

Appeal Decision

Site visit made on 2 May 2017

by K Taylor BSc (Hons) PGDip MRTPI

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

Decision date: 18 May 2017

Appeal Ref: APP/P1615/W/16/3165108

Land to the North East of Colchester Close, Colchester Close, Mitcheldean GL17 0JS

- 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 Ms A Burdus against the decision of Forest of Dean District Council.
 - The application Ref P0424/16/FUL, dated 30 March 2016, was refused by notice dated 10 August 2016.
 - The development proposed is the demolition of redundant sectional building. Residential development comprising erection of four dwellings, provision of vehicular parking and manoeuvring facilities and associated works.
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Decision

1. The appeal is allowed and planning permission is granted for the demolition of redundant sectional building. Residential development comprising erection of four dwellings, provision of vehicular parking and manoeuvring facilities and associated works at land to the North East of Colchester Close, Colchester Close, Mitcheldean GL17 0JS in accordance with the terms of the application, Ref P0424/16/FUL, dated 30 March 2016, subject to the conditions in the attached schedule.

Application for costs

2. An application for costs was made by Ms A Burdus against Forest of Dean District Council. This application is the subject of a separate decision.

Main Issues

3. The main issues are the effect of the development on:
 - the living conditions of the occupiers of 43 Colchester Close with regard to overshadowing and loss of light;
 - the users of the Early Learners Centre with regard to overshadowing and loss of light; and
 - the living conditions of the future occupiers of the proposed dwellings with regard to the provision of private garden space.

Reasons

Effect on the occupiers of 43 Colchester Close

4. Colchester Close is of a residential character where the majority of the dwellings are semidetached and set back a little from the road. The proposed dwellings would sit adjacent to, and broadly in line with, 43 Colchester Close. The orientation and alignment of the proposed dwellings is such that there
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- would be no significant effect on the rear garden or rear facing windows of this neighbouring property.
5. The closest dwelling, Plot 4, would sit less than 4m from the gable wall of no. 43. This would result in overshadowing and loss of light to the two, high level, side windows in this property. The evidence before me shows that the ground floor window is a secondary window and the first floor window serves a bathroom. It is common for the flank walls of dwellings to be located in close proximity to one another, even where there are windows in these elevations. There are several examples of this within the local area.
 6. I appreciate that the occupiers of no. 43 value the light from these windows and regularly use the space near the ground floor window. However there would still be a reasonable living environment in the down stairs area from the light from the principle window. The bathroom and landing are not spaces where occupants of dwellings typically spend a great deal of time and the effect on these spaces would not unacceptably compromise the neighbours' living conditions.
 7. The Council cite conflict with its document *Alterations & Extensions – a guide for householders* (the A&E Guide). The purpose of this guide is to provide advice on alterations and extensions to dwellings. Thus the guidance is not directly relevant to the appeal scheme. However this encourages developers to consider whether a proposal would affect light reaching a neighbour's main living rooms. I have taken this principle into account.
 8. The application of the 45° and 30° guidance in the A&E Guide to the appeal scheme is not at all clear, as the diagrams appear to only show this in relation to an extension that protrudes beyond the rear wall of a neighbouring dwelling. There is no relevant supporting text to provide clarity. Similarly a distance of 'under 4m' between two existing neighbouring dwellings is shown in a diagram but there is no indication that a new flank elevation in this proximity is contrary to the advice in the A&E Guide. I therefore give very limited weight to these alleged conflicts with the guide.
 9. Overall I consider the effect of the development would not result in unacceptable living conditions for the occupiers of no. 43. Thus there is no conflict with Policy CSP. 1 of the *Core Strategy, adopted February 2012*, (the CS). This requires account to be taken of the important characteristics of the environment, which I consider reasonably includes the living conditions of neighbouring residents. There is also no conflict with the National Planning Policy Framework's (the Framework) requirement to provide a good standard of living conditions for occupants of land and buildings, or the general principles of the A&E Guide.

Effect on the users of the Early Learners Centre

10. The Early Learners Centre, an educational facility for young children, lies to the rear of the appeal site. It is situated at a lower ground level and has its main outside space adjacent to the common boundary with the appeal site.
11. The proposed dwellings would be set back from the common boundary by around 7m and around 18m from the rear elevation of the Early Learners Centre. The land levels on the site, where the appeal dwellings are proposed, is only modestly above those of the education facility. This factor, taken together

with the separation distances, is such that the proposed dwellings would not appear oppressively close to the outside space or reduce the levels of daylight to a harmful degree. There is likely to be some shadowing to this neighbouring site at certain times of day and year. I appreciate the outside area is an important learning space for the children attending the Centre, however the shadowing effect would not be so significant as to render the space unpleasant.

