



Appeal Decision

Site Visit made on 9 November 2021

by Rachael Pipkin BA (Hons) MPhil MRTPI

an Inspector appointed by the Secretary of State

Decision date: 5 January 2022

Appeal Ref: APP/P0119/D/21/3276795

Fromewood, Frenchay Hill, Frenchay BS16 1LS

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
- The appeal is made by Seva Rathore against the decision of South Gloucestershire Council.
- The application Ref P21/00573/RVC, dated 31 January 2021, was refused by notice dated 24 March 2021.
- The application sought planning permission for 'Erection of front porch. Erection of single storey side and rear and first floor rear extensions to form additional living accommodation. Installation of a dormer and an increase in roof height to facilitate loft conversion.' without complying with a condition attached to planning permission Ref P20/18696/F, dated 11 December 2020.
- The condition in dispute is No 2 which states that: *The development/works hereby permitted shall only be implemented in accordance with the plans as set out in the plans list below: Site Location Plan and Existing Plans and Elevations (Refs S-01, GA-02 and 03), and Proposed Plans and Elevations (Refs GA 01A, 04A and 05A), received by the Council on the 8th December 2020.*
- The reason given for the condition is: *To define the terms and extent of the permission.*

Decision

1. The appeal is allowed and planning permission is granted for erection of front porch. Erection of single storey side and rear and first floor rear extensions to form additional living accommodation. Installation of a dormer and an increase in roof height to facilitate loft conversion at Fromewood, Frenchay Hill, Frenchay BS16 1LS in accordance with the application Ref P21/00573/RVC, dated 31 January 2021, without compliance with condition number 2 previously imposed on planning permission Ref P20/18696/F, dated 11 December 2020 and subject to the following condition:
 - 1) The development/works hereby permitted shall only be implemented in accordance with the following plans: GA-01C, 02, 03, 04C, 05C and 06A.

Preliminary Matters

2. Planning permission was granted for 'Erection of front porch. Erection of single storey side and rear and first floor rear extensions to form additional living accommodation. Installation of a dormer and an increase in roof height to facilitate loft conversion.'
3. The appellant sought to secure a 'minor material amendment' to the design of the approved scheme through the variation of the plans condition in order to substitute new plans. Those replacement plans showed an enlarged single-

storey extension to the side of the property as well as proposals for the formation of a tall boundary wall and gated entrance to the rear garden boundary with the street.

4. Section 73 of the Town and Country Planning Act 1990 allows for a grant of permission for the development of land without compliance with conditions subject to which a previous permission was granted. In *Finney v Welsh Ministers & Others*¹, the Court of Appeal held that an application under section 73 may not be used to obtain a permission that would require a variation to the terms of the “operative” part of the planning permission, that is the description of the development for which planning permission had originally been granted.
5. Since the appeal scheme included a new boundary wall and gates which did not form part of the approved scheme, I wrote out to the parties seeking their views as to whether or not the appeal proposal would be acceptable in terms of section 73 in light of the judgment in *Finney*. Notwithstanding that the plans including these additional elements had been before the Council at the time it made its decision, the Council confirmed that it does not consider that the boundary wall and gates could be added in the manner proposed as part of a section 73 application.
6. The appellant requested to amend the plans to exclude those offending elements, therefore restricting the amendments to the scheme to those relating to the single-storey side extension. I sought the Council’s views on whether this would be acceptable. The Council confirmed this would be acceptable although it maintained its objection to the scheme. Revised drawings were subsequently submitted.
7. Since these drawings omit elements of the scheme but do not add to it, I am satisfied that the interests of third parties would not be prejudiced if I were to take the revised drawings into account in my decision. I have therefore proceeded to deal with the appeal on the basis of those revised drawings.
8. The Council has confirmed that the decision notice incorrectly referred to drawing GA-04 and that this should have referred to Revision B of that drawing. Notwithstanding this, I have proceeded to consider the appeal on the basis of the Revision C version of this drawing for the reasons set out above.

Main Issue

9. The main issue is whether or not the proposed development would preserve or enhance the character or appearance of the Frenchay Conservation Area (FCA).

Reasons

10. The appeal site is located on the edge of the village of Frenchay and within the FCA. The village is characterised by narrow lanes and cottages positioned within irregularly sized plots often enclosed by stone boundary walls. This is described in the *Frenchay Conservation Area Character Appraisal 2007* as a ‘jumble of cottages’. The narrowness of the lanes in combination with buildings and boundary walls positioned hard up against the carriageway has an enclosing effect on the lanes. This creates a sense of intimacy with the irregular

¹ *Finney v Welsh Ministers & Others* [2019] EWCA 1868

pattern of development providing a sense of informality. These factors all contribute to the significance of the conservation area.

11. Fromewood is a modest detached two-storey dwelling and identified as a more modern addition to the conservation area. It is positioned at the end of Chapel Lane beyond which lies open land and the Frome Valley Walkway, a pedestrian route running through Frenchay Moor. Due to its position on the edge of the built up area, it is prominent in views on entering the village and contributes to how the FCA is experienced on the approach to the historic village. In this regard, Fromewood contributes to the significance of the conservation area. Development within the surrounding area is largely of two-storey cottages which are informally laid out with irregular plot sizes which have been constructed to work with the sloping topography of the area. A number of these are built directly on the boundary with the street.
12. A number of extensions to the appeal property were approved as part of the original scheme. This included a single-storey side and rear extension which wrapped around the property terminating approximately half way along the flank wall of the elevation to the street. This provided a set back from the front elevation of the property, facing towards the open land and reduced the bulk of development on the boundary with the lane. The proposal would extend the projection of the single-storey extension with a very small set back from the front elevation. The extension would have a hipped roof.
13. The proposed extension would be modest in size although in combination with the approved extension it would be relatively large, wrapping around the side and rear of the host property. Although the proposal would increase the size of the approved side extension, being single-storey, it would appear subservient to the host property and would not detract from its simple and modest character. Furthermore, with its modest height and hipped roof, it would not appear prominent in views both from within and looking towards the FCA.
14. The proposed extension would be positioned behind a low retained stone wall and almost directly adjacent to the lane. Such forms of development are common throughout the FCA with many examples of single and two-storey development directly abutting the street, providing enclosure of the lanes, which contribute to the character of the area. The appeal scheme would have a similar effect at this far end of Chapel Lane. Whilst arguably there would be some loss of openness to the lane, this would be very limited. Furthermore, it would result in a form of development commonplace throughout the village. Consequently, its effect on how the conservation area is experienced on the approach to the historic village would be negligible.
15. This leads me to conclude that the proposed development would preserve the character and appearance of the FCA. It would therefore accord with Policies PSP1 and PSP17 of the South Gloucestershire Local Plan: Policies, Sites and Places Plan 2017 and Policies CS1 and CS9 of the South Gloucestershire Local Plan Core Strategy 2013. These policies together seek development that is a high quality of design that responds to and makes a positive contribution to the distinctiveness of the area, protects the significance of heritage assets and has regard to the distinctive character and appearance of the conservation area in which it is located. It would also accord with the heritage objectives of the National Planning Policy Framework.

Conditions

16. The guidance in the Planning Practice Guidance makes clear that decision notices for the grant of planning permission under section 73 should set out all of the conditions imposed on the new permission, and restate the conditions imposed on earlier permissions that continue to have effect. The original permission included a standard time limit condition and a plans condition, to which this appeal relates. The development has already commenced and therefore I have omitted the standard time limit condition as this is no longer necessary.

Conclusion

17. For the reasons set out above, I conclude the appeal should be allowed.

Rachael Pipkin

INSPECTOR