



Appeal Decision

Site visit made on 16 April 2024

by Alexander O'Doherty LLB (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12th June 2024

Appeal Ref: APP/P1615/W/23/3333618

Land adjacent to 6 Bowens Hill Road, Coleford, Gloucestershire GL16 8DU

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by Miss A Cole (Coleford Properties Ltd) against the decision of Forest of Dean District Council.
 - The application Ref is P0682/23/FUL.
 - The development proposed is described on the application form as, "Proposed detached dwelling, associated parking and landscaping".
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Decision

1. The appeal is dismissed.

Preliminary Matter

2. Although representations have been submitted concerning the potential for the appeal site to be used mainly for car parking, no such scheme is before me. Accordingly, this appeal decision has been determined solely on the basis of what has been applied for, as described in the banner heading above.

Applications for costs

3. The appellant and the Council both made applications for costs. These applications for costs have been dealt with in separate decisions.

Background and Main Issues

4. The proposed development is similar to that considered in appeal decision Ref APP/P1615/W/22/3292365. In this regard, I acknowledge the importance of consistency of decision-making in the planning system. Nonetheless, the determination of this appeal involves an independent and impartial assessment of the facts and the merits of the proposed development. For the reasons that follow, it is necessary to depart from the conclusions reached in relation to the third main issue of appeal decision Ref APP/P1615/W/22/3292365.
5. Historically, the land forming the appeal site was in lawful residential use, as part of the outdoor amenity space used in conjunction with 6 and 8 Bowens Hill Road (Nos 6 & 8). It appears that in 2012 or thereabouts, Nos 6 & 8 were converted into Houses in Multiple Occupation (HMOs) and the site was used as a building compound during the conversion period. Lawful Development Certificates (LDCs) were issued in 2013, confirming that the change of use of Nos 6 & 8 from Use Class C3 to Use Class C4 was lawful.
6. Although the land ownership of the site has changed over the years and Nos 6 & 8 were lawfully converted into HMOs, the evidence does not indicate that the

lawful use of the site (that is, its residential use) was changed when the conversion to HMOs occurred.

7. Indeed, in the context of the Council attempting to establish the lawful use of the site, the applicant's representative for planning application Ref P0335/20/FUL stated in an e-mail of 21st May 2020 that, "You are correct in your assumption that;... 'As I see it essentially its lawful use (not ownership) remains as residential curtilage associated with 6 Bowens Hill Road'..."
8. The appellant has not provided evidence in the form of LDCs or other official planning-related documents to demonstrate that a material change of use at the site has occurred at any time since 2013. Moreover, the fencing currently erected between Nos 6 & 8, and the fencing between 6 Bowens Hill Road (No 6) and the site, would not, by their mere presence, alter the lawful residential use of the site.
9. Since 2013, the site has occasionally been used for the storage of broken / abandoned vehicles. This was undertaken by some of the occupiers of the HMOs, which indicates that the use of the site was at times seemingly incidental to their residential occupation. Whilst the site was at other times used for storing building materials and as a dumping ground, few details have been provided to explain what the duration or intensity of these activities were. It is not my role to speculate on these matters.
10. Hence, based on the evidence before me, it has not been demonstrated that a significant difference in the character of the activities on site has occurred when compared to that occurring prior to the conversion of Nos 6 & 8 to HMOs.
11. I am also mindful that prior to the conversion of Nos 6 & 8 to HMOs, the lawful residential use of the site fulfilled a recognised planning purpose in providing outdoor amenity space for the occupiers of Nos 6 & 8. In this regard, the outdoor amenity space likely positively contributed to the health and well-being of the occupiers of Nos 6 & 8. Healthy living conditions are matters which the National Planning Policy Framework (the Framework) seeks to support through the effective operation of the planning system. It follows that the loss of this land for the use of the occupiers of the HMOs has likely had a significant planning consequence.
12. This reinforces my finding that, whilst it is not the purpose of this appeal decision to provide a formal determination as to what the lawful use of the site was at any particular point in time, it has not been demonstrated that a material change of use from the established lawful residential use on site has occurred as a matter of fact and degree.
13. Taking all of the above into account, although the Inspector in appeal decision Ref APP/P1615/W/22/3292365 mentioned that the site was spatially and functionally separate from Nos 6 & 8, and that the land was essentially redundant, I have considered this appeal on the basis of the site being in its last known lawful use, which is a residential use in connection with Nos 6 & 8.
14. The main issues are therefore the effect of the proposed development on:
 - the living conditions of the occupiers of Nos 6 & 8, with particular regard to residential amenity space; and
 - highway safety, with particular regard to parking provision.

