

# Appeal Decision

Site visit made on 10 August 2023

**by G Powys Jones MSc FRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 12 September 2023**

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**Appeal Ref: APP/Z0116/W/23/3317535**

**Garage to rear of 3 Clyde Park, Bristol, BS6 6RR**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
  - The appeal is made by Mr & Mrs. Stephen and Marion Hughes against Bristol City Council.
  - The application Ref 22/05963/F, is dated 16 December 2022.
  - The development proposed demolition of garage and erection of dwellinghouse (Use Class C3).
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## Decision

1. The appeal is dismissed.

## Procedural and preliminary matters

2. The Council acknowledged the original application, but since a decision was not issued within the prescribed period, the applicants appealed. The Council, despite an indication to the contrary in its questionnaire response, did not submit a statement for the appeal, and nor did it provide final comments. The Council's position on the proposal is therefore unknown.
3. However, the appellants have referred to the Council's response to a 2019 pre-application submission in respect of the erection of a dwelling on the site. In a lengthy response where it set out matters for detailed consideration in any future submission, it said that *'no concerns are raised to the introduction of a mews house in the proposed location in principle...'*. The final sentence of the response says: *'Please note that the above advice represents an informal opinion of an officer of the Council who has no power to bind the Council by the views expressed.'* Since then, two applications to erect a dwelling on the site have been submitted and withdrawn.
4. My attention has also been drawn to a recent appeal decision<sup>1</sup> affecting land on a neighbouring site to the rear of 6 Clyde Park. The outcome was that planning permission was granted for the *'demolition of existing residential garage and erection of 2 bed 2 storey mews house with front and rear courtyards.'* The appeal decision is material to my considerations since it relates to a similar form of development to that proposed now, although the permitted scheme had not been implemented when I visited.

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<sup>1</sup> Ref: APP/Z0116/W/21/3285120 dated 8 February 2022.

5. Notwithstanding the Council's silence on the proposal, it has drawn significant opposition and objection by local residents and by what I shall describe as local amenity bodies and associations. To counterbalance those produced by the appellants, a group of local residents commissioned a planning statement, Arboricultural report and a Heritage Impact Assessment (HIA), the latter having regard to the site's location within the Cotham and Redland Conservation Area (CA).
6. Some objectors suggest that the appeal should be determined following a hearing on the basis that the Council has been silent on the application and the submitted evidence can be better tested. However, I share the appellants' view that the appeal can be appropriately dealt with under the Written Representations procedure.
7. Since I represent the Secretary of State in this appeal, Section 79(1) of the Act<sup>2</sup> allows me to deal with the application as if it had been made to me in the first instance. In the absence of any meaningful input from the Council, I shall proceed on this basis. I am required to have regard to the provisions of the development plan and to determine it in accordance with the plan unless material considerations indicate otherwise. Additionally, since the site lies within a CA, I have a statutory duty to pay special attention to the desirability of preserving or enhancing the character or appearance of the area.

### **Main issues**

8. The main issues are: (a) whether the proposal would serve to preserve or enhance the character or appearance of the CA, and (b) the effect of the development on the living conditions of the residents of 3 Clyde Park with particular reference to privacy and visual impact.

### **Reasons**

#### *Conservation Area*

9. Reference has been made to the Appraisal<sup>3</sup> in which the CA is sub-divided into several character areas principally on account of its size and divergent characteristics. The significance and special interest of the CA is described in summary in the Appraisal in the following terms:

*Overall, the Conservation Area is a leafy suburb characterised by its individually developed urban streets, dominated by a high-quality Victorian townscape. Complementing this context is its spacious and verdant character, which relates to individual gardens and areas of public landscape, generally handed down from earlier estate layouts of parklands.*

10. Clyde Lane falls into the West Redland character area and runs to the rear of properties in Clyde Park. Notwithstanding the specific reference made to Clyde Lane in the appraisal<sup>4</sup>, I found the lane to fall into two distinct sections, each significantly different in character to one another.
11. The southern part, also known as Clyde Mews, is tucked away around a corner in the lane, and is comprised of densely developed mews type dwellings. With

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<sup>2</sup> The Town and Country Planning Act 1990 (as amended)

<sup>3</sup> Cotham and Redland – Character Appraisal and Management Proposals 2001

<sup>4</sup> At paragraph 6.1.9

reference to the historical mapping produced by the parties, the development currently occupying that part of the lane closely resembles the form and layout of buildings as they existed during the late Victorian period.

