



Appeal Decision

Site visit made on 31 August 2023

by Helen O'Connor LLB MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13 September 2023

Appeal Ref: APP/C1625/W/22/3313131

1 Manor Farm House, School Lane, Whitminster, Gloucestershire GL2 7NT

- 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 Donald Fletcher against the decision of Stroud District Council.
 - The application Ref S.22/1348/FUL, dated 17 June 2022, was refused by notice dated 15 November 2022.
 - The development proposed is the erection of a three bedroom dwelling with ancillary site improvements.
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Decision

1. The appeal is allowed and planning permission is granted for the erection of a three bedroom dwelling with ancillary site improvements at 1 Manor Farm House, School Lane, Whitminster, Gloucestershire GL2 7NT in accordance with the terms of the application, Ref S.22/1348/FUL, dated 17 June 2022, subject to the following 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: Location & site plan, drawing no. P-01a; Proposed site plan, drawing no. P-02f; Proposed floor plans and site section, drawing no. P-03d; Proposed elevations, drawing no. P-04b; Proposed garage & carport, drawing no. P-05a.
 - 3) The dwelling hereby permitted shall not be occupied until the first floor windows in the rear (south) elevation shown on drawing nos. P-03d & P-04b serving the ensuite and bathroom have been fitted with obscured glazing, and no part of those windows that is less than 1.7 metres above the floor of the room in which it is installed shall be capable of being opened. Details of the type of obscured glazing shall be submitted to and approved in writing by the local planning authority before the windows are installed and once installed the obscured glazing shall be retained thereafter.
 - 4) Prior to the occupation of the development the electrical vehicle charging point and visibility splay shown on drawing no. P-02f shall be provided. The visibility splay shall thereafter be retained and kept free of obstructions to visibility over 0.6m in height above carriageway level.
 - 5) Prior to the occupation of the development there shall have been submitted to and approved in writing by the local planning authority a

scheme of landscaping. The scheme shall include details, species and sizes of tree planting as shown on drawing no. P-02f as well as a timetable for planting. Thereafter, the landscaping scheme shall be carried out in accordance with the agreed timetable and any trees or plants which within a period of 5 years die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species.

Procedural Matters

2. Refusal reason 3 on the Council's decision notice refers to a failure to secure appropriate mitigation measures, in the absence of which it is stated that the proposal would have an adverse effect on the Severn Estuary Special Area of Conservation. This international designation, together with those of the Severn Estuary Special Protection Area and Ramsar site are recognised by the Conservation of Habitats and Species Regulations 2017 (the Habitat Regulations). I refer to these collectively as the European sites in my decision. The appellant has submitted a signed Unilateral Undertaking (UU) dated 11 July 2023, pursuant to section 106 of the Town and Country Planning Act 1990. It contains a planning obligation to pay the Council prior to the commencement of development a Severn Estuary Mitigation contribution of £385 towards environmental and ecological mitigation measures at the European sites. The Council do not dispute the content of the UU and have confirmed that it overcomes refusal reason 3, which consequently falls away. I shall consider the UU later in this decision.
3. In relation to refusal reason 2, the Council refers to properties at 4 and 5 Parklands in its appeal statement. I understand this to mean dwellings at 4 and 5 Parklands Orchard and have made my determination on this basis.

Main Issues

4. The main issues are the effect of the proposal on:
 - The character and appearance of the area, and;
 - The living conditions of nearby residents having regard to the privacy of the rear garden at 5 Parklands Orchard.

Reasons

Character and appearance

5. The development would be located within the settlement of Whitminster. The Whitminster Design Statement, 2014 (WDS) is a helpful advisory document which provides a description of the local context. It refers¹ to the buildings on School Lane having a mixture of age, design, type and size, which gives it a distinctive characteristic of variety. It further mentions most buildings being no more than two-storey and the presence of newer developments. These factors were generally consistent with my observations whereby a variety of mostly residential buildings align with the street, but where some properties are set perpendicular to it, or set further back from it resulting in a spacious and somewhat informal development pattern. The softening effect of hedgerows and trees in established gardens enriches the appearance of the area.

