



Appeal Decision

Site visit made on 24 June 2024

by J Somers BSocSci (Planning) MA (HEC) MRTPI IHBC

an Inspector appointed by the Secretary of State

Decision date: 10th July 2024

Appeal Ref: APP/R3705/D/23/3335867

South View, Weddington Lane, Caldecote CV10 0TS

- 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 Mark Spencer against the decision of North Warwickshire Borough Council.
 - The application Reference is PAP/2022/0298.
 - The development proposed is described as a 'proposed garage, gym and link to existing property.'
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Decision

1. The appeal is allowed and planning permission is granted for a proposed garage, gym and link to existing property; at South View, Weddington Lane, Caldecote CV10 0TS; in accordance with the terms of the application Ref PAP/2022/0298, subject to the conditions attached as an annexe to this letter.

Preliminary Matters

2. I acknowledge and appreciate the planning history and background to this planning application which has resulted in a number of revisions and amendments to the scheme, where this current proposal seeks to lower the apex of the roof together with the incorporation of a hipped roof. Having read the appeal documents, there appears to be general agreement that the design of the proposal is acceptable and meets the design policies of the development plan; and also that the development would not cause adverse harm to the protected tree in the front garden. The one outstanding issue on the Decision Notice appears to be related to impact to living conditions of the neighbouring property. Taking this into account together with the refusal reasons, and for the avoidance of doubt I will not revisit the principle of the scheme and only look into those matters in dispute.
3. Upon my site visit, much of the development had been constructed which includes the footprint and walls and part of the roof of the development, meaning that the development is partly retrospective. It is noted that the proposal being applied for has a lower roof apex over the garage than the roof that has been constructed. I have made my decision on this basis.

Main Issue

4. The main issue is the effect of the development upon the living conditions of the neighbouring dwelling referred to as 'Timberlea,' with particular regard to sense of enclosure, overshadowing and access to light.

Reasons

5. The appeal site is part of a small group of dwellings located in a relatively detached position from the nearby villages. Building plots and dwellings are relatively large, with an emphasis on vegetation and spaces in and around dwellings. The appeal site is known as 'South View' and contains the main body of the dwelling situated to the rear of the plot, running from north to south, and with a later extension to the north which is set close to the northern boundary. It is from this extension, that the current proposal is constructed and runs west to east, close to the shared boundary with the neighbouring property Timberlea. The proposed subject projection of South View as part of this appeal is the snug and garage building that runs close to the eastern boundary and forward of the built form of Timberlea, adjacent to a paved area to the front of Timberlea which appears to be utilised for vehicular parking.
6. The side elevation of Timberlea is setback approximately 4 metres from the garage building of the appeal property with Timberlea also constructed at a slightly lower ground level than the appeal site. Timberlea also faces east and its main window openings face east and west. The side elevation facing the garage and snug includes a door and a small obscurely glazed bathroom window. The windows in the front elevation have full height glazing with the nearest window to the common boundary with the appeal site being a study, and the furthest window along the eastern façade fronts the lounge room.
7. In terms of access to light, both parties refer to a Daylight and Sunlight report which indicates that the property satisfies guidance¹ in terms of allowing sufficient access to light. Whilst I have not been presented with the report, given the direction of the sun, much of the overshadowing caused by the appeal building would be towards the morning, with Timberlea gaining access to sunlight during the afternoon and evening hours. This is also replicated in photos shared by the occupiers of Timberlea which show the extent of shadow experienced during the morning. Given that the photographs are from the structure as completed, the lowering of the roof form as proposed would reduce the amount of overshadowing shown in these photographs. I can appreciate that the level of sunlight received by Timberlea will be reduced by the development when compared to the scenario before the structure was erected, however the level of sunlight received by Timberlea would still be sufficient and not to a level where it would cause significant detriment upon the living conditions of Timberlea from overshadowing or loss of light.
8. Turning to outlook, the roof form of the garage building is pitched so that the lowest point is closest to Timberlea, some 4 metres away with the roof pitch graduating away from the property. The proposed extension would project to the front of the dwelling adjacent Timberlea, but given the depth and width of the adjacent property, together with the large amount of tree cover, Timberlea would have adequate level of access to sky from the front garden and the windows of the property. Whilst I agree that there would be a change to outlook from Timberlea, I disagree that it would be to a level that could be considered to cause 'serious and adverse' detriment to the living conditions of this property.

¹ Building Research Establishment (BRE) publication 'Site layout planning for daylight and sunlight'

9. I am also aware of comments made during the application process with regards to Articles 1, 2 and Article 8 of the European Convention on Human Rights or Human Rights, as incorporated by the Human Rights Act 1998.
10. Articles 1 and 2 provides that everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following conviction of a crime for which this penalty is provided by law. In relation to this appeal, relevant components of Articles 1 and 2 overlap with Article 8 which provides that everyone has the right to respect for their private and family life, their home and their correspondence. These Articles are referred to under similar circumstances in that the neighbouring occupier considers that the proposal would result in a shorter life expectancy for themselves and that the approval of such an application would affect the right of the neighbour to enjoy their property.
11. Based on the appeal documents, whilst there may be some change to the existing conditions as a result of the proposal, this would not be to a level where unacceptable harm would be caused to the neighbouring occupier or any future occupiers. I have no evidence to suggest that the proposal would shorten the life expectancy of the neighbour, and the neighbour would be able to adequately enjoy their property as a result of the proposal and the aforementioned discussion with regards to access to light and sense of enclosure. I note that the neighbouring resident has also referred to lack of privacy and overlooking, however there are no windows or direct views into the neighbouring property from the appeal site which would cause any privacy concerns. Having regard to the legitimate and well-established planning policy aims to protect the living conditions of the occupants and neighbouring dwellings, in this case I consider that greater weight attaches to the public interest. Approval of the appeal is therefore necessary and proportionate, and it would not result in a violation of the human rights of the neighbour.
12. Taking the above into account, I disagree that the proposal would result in unacceptable impacts to living conditions as a result of sense of enclosure, overshadowing or access to light. Consequently, the proposed scheme is made in accordance with North Warwickshire Local Plan Policies LP29 and LP30 which both seek to safeguard the living conditions of surrounding occupiers.

