



Appeal Decision

Site visit made on 11 March 2025

by **S Harrington MA MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 20 March 2025

Appeal Ref: APP/D0121/W/24/3351085

Land to the west of 37 Alma Street, Weston super Mare BS23 1QN

- 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 Blake, Roccaforte Holdings Limited against the decision of North Somerset Council.
 - The application Ref is 24/P/0384/FUL.
 - The development proposed is erection of a flexible commercial building (Use Class E - Commercial, Business and Service), with associated infrastructure.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The appellant has requested that an amended drawing (no. 005REVA) that did not form part of the Council's decision be taken into consideration within this appeal. The appeal process should not be used to evolve a scheme. The amended drawing directly relates to the second reason for refusal and has not been subject to formal public consultation. Furthermore, given the timing of its submission within the appeal timetable, the Council have not had an opportunity to comment on it as part of this appeal.
3. In light of this, my acceptance of the information would be procedurally unfair and result in prejudice to other parties. Therefore, I have not considered the amended drawing in determining this appeal.
4. During the course of the appeal the revised National Planning Policy Framework (the Framework) was published. The main parties have had the opportunity to comment on the implications of this change and no parties will have been prejudiced by my having regard to the latest version in reaching my decision.

Main Issues

5. The main issues are:
 - whether the proposal would comply with local and national policies that seek to steer new development away from areas at the highest risk from flooding;
 - the effect of the proposal on the living conditions of the occupiers of nearby dwellings, with regard to privacy and noise disturbance; and
 - the effect of the proposal on the character and appearance of the area.

Reasons

Flood risk

6. The appeal site lies within Strategic Flood Zone 3a which is described as land at risk of future flooding. Whilst the proposal falls within a 'less vulnerable' category according to the Flood Risk Vulnerability Classification, the Framework clarifies that a sequential test should be used in areas known to be at risk now or in the future from any form of flooding, except in certain criteria, none of which are applicable to the proposal. Moreover, the proposal is not one of the minor development and changes of use types that the Framework specifies should not be subject to the sequential test within footnote 62, and as such a sequential test is required.
7. The Planning Policy Guidance (PPG) states that the aim of the sequential approach is to ensure that areas at little or no risk of flooding from any source are developed in preference to areas at higher risk. This means avoiding, so far as possible, development in current and future medium and high flood risk areas, considering all sources of flooding.
8. Even if the second part of Policy CS3 of the North Somerset Core Strategy 2017 (CS) in relation to 'reasonably available sites' is now inconsistent with the Framework, the PPG provides more recent guidance. This states sites should be in a suitable location for the type of development with a reasonable prospect that the site is available to be developed at the point in time envisaged for the development. These could include a series of smaller sites and/or part of a larger site if these would be capable of accommodating the proposed development. Such lower-risk sites do not need to be owned by the applicant to be considered 'reasonably available'.
9. The appellant has submitted a sequential test (ST) within the appeal submission which considers whether there are any opportunities to locate the development at a site with lower risk of flooding from all sources of flooding and considered to be available, deliverable and developable. The ST covers an appropriate area and is thorough within the search criteria set, concluding that there are no sequentially preferable sites at present.
10. However, the appeal site is circa 44m² in footprint and the ST has discounted any potential site below 35.2m², or above 52.8m², adopting a 20% either way margin to the size of site. Nevertheless, the floor space of the proposal is circa 62m² and I have not been provided with any compelling reason as to why this type of development needs to be accommodated over two floors. As such, it is reasonable that search criteria should incorporate sites that can facilitate this floorspace, even if over a differing number of stories, as opposed to being constrained to the footprint of the appeal site. Therefore, the ST search criteria could exclude sites that could accommodate the floor space of the proposal, or indeed the floorspace including the sequential tests adopted 20% margin.
11. Even if the Council have accepted sequential tests within other applications that took a similar approach, I have insufficient evidence before me that any other sites are unsuitable for the type of development proposed and that all reasonably available sites have formed part of the sequential test. Therefore, it has not been adequately demonstrated there are no suitable sites for the proposal in areas of lower risk of flooding.