12. The northern part of the lane is different in character and, judging from historical mapping, is barely changed since this part of the City was built. Beyond its western frontage are the largely open, verdant gardens of imposing semi-detached villas, which contribute positively to local character. The historical mapping indicates that the villas' gardens were open being largely free of development in the past, with building restricted to what appear on the maps to be modestly sized greenhouses. Today, the several gardens are punctuated by outbuildings and garages, although these are of a relatively small scale and do not materially impinge on the verdant openness, characteristic of this part of the lane.
13. Whilst the appeal site has been divorced from No 3 Clyde Park in terms of its ownership, it retains its spatial relationship to that property. The proposal envisages the demolition of the single storey garage upon it and the erection of a two-storey dwelling. The removal of the garage, which is of a utilitarian appearance, would prove beneficial in visual terms. However, I do not regard its replacement with a two-storey dwelling in the same light. The introduction of a much larger building on a very restricted plot would represent what I would regard as a clear example of town-cramming, impinging harmfully on the openness of this part of Clyde Lane.
14. The appellants say that the Council's pre-application response and the subsequent appeal decision at No.6 Clyde Park, *'gave the clearest steer on the appropriateness of an emerging mews-style street scene along Clyde Lane'*. To my mind, neither the previous appeal scheme nor the current proposal would comprise mews housing in the normally accepted sense of the term<sup>5</sup>. The development proposed in both schemes are new, detached dwellings of disparate designs, and should, in my view, be seen and considered on that basis. Accordingly, individually designed detached dwellings built in the rear gardens of these villas do not amount, to my mind, to mews development in the traditional sense of the term and are not comparable with the type of development historically found in Clyde Mews. The proposed dwelling would look out of place in its visual context, since it is a form of development at odds with and harmful to the established spatial pattern, openness and character of this part of the CA.
15. Immediately outside the appeal site is a mature London Plane. The Arboricultural experts involved in different guises for the appeal agree that it is in good condition and has a lengthy remaining life, but they disagree about the effects of the proposed development upon it.
16. I have been provided with photographs of the tree in winter; when pollarded, and when in full leaf. My visit took place when the tree was in leaf and its canopy extended into and over the appeal site. The tree is a significant verdant feature in the lane, and no-one has disagreed with the proposition that the Plane is worthy of preservation on account of its positive contribution to local visual amenity.

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<sup>5</sup> Mews housing is traditionally a type of dwelling formed from the conversion of stables or coach houses located to the rear of large Georgian and early Victorian residences.

17. The appellants have provided substantial detail in relation to the exploratory works already carried out on the site to determine root depths and positions. Recommendations are made in respect of foundation design, construction methodology and the supervision required and proposed during the building process. On this basis, the appellants consider that the future health of the tree can be assured.
18. Given its very close proximity to future building activities, if it took place, I am not wholly convinced that the Plane, despite its acknowledged resilience, would survive the construction process. But even if that were to prove the case, I harbour little doubt that the tree, given its intrusion into the appeal site, would likely become the cause of nuisance to future residents. It would dominate the proposed dwelling at the front and would probably and reasonably be perceived as overbearing, causing overshadowing during the early part of the day. It could well cause physical damage to any property erected, particularly in that period immediately prior to its normally planned pollarding.
19. In the circumstances, I consider it almost inevitably that the Council would increasingly face pressure to significantly reduce the mass of the tree or possibly remove it on account of the nuisance it caused to residents. To my mind, the health and longevity of this attractive tree, which contributes significantly to local amenity and the character and appearance of the CA, would be best served by adopting a precautionary approach by eliminating the risk posed to it by the proposed development.
20. In her decision letter in respect of the appeal at No 6, the Inspector said:

