
Appeal Decision

Site visit made on 27 April 2017

by Andrew Dawe BSc(Hons) MSc MPhil MRTPI

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

Decision date: 22 May 2017

Appeal Ref: APP/B1605/W/16/3165414

Land adjacent to 12 Acacia Close, Prestbury, Cheltenham, Glos. GL52 3EQ

- 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 & Mrs P.M. & S.D. Townsend against the decision of Cheltenham Borough Council.
 - The application Ref 16/01134/FUL, dated 24 June 2016, was refused by notice dated 25 July 2016.
 - The development proposed is erection of a detached dwelling.
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Decision

1. The appeal is allowed and planning permission is granted for erection of a detached dwelling at Land adjacent to 12 Acacia Close, Prestbury, Cheltenham, Glos. GL52 3EQ in accordance with the terms of the application, Ref 16/01134/FUL, dated 24 June 2016, subject to the conditions in the attached Annex.

Procedural Matter

2. The Council, in its decision notice, refers to its Supplementary Planning Document: Development on Garden Land and Infill Sites in Cheltenham (the SPD). I have applied some weight to that document due to its role in supporting the relevant development plan policies.

Main Issues

3. The main issues are the effect of the proposed development on:
 - i) the character and appearance of the surrounding area;
 - ii) the living conditions of neighbouring residents with regard to privacy.

Reasons

Character and appearance

4. There is an extant planning permission, Ref 13/01265/FUL for the erection of a detached dwelling on the site albeit of a lesser footprint and overall size than the appeal proposal. Although I have determined this appeal on its own merits, that previous decision represents a significant material consideration, particularly in respect of the forward position and close proximity in relation to the existing dwelling of No 12.
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5. The streetscene is characterised by a variety of designs and sizes of dwellings. No 12 has a relatively wide front elevation and is set within a fairly spacious plot, including a wide side garden area. The proposed dwelling would be set very close to that existing dwelling, closer than the extant permission scheme referred to above. However, that in itself would not be unusual in the context of other close relationships between dwellings nearby. It would also be set well forward of No 12. However, that would be similar to the permitted extant scheme and would not be unusual in the context of the varied angles and positions of Nos 9, 12 and 14 in relation to their shared access drive.
6. Although of a greater footprint and mass than that extant scheme, the proposed element closest to No 12 would comprise a lower subservient element with the first floor within the roofspace. That would prevent it from dominating No 12, particularly due to the retained relatively wide frontage of that property avoiding an effect of it being hemmed in. That existing width would therefore enable No 12 to retain a good degree of visibility in the streetscene when seen from the street to the south. The massing and width of the proposed dwelling would also not be excessive in the context of some other fairly large and wider existing nearby dwellings as well as that of No 12. The dwelling's prominence would also be significantly lessened by the degree of set back from the main highway of the cul-de-sac to the south and partial screening by the garage of No 10.
7. For the above reasons, I conclude on this issue that the proposed development would not cause unacceptable harm to the character and appearance of the surrounding area. As such it would accord with policy CP7 of the Cheltenham Borough Local Plan (the Local Plan), and would not be at odds with the principles of the SPD, which together, in respect of this issue, require development to be of a high standard of architectural design and to complement and respect neighbouring development and the character of the locality. It would also accord with the National Planning Policy Framework (the Framework) which in paragraph 17 states that planning should, amongst other things, always seek to secure high quality design and take account of the character of different areas.

Living conditions with regard to privacy

8. In terms of the relationship with No 14 Lime Close to the rear of the site, the only window at first floor level that would afford potential overlooking of that property would relate to a bathroom. It could be secured by condition for that window to be obscure glazed with restricted opening to prevent any overlooking. The only other first floor window at the rear would be a high level velux, also set on the side of the rear roofslope furthest from the boundary with No 14. That would therefore be unlikely to afford any overlooking that would amount to a material loss of privacy.
9. In terms of the proposed rear ground floor windows, I have had regard to the site level being higher than that of No 14. However, the combination of the existing boundary screen fence and the degree of distance those windows would be set away from it would be likely to prevent overlooking to an extent that would amount to a material loss of privacy.
10. No side windows are proposed so there would also be no direct overlooking of those neighbouring properties on that south-east side of the site. The proposed front first floor bedroom window nearest to No 10 Acacia Close, would

only directly overlook a small corner of the rear garden of that property. Otherwise, any potential overlooking would be at an oblique angle, particularly in respect of the dwelling itself and the more private garden area nearest to it. Any overlooking would therefore be unlikely to be such as to amount to a material loss of privacy to those neighbouring residents.

11. For the above reasons, I conclude on this issue that the proposed development would not cause unacceptable harm to the living conditions of neighbouring residents with regard to privacy. As such, in respect of this issue, it would accord with policy CP4 of the Local Plan, and would not be at odds with the principles of the SPD, which together, in respect of this issue, require development not to cause unacceptable harm to the amenity of adjoining land users. It would also accord with the Framework which in paragraph 17 states that planning should, amongst other things, always seek to secure a good standard of amenity for all existing and future occupants of land and buildings.

