

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: 24 November 2016

Appeal Ref: APP/B1605/W/16/3151666

24/26 Horsefair Street, Charlton Kings, Cheltenham, Gloucester GL53 0JE

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr R Martin against the decision of Cheltenham Borough Council.
 - The application Ref 14/00209/FUL, dated 3 February 2014, was refused by notice dated 17 December 2015.
 - The development proposed is the demolition of existing dwelling and erection of four detached dwellings with garages. Construction of private access drive.
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This decision is issued in accordance with Section 56(2) of the Planning and Compulsory Purchase Act 2004 (as amended) and supersedes the decision issued on 20 October 2016.

Decision

1. The appeal is allowed and planning permission is granted for the demolition of existing dwelling and erection of three detached dwellings with garages. Construction of private access drive at 24/26 Horsefair Street, Charlton Kings, Cheltenham, Gloucester GL53 0JE in accordance with the terms of the application, Ref 14/00209/FUL, dated 3 February 2014, subject to the 14 conditions set out in the attached schedule.

Application for costs

2. An application for costs was made by Mr R Martin against Cheltenham Borough Council. This application is the subject of a separate Decision.

Procedural matters

3. The name of the appellant, as stated above, is different from that on the planning application form. Mrs B Martin sadly passed away during the application process. The name of the appellant was changed with the agreement of the Council to Mr R Martin. The name on this decision reflects this accordingly.
 4. The description of development on the planning application form refers to four dwellings. During the course of the planning application process, the development was amended to three dwellings. It is on this basis that I have considered the appeal.
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Main Issues

5. These are:

- (i) the effect of the proposal on the character and appearance of the Conservation Area and its setting;
- (ii) the effect of the proposal on the pedestrian safety of the occupiers of No 26 Horsefair Street; and,
- (iii) the effect of the proposal on local ecology, with particular regard to badgers.

Reasons

Conservation Area

- 6. I have a statutory duty, under Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 to pay special attention to the desirability of preserving or enhancing the character or appearance of the Conservation Area.
- 7. The National Planning Policy Framework (the Framework) is an important material consideration. It identifies that heritage assets are irreplaceable resources. Paragraph 132 advises that when considering the impact of a proposed development on the significance of a designated heritage asset, such as St Mary's Conservation Area (CA), great weight should be given to the asset's conservation.
- 8. The appeal site is within and adjoins the western boundary of the CA. Horsefair Street, which the appeal site has access onto, includes properties of varying scales and architectural styles which contribute to the character of the CA. The semi-detached property on the appeal site has been converted into a single dwelling and includes a number of alterations. Whilst the property contributes to the character of Horsefair Street and therefore to the significance of the character of the CA as a whole, its contribution is limited; the Townscape Analysis map before me identifies the property as a significant neutral building within the CA; in other words a building that *neither positively contributes nor detracts from the character and appearance of the locality*. To the rear of the appeal site is a large garden with mature trees. The garden is secluded, out of public view and with no public access. The evidence before me does not identify the garden as being of merit in defining the character of the CA and given its seclusion, contributes little to the significance of the character of the CA overall.
- 9. Half of the existing dwelling would be demolished and three detached dwellings erected within the rear garden. Saved policy BE1 of the Local Plan¹ seeks to ensure that development in a CA does not detract from the green or open character of the area. Given the limited contribution the garden makes to the character of the CA, together with its seclusion, its loss would not be harmful to the overall character and appearance of the CA and therefore I find that the development would not be contrary to Saved policy BE1.
- 10. The design and access statement identifies the building as being of no particular architectural merit which complements the conclusions of the

¹ Cheltenham Borough Local Plan (Second Review 1991-2011) Adopted by Council 29 June 2006, adoption notice published 10 July 2006.

Townscape Analysis mentioned. Whilst there is no evidence of a statement of significance or historic appraisal of the existing building, I do not find that the development would result in the loss of a building of important architectural or historical merit that would impact on the character and appearance of the CA overall.

11. The overall form and scale of the building retained would not be dissimilar to the form and scale of the existing building; the side elevation exposed to the street would not be materially different from that which currently exists. The development would not, therefore, have a discernible impact on the character of Horsefair Street or on the character and appearance of the CA overall.
12. In all, therefore, the development would not be harmful to the character and appearance of the CA or its setting. I do not find, therefore, that the proposal would be contrary to paragraph 132 of the Framework which anticipates that great weight be afforded to the conservation of designated heritage assets, including their setting, nor Saved policy BE1 or Saved policy CP7 of the Local Plan which require development to complement and respect the character of the locality.