12. The Council consider there is conflict with its *Residential Design Guide* (RDG), as the proposed dwellings would be less than 21m from the rear of the Early Learners Centre. The primary focus of this advice in the RDG is the effect of residential development on other residential properties in respect of overlooking. The reason for refusal relates only to overshadowing and loss of light. In this respect there is no conflict with the RDG.
13. Overall I consider the development would not result an unacceptable effect on the users of the Early Learning Centre. There is no conflict with Policy CSP. 1 of the CS which requires account to be taken of the important characteristics of the environment. There is also no conflict with the Framework's requirement to consider the impact of development on existing occupants of land and buildings.

Provision of private garden space

14. Rear garden areas vary in the locality, however some, including that at 43 Colchester Close, are of a broadly similar size to that proposed for the appeal scheme. The RDG suggests that an acceptable approach is for rear garden areas to be over 100m². This is a guidance document and it does not suggest that the provision of smaller garden areas is necessarily unacceptable.
15. In line with guidance in the RDG, the dwellings are orientated so the rear gardens would catch some morning sun and these would be commensurate with other gardens in the area. I am therefore satisfied that, although the rear gardens would be significantly smaller than the optimum suggested in the RDG, they would not be unpleasantly small. They would also be adequate even if the properties were used as family homes. The garden sizes do not therefore indicate that the proposal amounts to overdevelopment of the site. There is no conflict with Policy CSP. 1 of the CS which seeks to ensure new development takes account of the important characteristics of the environment or the Framework which seeks to secure a good standard of living conditions for future occupants.

Other matters

16. The dwellings have been designed with only high level rooflights serving the first floor rooms at the rear. Although the site is sloping, this is not to the extent that overlooking would occur from ground floor windows, given the shallow gradient and height of the proposed rear boundary. The side windows in Plot 1 would have an outlook towards the access to the Early Learners Centre, the school, and parts of the outside playing space. However the first floor window serves a bathroom and, with distances involved, overlooking would not be significant. I note the concerns in respect of child protection issues, however the dwellings have been designed to minimise opportunities for overlooking and as such this factor does not significantly weigh against the granting of planning permission.

17. While the development will result in the removal of the car parking area at the front of the site, I have no substantive evidence that the school, nearby church, or the public have rights to utilise this area. I therefore give this factor very limited weight in the consideration of this appeal.
18. The proposed access to the development is adequate with space for onsite manoeuvring. I therefore do not see any reason why vehicle movements associated with the development would have any material effect on the safety of pedestrians accessing the education facilities, nor would this modest number of houses result in vehicle congestion to the extent that access to the education facilities would be affected to any significant degree. I also have no substantive evidence to suggest that access to the site could not be achieved.
19. The appropriate disposal of potentially harmful material from the site, such as asbestos, is adequately controlled through separate legislation. There is no evidence to suggest that the disposal of any such material would necessitate the temporary closure of the adjoining education facility.
20. For the reasons given above, I have reached the view that the development would not create an oppressive environment for the Early Learners Centre and its outside space. I have taken account of the various concerns raised, but I have no substantive evidence that the construction of the dwellings would have such a significant effect on parents' choice to send their children to the facility that it is likely to result in its closure.
21. I also have no evidence that there are any ownership issues, that the land was mis-sold, or that it was formally secured as a community asset as part of an earlier housing development in the area. Neither do I have any evidence that the development would adversely affect birds or bats, and I note the Council has not raised this as a matter of concern.
22. There is no reason to believe the carrying out of the development would adversely affect the side boundary wall. I note the neighbours' concern that the plans could suggest the side gate for Plot 4 is intended to be attached to this wall. However, there would be means of providing a gate in this location without the need for it to be attached to the wall. Adequate arrangements for drainage can be secured to ensure that the site and adjoining land is not adversely affected.
23. The dwellings would not be significantly taller than the neighbouring houses, and their scale, form, and appearance would be in keeping with the character of the area. The dwellings would be seen from a number of neighbouring properties, including those in Colchester Close and Baynham Road. However the dwellings would be sited a significant distance from the properties such that there would be no material effect on the living conditions of these neighbouring occupiers and I do not give the effect on views from these properties significant weight in this appeal. The effect of noise and disturbance from building works would be for a temporary period and the working hours could be limited so that undue harm would not arise. Similarly parking for construction vehicles and contractors could be controlled to limit disturbance to local residents and users of the education facilities.

