



Appeal Decision

Site visit made on 29 October 2024

by P J Staddon BSc, Dip, MBA (Distinction), MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12 November 2024

Appeal Ref: APP/D0121/W/24/3346604

18 Meadway Avenue, Nailsea, BS48 2DU

- 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 Hullah against the decision of North Somerset Council.
 - The application Ref is 24/P/0301/FUL.
 - The development is the 'Proposed erection of a new detached garage to the West of existing property. Subsequent sub-division of plot and erection of a new detached 4-bedroom dwelling to the East.'
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Decision

1. The appeal is allowed and planning permission is granted for the erection of a new detached garage to the west of the existing property, subsequent sub-division of plot and erection of a new detached 4-bedroom dwelling to the east at No 18 Meadway Avenue, Nailsea, BS48 2DU, in accordance with the terms of the application, Ref 24/P/0301/FUL, and the plans submitted with it, subject to the following conditions:
 - 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
 - 2) The development hereby permitted shall be carried out in accordance with the following application plans: site location plan; existing block plan; visibility splay plan; and the amended plans received by the Local Planning Authority on 24 May 2024 bearing the references: DWG1 REV A (existing and proposed block plan); DWG2 REV A (proposed ground floor plans and garage plans); and DWG3 REV A (proposed elevations and street scene).
 - 3) No construction works in respect of the new dwelling hereby approved shall be undertaken until a Construction Method Statement, has been submitted to, and approved in writing by, the Local Planning Authority. The Statement shall provide for: the parking of vehicles of site operatives and visitors; loading and unloading of plant and materials; storage of plant and materials used in constructing the development; the erection and maintenance of security hoardings; the erection and maintenance of temporary tree protection fencing during the construction period around the root protection area of the mature tree to the south-east corner of the site; wheel washing facilities; measures to control the emission of dust and dirt during construction; and delivery and construction working hours. The approved Construction Method Statement shall be adhered to throughout the construction period for the development.

- 4) No external walls or roofs shall be constructed until details of the facing materials and finishes to be used in the development have first been submitted to, and approved in writing by, the Local Planning Authority. The development shall be carried out in accordance with the approved details.
- 5) The dwelling hereby permitted shall not be occupied until a means of vehicular access to serve the existing bungalow (No 18 Meadway Avenue) and the access and parking area to serve the new dwelling, have been provided in accordance with the approved plans. The approved accesses and parking areas shall be retained and kept available for access and parking purposes at all times.
- 6) The dwelling hereby permitted shall not be occupied until a hard and soft landscape scheme has been submitted to, and approved in writing by, the Local Planning Authority. It shall include details of: all trees, hedgerows and other planting to be retained; finished ground levels; a planting specification to include numbers, size, species and positions of all new trees and shrubs; details of existing and proposed walls, fences, other boundary treatments and surface treatments of the open parts of the site; and a programme of implementation. The hard and soft landscaping scheme shall be carried out in accordance with the approved details and programme of implementation. Trees, hedges and plants which, during the development works or a period of 5 years following full implementation of the landscaping scheme, are removed or die, become seriously diseased or are damaged, shall be replaced in the first available planting season with others of such species and size as the Local Planning Authority may specify. All hard landscape works shall be permanently retained in accordance with the approved details.
- 7) No construction works in respect of the new dwelling hereby approved shall be commenced until surface water drainage details, together with a programme of implementation, have been submitted to, and approved in writing by, the Local Planning Authority. Such works shall be carried out in accordance with the approved details and programme, and maintained thereafter.
- 8) The dwelling hereby permitted shall not be occupied until the secure cycle parking/storage facilities shown on the submitted plans have been provided on site in accordance with those details. These facilities shall thereafter be permanently retained and kept available for the parking of bicycles at all times.
- 9) The dwelling hereby permitted shall not be occupied until measures to generate 10% (less if agreed with the Local Planning Authority) of the energy required by the use of the development (measured in kilowatt hours – KWh) through the use of micro renewable or low carbon technologies have been installed on site and are fully operational in accordance with details that have been first submitted to, and approved in writing by, the Local Planning Authority. Thereafter, the approved technologies shall be permanently retained unless otherwise first agreed in writing by the Local Planning Authority.
- 10) The new dwelling hereby permitted shall not be occupied until space and facilities for the separate storage and collection of waste and recycling materials have been provided in accordance with plans and specifications

that have first been submitted to, and approved in writing by, the Local Planning Authority. The said space and facilities shall thereafter be made permanently available for the storage and collection of waste and recycling materials only in connection with the uses hereby permitted.

Procedural matter

2. At the application stage, amended plans were submitted which revised the design and position of the new dwelling element of the proposal. I have made my assessment on the basis of the amended plans as listed in North Somerset Council's (the Council) decision notice.

Main Issue

3. The main issue is the effect of the proposal on the living conditions of occupants of the neighbouring property, No 18a Meadway Avenue, with particular regard to its physical impact.

