into account.

Main Issues

5. The main issues are:
 - Whether the proposal is in an appropriate location with regards to access to facilities and services;
 - Whether the proposal is in a suitable location having regard to flood risk;
 - The effect of the proposal on highway safety;

- The effect of the proposal on the character and appearance of the area, including trees and hedgerow; and
- whether the proposed development would have a likely significant effect, alone or in combination with other plans and projects, on the North Somerset and Mendip Horseshoe Bats Special Area of Conservation (the SAC).

Reasons

Location

6. Despite the proposal involving development of a dwelling within the existing residential curtilage of Greenacres, it remains that the site is located a considerable distance outside any defined settlement boundary. For planning policy purposes, it is therefore within the open countryside.
7. Policy CS14 of the North Somerset Council Core Strategy (adopted 2017) (the Core Strategy), sets out the spatial strategy for development across the authority area. It seeks to steer development to those locations where there are most opportunities to access facilities and services. The policy clearly establishes that development outside of settlement boundaries will only be considered acceptable where a site is allocated in a local plan or where it comprises sustainable development that accords with the criteria set out in relevant settlement policies, of which Policy CS33 is of relevance to this case.
8. Policy CS33, amongst other matters, restricts residential development in the countryside to replacement dwellings, residential subdivision, residential conversion of buildings where alternative economic use is inappropriate, or dwellings for essential rural workers. The proposal would not fall within any of the exceptions set out in this policy.
9. The appeal site, although set alongside a small cluster of other residential development, lies in a rural position off Kenn Road. It is located a considerable distance from the limited services that are available within the village of Kenn. The nearest large settlements that contain a range of facilities and services are Yatton and Clevedon, located approximately 3km and 5km away respectively.
10. Kenn Road is a busy highway with a 40mph speed limit and does not contain any separate pavement provision within the near vicinity of the site. Given the distances involved, and the context of highway and footpath provision near to the site, I find it unlikely that future occupiers of the proposed dwelling would choose to walk or cycle to access local services or facilities needed to sustain day-to-day living.
11. Although there is a bus stop located near to the site it offers a highly infrequent service. The appellant has indicated that the Council has recently been granted funding (for three years) to implement a local bus service within rural areas of the authority, which the occupants of the proposal could utilise. Be that as it may, it is unclear as to the extent of this service and its practicality, as well as if it will be maintained in the long-term.
12. Based on the above, I find that any future residents of the proposed dwelling would be highly dependent on the use of private car, this is the least sustainable means of transport.

13. It has further been indicated that the proposal would allow the appellant to live adjacent to existing family members at Greenacres, enabling the appellant to provide care and support to family members whilst maintaining independent living. It is suggested that this would result in less vehicle movements to/from the site. However, there is no detailed evidence before me to indicate that the existing residents at the site require additional support, or the extent of such support needed. It has also not been sufficiently demonstrated that there are not alternative ways to provide this which would be less harmful than the appeal proposal.
14. Even if the proposal were to reduce the appellant's vehicle trips to visit family members at the site, and also allow an opportunity for occupants to work from home, it remains that future occupants of the proposal would likely be dependent on private motor vehicles to access a range of other facilities and services to meet every-day needs. Furthermore, personal circumstances rarely outweigh general planning matters because the effect of the development would remain long after the personal circumstances no longer apply. As such, my view does not turn on this matter.
15. For the reasons outlined above, the proposed development would be in an inappropriate location with regards to access to facilities and services and would not accord with the Council's development plan strategy for the location of new housing. It therefore conflicts with Core Strategy Policies CS14 and CS33.