¹ Page 32-33

6. 1 Manor Farm House is a pleasant traditional semi-detached brick dwelling that faces the street and is set within generous grounds. The appeal site primarily concerns the western end of the rear garden. Part of the car park to a large garden centre adjoins this part of the site to the south. Modern housing development is evident to the rear of the property and probable late twentieth century housing is present to the south-east. These include an assortment of house types with differing materials. Furthermore, a variety of housing can be seen on the opposite side of the road. Within this varied context, the appeal site generally makes a positive contribution to the street scene along School Lane.
7. The proposal would introduce a detached dwelling to the rear part of the site that currently forms part of the garden to no.1. The roof ridge height² at approximately 6.8m would be below both no.1 and the more recent residential development to the rear. Furthermore, owing to its set back from the road, and siting partially behind no.1, the dwelling would not have an obvious presence in the street scene and would generally be seen in glimpses via the access. Accordingly, it would not detract attention away from the attractive principal and side elevations of no.1.
8. The siting to the rear would be reasonably in keeping with the irregularities and small closes evident in the settlement pattern that form part of the character of the surrounding area. For example, an infill dwelling set partially behind another property lies on the opposite side of the road to the appeal site. Whilst I accept there are differences between this development and the appeal proposal, its presence and layout have relevance to my determination in broad terms.
9. Moreover, the plot size would be within the range of those commonly seen nearby, which in turn would mean the density of development would be broadly similar and fairly low. This is illustrated by the analysis provided by the appellant³. The building footprint would allow for a rear garden and a block paved driveway area to the front, such that building coverage within the plot would not be atypical. In this context, I do not consider the proposed domestic car port and garage would appear cramped. Accordingly, the proposal would make more efficient use of the land as is generally encouraged by the National Planning Policy Framework (the Framework) but not at the expense of the generally spacious character of the area.
10. The form of the dwelling would utilise roof space and incorporates gables and dormer windows. The Council assert that this would be over complicated and would be out of keeping with the surrounding area. However, I cannot agree as I observed several properties in the vicinity to use gables and a number had dormer windows. The photographs in the appellant's Design and Access statement contain some examples, and both feature in recent development to the rear of the site at Parklands Orchard. Moreover, the WDS⁴ lists dormer windows as amongst the style features used in newer housing that have been taken from older houses in the area.
11. As already outlined, there is some variety of form evident in nearby dwellings. The established roofscape, although not higher than two storey, is not

² Site section, drawing no. P-03d

³ Paragraph 6.27 and diagram, page 21, Appellant's Appeal Statement

⁴ Section 3.1.3

obviously ordered or uniform in character and so is not particularly sensitive to moderate differences in design approach. In this context, the roof of the proposed dwelling would be reasonably assimilated.

12. Whilst it would be possible to see the proposed dwelling from the adjacent garden centre, the built form would be seen against the context described. As such, it would not appear out of place or be particularly conspicuous. Moreover, despite being a neighbourhood centre, it is not shown that the view from the northern corner of the car park, which contains a loading bay and delivery access, provides a sensitive view of green space or has otherwise been identified as important.
13. Therefore, overall, I find that the proposed dwelling would be a reasonably considered response to the interface between the more traditional property at no.1, the modern residential development behind and the adjacent car parking area. The proposed design would resonate with the variety of residential development seen in the wider area. As such it has been shaped by an understanding of the context as is encouraged by the National Design Guide⁵.
14. It follows that the proposal would not result in harm to the character and appearance of the area. Instead, it would constitute an appropriate design with an appearance that would be respectful of the surroundings, including the local topography, built environment and heritage as required by policy CP14(5) of the Stroud District Local Plan, November 2015 (LP).
15. It further follows that I find no conflict in this regard with policy HC1 of the LP which supports small scale housing within defined settlements provided certain criteria are met. The first of which (HC1(1)) requires proposed housing, amongst other matters, to be of a scale, density, layout and design that is compatible with the character and appearance of the part of the settlement in which it would be located.