*Concerns have been raised that the development would set a precedent for future development along Clyde Lane. As I have found that the proposed dwelling would not cause harm to the character and appearance of the area, it would not create a precedent for development that would cause harmful effects in these regards. In any event, each case must be considered on its own merits and impacts.*
21. I have found that the current proposal would cause harm in its own right. Accordingly, I do not consider that the previous appeal decision should provide the green light to develop additional uncharacteristic housing along the length of this part of Clyde Lane's frontage, as the appellants appear to suggest.
22. I conclude that the proposal would harm the character and appearance of the CA and features that contribute towards its significance. This is contrary to those provisions of policies BCS22 of the Bristol Local Plan, Core Strategy (2011) and policy DM31 of the Bristol Local Plan - Site Allocations and Development Management Policies (2014) (BLP) requiring development proposals to safeguard or enhance the City's heritage assets.
23. I find, however, that the harm caused to the CA as a whole would be less than substantial. Having regard to the requirements of the Framework<sup>6</sup>, the harm should be weighed against the public benefits of the scheme. In this respect the appellants have listed what are regarded as its public benefits<sup>7</sup>. The appellants consider that whilst individually the elements described may be

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<sup>6</sup> National Planning Policy Framework, paragraph 202

<sup>7</sup> At paragraphs 3.26 to 3.29 of the appeal statement and paragraphs 6.38 to 6.41 of the Planning statement accompanying the original application

considered minor, taken together they represent a good package of tangible public benefits. To my mind, however, whilst I recognise that some of the matters listed would provide some minor public benefits they do not, taken as a whole, outweigh the harm caused to the significance of the heritage asset.

24. In these circumstances, the Framework's provisions in respect of the conservation of designated heritage assets<sup>8</sup> means that the development should not in my opinion benefit from the application of the 'tilted balance'<sup>9</sup>, as claimed by the appellants.

#### *Living conditions*

25. The proposed dwelling would have a larger footprint than the garage replaced, and its front wall would be brought to within about a metre of the lane's carriageway. At the rear, a small amenity area would be formed. The appeal property's rear elevation would be sited about 2m away from the boundary with No 3 Clyde Park, which would be marked with a 2m high fence. Towards the rear of the site a eucalyptus tree has been removed, lawfully so.
26. A large bedroom window would be inserted at first floor level in the rear elevation of the proposed dwelling. The appellants consider that the window-to-window distance of about 18m between the proposed bedroom window and those to the rear of No 3 is sufficient to avoid unacceptable loss of privacy to the residents of No 3. In my experience, the normally applied separation distance is 21m, and in the absence of any other objection, I may have been prepared to consider this reduction as not unacceptable.
27. However, whilst noting the presence of some vegetation close to the rear boundary of the site, the window would overlook No 3's rear garden at very close quarters thus depriving its' residents of the privacy to which they should reasonably be entitled. In this respect I note that the window would be fitted with a shroud, which the appellants say, amongst other matters, would act '*as an oversized reveal, restricting sideways views over adjoining gardens.*' That may be so, but the shroud would not prevent direct overlooking of and unacceptable loss of privacy to No 3's residents.
28. The appellants' combined DAS/HIA says that '*the gardens of the Clyde Park houses are large and could take development at the end of the gardens.* It is true that gardens are generally large, but No 3's effective garden length has been truncated by reason of a change in ownership. The proposed dwelling would be sited close to No 3's new rear garden boundary, and given its height, bulk and proximity, would be perceived as an oppressive and intrusive structure in the outlook from the remaining part of the garden.
29. Accordingly, I find that the proposed dwelling would materially affect No 3 residents' reasonable enjoyment of their property by reason of unacceptable loss of privacy and visual impact. A clear conflict arises with those provisions of BLP policy DM29 which provides that proposals for new buildings will be expected to ensure that existing and proposed development achieves appropriate levels of privacy and outlook.

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<sup>8</sup> The Framework, paragraph 199

<sup>9</sup> The Framework, paragraph 11(d)(i)

### **Other matters**

30. I have noted the references to other development plan policies and parts of the Framework, but those to which I have referred are considered the most relevant having regard to the particular circumstances of the case.
31. I acknowledge the efforts made by the appellants to achieve an energy efficient design and the references to other development in the locality which they consider to be similar. However, these do not overcome the concerns which led to my conclusions.
32. Some objectors refer to car parking provision, or the absence of it in the scheme. Whilst I note the appellants aspirations for a car-free development, the absence of car parking space represents to me a further symptom of town-cramming, although this would not, in itself, represent a reason to reject the scheme.
33. All other matters raised in the representations have been considered but none outweigh those considerations that led me to my conclusions.

*G Powys Jones*

INSPECTOR