



Appeal Decision

Site visit made on 2 July 2024

by A J Sutton BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12th July 2024

Appeal Ref: APP/D0121/W/24/3337068

Rear of 41 Oxford Street, Weston-Super-Mare BS23 1TN

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by Mr Baio, Midas G & E Properties Ltd against the decision of North Somerset Council.
 - The application is Ref 23/P/1140/FUL.
 - The development proposed is conversion of vacant meeting hall to 1 no. three-bedroom apartment (Class C3).
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Decision

1. The appeal is dismissed.

Procedural Matters

2. Attention has been drawn to an emerging plan. However, this is at the pre-submission stage and there are likely to be unresolved matters. Accordingly, the emerging plan attracts very limited weight.
3. It has been requested that revised plans be considered in this appeal. The revised plans show additional rooflights for all proposed habitable rooms. The original drawings also included a rooflight, such that the Council and other interested parties have had an opportunity to consider the principle of this feature at the application stage. Moreover, these proposed additional rooflights are limited in number and are small in scale. As such this proposed change does not amount to a substantial difference or a fundamental change of the original proposal. Consequently, I find that considering the revised plans in this appeal would not disadvantage interested parties in this case and would not be unfair to anyone involved in this process.

Main Issue

4. The appeal property is in the Town Centre character area of the Great Weston Conservation Area (CA). Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires, in respect of any buildings or other land in a conservation area, that special attention shall be paid to the desirability of preserving or enhancing the character or appearance of that area.
5. The historic significance of this part of the CA is positively defined by its fine grain Victorian commercial character. The property is in the civic quarter of the Town Centre, where the special historic interest includes the cluster of civic Victorian buildings. The appeal property is at the rear of a Victorian terrace

which has been much altered, and this includes the addition of a multi-storey car park.

6. This proposed development would result in the conversion of an existing ground floor building in this mixed-use property. Largely screened by an existing garage which would be retained, the changes proposed would likely not be noticeable in the street scene. As such, the development would not further erode any remaining historic interest that positively contributes to the significance of this part of the CA; accordingly, the character or appearance of this part of the CA would be preserved under this proposal.
7. Therefore, the main issue is whether the proposed dwelling would provide satisfactory living conditions for the future occupants having regard for outlook, daylight, odour and noise.

Reasons

8. The appeal property has a central location in the town centre. The area surrounding the property is dominated by a concrete multi-storey car park and an additional tarmacked parking and turning area. While there is pedestrian access, this is via narrow alleys and a single access road, and with these features, this area feels somewhat enclosed. This mixed-use area generally has commercial premises at street level, with residential units largely limited to the first floors of properties or above.
9. The former meeting hall and garage substantially fills the space at the rear of Nos 41 - 43. Under this proposal the footprint of the meeting hall would remain largely the same, but internally would be converted to create three bedrooms, along with a single open plan living room. The new dwelling would also have two outside spaces.
10. Existing windows on the western elevation of the meeting hall would be blocked up such that the openings serving the proposed living room would be largely limited to the French doors that would overlook a small outside space. This outside space would be contained by the rear elevation of the existing garage and side boundary wall. As such, while this opening would be a reasonable size, views from this habitable room would be largely constrained to a small space that is dominated by high, solid walls. Future occupants would have extremely limited views of the sky above the wall, and consequently, they would experience an unpleasant sense of enclosure when in this living room.
11. The principal outlook of the three bedrooms would be over the second outside space. This space would be relatively long and narrow such that it would have the quality of a passageway. This passageway would abut the shared side boundary that currently comprises a stone wall. The lean-to of the meeting hall appears to be grafted to this stone wall to form a high barrier at this boundary. It is unclear whether this existing feature would be retained. If retained, the bedroom windows would have an outlook of this solid wall. Divided only by the narrow passage, this side boundary would appear an overbearing feature and this would provide a poor outlook for all three bedrooms of the proposed dwelling.
12. This side shared boundary could be reduced in height, by condition. However, the parking area of the neighbouring property is immediately adjacent to this shared boundary. Moreover, given the narrowness of the outside space, the

three bedrooms would be extremely close to that existing neighbouring parking area. Accordingly, individuals using that parking area would have close views into the proposed bedroom windows if this shared boundary was to be lowered.

