
Appeal Decision

Site visit made on 15 November 2016

by Richard S Jones BA (Hons) BTP MRTPI

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

Decision date: 5 December 2016

Appeal Ref: APP/P0119/W/16/3156595

11 Cock Road, Kingswood BS15 9SJ

- 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 Roger James PR&S Construction against the decision of South Gloucestershire Council.
 - The application Ref PK16/2533/F, dated 9 May 2016, was refused by notice dated 19 July 2016.
 - The development proposed is the demolition of redundant dwelling. Erection of six flats.
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Decision

1. The appeal is dismissed.

Main Issues

2. The Council's second reason for refusal relates to the absence of a bat emergence or re-entry survey in support of the application and that approval would result in potential harm to a protected species. However, in support of the appeal, the appellant has submitted such a survey and the Council has withdrawn its ecological objection as no evidence of roosting bats has been found. The Council has therefore confirmed that its second reason for refusal is no longer applicable. On the basis of the evidence before me, I find no reason to take a contrary position.
3. Accordingly, the main issue in this case is the effect of the development on the living conditions of the occupiers of No 9 and No 13 Cock Road, with particular reference to privacy, outlook and sunlight.

Reasons

4. The appeal site sits within a row of established residential properties. It presently accommodates a detached two storey dwelling of relatively modest proportions along with a detached garage. Both are set well back within the site such that they sit close to the rear building line of the flanking properties.
 5. The proposed building would be situated slightly further back than the existing dwelling and would have a significantly greater footprint which would occupy nearly the full width of the site. As a result, the immediate built outlook from the rear garden of No 9, which presently consists of a relatively small scale garage, would be replaced with a substantial two storey building, which by reason of its overall height, mass and proximity, would be overbearing and oppressive and would dominate the outlook from that space. There would also
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- be some harm to the outlook from the rear of the dwelling but given the orientation of the windows in relation to the proposed building, the harm would not be significant.
6. Whilst positioned slightly further away from the boundary to No 13 than the existing dwelling, the proposed building would be substantially deeper and the entire footprint would be positioned behind the rearmost part of No 13. The appellant has also confirmed that the eaves height would be increased from 4.29m to 5.4m. Consequently, the outlook from the rear ground floor window, and the rear garden of No 13, would be dominated by a mass of largely unrelieved built form in a way that I consider would be overbearing and oppressive and significantly worse than the existing situation.
 7. This additional harm would not be materially alleviated by the slight increase in the gap between the south east corner of the proposed building and the nearest part of the dwelling at No 13, or by moving the substantially larger building 1.6m further away from the first floor rear elevation. This is because the ground floor window would face down the entire depth of the building and the angle of the site also turns the building towards the rear garden area of No 13. I acknowledge that the roof would slope away from No 13 but this is already the case and with an eaves height over a metre lower.
 8. I accept that the appellant would be able to erect a 2m fence between the two properties without planning permission, however, I have no evidence to suggest that this would likely occur if this appeal were to be dismissed. This therefore limits the weight I have attributed to this argument.
 9. No 13 also differs to the other two storey dwellings within its terrace in that its main entrance is situated on its western side elevation, which also includes two ground floor windows. The existing open outlook from these windows onto the front garden of the appeal site, albeit in its current unkempt state, would be replaced by a parking area with spaces located immediately adjacent to the boundary. This would be visually intrusive and would result in a loss of privacy as well as material harm arising from noise and disturbance from the increased concentration of activity and vehicular movements in close proximity to the windows. I accept that the proposed 1.5m boundary fence would partially screen the proposed parking area and provide some degree of defensible space, however, the proximity of the fence in relation to the windows would create its own adverse impacts in terms of outlook.
 10. Whilst the existing front garden could in principle be used for parking cars, under the present arrangement that would appear unlikely as the site benefits from a garage and driveway on the western side of the site.
 11. I do not consider that the proposal would materially increase overlooking from the flats over and above that which could already occur from the existing dwelling. At the same time, neither do I consider that there would be any material improvement to the existing level of overlooking towards No 13 as the existing first floor window in the side facing elevation of the dwelling is obscure glazed and serves a bathroom. Whilst less of the rear garden would be overlooked due the windows in the flats being further back, this would not amount to a significant benefit.
 12. The size, siting and orientation of the building would also result in overshadowing and loss of sunlight into the rear of No 9 in the earlier parts of

the day and No 13 in the later parts of the day. Although the additional harm arising over and above the existing situation would not be sufficient on its own to warrant withholding planning permission, the additional harm does nonetheless add to my above stated concerns, which could not be acceptably mitigated by the use of conditions.

13. I acknowledge that the site is relatively large and that the existing constraints would restrict the form of any redevelopment and that the existing storey heights may not conform to current building regulations. However these factors do not justify a building of the size and siting proposed and the consequential harm.
14. I therefore conclude that the proposal would result in an unacceptable harm to the living conditions of the occupiers of both No 9 and No 13, thereby conflicting with Saved Policy H4 of the South Gloucestershire Local Plan and Policy CS1 of the South Gloucestershire Local Plan: Core Strategy 2006 – 2027. These state, amongst other matters, that proposals for development within existing residential curtilages will only be permitted where a number of criteria are met, including where they would not prejudice the amenities of nearby occupiers. Whilst these policies may not make specific reference to overshadowing, this reasonably forms part of any consideration relating to the amenity of nearby occupiers.
15. To allow the appeal would therefore be contrary to the fourth bullet point of paragraph 17 of the Framework which states, in respect of plan-making and decision-taking, that planning should always seek to secure a good standard of amenity for all existing and future occupants of land and buildings.

Other matters

16. I acknowledge that the proposal would result in a modest increase in housing supply in a relatively sustainable location. However, in the particular circumstances of this case, these benefits would be outweighed by the above stated harm such that the proposal would not meet the social objectives of sustainability and as such would not amount to sustainable development, having regard to the advice at paragraph 7 of the Framework. Not being sustainable development, it follows that no such presumption applies.
17. I also acknowledge that the Council has not raised concerns regarding the demolition of the existing dwelling or any undue harm in respect of the living conditions of future occupants. Although I find no reason to take a contrary position, the absence of such harm cannot weigh in favour of the proposals and should properly be considered as neutral in the planning balance.

Conclusion

18. For the reasons explained, and taking all other matters into consideration, I conclude that the appeal should be dismissed.

Richard S Jones

Inspector