Living conditions

16. Policy CP14(7) of the LP stipulates that development should have no unacceptable adverse effect on the amenities of neighbouring occupants. Likewise, policy ES3(1) of the LP confirms that permission will not be granted to any development which, amongst other things, would be likely to lead to, or result in an unacceptable level of loss of privacy.
17. Paragraph 6.22 of the LP explains that the likelihood of development on particular sites causing harmful or disturbing effects will vary greatly, depending on the nature of the development proposed, and the number and proximity of nearby residential properties and other occupied property. Therefore, in making my determination I have been mindful that the appeal site lies within an established residential area of the settlement, whereby there is already a degree of mutual overlooking to rear gardens from neighbouring dwellings.
18. The Council is concerned that windows in the upper floor of the rear elevation of the proposed dwelling would unacceptably compromise the privacy of the rear garden for the occupants of 5 Parklands Orchard⁶.

⁵ Pages 10-12

⁶ Paragraph 4.12 Council's Appeal Statement

19. There are four windows at first floor level in the rear elevation of the proposed dwelling that would face towards the rear garden of no.5. Three would serve an en-suite and bathroom and consequently are proposed to have obscure glazing. Combined with the separation distance between the windows and the rear garden of no.5 (which also includes an intervening wedge shaped area of garden land serving 4 Parklands Orchard) this would be sufficient to prevent an unacceptable loss of privacy. The obscure glazing could be secured by a planning condition.
20. The remaining window, serving a bedroom would be positioned further away from the rear garden of no.5, and would align with the section of rear garden furthest away from the house at no.5. Its outlook would be obstructed to an extent by the presence of the rear gable at the proposed dwelling, whereby oblique views towards the portion of garden closest to the house at no.5 would be restricted. This would reduce the impact on the area of the garden most likely to be intensively used to an acceptable level. Combined with the separation distance, the arrangement would avoid intrusive views that would unacceptably undermine the privacy of the occupants of no.5 when using their garden.
21. Although not determinative to my findings, additional tree planting is shown on the rear garden boundary of the proposed dwelling⁷. In time, this would be likely to provide a filter for the presence of the proposed dwelling in views from the rear gardens of houses to the west and would assist in countering any perception of overlooking. As such, this carries limited positive weight.
22. I have also taken into account concerns raised by residents at Manor Court in relation to their living conditions, although these did not feature as part of the Council's case. My observations were that the orientation and position of windows in the proposed dwelling, combined with the separation distance would be sufficient to prevent direct inter-visibility to windows in those residences or intrusive levels of overlooking to their garden areas. The proposed dwelling would lie a notable distance north-west of the nearest dwellings in Manor Court. As such, there is little basis to suppose it would materially interfere with sun or daylight levels at those properties, and I have not seen any substantive evidence to show otherwise.
23. Accordingly, I find that the proposal would result in acceptable living conditions for nearby residents having regard to the privacy of the rear garden at 5 Parklands Orchard. Therefore, I do not find a conflict with policies CP14(7) or ES3(1) of the LP in this respect.

Other matters

European sites

24. The appeal site is located within 7.7km of the Severn Estuary European sites, recognised under the Habitat Regulations as being of international importance for the estuarine, mudflat and saltmarsh habitats which in turn support rare and vulnerable species, including many overwintering wildfowl. Caselaw⁸ requires the decision maker, when considering the effect that a proposal may have on European Sites, to consider mitigation within an Appropriate Assessment rather than at screening stage.

