



Appeal Decision

Site visit made on 21 February 2022

by James Blackwell LLB (Hons) PgDip

an Inspector appointed by the Secretary of State

Decision date: 11 March 2022

Appeal Ref: APP/P0119/W/21/3282597

1 Homestead Gardens, Frenchay, Bristol BS16 1PH

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73A of the Town and Country Planning Act 1990 for the development of land carried out without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Mr & Mrs R Smith against the decision of South Gloucestershire Council.
 - The application Ref P20/17252/RVC, dated 10 September 2020, was part refused by notice dated 25 June 2021.
 - The application sought planning permission for the erection of 1no dwelling: variation of condition 4 attached to PT17/4403/F (as amended by P21/00830/NMA) to substitute drawings without complying with a condition attached to planning permission Ref PT17/4403/F, dated 15 November 2017.
 - The condition in dispute is No 4 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:
RS.01 – Ground Floor Plan (Received 20/09/2017)
RS.02 – First Floor Plan (Received 20/09/2017)
RS.03 – The Location Plan (Received 20/09/2017)
RS.04A – Proposed Site Plan (Received 03/11/2017)
RS.06A – Proposed Elevations (Received 05/10/2017)".
 - The reason given for the condition is: "To define the terms and extent of the permission".
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Decision

1. The appeal is allowed and planning permission is granted for the erection of 1no dwelling and associated works at 1 Homestead Gardens, Frenchay, Bristol BS16 1PH in accordance with the terms of the application, Ref P20/17252/RVC, dated 10 September 2020, subject to the conditions set out in the Schedule.

Applications for costs

2. An application for costs has been made by Mr & Mrs Robert Smith against South Gloucestershire Council. This is the subject of a separate decision.

Preliminary Matters

3. During my site visit it was clear that development was nearing completion, and has been carried out in accordance with the revised plans now submitted as part of this appeal, rather than the originally consented plans. Whilst it is not clear whether the relevant plans condition had already been breached at the time the application was first made, I have determined this appeal under s73A of the Town and Country Planning Act 1990 (rather than s73), as it is apparent that the changes sought are now retrospective.

4. Planning permission was originally granted for the construction of 1no dwelling and associated works under planning reference PT17/4403/F on 15 November 2017 ("Original Permission"). The Original Permission has since been amended by a non-material amendment (to incorporate an approved plans condition), being application P21/00830/NMA approved on 26 February 2021 ("NMA"). It is the Original Permission as amended by the NMA which the appellant is now seeking to amend under this appeal.
5. Nonetheless, it is important to note that under s73 of the Town and Country Planning Act 1990, I can either allow the appeal and create a new planning permission, or dismiss the appeal. In either event, the Original Permission (as amended by the NMA) would remain extant. I have therefore used the description of development from the Original Permission as this relates to the development as a whole, and will ensure clarity over the development now permitted.
6. Whilst the plans condition approved under the NMA was numbered no. 1 in the NMA decision notice, this condition has been referred to as condition no. 4 (of the Original Permission) in the appeal documentation. I have followed this approach to ensure consistency and clarity.
7. The appeal application was part approved and part refused by the Council. The approved amendments included the addition of roof lights and changes to roof heights and fenestration arrangements. On this basis, the main issue of this appeal will focus solely on the refused elements of the revised scheme, being changes to the front boundary wall and brick piers.

Main Issue

8. In this context, the main issue is the effect that varying condition 4 of the Original Permission (as amended by the NMA) would have on highway safety, with particular regard to pedestrian movements.

Reasons

9. The front boundary wall to the appeal property has been built slightly closer to the kerb than the originally consented plans. The driveway entrance is also slightly narrower. As a result, visibility splays from the property have been reduced when compared to the consented plans.
10. The distance between the kerb and the front boundary wall does still meet the minimum 2.4 metres distance recommended by the Manual for Streets¹. For drivers egressing the property, this ensures the recommended visibility splay is achieved when looking right towards Malmains Drive. However, the left-hand visibility splay does fall slightly short of the recommended distance, which means drivers may have reduced visibility of oncoming pedestrians from this direction.
11. Nonetheless, Homestead Gardens is a short and quiet cul-de sac, serving 22 dwellings. There are no public rights of way emanating from the road, which means footfall is primarily limited to local residents and visitors, and is therefore limited. As such, potential for conflict between vehicles exiting the appeal property and oncoming pedestrians is generally low.

