
Appeal Decision

Site visit made on 16 December 2016

by R C Kirby BA(Hons) DipTP MRTPI

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

Decision date: 10 January 2017

Appeal Ref: APP/P1615/W/16/3157814

The Harrow, Kempley Road, Dymock, Gloucestershire GL18 2AH

- 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 Mrs Christine Trigg against the decision of Forest of Dean District Council.
 - The application Ref P1325/15/FUL, dated 25 August 2015, was refused by notice dated 2 March 2016.
 - The development proposed is the erection of two dwellings, garages and turning areas.
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Decision

1. The appeal is allowed and planning permission is granted for the erection of two dwellings, garages and turning areas at The Harrow, Kempley Road, Dymock, Gloucestershire GL18 2AH, in accordance with the terms of application Ref P1325/15/FUL, dated 25 August 2015 and in accordance with the 8 conditions in the attached Schedule.

Application for Costs

2. An application for costs was made by Mrs Christine Trigg against Forest of Dean District Council. This application is the subject of a separate Decision.

Main Issues

3. The main issues in this case are:
 - whether the proposal would preserve or enhance the character or appearance of the Dymock Conservation Area; and
 - the effect of the proposal on the living conditions of nearby occupiers, particularly with regard to noise and disturbance as a result of the use of the proposed access.

Reasons

Conservation Area

4. The appeal site is located within the Dymock Conservation Area (CA). Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires me to pay special attention to the desirability of preserving or enhancing the character or appearance of a conservation area. In this respect national policy on heritage assets, which includes conservation areas, is set out in the Framework. At paragraph 131, it sets out matters which should be taken into account including sustaining and enhancing the significance of the
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heritage asset and the desirability of new development making a positive contribution to local character and distinctiveness.

5. Policy CSP.1 of the Forest of Dean District Council: 23rd February 2012 Core Strategy Adopted Version (CS) sets out the Council's objective of providing quality environments. Amongst other matters, the design and construction of new development must take into account important characteristics of the environment and conserve, protect or otherwise respect them in a manner that maintains or enhances their contribution to the environment. This includes protected sites such as heritage assets.
6. The CA covers the historic core of the village with the B4215 running through its centre. The Council's Supplementary Planning Document *Dymock Character Appraisal* (DCA) was adopted in 2008. The DCA identifies that the structure of the village is ribbon development along the main road. At the southern end of the village it identifies that there is no unified street frontage and larger properties are set back from the road by large gardens; the middle and northern end of the village are characterised by smaller dwellings set tight to the roadside. It further states that the village has an unplanned nature and its haphazard development gives it its true character and beauty. No one style dominates; there is no continuous street scene.
7. The appeal site comprises part of the large garden of The Harrow, which fronts onto Kempley Road. It has the characteristics of the southern part the CA as set out in the DCA as a result of the property's large garden. However, I observed on my site visit that since the DCA was adopted it appears that the character and appearance of the southern part of the village has changed. Kyrle-Side has been developed with a row of terraces (my attention has been drawn to a planning application submitted in 2009) and the development to the rear of Kyrle-Side has been constructed. Both of these developments comprise residential properties set in modest plots. Whilst located outside of the CA, a higher density development at Kyrle Acre adjoins the boundary of it at its southern end. It is in this context that I have considered the appeal proposal.
8. I note that the Council is concerned about the loss of openness of the appeal site. The proposal would result in a loss of openness in that the open garden area would be developed with 2 detached houses and garages. However openness is not a specific characteristic referred to in the DCA. The appeal site is not identified as an Important Open Area within the DCA. The remaining garden area to The Harrow would be similar in size to the adjacent properties at Station House and The Stones. In this regard, the character and appearance of the CA would be preserved.
9. Although the new dwellings would have smaller rear gardens than properties adjoining the appeal site, they would reflect the modest gardens of the recent developments at Kyrle-Side to the south east of the appeal site, which the Council has relatively recently found to be acceptable. This is demonstrated by the appellant's aerial photograph and from the observations I made on my site visit. This development now forms part of the character and appearance of the CA.
10. The new dwellings would affect views from the B4215 towards Western Way and vice versa. However they would be set back from the main road some distance and would be served by a landscaped access. They would be viewed from the B4215 in the context of existing development in Western Way and

would not be prominent in the street scene. From Western Way, they would be viewed in the context of development fronting the main road, adding to the layers of development that is a characteristic of the area, as recognised in the DCA as 'haphazard development' which gives the area its 'true character and beauty'.

11. In light of the foregoing, I conclude that the appeal proposal would preserve the character and appearance of the CA. There would be no conflict with CS Policy CSP.1 in this regard or the statutory test.

