

## Appeal Decision

Site visit made on 3 September 2024

**by C Rose BA (Hons) BTP MRTPI**

an Inspector appointed by the Secretary of State

**Decision date: 19 September 2024**

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**Appeal Ref: APP/D0121/W/24/3340295**

**57 Severn Avenue, Weston-super-Mare, North Somerset BS23 4DG**

- 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 K Sampson against the decision of North Somerset Council.
  - The application Ref is 23/P/2682/FUL.
  - The development proposed is Demolition of existing garage. Demolition of conservatory attached to ground floor flat at 57 Severn Avenue. Adjustment of boundaries between 57 Severn Avenue and plot to side. Widening of driveway access and erection of rear fence to resultant plot to enable the provision of 1 no 1 bedroom dwelling.
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### Decision

1. The appeal is dismissed.

### Preliminary Matter

2. The description of development in the banner heading above is taken from the application form as neither party has provided written confirmation that a revised description has been agreed.

### Main Issues

3. The main issues are:
  - whether the appeal site is a suitable location for the proposed development having regard to the risk of flooding; and,
  - whether the proposal would result in the overdevelopment of the appeal site, and, if so, whether it would affect the character and appearance of the area and the living conditions of future or neighbouring occupiers.

### Reasons

#### *Flood risk*

4. Although the site is identified as falling within Flood Zone 1 on the Environment Agency flood map for the area, the site lies within Flood Zone 3a as a tidal flood plain as defined within the North Somerset Council Level 1 Strategic Flood Risk Assessment (June 2020) (SFRA). The SFRA takes account of the projected impacts from climate change. The SFRA forms part

of the evidence base to the Local Plan and could result in the need for a Level 2 Strategic Flood Risk Assessment. In light of this, and as the Weston-super-Mare Level 2 Strategic Flood Risk Assessment and further works: Technical Element 2010, pre-dates the SFRA, I give it little weight.

5. For development proposals in areas known to be at risk from flooding, national planning policy as set out in the National Planning Policy Framework (the Framework) requires the application of the sequential test. The Framework states that strategic flood risk assessments will be the basis for applying this test. The aim of the test is to steer new development to areas with the lowest risk of flooding from any source. Development should not be permitted if there are reasonably available sites 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.
6. At present the site and surrounding land is protected by coastal flood defences but the Planning Practice Guidance<sup>1</sup> (the 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 this infrastructure is uncertain.
7. The appellant has not provided a Sequential Test but has provided other flood risk evidence to demonstrate that a Sequential Test is not required. In relation to this, while I note the level of the roads at the junctions of Severn Road with Quantock Road and St Paul's Road, I do not have details of the levels of the appeal site. From my site visit, I could not conclude that the site is at the same or higher level as the road junctions. Furthermore, while I note that the finished floor level of the dwelling would be set 150mm above ground level and in excess of the 1 in 1000 year event predicted flood level without flood defences, in the absence of site specific levels, I cannot be sure that the remainder of the site would not be subject to flooding.
8. Therefore, and while I have had regard to the appellant's evidence related to the proposal falling within flood zone 1, in the absence of site-specific levels, it has not been adequately demonstrated that the appeal site falls outside of Flood Zone 3a as defined by the SFRA. In light of this and as any alterations to the SFRA fall outside of the scope of this appeal, I must make a decision based upon the current flood risk classification in the SFRA. Moreover, the PPG states at paragraph 023<sup>2</sup> that 'Even where a flood risk assessment shows the development can be made safe throughout its lifetime without increasing risk elsewhere, the sequential test still needs to be satisfied. Application of the sequential approach in the plan-making and decision-making process will help to ensure that development is steered to the lowest risk areas, where it is compatible with sustainable development objectives to do so, and developers do not waste resources promoting proposals which would fail to satisfy the test.' As a result, the Sequential Test should be applied to sites that present a greater risk than those within areas in Flood Zone 1 and should be applied when any part of the site is at risk of flooding.