Other matters

12. The degree of separation of the proposed dwelling from No 14 would be likely to ensure that the proposal would not cause a material loss of sunlight or daylight to that property, including the greenhouse close to the site boundary, or outlook from it. Furthermore, I saw that trees that were on the site and claimed to have caused loss of sunlight and daylight to No 14, had been removed. The removal of the trees also addresses a concern of another neighbouring resident about the risk of one such tall tree falling during construction work.
13. The proposed dwelling at its nearest point would be close to the rear boundary of No 10 Acacia Close. However, like the extant scheme, it would be angled away from that boundary. Therefore, together with the northerly aspect of the rear of No 10, the proposal would be unlikely to cut out sunlight or reduce natural daylight to that property to any material extent.
14. The proposed dwelling would also be directly opposite No 9. However, again, it would be at an angle to that property. Together with the degree of separation between the dwellings, similar to the extant scheme, and whilst there may be some loss of early morning sunlight, the proposal would therefore be unlikely to cause an unacceptable loss of sunlight or daylight to that property.
15. I have also had regard to concerns about the proposal exacerbating parking and access problems in Acacia Close. Although the existing access drive is narrow, the additional traffic generated by just one additional dwelling would be unlikely to materially increase the risk of conflicting movements of vehicles, or risk to pedestrian safety, particularly given the good degree of forward visibility and likely slow vehicle speeds. I have not received any substantive evidence to support claims relating to on-street parking problems, including the blocking of driveways. Nevertheless, there would be parking provided on the site which would minimise any additional demand for on-street parking. Again, the circumstances would not be materially different to those relating to the extant scheme.
16. Construction work would inevitably generate additional traffic. However, as it would relate to only a single dwelling, it is unlikely that this would be to such a degree as to cause material and unacceptable disruption or to pose a risk to highway and pedestrian safety.

17. Concern is also raised about the proposal exacerbating issues relating to bins having to be left adjacent to No 10 for waste collection. However, I have received no substantive evidence to indicate that the proposed single dwelling would be likely to materially add to any existing problems in this respect.
18. Concerns raised about the impact on views from neighbouring properties and loss of property values are not in themselves planning considerations.

Conditions

19. The Council has suggested six conditions that it considers would be appropriate were I minded to allow the appeal. I have considered these in the light of advice in the Government's Planning Practice Guidance and amended some of the wording and added one.
20. The standard time condition is required in this case and for the avoidance of doubt and in the interests of proper planning, a condition requiring that the development is carried out in accordance with the approved plans would also be required.
21. In the interests of the character and appearance of the surrounding area, a condition would be necessary to secure details of the external materials for the proposed dwelling for the Council's approval. In the interests of highway safety and local amenity, a condition to secure the provision and retention of the proposed garage parking would be necessary.
22. In the interests of protecting the privacy of neighbouring residents to the rear of the site, a condition would be necessary to ensure that the first floor rear bathroom window is obscure glazed with restricted opening, details of which would firstly need to be submitted for the approval of the Council. Related to this, it would therefore also be necessary and reasonable to remove permitted development rights for any additional windows or dormer windows in the rear and south-east facing side elevations at first floor level and above, in the interests of the privacy of those neighbouring residents.
23. I have had regard to the Council's suggested condition to remove permitted rights for any extensions, garages, walls, fences or other structures of any kind. However, I am mindful of paragraph 200 of the Framework which states that planning conditions should not be used to restrict national permitted development rights unless there is clear justification to do so. Furthermore, the Planning Practice Guidance advises that conditions restricting the future use of permitted development rights will rarely pass the test of necessity and should only be used in exceptional circumstances.
24. I have had regard to the controls set out in the Town and Country Planning (General Permitted Development) (England) Order 2015 (the GPDO). In the absence of any substantive evidence to the contrary, the only restrictions that would need to be specifically conditioned due to the site circumstances, that would not be controlled through the GPDO, would relate to the prevention of potential overlooking of the neighbouring property to the rear of the site from ground floor windows in any single storey extension. This is in light of the raised level of the site such that windows in closer proximity to the boundary than currently proposed would provide greater potential for looking over the boundary fence. It would therefore be necessary to remove permitted development rights for any single storey rear or side extensions to avoid that

circumstance and prevent an unacceptable loss of privacy to those neighbouring residents, particularly in respect of the use of their private garden area.

Conclusion

25. For the above reasons, I conclude that the appeal should be allowed.

Andrew Dawe

INSPECTOR

Annex – Conditions

- i) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- ii) The development hereby permitted shall be carried out in accordance with the following approved plans: 01134.01, 01 Rev. B, 02 Rev. A and 01134.03.
- iii) No development shall take place until a written specification and samples of all proposed external facing and roofing materials have been submitted to and approved by the local planning authority in writing. The relevant works shall be carried out in accordance with the approved sample details.
- iv) Prior to the first occupation of the dwelling hereby permitted, the proposed garage shall be provided in accordance with the approved plans and thereafter kept available for use as car parking.
- v) The dwelling hereby permitted shall not be occupied until the first floor bathroom window to the rear elevation has been fitted with obscured glazing and any opening shall incorporate a restricted opening mechanism. Details of the type of obscured glazing and the restricted opening mechanism shall be submitted to and approved in writing by the local planning authority before the window is installed. The window shall be installed strictly in accordance with the details so approved and shall be retained as such thereafter.
- vi) 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 other than those expressly authorised by this permission shall be constructed on the rear or south-east facing side elevations at first floor level or above.
- vii) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and/or re-enacting that order with or without modification), there shall be no enlargement of the dwellinghouse hereby permitted consisting of single storey rear or side extensions.