

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: 23rd September 2024

Appeal Ref: APP/D0121/W/24/3343535

35 Bournville Road, Weston-super-Mare, North Somerset BS23 3RN

- 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 M Randell against the decision of North Somerset Council.
 - The application Ref is 23/P/2177/FUL.
 - The development proposed is Erection of a Dwelling.
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Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by North Somerset Council against Mr M Randell. This application is the subject of a separate Decision.

Preliminary Matters

3. 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.
4. During the appeal the Council raised concerns regarding the erection of fencing on the site and confirmed that this is subject to investigation. The Council also raised concerns regarding the accuracy of the plans with regard to the front elevation of No.35 Bournville Road given that the plans do not reflect a single-storey front extension that has been recently constructed and is also the subject of further investigation. For the avoidance of doubt, the fencing and front extension to No.35 do not form part of this appeal and I have considered the appeal on the basis of the plans before me with regard to the proposed dwelling.

Main Issues

5. The main issues are:
 - the effect of the proposal on the living conditions of the occupiers of No's 44-48 Argyle Avenue with particular regard to privacy;
 - the effect of the proposal on highway safety with particular regard to the provision of off-street car parking;

- whether the appeal site is a suitable location for the proposed development having regard to the risk of flooding; and,
- whether the proposal represents a cramped form of development out of keeping with the character and pattern of development of the area.

Reasons

Living conditions

6. The appeal site is located to the side of No.35 Bournville Road and to the rear of No's 46 and 48 Argyle Road. Due to the location of the site close to the junction of Bournville Road and Argyle Road, the appeal site and No's 46 and 48 have tapering adjoining gardens.
7. The development would result in the proposed dwelling being located in close proximity to the shared boundary with No's 46 and 48 Argyle Road. As a result, proposed first-floor windows serving the hallway and Bedroom 1 would look out over the rear gardens to No's 46 and 48 Bournville Road in very close proximity and at a significantly closer distance than existing windows. This would result in the overlooking of these gardens with a subsequent loss of privacy even taking into account the appellants interpretation of the '45-degree rule'. I note that the distances to the shared boundary from these windows would be below the distances recommended in the Supplementary Planning Document Residential Design Guide – section 1 Protecting living conditions of neighbours January 2013 (the Design Guide). While I note that the Design Guide is guidance only, it is material to the consideration of the appeal and therefore carries weight.
8. Although the first-floor hallway window could be conditioned to be obscure glazed to reduce overlooking, I do not find that this would be appropriate to the main bedroom to the appeal property as it would result in poor living conditions for the occupiers due to the resulting restricted outlook.
9. I have had regard to the fact that the occupiers of No.48 Argyle Road have not objected to the proposal. Nonetheless I am required to consider the impact upon both existing and future occupiers of this property and as a result the lack of objection does not alter my findings above. I have also had regard to, and saw at my site visit, the relationship between No.36 Bournville Road and No.73 Argyle Road. However, this has been planned as part of the original estate and as such is not directly comparable to the proposal that would impose the new development into an existing situation where such a relationship does not currently occur.
10. While the rear garden to No.44 Bournville Road would also be overlooked from the proposed first floor windows, this garden is located a considerable distance away with windows to surrounding properties having a similar relationship. As a result, there would be no greater harmful levels of overlooking to No.44 that would justify refusal of planning permission.
11. In light of the above, I conclude that the proposal would have a harmful effect on the living conditions of the occupiers of No's 46 and 48 Argyle Road with particular regard to privacy. As such, the proposal is contrary to policies DM32 and DM37 of the North Somerset Council Core Strategy 2017 (CS), and the Design Guide. Amongst other things, these seek to ensure that the

design and layout does not prejudice the living conditions of occupiers of the proposal or that of adjoining occupiers through loss of privacy and overlooking, and permits proposals provided the living conditions of the occupiers of adjoining properties would not be prejudiced.

Highway safety

12. The Proposed Site Plan¹ shows the provision of 2 parking spaces to the front of No.35 Bournville Road and 1 parking space to the front of the proposed dwelling.
13. The North Somerset Council Parking Standards Supplementary Planning Document 2021 (SPD) requires the provision of 2 car parking spaces for every 2 and 3 bedroom unit. As a result, the proposal provides a shortfall in parking. Furthermore, due to the construction of the front extension to No.35 Bournville Road that I viewed at the time of my site visit; I cannot be sure that adequate space remains to the front of this dwelling to provide the two parking spaces to its frontage.
14. In light of the above and given the parking restrictions on the road to the immediate site frontage, the proposed development would not provide the required number of car parking spaces and would lead to parking on-street that would result in an adverse impact upon highway safety. Given the uncertainty regarding the availability of space to the front of No.35 Bournville Road and as the provision of an additional parking space to the front of the proposed dwelling are not detailed on the plans before me, I find that this matter cannot adequately be addressed through the imposition of a condition requiring provision of a further parking space.
15. I note the comments with regard to the relocation of the bus stop to the site frontage. However, as there is general agreement between the main parties that this requires relocation, I see no reason why it's relocation could not be adequately secured by condition should I allow the appeal.
16. As a result of the above, I conclude that the proposal would harm highway safety with particular regard to the provision of off-street car parking. As such, the proposal is contrary to policies DM24 and DM28 of the North Somerset Development Management Policies Site and Policies Plan Part 1 2016 (PSPP) and SPD. Amongst other things, these seek to ensure that development would not prejudice highway safety and that development proposals meet the council's standards for the parking of motor vehicles.