13. Even if the boundary treatment was revised, with a fence that allows light to permeate, this side boundary would still need to be relatively high and solid to ensure that future occupants of the dwelling would have a reasonable degree of privacy when using the bedrooms. As such the outlook for future occupants, when looking out of the bedroom windows, would be of a solid form, close up, with very restricted views of the sky above.
14. Solid, high features would surround all the habitable rooms of the proposed dwelling. Moreover, there would be limited space between the windows and these features such that they would harmfully dominate the outlook of the property. In turn this would create a poor outlook for the future occupants. Painting the walls of the outside spaces would not overcome the resultant harmful sense of enclosure that occupants would experience in the dwelling.
15. All habitable rooms would have a source of daylight. However, the rear of No 41 has a northerly aspect, and as already outlined, there is a sense of enclosure due to surrounding buildings. Added to this, the proposed dwelling would have an oppressive outlook. With this combination of factors, the internal space of the dwelling would be a gloomy and unpleasant place to reside.
16. Attention is drawn to existing apartments at the rear of Oxford Street that have an outlook towards the car park and enclosed area. However, those apartments are set back from surrounding buildings and have a relatively elevated position, being located at the first-floor level and above. As such, their occupants enjoy a sense of space when looking from their windows. This would not be the case for future occupants of this proposed dwelling for the reasons outlined above.
17. Occupants of residential properties in this town centre location are likely to experience noise from various sources throughout the day and night. However, as residential units are generally limited to the upper floors, there is a degree of separation from commercial premises, the pavement and parking areas at the street level. In turn this helps to reduce the level of noise disturbance that those living in existing apartments will experience from these sources.
18. The accommodation proposed in this case would be limited to the ground floor. Moreover, the proposed dwelling would be flanked by the parking areas of the neighbouring properties. Cars would be parked close to the three bedrooms of the dwelling and the noise of this, along with car doors closing and people talking could disturb future occupants anytime of the day or night. Similar noisy activities would likely occur near the living room, such that future occupants would have little respite from this source of disturbance in any habitable room of the dwelling.
19. Also, there is a nightclub close to the appeal property which is open for part of the week. A Noise Impact Assessment (NIA) has been submitted and identifies mitigation which includes façade insulation and the use of secondary glazing. The NIA further states that the use of mechanical ventilation is recommended. It is asserted that this would ensure that future occupants would have an

acceptable quality of life, avoiding over heating of the premises, with windows closed to keep sound levels within the dwelling to reasonable limits.

20. However, Planning Practice Guidance (PPG), in respect of factors that influence whether noise could be a concern, highlights amongst other matters, that proposed mitigation relying on windows being kept closed most of the time, may affect living conditions. While closed windows may not be an uncommon measure to consider in respect of this matter, it seems to me that it should be a reasonable expectation for future occupants of a dwelling to be able to open windows for fresh air or in fine weather and have a reasonable nights' sleep.
21. Also, if an acceptable internal noise climate and suitable living conditions for future occupiers could only be achieved by keeping windows closed at night, this mitigation would be reliant on the actions of a third party. Third parties are beyond the control of either the appellant or the Council. As such this alone is unlikely to be suitable mitigation to avoid noise giving rise to significant adverse impacts on health and the quality of life for future occupants. Moreover, on this basis a condition of this nature may not satisfy the test for planning conditions set out in the National Planning Policy Framework – December 2023 (the Framework) and PPG.
22. Attention is drawn to an appeal decision for a proposal at Pennington Street, London, where the Inspector accepted this form of mitigation. It is also stated that this was deemed acceptable by the Council in respect of the planning permission to extend Nos 41 – 43. However, even if I accept that this would be suitable mitigation and could be secured by condition, the proposal would still be unsatisfactory with regards outlook.
23. The appellant asserts that the principle of residential use at this site is already established by the planning permission ref. 17/P/2125/F which allows, amongst other matters, a rear extension to form eight apartments. The development approved under that permission will extend the rear elevation of Nos 41 – 43, at the first and second floor, such that the gap between the appeal property and the multi-storey car park will be smaller than is currently the case.
24. However, the approved plans of that permission show that residential uses would be limited to the first and second floor of the property, with a parking and turning area at the ground floor. As such future occupants, under that scheme, would still enjoy a relative sense of space from an elevated position. That approved development is distinctly different from the proposal before me in that regard and has not altered my findings for this reason.
25. It is asserted that the proposed dwelling would have adequate internal space, but this should be an expectation of development. In any event this would not counter the unsatisfactory living conditions identified above. The appellant highlights that basements are often used for residential use and have limited outlook and light. Be this as it may, development elsewhere should not justify the creation of poor living conditions at the appeal property.
26. Concerns have been raised about the proximity of the proposed dwelling to the waste bins of the neighbouring commercial premises. While noting those bins are outside the control of the appellant, I saw that they are stored close to the rear elevation of the neighbouring property. Therefore, there is a degree of separation from the shared boundary and the proposed habitable rooms at this elevation. Also, as outlined above a reasonably solid and high boundary