12. The appellant's Flood Risk Assessment indicates that proposed development will be safe and that it would not increase flood risk elsewhere and planning conditions could be imposed concerning flood resilience measures. However, this does not negate the requirement for a robust sequential test to be passed.
13. Consequently, I conclude that the proposal would not comply with policies that seek to steer new development away from areas at the highest risk from flooding, including CS policy CS3 and Policy DM1 of the North Somerset Sites and Policies Plan (Part 1) 2016 (PP). These policies seek amongst other things, to reduce flood risk overall and ensure that the impact of new development on flooding is fully taken into account.

Living conditions

14. The proposal would feature ground and first floor windows to the front elevation. The first-floor windows would allow views across to the rear gardens and windows of 68 and 70 Meadow Street as well as at a greater distance, properties along Orchard Street.
15. The separation distance between windows to the rear of 68 and 70 Meadow Street would be below the 21m specified within the Council's Supplementary Planning Document 'Residential Design Guide – Section 1' (SPD). Although at an oblique angle, given the distance, some increased overlooking would be inevitable, resulting in a loss of privacy.
16. Moreover, the distance from the windows to the rear outdoor areas of these properties would also be below the 7m advised in the SPD. The proximity of the relatively high wall opposite the appeal site, in relation to the height of first floor windows would reduce some overlooking of part of gardens closest to the appeal site. However, views would still be available of more distant areas of garden despite existing foliage.
17. Nevertheless, obscure glazing to the first-floor windows would prevent any overlooking to neighbouring gardens or windows. If the appeal were to be successful, a planning condition could be imposed to ensure the windows were obscure glazed and retained as such thereafter.
18. In terms of noise disturbance, there is no vehicular traffic fronting the appeal site, or buildings in the immediate vicinity with noise creating external extraction equipment. The area is nevertheless in an urban location, with a mix of nearby commercial uses including shops, restaurants and offices with associated movements and disturbance, and does not have the character of a tranquil residential area.
19. The appellant has indicated that the proposal would likely be utilised as an office. Nevertheless, even if it were utilised as a flexible commercial use, given the mix of nearby uses and the proposals small scale, and notwithstanding the presence of nearby residential properties, it would not result in significant disturbance over and above what would be expected within such an urban location.
20. Consequently, I conclude that subject to the imposition of a planning condition, the proposal would not harm the living conditions of the occupiers of nearby dwellings, with regard to privacy and noise disturbance. The proposal would therefore accord with PP policies DM32 and DM47. These policies seek, amongst other things, to

ensure design and layouts do not prejudice the living conditions of adjoining occupiers.

Character and appearance

21. The appeal site is a small vacant plot of land within the Great Weston Conservation Area (CA). The tight urban grain created by terraced properties directly addressing highways, but often of differing appearance, scale and uses contribute to the tight-knit urban character of the area.
22. From my observations, in so far as they relate to this scheme, the significance of the CA arises from the consistency of materials but broad mix of architectural styles in the area, as well as the pattern of development, which illustrates the historic expansion of this area of the settlement.
23. The proposal would appear as a traditional building with pitch roof and feature external materials and architectural details similar to those in the surrounding area including brick, stone window headers and sash window frames.
24. Although the proposal would result in built form covering the width of the site, this is not uncharacteristic of the area. Furthermore, the modest ridge height would be reflective of built form along Back Street and would not appear as a form of overdevelopment or out of scale, but would appropriately assimilate into the surrounding built environment. As such, the proposal would also not harm the character or appearance of the CA.
25. Consequently, I conclude that the proposal would not harm the character and appearance of the area. The proposal would accord with CS policy CS12 and PP policies DM32 and DM47. These policies seek, amongst other things, to avoid poor design standards and ensure that proposals do not harm the character of an area.

Other Matters

26. The proposal would be an efficient use of land which formerly accommodated a warehouse, providing an accessible commercial unit which would assist in the regeneration of the area and provide economic benefits, both short-term during construction, as well as longer term through its future commercial use. However, given the scale and scope of the proposal, such benefits would be modest.
27. The appellant's frustrations with the Council's handling of the application have little to do with the planning merits of the case, which I have considered on the basis of the evidence before me.

Conclusion

28. For the reasons given above, whilst I find that the proposal would be acceptable in terms of living conditions and character and appearance, I find that the proposal would conflict with the development plan, read as a whole. No material considerations, individually or cumulatively, indicate that a decision should be taken otherwise than in accordance with it. Therefore, the appeal is dismissed.

S Harrington

INSPECTOR