
Appeal Decision

Site visit made on 28 January 2020

by S J Lee BA(Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11th February 2020

Appeal Ref: APP/F1610/W/19/3240652

The Piece, Cutwell, Tetbury GL8 8EB

- 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 and Mrs Paul Downey against the decision of Cotswold District Council.
 - The application Ref 19/01126/FUL, dated 22 March 2019, was refused by notice dated 20 August 2019.
 - The development proposed is a dwelling.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues in this case are the effects of the development on (i) the character and appearance of the area, including the Cotswolds Area of Outstanding Natural Beauty (AONB) and the Tetbury Conservation Area (TCA) and (ii) the living conditions of occupants of both the Piece and future occupants, with particular regard to privacy.

Reasons

Character and appearance

3. The appeal relates to part of the garden of a large detached dwelling known as the Piece. The site is located within the TCA and the AONB. Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires special attention to be paid to the desirability of preserving or enhancing the character or appearance of Conservation Areas. This is reflected in paragraph 193 of the National Planning Policy Framework (the Framework) which states that when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation. Paragraph 172 of the Framework states that great weight should be given to conserving and enhancing the landscape and scenic beauty in Areas of Outstanding Natural Beauty.
4. The significance of the TCA lies in the architectural and historic quality of many of its buildings, the majority of which reflect the Cotswolds vernacular in terms of design and materials. The historic layout of the streets and the topography of the town also add to the overall townscape quality of the area. The site is located at the end of the TCA as it extends along Cutwell. This is a narrow street which drops steeply to a ford. Development along Cutwell is generally of

a lower density and looser grain. Although there are modern dwellings beyond the site on Longfurlong Lane and Berrells Road, this part of the TCA still forms something of a transition between the core of the town and the countryside beyond. The narrow but relatively verdant nature of Cutwell helps to reinforce this character.

5. The dwellings opposite the site are generally set well back from the road, with large front gardens. These do not add significantly to the architectural or historic quality of the area and are outside the TCA. However, their layout still adds to the general sense of openness that exists. The site itself is well screened from the road by a wall and hedge. Nevertheless, it is clear that the site forms part of an open garden and both this, and the verdant nature of the site and its boundary, all make a substantial positive contribution to the TCA's character and significance. The Piece itself is a large, detached stone building which is broadly in-keeping with the character of the TCA.
6. The development would result in the subdivision of the garden and a significant and discernible reduction in the open character of the site. The proximity and orientation of the two dwellings in a relatively constrained plot would create an overly cramped appearance. This would be exacerbated by the detached garage close to the shared access and the likely increase in associated domestic paraphernalia. The siting of the dwelling partially beneath the crown of the large beech tree would also add to the sense that the dwelling had been squeezed into an unduly confined space.
7. There is no dispute between the parties that the beech tree makes a positive contribution to the visual amenity of the area and consequently the character, appearance and significance of the TCA. A hipped roof design has been chosen to allow the dwelling to sit under the crown of the tree without any apparent need for extensive pruning. Nevertheless, the Council has raised concerns that the relationship between the tree and the house would be such that it would lead to increased pressure for pruning and/or felling.
8. As the site is within the TCA, the Council has some control over any works to the tree. However, it can be difficult to resist applications to lop, top or fell trees in circumstances where safety is at issue or where damage to the building might be sustained. In my view, the unduly close relationship between the tree and dwelling would give rise to significant risks associated with falling branches and other debris. Even the perception of potential damage or other safety issues may be sufficient to persuade future occupants to seek to carry out works. The position of the tree would also give rise to the likelihood of additional issues associated with the nuisance of leaf drop.
9. Notwithstanding the tree's position to the north of the dwelling, the dense canopy would be likely to have some effect on daylight, particularly in the living room and bedroom 2. This could lead to a somewhat gloomy environment. The living room would also have obscured glazing in the western elevation, which would have a negative impact on the outlook from that room. This could increase the desire to remove the tree in the longer term.
10. I have had regard to the appellants' comments on the measures that could be taken to address all of these issues, and that future occupants would clearly be aware of the tree's presence. However, I am not persuaded that these would be sufficient to ensure the long-term protection of the tree. Therefore, even if I were to conclude that the tree could be adequately protected during

construction, there would still be significant risk of harm in the longer term. Any impact on the tree, either through excessive pruning, lopping or felling would have an unacceptable impact on the character and appearance of the TCA.