treatment would be necessary at this shared boundary to protect the privacy of the future occupants. Taking these factors into account, odours from the neighbouring bins would unlikely result in harmful living conditions for future occupants.

27. Although harm has not been identified in respect of odour, I find that the proposed dwelling would not provide satisfactory living conditions for the future occupants having regard for outlook and noise. In this respect, the proposal would be contrary to Policies CS3, CS12, CS15 of the North Somerset Council Core Strategy and Policies DM32, DM37 of the North Somerset Council Development Management Policies Sites and Policies Plan (Part 1). Collectively, these Policies require, amongst other matters, that the design and layout should not prejudice the living conditions for the occupiers of the proposal or that of adjoining occupiers through loss of privacy, overlooking, overshadowing or overbearing impact. The Policies also state development that would result in environmental pollution or harm amenity will only be permitted if potential adverse effects would be mitigated to an acceptable level.
28. The proposal would also not accord with the guidance of the Supplementary Planning Document Residential Design Guide – Section 1 Protecting Living Conditions of Neighbours with regards this issue.

Planning Balance and Other Matters

29. The appellant contends that the proposal would be a high-quality design. The Council has also not raised concerns about the impact on neighbouring residents, appearance, highways and parking subject to conditions. However, this should be expected for all development and as such these are neutral factors.
30. The Council is unable to demonstrate the required housing land supply. Therefore, the provisions set out in Paragraph 11 of the Framework are relevant in this case.
31. The principle of this use and the density of development are not matters in dispute. The proposal would result in an additional residential unit over that which currently exists. However, this would be fewer residential units than that permitted under planning permission ref. 17/P/2125/F.
32. This aside, if I accept that the development would result in an additional dwelling, this will make a small contribution to the Government's objective to significantly boost the supply of homes and would add to the mix of much needed homes in the area. This attracts moderate weight.
33. In this town centre location, the property is well related to services and public transport options. As a small windfall site, the dwelling could be built quickly, and this would be an efficient use of a vacant building. There would be some economic benefit through the construction phase. Also, future occupants would likely support local services and contribute to the local economy.
34. The development would incorporate energy efficiency measures including photovoltaics. This is a matter which could be secured by condition.
35. While the proposed dwelling would likely be gloomy inside, this alone would unlikely justify refusing planning permission. However, even adopting a flexible approach in applying policies and guidance relating to daylight, for the reasons

already outlined this dwelling would offer poor living conditions, particularly in respect of outlook.

36. Although the Framework provides support for the use of suitable previously developed land, it also requires a high standard of amenity for existing and future users. Policies of the development plan are consistent with these provisions of the Framework. For the reasons already set out, this proposal would not provide the required high standard of amenity for future users.
37. I find the adverse impacts, in respect of living conditions, would significantly and demonstrably outweigh the moderate social, economic and environmental benefits identified above, when assessed against the policies of the Framework taken as a whole. This would be so even if these benefits are considered together. Other material considerations presented in this case do not indicate that the proposal should be determined otherwise than in accordance with the development plan.
38. The officer's report identifies the North Somerset and Mendips Bats Special Areas of Conservation as a constraint in respect of the appeal property. Likely significant adverse impacts on the integrity of these protected habitats as a result of this proposal has not been ruled out. However, as I am dismissing on other grounds it is not necessary to consider this matter further.

Conclusion

39. For the reasons outlined above, having regard to the development plan and other material considerations, including the Framework, the appeal should be dismissed.

A J Sutton

INSPECTOR