Reasons

Living Conditions

15. The Forest of Dean Residential Design Guide Supplementary Planning Guidance (adopted 1998) provides advice on site layout, which is intended to result in new housing having gardens averaging 100 square metres per family dwelling on the private side of the house to the rear of the plot. As Nos 6 & 8 are in use as HMOs, meaning that they could potentially be lawfully occupied by up to 12 residents in total, it is reasonable to expect the occupiers of the HMOs to enjoy a similar size of amenity space.
16. Apart from the site, which as stated above is taken for the purposes of this appeal as being in lawful residential use in connection with Nos 6 & 8, the occupiers of Nos 6 & 8 currently only benefit from very small areas of amenity space to the rear of their respective properties. In the case of 8 Bowens Hill Road (No 8), this area is not fully enclosed from the public realm, and accordingly is not completely private.
17. The proposed development would eliminate the possibility of the site being used as outdoor amenity space for the benefit of the occupiers of Nos 6 & 8. The amenity space left for the use of the occupiers of Nos 6 & 8 would in that event continue to be very small, thereby offering a cramped environment with limited opportunities for entertaining, recreation, or relaxing. As the retained areas of amenity space would not likely be particularly pleasant to use nor appropriate for the reasonable needs of the occupiers of Nos 6 & 8, the proposed development would not therefore support their health and well-being, including their mental health.
18. I therefore find that the proposed development would have an unacceptable and harmful effect on the living conditions of the occupiers of Nos 6 & 8, with particular regard to residential amenity space. It would conflict with Policy AP 1 of the Allocations Plan 2006 to 2026 (adopted 2018) (Allocations Plan) which provides that, amongst other things, in assessing planning applications the primary consideration will be whether or not the development proposed is sustainable with the overall aim of improving the economic, social and environmental conditions of the area, and with the 6th bullet point of Policy AP 4 of the Allocations Plan which provides that, amongst other things, new development should adopt an inclusive approach that will embrace the needs of all different groups in the community.
19. The proposed development would conflict with the 2nd bullet point of Policy CH2 of the Coleford Neighbourhood Development Plan 2017 – 2026 (made 2018) (Neighbourhood Plan) which provides that, amongst other things, new housing development should safeguard and not have an adverse impact on the residential amenities of the existing and future community.
20. The proposed development would also conflict with paragraph 135 f) of the Framework which provides that, amongst other things, planning decisions should ensure that developments create places which promote health and well-being, with a high standard of amenity for existing and future users.

Highway Safety

21. The Manual for Gloucestershire Streets (July 2020) Addendum (October 2021) (MfGS Addendum) states that, amongst other things, 3-4 bedroom units must