11. The appellants have suggested that either a condition or planning obligation could be used to secure the protection of the tree. No planning obligation is before me and thus I cannot give this any further consideration. The suggested condition refers to the tree being protected 'as if covered by a Tree Preservation Order'. This would not preclude future occupants from seeking to carry out works on the tree. For the reasons given above, the Council may have difficulties in resisting such applications. The suggested condition would not, therefore, be an effective means of protecting the tree.
12. Turning to the dwelling itself, the suggested materials would complement the local area. However, the design would differ to that of many dwellings in the immediate vicinity of the site, including The Piece itself. The hipped roof design, large conservatory to the front of the dwelling and associated fenestration would be uncharacteristic of the area. While variety in building styles need not always lead to harm, this is a sensitive location with a strong local vernacular. The style and detailing of the development would not make a positive contribution to this and would appear as an unsympathetic addition to the Conservation Area.
13. I find therefore that the development would have a harmful impact on the character and appearance of the TCA. In coming to this conclusion, I have had regard to the screening which exists around and within the site. However, the development would still be visible above the hedge, through the shared access and from the public right of way which runs behind the site. The cramped, incongruous and contrived nature of the development would be readily apparent from these vantage points. In winter months, the visual impact of the development would be even more striking.
14. Policy ENV5 of the Cotswolds District Local Plan (2018)(CDLP) makes it clear that the conservation and enhancement of the AONB, including its special qualities, will be given great weight. One of these qualities relates to distinctive settlements developed in the Cotswolds vernacular, with high architectural quality and integrity. It would be reasonable to assume that the special character of the TCA also contributes to the special qualities of the AONB in this regard. The scale of development is not significant in relation to the AONB as a whole and there would be no encroachment into the open countryside. Nevertheless, the detrimental impact on the TCA would also result in the failure to conserve or enhance the special qualities of the AONB. This adds to the harm caused by the development.
15. In combination, the siting, density and design of the development would result in the failure to preserve or enhance the character and appearance of the TCA and consequently the AONB. Accordingly, there would be conflict with CDLP policies EN1, EN2, EN4, EN5, EN10 and EN11 which seek, amongst other things, to ensure development is of a good quality which conserves or enhances the historic environment and the AONB. There would also be conflict with Policy EN7 which seeks to resist development that fails to conserve trees of high amenity value.

16. The harm to the significance of the TCA would be 'less than substantial'. As such, the Framework requires me to balance the harm caused with any public benefits of the development. I shall return to this matter in the 'planning balance' below.

Living conditions

17. The Cotswolds Design Code (CDC) indicates that the minimum distance between facing windows of one and two storey dwellings should be no less than 22 metres. The distance between the conservatory windows of the development and the facing windows of The Piece would be around 11 metres. The development would therefore clearly conflict with this guidance.
18. Although the CDC is guidance only, the Council's concerns over privacy are valid. The close relationship between the dwellings is such that there would be a distinct and unwelcome perception of being overlooked in both properties. This would tangibly diminish the enjoyment of the conservatory of the development and affected rooms of The Piece to the material detriment of living conditions within.
19. The appellants have indicated that, as the dwelling is intended to be occupied by the appellants, they would be aware of issues regarding privacy. However, while they may be comfortable with this now, I must consider the long-term effects of the development on future occupiers of both dwellings. The personal circumstances of the appellants are not sufficient justification for allowing a harmful form of development.
20. The appellants have suggested that windows in the host dwelling could be obscured or removed in order to facilitate the development. However, these do not form part of the appeal proposal and no mechanism for securing any changes are before me. Furthermore, I have no evidence relating to the potential impacts of the suggested course of action on the character and appearance of The Piece or the effect on living conditions therein. As such, the alterations suggested are not an acceptable or effective way of addressing the concerns raised.
21. I therefore find the development would result in unacceptable harm to the living conditions of occupants of The Piece and the development itself. There are no conditions that would address this. Accordingly, there would be conflict with CDLP Policy EN2 and the CDC which seek, amongst other things, to ensure development provides for adequate privacy. There would also be conflict with paragraph 127 of the Framework which expects a good standard of amenity for existing and future users.

Other Matters & Planning Balance

22. The development would add one dwelling to the housing land supply. There is no dispute that the Council can demonstrate a five-year supply of housing land. Therefore, while one additional dwelling would still provide some public benefits, they would not be significant. I have therefore given this factor only moderate weight.
23. It has been suggested that the development would make use of 'pre-used' land. The Framework's definition of previously developed land excludes land in built-up areas including residential gardens. The site is in a built-up area and thus would not be considered previously developed land. I therefore give no

weight to the appellants' assertion that the site is not greenfield. There would be some minor benefits associated with making more efficient use of land within a defined settlement. However, these garner only limited weight in my decision.

24. The development would ostensibly facilitate improvements to the adjacent public footpath. While this is relatively narrow and unsurfaced, it is still in useable condition. Therefore, any benefits associated with widening a short stretch of the path, or improving its surfacing, also carry limited weight in my view.
25. My attention has been drawn to other developments in Tetbury which have been considered acceptable in terms of impact on character. Examples of dwellings being allowed close to trees have also been provided. I do not have the full details of these developments. As such, I cannot conclude with any certainty they are directly comparable to the development before me. I have considered the appeal on its own merits based on the evidence before me and my own observations of the area. These examples do not alter my conclusions.
26. The Council raised no objections in relation to other factors, including highways and the living conditions of residents outside the site. I saw nothing that would lead me to a different conclusion. However, a lack of harm is neutral and weighs neither for nor against the development.
27. The evidence suggests that the dwelling would act as a retirement property for the appellants. Any benefits associated with this would be private in nature. I recognise the appellants' desire to move, but personal circumstances seldom outweigh general planning considerations. While personal circumstances will change over time, the effects of the development are likely to be permanent.
28. Concerns raised about the handling of the application are matters between the appellants and the Council and are outside the scope of the appeal. The appellants have also made several comments relating to how the development could be amended to address the Council's issues. No detailed alternative proposals have been put forward and thus I have not been able to give them consideration. In any event, the Planning Inspectorate's Procedural Guide makes it clear that the appeal process should not be used to evolve a scheme and it is important that what is considered by the Inspector is what was considered by the Council, and on which any interested person's views were sought. These suggestions have not therefore had any bearing on my decision.
29. Having had regard to all relevant material considerations, I conclude that the public benefits of the development would not outweigh the harm to the heritage asset. There are also no other material considerations that would lead me to a different decision.

Conclusion

30. For the reasons given above I conclude that the appeal should be dismissed.

S J Lee

INSPECTOR