



Appeal Decision

Site visit made on 22 March 2022

by Tamsin Law BSc MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 02 February 2023

Appeal Ref: APP/F1610/W/21/3283183

6 Jubilee Mews, Andoversford GL54 4AZ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a grant of planning permission subject to conditions.
 - The appeal is made by Ian Sneyd against the decision of Cotswold District Council.
 - The application Ref 20/04289/FUL, dated 27 November 2020, was approved on 16 September 2021 and planning permission was granted subject to conditions.
 - The development permitted is change of use of land to residential.
 - The conditions in dispute are No's 3 and 4 which state that:
 - (3) *No earthworks/engineering operations shall be undertaken to the area shown in red on Drawing No. (AND_COU_PLOT 6B).*
 - (4) *Notwithstanding the provisions of Schedule 2 Part 1 Class A and E; and Schedule 2 Part 2 Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended), or any other statutory instrument amending or replacing it, no extensions or outbuildings, or new walls, fences or other means of enclosure shall be created, placed, erected or constructed in the area shown in red on Drawing No. (AND_COU_PLOT 6B).*
 - The reasons given for the conditions are:
 - (3) *To protect the character and appearance of the former railway line and to protect the residential amenities of the occupants of neighbouring dwellings in accordance with Cotswold District Local Plan Policies EN1, EN2, EN4, EN5 and EN15; and the National Planning Policy Framework.*
 - (4) *To protect the character and appearance of the former railway line and to protect the residential amenities of the occupants of neighbouring dwellings in accordance with Cotswold District Local Plan Policies EN1, EN2, EN4, EN5 and EN15; and the National Planning Policy Framework.*
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Decision

1. The appeal is allowed and the planning permission Ref 20/04289/FUL for the change of use of land to residential at 6 Jubilee Mews, Andoversford, GL54 4AZ granted on 16 September 2021 by Cotswold District Council, is varied by deleting conditions 4 and substituting it for the condition detailed in the attached schedule.

Preliminary Matters

2. I have used the description of development contained within the Council's decision notice as this more concisely describes the development.

Background and Main Issues

3. Planning permission was granted for the change of use of land to residential at the site on 16 September 2021, subject to a number of conditions. In particular, conditions 3 and 4 restrict any earthworks/engineering operations

and removes certain permitted development rights within a section of the site. The appeal seeks to remove these conditions.

4. In that context, the main issue is whether conditions 3 and 4 are necessary with particular regard to the living conditions of the occupiers of neighbouring properties and the character and appearance of the area.

Reasons

Site Context

5. The appeal site is an area of land to the rear of 6 Jubilee Mews, a residential dwelling with garden area to its rear. The site has been subject to previous appeals¹ that, amongst other matters, related to the use of land as residential and various alleged works. Land belonging to the host dwelling extends beyond the rear garden and to a point near to the A40. The railway embankment effectively forms the boundary between the existing rear garden of 6 Jubilee Mews and the appeal site. Whilst the railway embankment does not have any designated or non-designated status, and I have had regard to the appellants comments regarding this matter, it delineates and provides a link to the historic railway line that ran through the area. Some sections of the wider railway embankment have been removed; however it forms a unique and simple boundary feature to the rear of Jubilee Mews that contributes positively to the character and appearance of the area.
6. From my site visit it appears that properties either side of the appeal site have also extended their garden beyond the railway embankment. Apart from steps down the embankment allowing access to the site there is no other development that would allow views into neighbouring gardens. This means that the garden areas of neighbouring properties between the embankment and the A40 benefit from a high level of privacy. The existing steps offer transient glances towards neighbouring gardens rather than any sustained opportunity of overlooking. Neighbouring occupiers therefore benefit from a private garden space and would have a reasonable expectation that this would be preserved.

Condition 3

7. Condition 3 effectively restricts any earthworks or engineering operations being undertaken within the bund area. Whilst the previous inspector considered the embankment to be a means of enclosure, it is an inescapable fact that to remove the embankment would involve earthworks – and therefore this condition would prevent its removal.
8. Whilst the railway embankment does not have any designated or non-designated status, and I have had regard to the appellants comments regarding this matter, it delineates and provides a link to the historic railway line that ran through the area. Some sections of the wider railway embankment have been removed; however it forms a unique and simple boundary feature to the rear of Jubilee Mews that contributes positively to the character and appearance of the area. Additionally, as other parts have been removed this only highlights the importance of its retention here.

