



Appeal Decision

Site visit made on 4 January 2022

by Stuart Willis BA Hons MSc PGCE MRTPI

an Inspector appointed by the Secretary of State

Decision date: 07 January 2022

Appeal Ref: APP/B1605/W/21/3281489

1 Loweswater Road, Cheltenham, Gloucestershire GL51 3AZ

- 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 Adam Russell against the decision of Cheltenham Borough Council.
 - The application Ref 21/00505/COU, dated 28 February 2021, was refused by notice dated 20 May 2021.
 - The development proposed is change of use to land at the rear to extend garden land.
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Decision

1. The appeal is allowed, and planning permission is granted for change of use to land at the rear to extend garden land at 1 Loweswater Road, Cheltenham, Gloucestershire GL51 3AZ in accordance with the terms of the application, Ref 21/00505/COU, dated 28 February 2021, subject to the conditions in the attached schedule.

Preliminary Matters

2. Although referenced on the application form and other appeal documents by the appeal parties, unlike the proposed fence, a summer house is not shown on the submitted plans. In addition, it is not included in the description of development on the decision notice that the appellant has confirmed they are satisfied with. Therefore, I have not included this as part of the development being sought.
3. As such, I have taken the description of development from the decision notice. Although different to that given on the application form, it is more precise. It is also the description upon which notification took place.
4. Following the refusal of the application the new National Planning Policy Framework (Framework) has been published. Where comments have been received in relation to this, they have been taken into consideration in my decision.

Main Issues

5. The main issues of the appeal are the effect of the proposed development on:
 - the character and appearance of the area; and
 - biodiversity.

Reasons

Character and Appearance

6. Although said to have been part of the original estate layout, the evidence before me indicates that the appeal site is not designated as open green space in the development plan.
7. It is an area of undeveloped land between Loweswater Road and Winton Road with a pedestrian path alongside it linking the streets with garden areas to two sides. There are several pockets of undeveloped land within the surrounding streets that vary in terms of their size, shape and greenery. These act as a break in the built form and along with landscaping within plots softens the appearance of the streetscene.
8. The appeal site is of a small size with limited greenery. It is located at the end of a cul-de-sac adjacent to gardens and enclosed by boundary treatments to 2 sides. Parking was taking place in front of the site and along the road at the time of my visit which also partly obscured views of the site. As a result, the site is largely screened in longer range views and while visible from them, is not prominent from many of the nearby properties. While it previously contained mature landscape features, it is currently overgrown and unkempt.
9. Consequently, it is not a key feature in the streetscene and makes a limited contribution to the character and appearance of the area at present.
10. The proposed development would remove the vegetation on the site. Nonetheless, hard surfacing and parked vehicles would be low level and would not be discordant given the presence of the adjacent roads and paths. Existing boundary treatments would aid in screening the area and part of the site would remain open. A condition is imposed preventing further structures being added. In addition, although not large, an area of planting is proposed in one corner of the site that would act as a buffer between and be visible from both streets.
11. The site is partly enclosed, and the remainder could be enclosed by some boundary treatments under permitted development rights. There are walls and fencing along the cul-de-sac of varying appearance. Therefore, the fencing off of part of the site would not be discordant with the existing site and its context. A condition is imposed requiring details of the proposed fencing to be agreed.
12. Even if I were to agree that the site was an existing open space in the context of paragraph 99 of the Framework, due to its small size, its loss would have a minimal effect on the level of provision in the area and is of limited public value at present.
13. Therefore, the proposed development would not harm the character and appearance of the area. It would comply with Policy INF3 of the JCS¹ along with Policy D3 of the Cheltenham Plan. These, amongst other things, seek to prevent the development of private green areas and open space that make a significant contribution to the townscape and environmental quality and protect green infrastructure in a manner that reflects its contribution to landscape/townscape quality. It would also accord with the Framework where it requires schemes to be sympathetic to local character.

¹ Gloucester, Cheltenham and Tewkesbury Joint Core Strategy 2011 - 2031

Biodiversity

14. I acknowledge third party references to slow worms, dormice and other fauna at the site. Notwithstanding this, while overgrown at the time of my visit the information before me indicates that there are no records or biodiversity alerts for the site from the Gloucestershire Centre for Environmental Records.
15. There is little connectivity to other habitats and previous landscape features have been removed. There is no compelling evidence that there is a reasonable likelihood of protected species being present on or near the site or that they may be adversely affected by the proposal. As a result, and in light of the condition of the site at the time of my visit, further information, such as ecological surveys of the site, are not necessary.
16. Landscape features have previously been removed at the site and areas would be hard surfaced. Nevertheless, an area of planting is proposed and secured by condition.
17. Therefore, the proposed development would not harm biodiversity. It would accord with the biodiversity protection aims of SD9 and INF3 of the JCS.

Other Matters

18. Whether the removal of landscape features at the site required separate consents is not a matter for this appeal. I saw there were streetlights nearby and the relocation of the existing one in front of the site is a matter for the Council. That previous applications and enforcement action at the site have taken place do not alter my findings on the scheme before me.
19. While any contribution towards reducing climate change is worthwhile, given the size of the site, the loss of the remaining greenery at the site would be small. The individual circumstances of this proposal mean it would not set a precedent. I have concluded that the proposal would be acceptable, and I can see no reason why it would lead to harmful developments on other sites. Moreover, each case should be assessed on its own merits, as would any future proposals at the site.
20. There is unrestricted parking near the site and much of the surrounding streets with some properties have parking within their plots. This would provide sufficient space to accommodate any displaced by the appeal scheme. The Highways Planning Liaison Officer concluded that there would not be an unacceptable impact on highway safety or a severe impact on congestion. I have reached the same finding.
21. Parking already takes place near the site a comparable distance from the surrounding properties and their gardens. Therefore, the presence of parked vehicles in the outlook from nearby dwellings, and any noise or disturbance associated with vehicle movements or activities within the enlarged garden area, would not be unexpected or significant.

Conditions

22. In addition to the standard time limit condition, I have imposed one requiring that the development is carried out in accordance with the approved plans. This is in the interest of certainty.

23. In order to protect the character and appearance of the area, I have also imposed a condition requiring details of the proposed fence, a landscape scheme and one removing permitted development rights for further structures or buildings at the site.

Conclusion

24. For the reasons given, and having considered all matters raised, I conclude that the appeal should be allowed, subject to the conditions below.

Stuart Willis

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: Site Location and Existing Block Plan Drawing No SK 001 and Proposed Layout Plan.
- 3) 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), no plant, structures, buildings, walls, fences or other means of enclosure, other than those expressly authorised by this permission, shall be erected, constructed or installed at the site.
- 4) Prior to their beneficial use of the development hereby approved boundary treatments at the site shall be erected in accordance with details, including material(s), finish/colour(s) and dimensions, that have first been submitted to and approved in writing by the local planning authority and thereafter retained as such.
- 5) Prior to the beneficial use of the development hereby approved, details of both hard and soft landscape works shall be submitted to and approved in writing by the local planning authority. These details shall include:
 - i. Planting plans,
 - ii. Written specification of planting and cultivation works to be undertaken,
 - iii. Schedule of plants giving species, plant sizes, and proposed numbers/densities where appropriate,
 - iv. existing and proposed finished levels,
 - v. vehicle parking layout,
 - vi. materials for hard surface areas that shall be permeable or drained to a permeable area, and
 - vii. an implementation programme.

Thereafter, the development shall be carried out and maintained in full accordance with the approved details.

Any trees or plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species.