Pedestrian safety

13. Pedestrian access for the occupiers of the section of building to be retained would be via a door set in from the street and off a pavement separate from the access road into the site. Consequently occupiers could access the property safely and a distance from any moving vehicles. As a result I find that the development would not be harmful to pedestrian safety. Whilst I find no reference to pedestrian safety in any of the Saved policies referred to by the Council, I have found the proposal acceptable.

Ecology

14. The evidence before me suggests a presence of badgers on the site. The Badger Survey² before me proposes a mitigation strategy which seeks to retain the badger pathway and sett entrances and affords protection to the badgers during and after construction. The appellant's statement refers to a retaining wall to *delineate a proposed rear garden* and the Badger Survey suggests leaving the bank area undeveloped and retaining the badger pathway.
15. It is not clear, however, what the landscaping treatment would be between the rear gardens of the properties and the area for badgers. Based on the information before me, I cannot be confident that the gardens would not be exposed to badgers which in turn could have implications for the quality of the garden space provided and the potential for prospective residents to seek to eradicate the protected species.
16. It would not be unreasonable, however, to secure any planning permission with a condition to ensure that the rear gardens are secure from badgers whilst at the same time retaining the badger pathways and sett entrances. This approach would comply with Saved Policy NE1 of the Local Plan which suggests that conditions are an appropriate means to ensure that development would not materially harm legally protected species.

² Badger Survey Report for land at Horsefair Street. Reference: Martin 1\Mitigation.doc 11 April 2014.

Other matters

17. Whilst I note local concerns in respect of flooding and traffic congestion, the Council did not raise these as matters of concern. In the absence of substantive evidence to demonstrate otherwise, I have no reason to reach a contrary view to the Council in this regard.
18. I note concerns regarding land ownership and the removal of Wisteria. These matters are civil matters which are outside the planning merits of this appeal and therefore I have no jurisdiction in such matters. From a planning point of view there is no objection to the site access and related works.
19. Concerns have sought clarification on the drawings proposed, in particular those drawings relating to the site's access³. These drawings have been superseded by more recent revisions which have been considered as part of this appeal and concluded on accordingly.
20. Whilst local concerns refer to the presence of bats and other wildlife on the site, I have no evidence before me to suggest that a detailed ecological survey should be a requirement of planning accordingly.
21. I appreciate the number of objections to the proposed development. I have considered the content of these objections and assessed the proposal against the development plan and found that the proposal would not be harmful or contrary to policy.

Conditions

22. The Council has suggested a number of planning conditions which I have considered against the advice in the Planning Practice Guidance (PPG). As a result I have amended some of them for clarity and eliminated others to avoid duplication.
23. In addition to the standard time limitation for commencement, I have imposed a condition specifying the relevant drawings as this provides certainty.
24. Conditions with regards to landscaping, contamination, ground and slab levels, refuse and recycling facilities and a construction method statement are necessary to ensure that there are no significant adverse impacts on the local environment and the amenity of prospective residents.
25. To safeguard the trees to be retained, a condition to ensure that the appropriate tree protective fencing is installed and a condition securing appropriate landscape works have been imposed.
26. To safeguard the known badger population on the site and to protect the living conditions of future occupiers, I have imposed a condition requiring the submission, approval and implementation of a badger mitigation strategy.
27. In the interests of pedestrian and highway safety I have imposed a condition to ensure that the site access is constructed in accordance with the approved drawing and retained thereafter. I have also attached a condition which requires the submission and approval of a drawing showing parking and turning facilities; whilst the Council suggest drawing RM2C in this regard, the facilities on this drawing are not clear.

³ Drawings RM2B and M348/03.

28. To safeguard the character and appearance of the area, a condition is required to deal with the external materials of construction.

Conclusion

29. For the reasons given above, the proposal would not be contrary to the development plan and therefore the appeal is allowed.