⁷ Drawing no. P-02f

⁸ People over Wind and Sweetman v Coillte Teoranta ECLI:EU:C:2018:244

25. Furthermore, policy ES6 of the LP stipulates that development will safeguard and protect all sites of European and Global importance, designated as Special Area of Conservation, Special Protection Area and Ramsar sites. Therefore, development proposals need to demonstrate and contribute to appropriate mitigation and management measures to maintain the ecological integrity of relevant European sites.
26. In the absence of mitigation measures and using a precautionary approach, given the proximity to the European sites, it is reasonable to suppose that future residents of the development would potentially visit them for recreational purposes and dog-walking. Intensification of such activities would be likely to cause disturbance to the habitat and species within them. As such, there is a risk of a significant effect on the internationally important interest features of the European sites.
27. The Strategy for Avoidance of Likely Significant Adverse Effects on the Severn Estuary SAC, SPA and Ramsar Site, Supplementary Planning Document, December 2017 (SPD) sets out the Council's approach to mitigating the adverse effects of new housing development. This specifically identifies various projects and their costing, including for example habitat management schemes, visitor engagement activity and further monitoring of effects. The SPD⁹ identifies that the effect of new dwellings on the European sites can be adequately mitigated by a proportionate financial contribution towards their total cost. This equates to the £385 per new net dwelling.
28. The appellant has submitted a signed and dated UU that would provide this financial contribution towards mitigation measures at the European sites. I am satisfied that the obligation meets the requirements of the SPD and policy ES6 of the LP. In turn it fulfils the tests in Regulation 122(2) of the Community Infrastructure Levy Regulations 2010 in that it is necessary to make the development acceptable in planning terms, is directly related to the development and that the amount is fairly and reasonably related in scale and kind to the development.
29. Furthermore, in response to consultation under Regulation 63(3) of the Habitat Regulations, Natural England have confirmed that the mitigation measures proposed in this case would be sufficient to avoid an adverse impact to the integrity of the European sites and would be appropriately secured. Given their specialist knowledge, this attracts considerable weight.
30. On this basis, I am satisfied that the mitigation identified would be sufficient to avoid the likely impact of the dwelling proposed on the European sites, and that it can be appropriately secured.

Representations

31. In making my determination I have had regard to the representations made in objection to the proposal, including that of Whitminster Parish Council. Many of the concerns raised have already been addressed in my consideration of the main issues. However, there are several other matters raised that are not disputed by the main parties. These include concerns regarding highway and parking impacts, the need for the development and setting a precedent.

⁹ Paragraph 5.2.7

32. Highway issues were addressed in the Council's Case Officer's review, with the Council concluding that subject to conditions there would be no material harm. Furthermore, I am mindful that no objection was raised by the Highway Authority with regards to the safety of the access or adequacy of the parking arrangements. Given their expertise and local knowledge, this attracts significant weight and little substantiated evidence has been submitted that would undermine their findings or lead me to find otherwise.
33. In setting policies for residential development, the development plan must, amongst other things, respond to evidence of need. Policy HC1 of the LP relates to meeting small-scale housing need within defined settlements, which is supported subject to qualifying criteria. Whilst the first main issue related to one of those criteria, there is no dispute between the main parties in relation to the underlying principle that qualifying small-scale housing developments in such locations are supported. As such, there is no additional requirement to prove specific need given this support in the development plan.
34. It is a basic tenet that each planning application is considered upon its own merits, and a generalised concern regarding the setting of a precedent would not justify withholding permission. Moreover, given that I have concluded the proposal would be acceptable, there is little reason to find that it would lead to harmful development in the wider area.

Conditions

35. The Council suggested 4 conditions. These were all considered against the Framework and Planning Practice Guidance and in particular the Government's intention that planning conditions should be kept to a minimum and that pre-commencement conditions should be avoided unless there is clear justification.
36. Conditions setting out the time limit and securing compliance with the approved plans are necessary to provide certainty.
37. To prevent unreasonable overlooking to the rear gardens of properties in Parklands Orchard, a condition is imposed to require the obscure glazing of the rear facing first floor bathroom and ensuite windows specified on the plans to be agreed, implemented and thereafter retained. The Council's suggested condition was less specific and would have included the rear facing first floor bedroom window which would have been unreasonable for future occupants. As such I have adjusted the wording.
38. The final condition suggested by the Council related to the provision of visibility splays in the interests of highway safety. It is not suggested that the visibility splay information shown on the submitted drawings is deficient, and therefore, I have simplified the wording of the condition to require the implementation of those details prior to occupation. In addition, I have required the provision of the electric vehicle charging point indicated on the plan, which aligns with the recommendations of the Highway Authority.
39. Finally, as the additional tree planting indicated would contribute to softening and filtering the impact of the development, it is reasonable to agree a detailed landscaping scheme. I have therefore, imposed such a condition to be agreed prior to the first occupation of the dwelling.

Conclusion

40. Planning law requires that applications for planning permission be determined in accordance with the development plan, unless material considerations indicate otherwise¹⁰. For the reasons given above I conclude that the appeal proposal accords with the provisions of the development plan and consequently, should be allowed.

Helen O'Connor

Inspector

¹⁰ Section 38(6) Planning and Compulsory Purchase Act 2004 and section 70(2) of the Town and Country Planning Act 1990.