Conditions

24. I have imposed a condition specifying the relevant plans as this provides certainty. To ensure there are adequate arrangements for parking, deliveries,

and working practices, so that the living conditions of nearby residents and users of the adjacent education facilities are protected, a construction method statement is necessary. In order to be effective these details must be approved before the commencement of development.

25. To ensure there is adequate surface water drainage, and having regard to the changing levels across the site and on adjoining land, I have imposed a drainage condition. I have simplified the wording as this adequately, but precisely, deals with the matter. It is sufficient for the details to be submitted prior to the construction of the dwellings, as this will allow site clearance works to commence in advance of the approval of these details. Requiring that the drainage scheme is implemented in accordance with a programme of implementation is more appropriate than this being prior to occupation, as the drainage scheme would need to be in place even if the dwellings were vacant for some time prior to the first occupation.
26. In order to protect the character and appearance of the area I have imposed a condition requiring that the external materials of the dwellings and the landscaping scheme are provided in accordance with the details shown on the plans. I have required that the landscaping is implemented by the first planting season following the first occupation of the development rather than following the completion of the development. This will avoid any ambiguity as to what constitutes the completion of the development.
27. A condition to secure the parking spaces and turning facilities is necessary to ensure adequate parking arrangements are provided. A condition to secure boundary treatments is necessary to ensure adequate living conditions are secured and maintained for the adjoining and future occupiers.
28. To prevent direct overlooking to the outside space of the adjacent education facility a condition requiring that the rooflights in the rear of the properties are placed at a high level is necessary. To ensure this is effective in the long term the permitted development rights need to be removed to prevent the future insertion of openings in the rear elevation, above ground floor level. It is only necessary that this affects the rear elevations rather than all parts of the dwellings. I have amended the wording of the suggested conditions for clarity and to meet the tests in the Framework.

Conclusion

29. For the above reasons, and having regard to all other matters raised, I consider that the development accords with the development plan when considered as a whole. I conclude that the appeal should be allowed.

K Taylor

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: PG/03 Rev. A, PG/04 Rev. A, PG/05 Rev. A, PG/06 Rev. A, PG/07 Rev. A, and PG/08.
3. No development shall take place, including any works of demolition, until a Construction Method Statement has been submitted to and approved in writing by the local planning authority. The Statement shall provide for:
 - the parking of vehicles of site operatives and visitors (including details of the typical type and number of vehicles);
 - loading and unloading of plant and materials;
 - storage of plant and materials used in constructing the development;
 - wheel washing facilities;
 - measures to control the emission of dust and dirt during construction; and
 - delivery, demolition, and construction working hours.

The approved Construction Method Statement shall be adhered to throughout the demolition and construction period for the development.

4. No development shall take place in respect of the construction of the dwellings until a full surface water drainage scheme has been submitted to and approved in writing by the local planning authority. The scheme shall include details of the size, position and construction of the scheme, the results of soakage tests, a management plan setting out the maintenance requirements for the drainage assets, an exceedance route plan, and a programme of implementation. The development shall be carried out in accordance with the approved details including the programme of implementation and shall thereafter be maintained in accordance with the management plan.
5. The external surfaces of the development hereby permitted shall be constructed in the materials shown on plan no. PG/07 Rev. A.
6. The landscaping scheme shown on plan no. PG/04 Rev. A shall be fully implemented not later than the first planting season following the first occupation of the development. If at any time during the subsequent five years any tree, shrub, or hedge forming part of the scheme dies, is removed, or felled it shall be replaced with another tree, shrub, or hedge of the same species during the next planting season in accordance with details which have been first approved in writing by the local planning authority.
7. The dwellings hereby permitted shall not be occupied until the vehicular parking and the shared driveway have been provided in accordance with plan no. PG/04 Rev. A. The parking and shared driveway shall thereafter be retained for the life of the development and kept available at all times for the parking and turning of vehicles.
8. The dwellings hereby permitted shall not be occupied until the boundary treatments and means of enclosure have been implemented in accordance with the details shown on plan no. PG/04 Rev. A. The boundary treatments and

means of enclosure shall thereafter be retained as such for the lifetime of the development.

9. The rooflights on the north east roof slope of the dwellings hereby permitted shall be constructed so that no part of the glazing shall be less than 1.7m vertically above the first floor level as shown on plan no. PG/06 Rev. A. The rooflights shall thereafter be retained as such for the lifetime of the development.
10. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that Order with or without modification), no windows, dormer windows, or rooflights, other than those expressly authorised by this permission, shall be constructed, above ground floor level, on the north east elevation of the dwellings.