- provide a minimum of 2 external car parking spaces and that garages will not count towards the car parking requirements.
22. As the proposed car port serving the proposed new dwelling would not be external, it would not be in strict conformity with this guidance. Furthermore, the space comprising the proposed car port would be fully enclosed on 3 sides by permanent brickwork and an internal door, with some of its walls forming part of the dwelling itself. As such, it is debateable whether the space could be considered to be a car port as is commonly understood.
23. Nevertheless, if the proposed development were acceptable in all other respects, a planning condition could potentially be imposed, requiring the space to be permanently kept available for parking, and to ensure that an external garage door is not installed. Whilst this would not alter the fact that this space would not sit squarely with the guidance given in the MfGS Addendum, mentioned above, it would ensure that the space could not be converted into habitable accommodation or used for personal storage rather than that of a vehicle, which the Manual for Gloucestershire Streets (July 2020) (MfGS) seeks to prevent.
24. On balance, therefore, with planning conditions in place I consider that the proposed car port could be considered to provide an individual parking space for the proposed new dwelling. In combination with the parking space proposed on the driveway, the proposed development would provide an acceptable level of parking provision based on the number of bedroom units in question.
25. The Inspector in appeal decision Ref APP/P1615/W/22/3292365 referred to an existing shortfall of parking for the occupiers of Nos 6 & 8. Since that appeal decision was issued, the low stone wall on the north-western side of No 8 has been demolished and a gravelled area adjacent to No 8 has occasionally been used for parking.
26. However, no vehicular dropped kerb serves that gravelled area. As the dropped kerb present on the corner of Bowens Hill Road close to No 8 mirrors that found on the other 3 corners of the junction between Bowens Hill Road and Victoria Road, and noting that it was in place before the gravelled area was created, it is clear that its function is for pedestrian rather than vehicular use. As such, there is no authorised and demonstrably safe method of accessing the gravelled area. It cannot therefore be considered to comprise part of the legitimate parking provision for Nos 6 & 8.
27. The MfGS requires a minimum of 2 parking spaces to be provided for a HMO with 4 or more bedrooms, which means that Nos 6 & 8 are required to provide a minimum of 4 parking spaces in total. A driveway running alongside the south-eastern side of No 6 provides space for 2 vehicles. From these facts, it is clear that Nos 6 & 8 suffer from a shortfall of 2 parking spaces in total.
28. Even so, it is clear from the image provided by the Council from September 2009 that the area comprising the appeal site was not used for parking at that time. The appellant has clarified that although the Inspector in appeal decision Ref APP/P1615/W/22/3292365 mentioned that the appeal site has previously been used for parking in connection with the HMOs, this was never the case, as broken / abandoned vehicles were merely placed on site. In any event, I observed that no dropped kerb serves the site, and therefore even if the site

had occasionally been used for car parking, the site cannot be considered to be a legitimate parking location.

29. Therefore, the proposed development would not alter the amount of off-street parking provision which has historically been legitimately available to Nos 6 & 8, and which is presently available, which comprises the driveway running alongside the south-eastern side of No 6. In other words, whilst Nos 6 & 8 suffer from a shortfall of 2 parking spaces, the proposed development would not worsen this existing situation.
30. There is ample evidence from local residents that on-street parking in the vicinity of the site is at a premium during the school drop-off and pick-up times for the nearby St John's Church of England Academy, and that visibility at the junction near the site is often restricted during these times due to the number of vehicles parked close to the junction. The parking survey provided by Coleford Town Council additionally shows that parking on the double-yellow lines at the junction has occurred during these times.
31. The fact that the gravelled area to the side of No 8 has been used for parking even in the absence of a vehicular dropped kerb further indicates that a lack of on-street parking is a feature of the locality. Reference has been made to the Highways authority using existing parking enforcement legislation, but it has not been shown that the use of this legislation would likely occur in an effective manner in the foreseeable future.
32. Notwithstanding this existing situation, as described above the proposed development would provide an adequate level of parking provision. Also, it would not reduce or alter the amount of off-street parking which is presently available to the occupiers of Nos 6 & 8. Overall, it would not meaningfully add to parking pressures in the locality. It would not therefore increase the risk of collision in this sensitive location where children are present during the school drop-off and pick-up times.
33. Local residents have referred to planning permission Ref P0297/10/FUL which showed car parking provision on the appeal site, but that permission was not implemented. As the site currently does not provide parking for Nos 6 & 8, the issues referred to by local residents in relation to the alleged parking habits of the occupiers of Nos 6 & 8 are matters for the Council / Highways authority to consider outside of the appeals process. I have had regard to the parking surveys found within the submitted Technical Note¹. Whilst these surveys do not cover the school drop-off and pick-up times mentioned above, I have already found that the proposed development would not result in unacceptable impacts on highway safety. Consequently, none of these matters alters my findings on this main issue.
34. I therefore find that the proposed development would have an acceptable effect on highway safety, with particular regard to parking provision. It would not conflict with paragraph 115 of the Framework which provides that, amongst other things, development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety.