¹ Department for Transport, Manual for Streets

12. The appeal property also benefits from a large sweeping driveway, which means drivers would be able to exit the property in forward gear, without any need to reverse. Moreover, the entrance to the appeal site has an electric gate which takes approximately 25 seconds to open, which would help alert oncoming pedestrians (both visually and aurally) to imminent vehicle movements from the appeal property. Both of these factors further reduce the potential for conflict. In this context, drivers accessing or egressing the appeal property should have sufficient visibility of oncoming pedestrians, and adequate time to see them, to ensure safe manoeuvring without risk to their safety. This reflects the view of the Highways Authority.
13. For these reasons, I am satisfied that the development carried out pursuant to the amended plans does not give rise to an unacceptable level of risk to pedestrian safety. As such, the as-built development remains consistent with Policy PSP11 of the Council's Policies, Sites and Places Plan (2017), which seeks to ensure new development procures safe and appropriate access.

Other Matters

14. Whilst I note local concern regarding the size of the dwelling, potential for overlooking arising from the fenestration arrangement, and removal of trees, these are all matters which go beyond the scope of this appeal, which is concerned solely with the changes to the front boundary wall and the resultant effects on highway safety.

Conditions

15. The Planning Practice Guidance makes clear that decision notices for the grant of planning permission under section 73 should also restate the conditions imposed on earlier permissions that continue to have effect. Whilst development is now at a late stage, I have little information before me about the status of other conditions imposed on the Original Permission (as amended by the NMA). The Council also added a number of additional conditions to the part approval relating to the appeal application, to ensure acceptability of the changes sought. Again, the status of these conditions is unknown. Subject to the amended plans conditions, I shall therefore impose all those conditions imposed on the part approval, to ensure continued compliance. In the event that some have in fact been discharged, that is a matter which can be addressed by the parties. Notwithstanding this approach, I have removed the deadline of 31 October 2021 for implementation of the landscaping scheme under condition 3, as this would now be impossible to comply with (if the condition hasn't already been fully discharged).

Conclusion

16. For the reasons given above, and having considered the development plan as a whole, the approach in the Framework, and all other relevant material considerations, the appeal should be allowed and the planning permission is varied accordingly.

James Blackwell

INSPECTOR

SCHEDULE OF CONDITIONS

- 1) The development/works hereby permitted shall only be implemented in accordance with the plans as set out in the plans list below:
PDCM:516-12C - Proposed Ground Floor Plan (Received 15/09/2020)
PDCM:516-13A - Proposed First Floor Plan (Received 15/09/2020)
PDCM:516-22A - Proposed Roof Plan Lower Level (Received 15/09/2020)
PDCM:516-23A - Proposed Roof Plan Upper Level (Received 15/09/2020)
PDCM:516-30F - Proposed West Elevation (Received 11/05/2021)
PDCM:516-31F - Proposed North Elevation (Received 11/05/2021)
PDCM:516-32E - Proposed East Elevation (Received 11/05/2021)
PDCM:516-33F - Proposed South Elevation (Received 11/05/2021)
PDCM:516-34A - Block Plan (Received 15/09/2020)
- 2) The first-floor window on the east elevation and first floor windows on the north elevation shall be glazed with obscure glass to level 3 standard or above with any opening part of the window being above 1.7m above the floor of the room in which it is installed; and all shall be retained as such thereafter.
- 3) Within two months of the date of this decision, a detailed scheme of soft landscaping, to include details of proposed planting shall be submitted to the Local Planning Authority for approval. Such details shall include new replacement semi-mature tree planting around the site frontage. Development shall be carried out in accordance with the agreed details in the first planting season following this decision.
- 4) Notwithstanding the provisions of Schedule 2 of the Town & Country Planning (General Permitted Development) (England) Order 2015 (or any Order revoking and re-enacting that Order with or without modification) no development as specified in Part 1 (Classes A, AA, B, C, D, E, F, G and H), or any minor operations as specified in Part 2 (Class A), other than such development or operations indicated on the plans hereby approved, shall be carried out without the prior written consent of the Local Planning Authority.
- 5) The off-street parking facilities (for all vehicles, including bicycles) shown on the plan hereby approved shall be provided before the building is first occupied, and thereafter retained for that purpose.
- 6) The hours of working on site during the period of construction shall be restricted to 7:30 to 18:00 Monday to Friday and 8:00 to 13:00 on Saturdays; and no working shall take place on Sundays or Public Holidays. The term 'working' shall, for the purpose of clarification of this condition include: the use of any plant or machinery (mechanical or other), the carrying out of any maintenance/cleaning work on any plant or machinery deliveries to the site and the movement of vehicles within the curtilage of site.