Flood Risk

16. The appeal site is located within Flood Zone 3 as defined on the Environment Agency's Flood Map for Planning. This is identified as an area at high probability of flooding from the river sources and the sea. Whilst the site and surrounding land may be protected by coastal flood defences, the Planning Practice Guidance (PPG) advises that for the purposes of the sequential test, the presence of existing flood risk management infrastructure should be ignored, as the long-term funding, maintenance and renewal of such infrastructure is uncertain. The risk of flooding is also likely to increase over time due to climate change.
17. The Framework and PPG aim to steer development to areas with the lowest probability of flooding through the application of the sequential test. Policy C3 of the Core Strategy also includes this provision. As per the requirements of the sequential test, development should not be permitted if there are reasonably available sites that are appropriate for the proposed development in areas with a lower risk of flooding. Only if it is not possible for development to be located in areas with a lower risk of flooding should development be considered, subject to the exception test.
18. A sequential search of alternative sites has been undertaken by the appellant, however, it is very limited in scope and detail. For example, despite outlining an intention to provide long-term support for family members residing at Greenacres, there is no robust justification as to why the property must be within walking distance of the existing dwelling. Likewise, the requirement that any alternative site must be capable of accommodating a 7m long steamboat and associated workshop facilities has not been justified. As such, I find the appellant's sequential search to be inadequate. Consequently, it has not been

demonstrated that there are no reasonably available alternative sites or locations for the proposed development in Flood Zones 1 or 2.

19. The design of development has incorporated measures intended to reduce the potential impacts of flood risk. This includes the incorporation of 'flood refuge areas' and the use of steel columns to raise the dwelling so that finished floor levels are significantly above existing ground levels. The appellant also suggests that further mitigation measures could be provided by way of planning condition if necessary. However, this does not overcome the need for the sequential test to be adhered to in this first instance.
20. The appellant also puts forward that the site is only at risk of flooding in extreme circumstances and has not suffered from flood events in the past, with it being suggested that the M5 acts as an effective barrier against tidal flooding. However, past occurrences are not necessarily an accurate predictor of future flood risk events, particularly taking account of climate change.
21. For the above reasons, it has not been demonstrated that the appeal site is a suitable location for the proposed development in terms of flood risk. The proposal therefore conflicts with Core Strategy Policy CS3. As set out above, this policy aims to steer development away from areas at higher risk of flooding. Additionally, Policy CS3 only supports development in areas of high flood risk, where the submission of a FRA and sequential test demonstrates that it is appropriate and that there are no available and suitable alternative sites at lower risk of flooding. The proposal is also contrary to the Framework that has similar objectives for flooding.

Highway Safety

22. The proposal would utilise an existing vehicular access from Kenn Road (the B3133). As previously indicated, this is a busy highway with a speed limit of 40mph. It is a rural road, which is characterised by mature vegetation running alongside much of its length, albeit this is frequently punctuated by vehicle accesses to dwellings and other uses.
23. No evidence has been submitted by the appellant to demonstrate that appropriate visibility splays could be achieved, as per the previous request of the local highway authority.
24. The access to the appeal site lies near a curvature in the main road. From my own observations I found that the visibility splays from the access would be substandard. Notably, visibility to the south is severely compromised by the presence of trees and vegetation, as well as the curvature of the road. This impedes the views of drivers to emerging vehicles. Therefore, drivers when turning right out of the site, have to edge out into the carriageway and towards approaching road users, that are likely travelling at speed and therefore have limited warning, resulting in the risk of collision.
25. I recognise that these conditions already exist for the existing residents that utilise the current access, whilst other properties along this stretch of road may also have substandard access arrangements. Nevertheless, whilst the proposal may only be of a modest scale, I consider it would still likely increase the use of the existing access, thereby presenting a greater risk of accidents occurring.
26. In reaching this view, I note the appellants arguments that given his personal circumstances, the proposal may result in less vehicle movements from the

site. However, for reasons previously outlined I am unconvinced by such arguments, whilst the development is likely to endure beyond the period in which the appellant's personal circumstances would apply.

27. The fact that a bus stop may be located nearby to the site's access does not demonstrate that the access has appropriate visibility or that the proposal does not result in increased highway safety risks.
28. For the reasons highlighted above, I find that the effect of the proposed development would be prejudicial to highway safety. The development would therefore conflict with Policy DM24 of the North Somerset Sites and Policies Plan Part 1 (the Local Plan Part 1), which amongst other matters, seeks to ensure development would not prejudice highway safety.