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<sup>1</sup> Paragraph: 024 Reference ID: 7-024-20220825

<sup>2</sup> Paragraph: 023 Reference ID: 7-023-20220825

9. I have had regard to the reference to a sequential test for another application nearby<sup>3</sup> but given that this is a number of months old, and I have not been provided with a copy, I cannot be sure that circumstances will not have changed. As a result, it cannot be relied upon in relation to the current appeal to demonstrate that no alternative sites with a lower flood risk are reasonably available.
10. My attention has been drawn to Policy DP9 of the emerging North Somerset Local Plan 2039 Pre-submission Plan (Reg 19) dated November 2023. However, in accordance with paragraph 48b of the Framework, given the extent of unresolved objections to the policy, and the council engaging in another round of consultation that I have been advised changes the wording of the policy, I give this policy very limited weight in relation to this appeal.
11. As the assessment of the Sequential Test is a matter for the Council, it was not unreasonable for it to determine the planning application in the absence of comments from the Environment Agency. As the Sequential Test has not been passed, there is no need to consider the Exception Test.
12. It follows from the above that I conclude that the appeal site is not in a suitable location for the proposed development having regard to the risk of flooding. As such, the proposal is contrary to Policy CS3 of the North Somerset Council Core Strategy 2017 (CS), Policy DM1 of the North Somerset Development Management Policies Site and Policies Plan Part 1 2016 (PSPP) and the Framework with regard to Planning and Flood Risk. Amongst other things, these seek to ensure that all development consider the vulnerability to flooding and that development in flood zones 2 and 3 complies with the sequential test.

### *Overdevelopment*

13. The appeal site is located on the eastern side of Severn Avenue close to its junction with Quantock Road. Severn Avenue is predominantly residential and comprises largely two storey semi-detached and terraced properties, with small front gardens enclosed by boundary walls, although a few frontages are used for off-street parking. The properties benefit from long narrow rear gardens. Overall, the surrounding area is typical of that found within central urban locations, with existing properties tightly knit together with rear usable amenity space and a high level of on-street parking.
14. The appeal site itself comprises part of the former rear garden to No.57 Severn Avenue, formally comprising a single garage and enclosed by a stone wall. At the time of my site visit, the area was unused and separated from the rear of No.57. The appeal proposal involves the demolition of the garage and construction of a one-bedroom bungalow with a single parking space to its frontage behind a low stone wall.
15. The Council have concerns with the footprint of the development relative to the size of the appeal site, to the siting of the dwelling harming the living conditions of occupiers of No.55 Severn Avenue by reason of overshadowing and loss of light, to the loss of parking for occupants of the two flats forming No.57 Severn Avenue, and to the plot size being out of character with the

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<sup>3</sup> 23/P1016/FUL

wider area. As a result, the Council consider that the proposal represents overdevelopment of the site.

16. Due to the size and shape of the appeal site, it is much more limited in depth than other plots on Severn Avenue. The proposed dwelling would be positioned in very close proximity to its side and rear boundaries. In light of this, and with parking, turning and storage to the site frontage, there would be very little usable private outdoor space for occupiers and limited outlook such that this represents overdevelopment of the site.
17. Turning to the matter of car parking, while the proposal would provide one parking space for the proposed dwelling in accordance with North Somerset Council Parking Standards Supplementary Planning Document 2021 (SPD), it would result in the loss of potential parking for the flats forming No.57 Severn Avenue. This would result in a short-fall in off-street parking for the flats that are located on a corner where parking is restricted and, in an area, where I am advised by the Council and interested parties that on-street parking is limited. While I note the aerial photos from the appellant regarding the lack of use of the garage and parking area in association with No.57, photos from the Council demonstrate some recent use for car parking that is supported by comments from interested parties. Furthermore, and even if the current occupiers of the flats within No.57 do not rely upon a car or the appeal site for parking for various reasons including its condition, there is no certainty that future occupiers would not. The lack of parking indicates that the proposal represents overdevelopment of the site and would be harmful to the living conditions of nearby occupiers.
18. While the site is smaller in size relative to that prevailing in the area, given that its depth would not be readily visible from Severn Avenue behind the proposed dwelling, this would not be out of keeping with the wider area to an extent that would justify withholding the grant of planning permission.
19. Finally, with regard to the relationship with No.55 Severn Avenue, there is no dispute between the main parties that the proposal fails Stage one of the 45-degree Test - depth and width as set out in Supplementary Planning Document Residential Design Guide – section 1 Protecting living conditions of neighbours January 2013 (the Residential Design Guide). However, having observed the relationship on site of the proposed dwelling to the windows to No.55, and given the proposed roof pitch and proposed section on drawing number 03, I am not convinced that the proposal fails Stage two of the 45-degree test – height. The Residential Design Guide states that if the proposed development only fails one of the tests, then it is unlikely to result in a significant harmful impact. Even if the proposal were to fail Stage two, given the height, roof pitch and position of the proposed dwelling beyond a rear boundary fence set away from the windows in the side of No.55, I do not find that this would result in an unacceptable adverse impact that leads to any material harm to the living conditions of neighbouring residents at No.55. As such, this is not an indication that the proposed development would result in overdevelopment of the site.
20. However, it follows from the above that I find that the proposal as a whole represents an overdevelopment of the appeal site with a harmful effect on the living conditions of future and neighbouring occupiers. As such, it is