Living Conditions

12. It is proposed to access the new dwellings along an existing access from the B4215. The host property would be accessed from Kempley Road. The Council and nearby occupiers are concerned that the use of the access by the new dwellings would be harmful to living conditions as a result of noise and disturbance. The appellant submits that this access is used as a rear access for The Harrow. I have not been provided with evidence that this is not the case.
13. The access runs in close proximity to the side of adjacent dwellings, the Old Post Office and Orchard Lea and the rear boundary of The Stones. Both the Old Post Office and Orchard Lea have a window in the side elevation facing the access into the site.
14. Although the proposal would be likely to result in an increase in vehicle movements along the access drive, over and above those associated with the host property, it is likely that these movements would not be significant, given that only one additional dwelling would be being served by it. It has not been brought to my attention that the use of the access by the Harrow has resulted in harm to the living conditions of nearby occupiers and given the limited additional vehicle movements, I am not convinced that noise and disturbance would result to a degree that would be harmful to neighbouring occupiers' living conditions.
15. I therefore conclude that in the absence of substantive evidence to demonstrate otherwise that the increased use of the access from the B4215 would not be harmful to the living conditions of neighbouring occupiers. There would be no conflict with the environmental objectives of CS Policies CSP.1 and CSP.4 in this regard, which whilst not specifically mentioning living conditions within their text, require development to be compatible with its surroundings. Furthermore, although the Council's second reason for refusal made reference to Policy AP 5 of the Forest of Dean District Council Allocations Plan Submission Draft, August 2015 (APSD), it is clear from its evidence that it considers that there is conflict with Policy AP 4 relating to the design of development. Having regard to my findings, I find that there would be no conflict with emerging APSD Policy AP 4. Moreover there would be no conflict with the core planning principle of the Framework which requires a good standard of amenity to be provided for all existing and future occupants of land and buildings.
16. The Council has made reference to its *Forest of Dean Residential Design Guide* (RDG), however has not drawn my attention to a specific part of this document. Having perused this document I cannot find where conflict would occur in respect of the Council's and local residents' concern regarding the use of the access. In the absence of evidence to indicate otherwise I cannot therefore conclude whether or not there would be conflict with this document.

Other Matters

17. Although not forming part of the Council's reason for refusing the planning application, concerns have been raised by nearby occupiers about the effect of the proposal on privacy and outlook. The officer report makes reference to the rear elevation of the new dwellings being approximately 16 and 18 metres from the rear elevation of Station House and Spring Hollow respectively. Whilst this is less than the 21 metres guidance in the RDG, the Council is satisfied that the design of the new dwellings with first floor windows on the rear elevation serving a bathroom and en-suite only, would ensure that there would be no loss of privacy to adjoining occupiers. Providing these windows were obscure glazed and had restricted opening, I have no reason to reach a contrary view to the Council in this respect. This matter could be controlled by way of a suitably worded planning condition.
18. The front first floor windows of the new dwellings would be visible from the rear elevation and garden of Orchard Lea, The Stones and the Old Post Office. However, I am satisfied that given the orientation and separation distance of the new dwellings, relative to neighbouring properties that there would be no material loss of privacy to the occupiers of them, over and above that which already exists in this built up area, where there is already mutual overlooking of neighbouring properties and gardens. I note that the Council did not raise this as a concern when it refused the planning application.
19. Concerns have been raised about Station House not being accurately depicted on the application drawings. It was clear from my site visit that this property had been extended and I based my assessment on what I saw on my site visit. It is asserted that the proposal would affect light reaching Station House and its garden, although I have not been provided with evidence to substantiate this concern. The new dwellings would be sited to the east of this property. However given the distance from the party boundary, I am not convinced that there would be a loss of light to a degree that would be harmful to living conditions. This is not good reason to refuse the proposal, and I note that the Council did not raise this as a concern within its evidence.
20. Although not raised as a reason for refusing the planning application by the Council, concerns have been raised in respect of the siting of the new garage to plot 1 and the effect this would have on the outlook from The Stones. The outlook from the rear of this property would inevitably change as a result of the appeal proposal. However, although the garage would be sited close to the party boundary with The Stones, and its roof would be visible above the existing boundary treatment, I am satisfied that its scale and position relative to this property's rear elevation and windows, would be such that the new building would not be intrusive or overbearing in the outlook from it. Harm to the living conditions of occupiers of this property would not occur.
21. In light of the foregoing, there would be no conflict with the environmental objectives of CS Policies CSP.1 and CSP.4, or emerging policy AP 4 of the APSD.
22. Submissions were made relating to Article 8 of the Human Rights Act 1998 and I recognise that if the appeal is allowed the proposal would interfere with the occupiers' of The Stones home and family life. However this consideration must be balanced against the rights and freedoms of others, and in the light of

my conclusions above, I am satisfied that if this development goes ahead its effect upon the occupiers of The Stones would not be disproportionate.