Character and Appearance

29. The site forms part of the A1: Kingston Seymour and Puxton Moors landscape character type as defined within the North Somerset Council Landscape Character Assessment Supplementary Planning Document (LCA). The wider surrounding vicinity is a rather flat, lowland area and is characterised by rural villages that are connected by the winding main road, with scattered groups of dwellings, agricultural buildings, and commercial properties. The landscape setting is predominantly pastoral grassland, with mature hedgerows, often including trees, largely enclosing field boundaries. Additionally, the landscape incorporates a network of waterways including rhynes and ditches along field boundaries, which add to an organic field pattern. In this respect it has a strong, remote, pastoral character and aligns with key landscape characteristics of the area that are identified in the LCA.
30. The proposed dwelling would be situated in the rear garden of Greenacres. The rear garden is long in length and contains several mature trees, with its boundaries largely defined by mature hedging. Greenacres is located alongside a small cluster of dwellings/commercial buildings that vary in their appearance and the manner in which they address Kenn Road.
31. The proposed dwelling would have a tandem relationship with the existing property of Greenacres and would be of a more modern vernacular than surrounding buildings. However, there is a lack of uniformity in the design and appearance of dwellings within the surrounding area, including their positioning within plots. Furthermore, buildings being set back from the main road, behind other built form, are not an uncommon feature in the near vicinity of the site. Therefore, despite the overall scale of the proposed dwelling, I do not consider its form or appearance would be at particular odds with surrounding built development nor harmful. Additionally, public views of the proposed dwelling would largely be from Kenn Road, but such views would be highly transient in nature and limited due to intervening built form and vegetation.
32. Turning to the proposal's impacts on trees and hedgerows, the LCA identifies the need to conserve the remote, pastoral character of the area, including its strong network of hedgerows. Indeed, enhancing the hedgerow network is one of the key landscape guideline principles that is set out under the LCA.
33. The proposed siting of the development would entail the loss of trees and hedgerow. The appellant has indicated that only a single mature tree, of poor quality, would need to be removed from the site to facilitate the proposal.

34. Extracts of a previous arboricultural survey undertaken at the site have been provided, however, the full survey/report findings have not been made available. I understand that much of the arboricultural work undertaken was in relation to a previous development scheme on an adjacent site. The appellant has made reference to previous survey work having been updated but details are extremely limited and vague in nature. Although the previous survey may have also encompassed parts of the current appeal site, from the available evidence, it is unclear whether the implications of the appeal scheme's design on trees and hedgerows has been fully considered, including with appropriate input from an arboricultural specialist.
35. Based on the evidence before me, I am not convinced that the extent of tree loss at the site would be as per the appellant's claims. Likewise, I am not convinced that the proposal would only result in the loss of approximately 20m of hedgerow, suggested by the appellant. Nonetheless, this would still be a significant extent of boundary hedgerow that would be lost to the development. Furthermore, given the importance of mature hedgerows to the area's rural landscape character, this would still result in a harmful effect on the character and appearance of the area.
36. The appellant has indicated a willingness to provide replacement tree and hedgerow planting. Although conditions may be imposed on any grant of permission requiring mitigation planting to take place, this may take many years to successfully establish. Additionally, the siting of the proposed development straddles the boundary of the property, including being sited over a rhyme that is likely to form a historic field boundary. The boundary hedgerow required to be removed to facilitate the appeal scheme follows the route of the rhyme. As such, replacement hedgerow planting is unlikely to be able to replicate or respect the established, rather organic, field pattern of the area, thereby is unlikely to offer suitable mitigation.
37. I also note that the appellant has recently planted a significant number of trees on nearby land, albeit this is unrelated to the proposal before me and does not offer suitable mitigation for the above identified harm.
38. The appeal scheme is not comparable to the development of a power pylon that has recently been erected in a nearby field. From the evidence before me it is unclear whether that development required planning permission. In any case, the pylon, although rather visually intrusive and not in keeping with the surrounding landscape, is likely to be essential infrastructure serving the wider public need. As such, my view on this matter does not turn on the presence of the pylon.
39. For the reasons identified above, I find that the loss of hedgerow would cause harm to the character and appearance of the area. It therefore conflicts with policies CS5 and CS12 of the Core Strategy, as well as policies DM10 and DM32 of the Local Plan Part 1 and the LCA. Together these policies and guidance seek to promote developments of a high-standard of design that protect the character and distinctiveness of their landscape setting.