contrary to policies CS12 of the CS, policies DM32 and DM37 of the PSPP, and the SPD. Amongst other things, these seek to achieve high quality design, development that does not prejudice the living conditions for occupiers of the proposal or that of adjoining occupiers, permits proposals provided that gardens are of an appropriate size for proposed new dwellings and parking standards are met.

### **Other Considerations**

21. My attention has been drawn to two other recent decisions by the Council in the area<sup>4</sup>. I do not have the full details of each of these proposals and as they are included within the appellant's final comments, the Council have not provided comments in response. In light of this, I cannot be sure that they are directly comparable to this appeal. In addition, I am required to consider the appeal proposal on its merits.
22. The appeal proposal is well located close to a range of services and facilities, complies with the nationally prescribed space standards, provision of EV parking and off-street secure cycle parking. It would also benefit from photovoltaics. However, as these are requirements of local planning policy and national guidance, they are neutral in my consideration.
23. The appellant raises a number of concerns regarding engagement with the Council during their consideration of the planning application. However, these are not matters which are for consideration in this appeal.
24. The site falls within the North Somerset and Mendip Bats Special Area of Conservation Horseshoe Bat Zone C. However, as I am dismissing the appeal for other reasons, I do not need to consider this matter or the related duties under the Conservation of Habitats and Species Regulations 2017 further.

### **Planning Balance**

25. The appeal site would not be in a suitable location for the proposed development having regard to the risk of flooding and would represent overdevelopment of the site with a harmful effect on the living conditions of future and neighbouring occupiers. The relevant policies are largely consistent with the Framework where it states that planning decisions should guide development away from areas at risk of flooding whilst creating places with a high standard of amenity for existing and future users. Therefore, the proposed development would be contrary to the development plan as a whole and I give significant weight to the conflict with these policies.
26. The Council cannot demonstrate the required supply of deliverable housing sites at present. Paragraph 11 of the Framework indicates that policies of the development plan may be out-of-date in these circumstances. As a result, the Framework indicates that permission should be granted, except in certain circumstances including where areas or assets of particular importance, such as areas at risk of flooding, provide a clear reason for refusing the development.
27. I have already concluded that development would conflict with the Framework policy relating to development at risk of flooding. This provides a

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<sup>4</sup> 23/P/2189/FUL and 24/P/0583/CM2A

clear reason for refusing the development proposed, in accordance with the presumption in favour of sustainable development set out at paragraph 11 of the Framework. As a result, I do not need to consider the proposal against paragraph 11 d) ii.

### **Conclusion**

28. Overall, for the reasons given above, the proposal conflicts with the development plan taken as a whole. There are no other considerations, including the Framework, that indicate that a decision should be made other than in accordance with the development plan. The appeal is dismissed.

*C Rose*

INSPECTOR