¹ Technical Note (Rappor Consultants Ltd) (April 2023)

Other Matters

35. The findings on the second main issue above, in relation to highway safety, is a neutral matter, which does not weigh in favour of the proposed development.
36. As it has not been demonstrated that the site is not in lawful residential use in land use terms, the site is not under-utilised in the terms of paragraph 124 d) of the Framework which provides that, amongst other things, planning decisions should promote and support the development of under-utilised land. This is a neutral matter, which does not weigh in favour of the proposed development.
37. Reference has been made to a number of matters relating to land ownership and the value of the site in commercial terms, including that the Council has no powers to force the sale of a parcel of land to an adjacent landowner for future amenity use. However, these matters do not alter the lawful land use position of the site, mentioned above. As such, these are not matters which alter my findings on the main issues above.

Planning Balance

38. The proposed development would provide one new 4-bedroom property in an accessible location, and in doing so it would contribute to the Government's objective of significantly boosting the supply of homes. This matter has added importance considering that, based on the information before me, the Council cannot currently demonstrate a 5-year supply of deliverable housing sites, which the Council has stated as being approximately 4.8 years in the best case scenario.
39. The proposed development would provide economic benefits during the construction phase, in the form of work for construction professionals and transactions in the construction supply chain. Economic activity would also likely be generated via property transactions. The future occupiers of the proposed new dwelling would be likely to provide revenue towards public services through the payment of Council Tax.
40. The various benefits of the proposed development, as summarised above, would garner support from a number of the Council's development plan policies, and relevant paragraphs of the Framework. This includes Policy CSP. 4 of the Core Strategy (adopted 2012) which provides that, amongst other things, new development must contribute to reinforcing the existing settlement pattern in a manner which emphasises the importance of the towns.
41. The benefits in this regard are however tempered by the fact that it has not been demonstrated that the proposed new dwelling, which would be a 4-bedroom property, would address local needs in the terms of Policy CH1 of the Neighbourhood Plan. In any event, these benefits would be tied to the very limited quantum of development proposed, of one new dwelling only, resulting in only little weight being accorded to these benefits support of the proposed development.
42. The proposed development would cause unacceptable and harmful impacts with respect to the living conditions of the occupiers of Nos 6 & 8. As the HMOs could potentially be lawfully occupied by up to 12 residents in total the adverse impacts in this regard, including in relation to the proposed development's lack of support for their health and well-being, would be considerable. Accordingly,

significant weight is given to the adverse impacts of the proposed development.

43. It follows from the above that the considerations put forward in support of the proposed development, do not, either individually or collectively, outweigh the adverse impacts identified, nor the conflict with the development plan identified. The proposed development would accordingly conflict with the development plan when considered as a whole.
44. As mentioned above, the Council cannot currently demonstrate a 5-year supply of deliverable housing sites. This means that paragraph 11 d) ii. of the Framework is engaged. In relation to this, it is clear from the above that the adverse impacts of granting planning permission for the proposed development would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole. The proposed development would not benefit from the presumption in favour of sustainable development.
45. Overall, none of the other considerations in this case, including the provisions of the Framework, indicate that this appeal decision should be taken otherwise than in accordance with the development plan.

Conclusion

46. For the reasons given above, having considered the development plan as a whole, the approach in the Framework, and all other relevant material considerations, I conclude that the appeal should be dismissed.

Alexander O'Doherty

INSPECTOR