Flood risk

17. The site lies within Flood Zone 3 and is therefore at a high risk of flooding. A dwelling is categorised in the "more vulnerable" category in the Planning Practice Guidance (PPG). The appellant has demonstrated that there are no sequentially preferable sites, and as such, the proposal is subject to the exception test. In accordance with paragraph 170 of the National Planning Policy Framework (the Framework), for the exception test to be passed it should be demonstrated that the proposal would provide wider sustainability benefits to the community that outweigh the flood risk (part a) and the development will be safe for its lifetime, without increasing flood risk

¹ Drawing Number PL01B

elsewhere, and, where possible, will reduce flood risk overall (part b). Both parts of the exception test must be satisfied for development to be permitted.

18. The site-specific flood risk assessment sets out some mitigation measures to ensure that the development would be safe for its lifetime and would not exacerbate flood risk elsewhere. The Council accept the assessment, and subject to conditions, conclude that part b of the Exception Test is passed. Based on the evidence before me, I have no reason to disagree.
19. In relation to part a of the Exception Test regarding wider sustainability benefits, the PPG identifies that such benefits could include the re-use of suitable brownfield land as part of a local regeneration scheme, an overall reduction in flood risk to the wider community through flood risk management infrastructure, or the provision of multifunctional sustainable drainage systems. The implication of these examples is that they would positively impact a substantial number of people or make a substantial environmental difference.
20. While these examples do not apply to the appeal site, the proposal would add to the supply of housing at a time when the Council cannot demonstrate the necessary supply of deliverable housing sites. Furthermore, it would provide a type of housing for which there is an identified need, albeit limited. In light of this, I find that the proposal would provide a small benefit to the community. However, the benefit is limited by the small scale of the proposal and is also off-set by my findings above in relation to the harm caused to the living conditions of neighbouring residents and to highway safety. This is the case despite the lack of objection from the Environment Agency as the application of the exception test is a matter of planning judgement for the decision maker.
21. On balance, I therefore conclude that the proposal would not provide wider sustainability benefits to the community that outweigh flood risks and the proposal fails the exception test overall. It would be contrary to paragraphs 170 and 171 of the Framework, which seek to direct development to areas at lower probability of flooding and minimise the risk from flooding.
22. 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 CS Policy CS3, Policy DM1 of the 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 and exception tests.

Character and appearance

23. The appeal site forms part of a larger estate and is located off Bournville Road that is characterised by pairs of semi-detached dwellings of almost identical designs in reasonably sized plots with a number benefitting from parking within their front amenity areas. Nearby within the wider estate are terraces of dwellings of almost identical designs.

24. Unlike the majority of other semi-detached dwellings off Bournville Road, No.35 benefits from a sizable side outdoor area. It is proposed to construct a new end of terrace dwelling on this outdoor area. The dwelling would be of a very similar width, height and depth to No.35.
25. In light of the available width of the plot and given that the adjacent properties on Argyle Road comprise a terrace of dwellings, I do not find the provision of an additional dwelling adjoining No.35 Bournville Road, or creation of a small terrace of three dwellings, out of character with, or harmful to, the prevailing character of the area.
26. Although the proposed dwelling would have a smaller rear garden in comparison to that prevailing to the other semi-detached dwellings on Bournville Road and Argyle Road due to its tapering nature, this would not be highly discernible from the road.
27. My attention has been drawn to three other appeal decisions in Clevedon². However, they are located within a different town and within a different context such that they are not directly comparable to the appeal proposal. Moreover, I am required to consider the current appeal on its merits.
28. As a result, I do not find that the location of the dwelling represents a cramped form of development out of keeping with the character and pattern of development of the area to an extent that would justify the refusal of planning permission.
29. It follows from the above that I conclude that the proposal would not represent a cramped form of development out of keeping with the character and pattern of development of the area. As such, the proposal would not be contrary to CS Policy CS12 and Policies DM32 and DM37 of the PSPP. Amongst other things, these seek to achieve a high quality design and place making, well designed buildings and places, demonstrate sensitivity to the local character, and the setting, and enhance the area taking into consideration the existing context, and not adversely affect the character of the area.
30. Despite not forming part of the Council's reason for refusal, given the uncertainty regarding the lawfulness of the ground floor extension to No.35 Bournville Road, if I were minded to allow the appeal, this matter would require further information and clarification, not least to ensure that the front elevation of the proposed dwelling were of a suitable appearance in the interests of protecting the character and appearance of the area.

Other Considerations

31. The proposal would provide some benefits through the provision of an additional dwelling, jobs from construction, and from future spend in the economy during construction and from future occupiers. However, given the small scale of the proposal, the benefits would be limited.
32. I note the support for the proposal from the Town Council but in the absence of details of the reasons for their support, I give the comments limited weight.

² APP/D0121/W/19/3235490, APP/D0121/W/18/3195319 and APP/D0121/W/15/3140724

33. 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 and Conclusion

34. I have found above that the appeal site would not be in a suitable location for the proposed development having regard to the risk of flooding and would result in a harmful effect on the living conditions of neighbouring occupiers and highway safety. 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 users and refusing proposals that would have an unacceptable impact on highway safety. 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.
35. 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.
36. I have already concluded that development would conflict with the Framework policy relating to development at risk of flooding. This provides a 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.
37. 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 therefore dismissed.

C Rose

INSPECTOR