Somerset and Mendip Horseshoe Bats Special Area of Conservation

40. The appeal site is within Consultation Zone C of the North Somerset and Mendip Bats Special Area of Conservation (SAC). This has been established to protect greater and lesser horseshoe bat navigation and foraging habitats, and

to ensure that associated roosts continue to be maintained in suitable conditions and remain viable.

41. The appellant has referred to the findings of a desk top study and preliminary site visit undertaken by ecologists in August 2020, as well as a 'Protected Species Survey' that was complete in 2019. However, the findings of these works are over two-years old. Furthermore, they related to development proposals on an adjacent site. Despite sharing boundaries with the former development scheme, much of the current appeal site was not surveyed as part of the previous ecological work. Consequently, this previous ecology work provides neither up-to-date nor valid findings in relation to this appeal scheme.
42. Given the site's location relative to the SAC, combined with characteristics including the presence of trees, hedgerow, and limited levels of lighting, it seems likely that it is functionally linked foraging habitat associated with the SAC. The Conservation of Habitats and Species Regulations 2017 (the Habitat Regulations) require that permission may only be granted after having ascertained that it will not affect the integrity of the European site.
43. However, as I am dismissing the appeal on other grounds, I have not considered this matter further. It has therefore not been necessary for me to carry out an Appropriate Assessment as required by the Habitat Regulations.

Other Matters

44. A lack of objections to the proposal from neighbouring residents or the Parish Council is not a reason to support unacceptable development.

Planning Balance and Conclusion

45. I have identified conflicts with the development plan's spatial strategy, as well as policies that seek to safeguard highway safety, landscape character, and prevent the effects of flood risk. The appeal scheme therefore conflicts with the development plan when taken as a whole.
46. The proposal would provide some socio-economic benefits associated with the delivery of a dwelling and its subsequent occupation. However, such benefits would be limited given that the proposal involves the provision of a single dwellinghouse. I note the appellant's desire to create multi-generation living at the site, but for reasons previously outlined I have given this matter limited weight.
47. The appellant has also highlighted an intention for the development to incorporate low-carbon and renewable energy technologies, which could contribute towards a sustainable form of development. However, a development's location, and accessibility by sustainable means of transport, are fundamental aspects of sustainable development. Whilst there is no robust evidence to support the appellant's claim that the design of the development would be innovative.
48. Although the proposal may comply with a range of other planning policy requirements, this is to be expected of new development proposals. Consequently, these are neutral matters in the planning balance.
49. The Council acknowledges that it cannot demonstrate a five-year housing land supply and has indicated that its latest tested position demonstrates a supply

of less than four years. As such Paragraph 11d) of the Framework is engaged. This states that where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date, permission should be granted unless one of the two limbs of paragraph 11(d), (i) or (ii), indicates otherwise.

50. Areas at risk of flooding are a particular policy of protection referred to in associated Footnote 7 of the Framework. Given my conclusion on the harm to flood risk, there is a clear reason to refuse the proposed development in line with Paragraph 11d)(i) of the Framework.

51. The proposal would therefore conflict with the development plan, when taken as a whole, and material considerations including the Framework, do not indicate that a decision should be made other than in accordance with it. Accordingly, the appeal is dismissed.

Lewis Condé

INSPECTOR