¹ APP/F1610/C/16/3142868, APP/F1610/C/16/3142869, APP/F1610/C/15/3141425 and APP/F1610/C/15/3141425

9. Additionally, other earthworks could be undertaken that could create level area on the embankment. These could be utilised for garden chairs or other domestic paraphernalia that could increase the ability to look over neighbouring gardens. The elevated position of the embankment heightens the sense of overlooking and so differs significantly from the relative privacy which is currently afforded to the neighbouring occupiers. Given my reasoning above, in my view the privacy of the neighbouring occupants would be materially adversely affected should further development of the embankment be undertaken
10. The disputed conditions allow for greater control to be applied to the types of development that can be undertaken within the railway embankment area. These conditions are necessary to ensure that the proposal does not allow future development that could have a harmful impact on the on the character and appearance of the area. If this condition were to be removed, there could be the loss of a feature that contributes positively to the character and appearance of the area.
11. The disputed condition is precisely defined and is clearly necessary in order to ensure that the proposed development complies with development plan policy.
12. For the above reasons, I conclude that the disputed condition is reasonable and necessary in order to ensure that there is no harm to the character and appearance of the area or on living conditions of nearby residents. Their removal would therefore be contrary to accordance with policies EN1, EN2, EN4, EN5 and EN15 of the Cotswold District Local Plan (2018) (LP), which seek, amongst other things, to ensure that development complements the character of an area and takes account of historic landscape character and ensures adequate privacy is provided to neighbouring properties.

Condition 4

13. Condition 4 removes permitted development rights for Class A (extensions to dwelling) and Class E (development within the curtilage). Potential development such as terracing, decking or outbuildings could be constructed that would offer direct views over the boundary fence into neighbouring gardens, having a harmful impact on neighbouring occupiers and the enjoyment of their gardens. There would therefore be the potential for direct overlooking of neighbouring rear gardens for more sustained periods than would be usual from an embankment with access steps. The elevated position of the embankment heightens the sense of overlooking and so differs significantly from the relative privacy which is currently afforded to the neighbouring occupiers. Given my reasoning above, in my view the privacy of the neighbouring occupants would be materially adversely affected should further development of the embankment be undertaken.
14. Whilst the area to the rear of Jubilee Mews has a residential character, with formal boundary treatments, there is little built development. The appeal site and embankment are largely free from built development and allows the historic railway line to be legible. Additional development of structures and means of enclosure could clutter the embankment, which is a prominent feature from neighbouring gardens. This would be at odds with its simple form, and could add visual clutter to the embankment, drawing the eye.

15. The disputed conditions allow for greater control to be applied to the types of development that can be undertaken within the railway embankment area. The condition is necessary to ensure that the proposal does not allow future development that could have a harmful impact on the on the living conditions of neighbouring occupiers and the character and appearance of the area. If this condition were to be removed in its entirety, various structures and operations could be undertaken, that would have a harmful impact.
16. However, Condition 4 references Class A which relates to the extension and alteration of a dwellinghouse. The host dwelling is not within the red outline of this appeal and from reviewing the plans any extension that could be undertaken under permitted development rights would not encroach into the embankment area. As such, currently the condition is imprecise, I will need to alter the wording to remove reference to Class A in order for the condition to be precise.
17. For the above reasons, I conclude that the disputed condition, insofar as it relates to the removal of permitted development rights relating to Class E, is reasonable and necessary in order to ensure that there is no harm to the character and appearance of the area or on living conditions of nearby residents. Their removal would therefore be contrary to accordance with policies EN1, EN2, EN4, EN5 and EN15 of the LP, which seek, amongst other things, to ensure that development complements the character of an area and takes account of historic landscape character and ensures adequate privacy is provided to neighbouring properties

Conditions

18. I have varied the disputed condition 4 and retained condition 3 for the reasons set out. The Planning Practice Guide (PPG) indicates that, to assist with clarity, decision notices for the grant of planning permission under section 73 should also repeat the relevant conditions from the original permission, unless they have already been discharged. In this case, it is the conditions attached to the 2021 permission which remain relevant.
19. I have no evidence before me to suggest that any of the other conditions are no longer necessary or relevant and during my site visit, I noted that works had not commenced. I have therefore imposed all of the other conditions attached to the 2021 permission.

Conclusion

20. I therefore allow the appeal, deleting condition 4 and substituting with a condition which is more precise whilst, for the reasons given, condition 3 will remain.

Tamsin Law

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall be started by 3 years from the date of this decision notice.
- 2) The development hereby permitted shall be implemented in strict accordance with the following approved plans: Location Plan (Unnumbered and received by the Council on 05/01/2021).
- 3) No earthworks/engineering operations shall be undertaken to the area shown in red on Drawing No. (AND_COU_PLOT 6B).
- 4) Notwithstanding the provisions of Schedule 2 Part 1 Class E; and Schedule 2 Part 2 Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended), or any other statutory instrument amending or replacing it, no outbuildings, or new walls, fences or other means of enclosure shall be created, placed, erected, or constructed in the area shown in red on Drawing No. (AND_COU_PLOT 6B).