

Appeal Decision

Site visit made on 12 September 2016

by Rachel Walmsley BSc MSc MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 6TH October 2016

Appeal Ref: APP/B1605/W/16/3152427

21 Sedgewick Gardens, Up Hatherley, Cheltenham, Gloucester GL51 3QD

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a grant of planning permission subject to conditions.
 - The appeal is made by Mr Robert Davis against the decision of Cheltenham Borough Council.
 - The application Ref 16/00549/FUL, dated 26 March 2016, was approved on 26 May 2016 and planning permission was granted subject to conditions.
 - The development permitted is a single storey and two storey extension to rear, first floor and gable roof extension to front and side.
 - The conditions in dispute are numbers 1 and 6 which state that:
Condition No 1: *the development hereby permitted shall be begun before the expiration of three years from the date of this permission.*
Condition No 6: *notwithstanding the submitted details, the proposed first floor windows on the rear (south) elevation of the proposed extension shall be limited in size to those permitted under the previously approved application ref 15/00241/FUL. Both windows shall be 1.2m high and 1.3m wide, and shall be maintained as such thereafter.*
 - The reasons given for the conditions are:
Condition 1: *to accord with the provisions of Section 91 of the Town and Country Planning Act 1990, as amended by Section 51 of the Planning and Compulsory Purchase Act 2004.*
Condition 6: *to safeguard the amenities of the adjoining properties in accordance with Local Plan Policy CP4 relating to safe and sustainable living.*
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Decision

1. The appeal in respect of condition 6 is allowed and the planning permission Ref 16/00549/FUL for a single storey and two storey extension to rear, first floor and gable roof extension to front and side at 21 Sedgewick Gardens, Up Hatherley, Cheltenham, Gloucester GL51 3QD granted on 26 May 2016 by Cheltenham Borough Council, is varied by deleting condition 6.

Additional matter

2. With regard to condition 1, I find no reason to vary the existing condition and therefore make no change to the existing planning permission in this respect.

Main Issues

3. These are:
 - (i) whether any good planning reasons have been shown for departing from the standard time period provided for in Section 91 of the Town and Country Planning Act 1990, as amended by Section 51 of the Planning and Compulsory Purchase Act 2004; and,
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- (ii) the effect deleting condition 6 would have on the living conditions of the occupiers of No 23 Sedgewick Gardens, with particular regards to privacy.

Reasons

Condition 1

4. The Town and Country Planning Act 1990 (the Act 1990) was changed by the Planning and Compulsory Purchase Act 2004 to reduce the life of planning permissions from five to three years. The Planning Practice Guidance (PPG)¹ states that there may be circumstances where this default time may be shortened or lengthened. This should be where there are good planning reasons for doing so.
5. An earlier planning permission on the appeal site² was granted subject to, amongst other conditions, a condition limiting the time of the commencement of development to five years. The Council confirms that since this permission was granted, the Council have reduced the time limit for commencement from five to three years.
6. There is nothing within the evidence before me that states why a longer time period of five years is required for the proposed development. With no good planning reason, therefore, to extend the time limit and in light of the default period of three years set by the Act 1990, I find a time limit condition of three years to be reasonable. Varying condition 1 to five years, therefore, would conflict with the provisions of Section 91 of the Town and Country Planning Act 1990, as amended by Section 51 of the Planning and Compulsory Purchase Act 2004 and consequently I find no reason to vary this condition.

Condition 6

7. Policy CP4 of the Local Plan³ states that regard should be had to matters including loss of privacy and development should not cause harm to the amenity of adjoining land users and the locality.
8. The appeal site concerns a residential property with a rear garden that adjoins a shared boundary with No 23 Sedgewick Gardens. Planning Ref 16/00549/FUL granted permission for, amongst other things, a rear extension with first floor windows restricted in size by condition 6 to the dimensions of the windows allowed under planning Ref 15/00241/FUL. This was to limit any potential overlooking from the windows to the garden of No 23.
9. Increasing the width of both windows at first floor level to three panes would result in a modest increase in the field of vision from these windows. However, views to the garden of No 23 would be at an oblique angle and therefore direct overlooking would not occur.
10. From my observations on site, including from the garden of No 23, and when taking into account the position of the windows which would be part way along the shared boundary with No 23, not all of the adjoining garden would be

¹ Paragraph 027 Reference ID: 21a-027-20140306.

² Planning Ref 15/00241/FUL for a single storey and two storey extension to rear, first floor and gable roof extension to front and side. Creation of new parking and turning area at front (amended plans received revising the design of the rear extension and extended front parking and turning area).

³ Cheltenham Borough Local Plan (Second Review) Adopted July 2006.

overlooked. Furthermore, the windows would be a distance from the shared boundary, sufficient for the increase in the field of vision to not have a discernible effect on the privacy of the occupiers of the neighbouring property when in their garden. In all, therefore, I find that the larger windows would not result in undue harm to the privacy of the garden at No 23 and would not affect the living conditions of the occupiers of No 23 to an unacceptable degree.

11. On this basis, I find that condition 6 of planning permission 16/00549/FUL is not necessary. Removing this condition from the planning permission would result in the development for a single storey and two storey extension to rear, first floor and gable roof extension to front and side being implemented under the drawings listed in schedule 1 of the decision notice including drawing 4305/1 Rev G which shows the windows at first floor level and within the rear elevation with three panes each.
12. I appreciate concerns raised with regards to the loss of privacy to the living spaces of No 23 and for the scale of the proposed development. However, the matters before me for consideration are conditions 1 and 6 and with reference to privacy, the effect of deleting condition 6 on the living conditions of the occupiers of No 23 when in the garden. It is on this basis, therefore, that I have decided the appeal.
13. In all, I am satisfied that the development in the form proposed would not have a harmful impact on the living conditions of the occupiers of No 23 Sedgewick Gardens, with particular regards to privacy and therefore would not be contrary to Policy CP4 of the Local Plan. On this basis it is reasonable to delete condition 6 of planning permission 16/00549/FUL.

Other matters

14. I note the relationship between No 10 Manor Farm and No 21 Sedgewick Gardens and a previous decision to block up a window at No 10 in response to concerns for overlooking between houses that face each other. This does not compare with the relationship between No 21 and No 23 however, which are at right angles to each other. Whilst I appreciate the proximity of the proposed extension at No 21 to the garden of No 23, I have found that the proposal would not be harmful to privacy.
15. I have noted concerns raised for the loss of privacy to other gardens nearby. However, an increase in the width of the windows proposed would not alter the field of vision from the internal living spaces at No 21 in a way that the privacy of these gardens would be materially affected.
16. I have considered the facts and circumstances pertaining to this particular case and reached my conclusion accordingly. In the same way, each development proposal must be assessed on its own merits and therefore I do not consider that this development would set a precedent for similar developments in the future.

Conclusion

17. For the reasons given above I conclude that the appeal should succeed. Accordingly, I vary the planning permission by deleting condition 6. Condition 1 will remain unchanged.

R Walmsley INSPECTOR