Other Matters

13. I note that there is discussion from interested parties with regards to a duty for the Council to make determinations on future uses of the building; the lack of compliance with building regulations; Considerations regarding health and well being; that the application does not reflect comments made within a previous application; and that there are concerns regarding pollution in terms of noise and smell. There is no ability for the Planning Authority to make judgements upon future uses of the building beyond the application, it can only make decisions based upon the use that is applied for. If a material change of use occurs, this would require planning permission and then a further assessment of the planning merits of the case would occur as part of this application. Compliance with Building Regulations is not a planning matter with this concern being able to be dealt with outside this appeal process. Considerations with regards to health and well being have been incorporated into planning policy and is part of the decision making process. There is no duty that binds a planning authority to make decisions in accordance with comments previously

expressed in officer reports relating to other applications. The Officer report in question dates from 2012 a substantial time which has passed and reflects a different policy position. The consideration of an application is based upon its planning merits which has been the case in this particular application. These considerations have formed part of the decision making process as part of the application and of this appeal. With regards to pollution, this would be commensurate with a domestic use and as such the use of a garage would not generate additional noise or smells above levels normally associated with domestic use which would not cause detriment to the living conditions of surrounding occupiers.

14. I also note submissions by third parties of a number of newspaper articles which show structures having been constructed without planning permission and that have since been requested to be removed. Given the variance in different forms and developments, I am unclear how these examples or considerations involving these examples relate to the current proposal, with these cases demonstrating that each application should be considered on their merits and if they are seen to be contrary to the development plan and/or material considerations, then they are sought to be removed. These examples are not analogous to the scheme as part of this appeal and do not justify support for the refusal of the application.
15. I also note discussions regarding the Corporate Manslaughter and Homicide Act 2007 in relation to the tree on the appeal site falling, or from items from the roof falling onto the neighbouring property. Planning matters relate to the integrity and impact upon the tree whereby any impacts have been assessed as being suitable as a result of the development in accordance with the development plan. I have not being presented with any additional evidence to consider which counters the arguments of the Council and of the Appellant with regards to the tree and its compliance with the development plan. In terms of objects falling from the roof, this is beyond a planning matter and would be best dealt with civilly. Taking the above into account, the matters raised do not constitute material considerations that would change the appropriateness of the development.

Conclusion and Conditions

16. Representations were made to the effect that the rights of the adjoining occupier, under Articles 1, 2 and 8 as set out in the Human Rights Act 1998 would be violated if the appeal were allowed. However, I have found that the proposed development would not result in adverse detriment from overlooking, sense of enclosure, access to light or overshadowed so that the neighbour would suffer unacceptable harm to their living conditions. The development would not conflict with Local Plan Policy DE1 or guidance in the SPD. I am satisfied that a grant of planning permission would not unacceptably interfere with the neighbour's right to a private and family life and home. It is proportionate in the circumstances to allow the appeal.
17. For these reasons, and having considered all matters raised in evidence and from what I saw during my site visit, I conclude that the appeal should be allowed and planning permission granted, subject to the conditions attached as an annexe.
18. The Council in their Appeal Form response detailed that should the appeal be allowed, that specific conditions should be placed on the Decision Notice. I have

considered the conditions as specified in the beginning of this letter in accordance with the Planning Practice Guidance (PPG). Suggested Conditions 1 and 2 are regarding time limit and approved plans which are standard conditions which set the standard time limit and approved plans which are necessary for the avoidance of doubt and in the interests of proper planning. The notice of 6 months within the decision notice to start is considered a reasonable timeframe to commence the alterations as much of the scheme has already commenced. Suggested Condition 3 seeks that that facing materials of the scheme are submitted for approval, which is necessary as this condition enables the development to fit in with the character and appearance of the existing dwelling and the locality. Suggested condition 4 seeks that any new openings require consent which is necessary in order to avoid further concerns and assessment of any implications to living conditions. Suggested Condition 5 seeks that the garage only is used for residential type uses. Any other uses beyond the enjoyment of a residential use, would constitute a change of use and would require planning permission in any event. As such the condition is unnecessary and would not meet the tests of conditions of the PPG. This condition is therefore not included.

J Somers
INSPECTOR

ANNEXE: SCHEDULE OF CONDITIONS TO BE INSERTED

1. The development to which this permission relates must be begun no later than the expiration of six months from the date of this permission.
2. The development hereby approved shall not be carried out otherwise than in accordance with plan numbers:
 - 9606/21 Rev b, 'Plans and Elevations,' received by the Local Planning Authority on 14 July 2023;
 - 9606/23A, 'Site Cross Sections,' received by the Local Planning Authority on 15 June 2023; and
 - 9606/01, 'Site Layout,' received by the Local Planning Authority on 13 June 2022.
3. Notwithstanding the details shown on the approved plans, the facing material to be used on the building shall be rendered blockwork, the colour of which shall first have been agreed in writing by the Local Planning Authority.
4. No additional openings within any elevation of the building hereby approved or within any part of its roof shall be made or installed.

END OF SECTION