Reasons

4. No 18 Meadway Avenue is a modest bungalow which sits on a relatively large plot on the south side of the road, which is residential in land use and character, and situated a short distance to the west of the town centre. To the west of the appeal site there is a row of detached bungalows, each set back behind modest front gardens. To the east of the appeal site, the neighbouring property, No 18a, is a 2-storey detached house, with an integral garage projecting forward of its front wall, all set behind an attractive lawned front garden.
5. The appeal proposal would introduce a detached garage on the west side of No 18 and a new dwelling with integral garage on its east side, on a plot that would be created in the space between No 18 and its boundary with No 18a. There is no dispute between the main parties concerning the detached garage proposal. The Council also does not dispute that, in principle, there is scope for an infill plot dwelling on the land to the east of No 18.
6. The proposed dwelling would be of a 1.5 storey chalet style design, and would be sited with its front elevation a little forward of the line of the front wall of No 18, and its projecting integral garage element a short distance behind the line of the front of the garage of No 18a. The rear elevation of the proposed dwelling would moreorless align with the rear wall of No 18; this is several metres beyond the rear wall of No 18a, which contains rear facing habitable room windows at ground and first floor.
7. The Council's concern is that the rearward projection of the new dwelling would have an overbearing impact on No 18a's windows and garden, and would cause overshadowing and loss of light. The main parties dispute whether the proposal would comply with the '45-degree test' set out in the North Somerset Residential Design Guide Supplementary Planning Document (adopted January 2013) (the SPD).
8. The SPD explains that a new residential building should not cause significant harm to the living conditions of neighbouring residents when using their gardens or habitable rooms. It employs 2 stages to the 45-degree test. The first stage relates to 'depth and width' and is based on whether a development would encroach within a line drawn at 45 degrees from the midpoint of the

- neighbouring property's nearest habitable window. The second stage relates to 'height', and tests the development against a 45-degree line drawn upwards from the midpoint of the neighbouring window.
9. The appellant has produced an annotated plan which seeks to evidence that the proposed dwelling meets the 'depth and width' stage test, with the dwelling sitting inside a drawn 45-degree line from the neighbour's window. The Council challenges the accuracy of this plan, and submits that the distance between the rear corner of No 18a and the proposed dwelling is less, claiming it is 3.697 metres, compared to the appellant's figure of 4.152 metres¹, and that the 45-degree line would be breached, although it has not shown such a line on its annotated plan.
 10. If I were to accept the Council's submissions, my assessment is that the south-east corner of the proposed dwelling might touch, or marginally pass, the 45-degree line. With regard to the second 'height' stage, I am satisfied that the proposed dwelling would fall comfortably within that 45-degree line drawn from the midpoint of No 18a's nearest ground floor window.
 11. In my assessment, the dwelling would not cause significant harm to the living conditions of occupants at No 18a and I base this finding on a number of reasons. First, as noted above, any breach of the depth and width test would be marginal, and the height test is comfortably met. Second, the 45-degree tests are set in the SPD rather than policy, and are intended to be guidance, rather than prescriptive rules. Third, and related to the height test, the design, being limited to 1.5 storeys, means that the new dwelling will be considerably lower than No 18a and will not appear bulky, imposing or harmful to the outlook from No 18a. Fourth, with regard to overshadowing and loss of light, there is no technical evidence before me to demonstrate that there would be significantly harmful effects and, as a consequence of the foregoing reasons, I assess that any impacts will be limited, and that the habitable rooms and garden spaces at No 18a would not be unduly compromised.
 12. I have further considered the issue of 'tunnelling', which is briefly referred to in the SPD, and has been covered in the main parties' cases. Whilst I have noted the fact that No 20 (to the east of No 18a) does extend further back, I am not convinced that the proposed dwelling, being set away from the property boundary and of a restrained height, will lead to a 'tunnelling' situation. Indeed, whilst there will be some change, No 18a will continue to enjoy a spacious and open south facing aspect, and will not appear hemmed in.
 13. On the main issue, I conclude that the appeal proposal would not be harmful to the living conditions of No 18a Meadway Avenue. I find no conflict with policies DM32 and DM37 of the North Somerset Sites and Policies Plan (Part 1) or section 12 of the National Planning Policy Framework (Framework), which seeks to protect the living conditions of occupants of neighbouring properties. I also find no conflict with the guidance set out in the National Design Guide (January 2021), the National Model Design Code (October 2021), the SPD (adopted January 2013) and the Building Research Establishment's 2022 publication 'Site layout planning for daylight and sunlight'.

¹ Notated on drawing no 2673/01/Revision A

Other matters

14. I have noted and considered submissions from an interested party about matters relating to the site, its clearance, and the view that a smaller bungalow property would be preferred.

Planning conditions

15. In the event that I was minded to allow the appeal, the Council provided a list of requested conditions to be applied. I have assessed these with regard to the tests set out in the Framework and the advice contained in the Planning Practice Guidance.
16. In addition to a condition setting out the statutory time limit, a condition requiring compliance with the approved plans is essential in the interest of certainty. I consider it necessary and reasonable to impose planning conditions requiring: a Construction Method Statement, in the interests of local amenity and highways safety; the approval of facing materials to ensure a satisfactory appearance of the development; completion of accesses and parking areas to serve the new dwelling and No 18, and the implementation of secure cycle storage; landscaping details in the interests of visual amenity and biodiversity; drainage details to ensure that adequate drainage arrangements are put in place; details of the renewable energy provision to accord with development plan policies CS1 and CS2; and likewise details of refuse and recycling facilities.
17. I have considered the Council's request to impose tree protection measures and to remove permitted development rights from the new dwelling. Whilst there do not appear to be any existing trees within the vicinity of the construction works, there is a large tree to the south-east corner of the site: I have included a requirement to include temporary protective fencing during works as part of the Construction Method Statement (condition 3). The Framework counsels against conditions that restrict national permitted development rights, unless there is clear justification to do so, and I am not persuaded there is such a justification in this case; I have therefore not included that suggested condition.

Conclusion

18. For the reasons stated above, the appeal is allowed and permission is granted, subject to the conditions that appear in paragraph 1 of this decision.

P. Staddon

INSPECTOR