R Walmsley

INSPECTOR

SCHEDULE OF 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 approved plans: R.M.10; R.M.3 A; R.M.8 A; R.M.11; R.M.1 B; R.M.4 A; R.M.5 A; R.M.6/1 B; R.M.6/2 A; R.M.6/3; R.M.7/1 A; R.M.7/2; M.7/3 B; R.M.2 C; M348/03 Rev C and Tree Protection Plan Ref Drg.HCK.084.T.3.
3. No development shall take place until details of both hard and soft landscape works have been submitted to and approved in writing by the local planning authority. These details shall include planting schedules noting species, plant sizes and proposed numbers/densities and layout. The hard landscaping works shall be carried out in accordance with the approved details before any part of the development is first occupied.
4. All planting, seeding or turfing comprised in the approved details of landscaping referred to under condition 3 shall be carried out in the first planting and seeding seasons following the occupation of the buildings or the completion of the development, whichever is the sooner; and any trees or plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species.
5. No development shall take place until an assessment of the risks posed by any contamination, carried out in accordance with British Standard BS 10175: Investigation of potentially contaminated sites - Code of Practice and the Environment Agency's Model Procedures for the Management of Land Contamination (CLR 11) (or equivalent British Standard and Model Procedures if replaced), shall have been submitted to and approved in writing by the local planning authority. If any contamination is found, a report specifying the measures to be taken, including the timescale, to remediate the site to render it suitable for the approved development shall be submitted to and approved in writing by the local planning authority. The site shall be remediated in accordance with the approved measures and timescale and a verification report shall be submitted to and approved in writing by the local planning authority. If, during the course of development, any contamination is found which has not been previously identified, work shall be suspended and additional measures for its remediation shall be submitted to and approved in writing by the local planning authority. The remediation of the site shall incorporate the approved additional measures and a verification report for all the remediation works shall be submitted to the local planning authority within 14 days of the report being completed and approved in writing by the local planning authority.
6. No development shall take place until plans showing the existing and proposed ground levels and slab levels of the proposed and adjacent buildings have been submitted to and approved in writing by the local

planning authority. The development shall be carried out in accordance with the approved details.

7. Prior to the occupation of the development, refuse and recycling facilities shall be provided for each dwelling and retained thereafter.
8. No development shall take place until a Construction Method Statement has been submitted to and approved in writing by the local planning authority. The statement shall:
 - i) specify the type and number of vehicles expected during the construction of the development;
 - ii) allocate space for the parking of vehicles and site operatives and visitors;
 - iii) allocate space for the loading and unloading of plant and materials;
 - iv) allocate space for the storage of plant and materials used in constructing the development;
 - v) provide for wheel-washing facilities;
 - vi) specify the intended hours of construction;
 - vii) specify measures to control the emission of noise, dust and dirt during construction; and,
 - viii) specify the access points to be used and maintained during construction.

The development shall be carried out in accordance with the approved details.

9. No site clearance, preparatory work or development shall take place until tree protective fencing to BS5837:2012 has been installed on site and in accordance with the Tree Protection Plan Ref Drg.HCK.084.T.3. The fencing shall be erected, inspected and approved in writing by the local planning authority prior to the works to construct the dwellings has started, and shall remain in place throughout the construction period for the development.
10. No development shall take place until a method statement to demonstrate how the existing concrete at the base of and adjacent to the trees to be retained as shown on the Tree Protection Plan Ref Drg.HCK.084.T.3, shall be removed without damage to the root protection areas of the trees, shall be submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved method statement.
11. No development shall take place until a detailed mitigation strategy and a programme of implementation for the protection of badgers and their foraging areas and pathways have been submitted to and approved in writing by the local planning authority. The strategy shall be in accordance with the recommendations of the Badger Survey Report (Reference: Martin 1\Mitigation.doc 11 April 2014) and shall include a monitoring programme of the badger setts during construction, and landscaping and boundary treatment details for the area between the rear gardens of all plots and the boundary of the site, to include badgers gates where necessary. The

development shall be carried out in accordance with the approved details and the approved programme of implementation.

12. The proposed access to the site shall be constructed in accordance with drawing M348/03 Rev C, to include the build out, reflective bollards and visibility splays. The access, as constructed, shall be retained thereafter.
13. No development shall take place until details showing the parking and turning area proposed have been submitted to and approved in writing by the local planning authority. The development shall not be occupied until the parking and turning area has been implemented in accordance with the approved details. The parking and turning area shall be retained thereafter.
14. No development above ground level shall take place until samples of the materials to be used in the construction of the external surfaces of the development hereby permitted have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved samples.