23. For the same reasons given in respect of Article 8, I consider the interference with Mr Gay's peaceful enjoyment of his property is proportionate and strikes a fair balance in compliance with the requirements of Article 1 of the First Protocol.
24. I note the concerns raised in respect of drainage. However, I concur with the Council that such matters could be addressed by a suitably worded planning condition, as suggested by Seven Trent Water in its consultation response.
25. Concerns have also been raised in respect of highway safety. On my site visit, I observed that the access onto the B4215 had good visibility in both directions. Sufficient car parking could be provided on the appeal site and also at the Harrow. The access points to the Harrow on Kempley Road are existing. Whilst vehicles leaving these spaces may need to reverse into the road, I have not been provided with substantive evidence that this has resulted in harm to highway safety. The Highway Authority raised no objection to the use of this access or the existing access off the B4215. I have no convincing evidence before me to persuade me to reach a different conclusion. I therefore find that the proposal would not result in harm to highway safety.
26. Concerns have been raised about the loss of trees upon the site and the effect upon biodiversity. I note that the Council's Sustainability and Landscape Technician raised no objection in respect of this matter, considering that the trees shown for removal were of low quality. In the absence of convincing evidence to demonstrate otherwise, I have no reason to disagree with this assessment.
27. The future maintenance of the new garage and party boundary is a private matter and has not formed part of my consideration of the proposal.

Conditions

28. The Council has suggested a number of conditions that it would wish to see imposed in the event that the appeal was successful. I have considered the suggested conditions against the guidance contained within the Planning Practice Guidance and the Framework at paragraph 206.
29. A condition is necessary to ensure that the development is carried out in accordance with the approved drawings. To ensure that the scheme is suitably drained, a condition is necessary requiring a drainage scheme to be approved and implemented. The provision of car parking and turning is necessary in the interests of highway safety and a condition to this effect is attached. In the interests of archaeology, a condition requiring a scheme of archaeological investigation to be carried out is necessary.
30. In the interests of biodiversity and the character and appearance of the area, a condition is necessary to protect the retained trees upon the site; a condition is also necessary controlling future alterations to the new dwellings, in the interest of the character and appearance of the area. A condition controlling hard surfacing and porches is not however necessary. In the interests of living conditions, a condition is necessary controlling the glazing and opening of the windows on the rear elevation of the new dwellings.

31. A neighbouring occupier has suggested that a condition controlling working hours is necessary to protect living conditions, although I note that this matter was not raised by the Council. Given the small scale nature of the development, I find that such a condition would not be reasonable.

Conclusion

32. For the above reasons, and having regard to all other matters raised, the appeal is allowed.

R C Kirby

INSPECTOR

Schedule

Conditions

- 1) The development hereby permitted shall be commenced before the expiration of three years from the date of this permission.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: Location Plan; Proposed Site Plan Drawing No: 556/01A; Proposed Garage Drawing No: 556/05; Tree Protection Plan Drawing No: 01 0; House Type Design 556/03A.
- 3) Prior to any commencement of development full drainage details for the discharge of surface and foul water arising from the site shall be submitted to and be approved in writing by the Local Planning Authority. Thereafter the approved drainage details shall be fully implemented prior to occupation of the dwelling and be maintained.
- 4) No dwelling shall be occupied until the parking spaces, turning facilities and access shown on the approved plans have been constructed, laid out and provided ready for use. Thereafter such areas shall be kept available at all times for those purposes.
- 5) No development shall take place within the application site until the applicant, or their agents or successors in title, has secured the implementation of a programme of archaeological work in accordance with a written scheme of investigation which has been submitted by the applicant and approved in writing by the local planning authority.
- 6) The development hereby approved shall be implemented in accordance with the approved Arboricultural Report, Wotton Tree Consultancy dated 23rd December 2014 and existing retained trees shall be protected during construction in accordance with the arboricultural report and tree protection Plan 01 Dec 2014.
- 7) Notwithstanding the provisions of Part 1 of the Second Schedule to the Town & Country Planning (General Permitted Development) Order 2015 (or any Order revoking and re-enacting that Order with or without modification) no development as specified in Part 1 (Classes A, B, C, and E), other than such development or operations indicated on the plans hereby approved, shall be carried out.
- 8) The dwellings hereby permitted shall not be occupied until the windows at first floor level in the rear elevation have been fitted with obscured glazing, and no part of those windows that is less than 1.7 metres above the floor of the room in which it is installed shall be capable of being opened. Details of the type of obscured glazing shall be submitted to and approved in writing by the local planning authority before the window is installed and once installed the obscured glazing shall be retained thereafter.