



Appeal Decision

Site visit made on 30 July 2024

by Nick Bowden BA(Hons) Dip TP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 30 August 2024

Appeal Ref: APP/P0240/W/23/3335736

3A Earl Close, Hitchin Lane, Clifton SG17 5RS

- 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 Mr David Gill (Gill-Hudson Homes Ltd) against the decision of Central Bedfordshire Council.
 - The application Ref is CB/23/00298/FULL.
 - The development proposed is retention of 1 No. dwelling and all ancillary works.
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Decision

1. The appeal is allowed and planning permission is granted for use of building as 1 No. dwelling and all ancillary works at 3A and 3B Earl Close, Clifton SG17 5RS in accordance with the terms of the application, Ref CB/23/00298/FULL, and the plans submitted with it, subject to the conditions in the attached schedule.

Preliminary Matters

2. The site address as detailed in the banner heading is taken from the application form. I am aware that the site is also commonly known as 3A and 3B Earl Close, including on the Council's decision notice and the Unilateral Undertaking (UU). For the avoidance of doubt, this decision relates to both addresses which are contained within the red edge of the application site.
3. In allowing the appeal, I have adjusted the description of development from that given in the banner heading as 'retention' is not an act of development. Moreover, the existing building is not presently configured so as to be occupied as a single dwelling. I have also excluded other commentary that was included on the application form as, whilst providing context, it is also not development.
4. A signed and completed UU was submitted with the appeal and upon which the Council has commented. I have taken this UU into account in reaching my decision here.
5. An additional plan (2117.PL.07B) showing a pedestrian visibility splay was included with the appeal and upon which the Council has had the opportunity to comment. I have therefore included this plan in my assessment.
6. The National Planning Policy Framework (the Framework) was revised in December 2023. I am also aware of the revised consultation draft from July 2024. As the changes do not materially affect the main issues in this case, the parties have not been invited to make further comments. References to paragraph numbers in this decision relate to the December 2023 version of the Framework.

Background and Main Issues

7. The building at 3A and 3B Earl Close was originally granted permission for use as two home offices in connection with the homes presently known as 5 and 6 Earl Close. It has, however, been converted for use as two dwellings although only one of these was occupied at the time of my site visit. The use of the property as two dwellings is presently unauthorised but the development being considered here is for the use of the building as a single dwelling.
8. Therefore, the main issues are:
 - a) the effect of the proposed development on the character and appearance of the area,
 - b) whether the proposed development would provide satisfactory living conditions for the future occupants having regard to internal and exterior space,
 - c) the effect of the proposed development on the living conditions of neighbouring properties,
 - d) the effect of the proposed development on highway safety with particular regard to pedestrian visibility, and
 - e) whether the UU is effective in providing contributions to mitigate the infrastructure impacts of the development with particular regard to community facilities and sport.

Reasons

Character and appearance

9. The existing building was previously authorised as part of the plan for this part of the estate, albeit as home offices. It does appear as a notably more diminutive structure when compared to surrounding buildings. Nevertheless, it is of a pleasant design and has a similar vernacular to neighbouring buildings despite the use of a dual pitched roof.
10. Its slim and low presentation to the street means that it does not appear as a strident or prominent feature. The proposed alterations to the front garden area to increase the amount of planting would only enhance this situation, which in any case, is acceptable already. To the rear, the relatively short garden is not appreciable in the public realm as a consequence of the depth of the existing building and its relationship with the boundary treatment and neighbouring buildings. The fairly short garden depth would not be dissimilar to a typical depth behind a garage or home office and, in terms of effects on the character of the area, this would not be readily noticeable or have a harmful effect on visual amenity.
11. I therefore consider that the proposed development would not be harmful to the character or appearance of the locality. It would comply with policy HQ1 of the Central Bedfordshire Local Plan 2021 (CBLP) and provisions of the design guide which, when read together, require the size, scale, massing, orientation, materials and appearance of development proposals to relate well to the existing local surroundings.

Living conditions – future occupants

12. Internal space for the dwelling would be 50 square metres including a 14 square metre bedroom and storage space. This accords with the Nationally Described Space Standard for a one bedroom two person dwelling which is required by CBLP policy H2. Moreover, as a single storey dwelling with level access, it is an adaptable home. The internal accommodation is well illuminated with windows to all sides. Accordingly, the dwelling's internal space would provide adequate living conditions for the occupants.
13. Outdoor amenity space for the proposed dwelling would be quite limited. This is effectively confined to the rear garden area as the front area would be exposed to the street and offer no private space such that its value is aesthetic only. I have not taken the front garden area into account in my assessment. The outdoor space to the rear would be improved through the creation of a covered patio area.
14. This area, even were the covered space to be included, still falls short of the minimum 50 square metre garden size for a one or two bedroom dwelling under the most recent Central Bedfordshire Design Guidance (2023). Even so, it still provides a modest and secluded area for the future occupants. The small garden and covered outdoor space offers a variety in choice of accommodation.
15. I therefore conclude that the proposed development would provide satisfactory living conditions for the future occupants and would accord with the provisions of policy HQ1 of the CBLP in this regard. This policy supports healthy lifestyles through the design and layout of development.

Living conditions – neighbouring occupants

16. The Council's decision notice referenced harmful impacts on adjoining occupants. This point, however, was not elucidated upon by either party. I did however, at my site visit, note the use of trellis fencing between waist and slightly above eye level. This partially obscured views through the use of artificial plants within the trellis, however, some fleeting views towards neighbouring gardens was still apparent. In this regard, I have noted the submitted plans indicate that the close boarded boundary fencing would be increased in height to mitigate such overlooking concerns. This is a matter that can be secured by way of planning condition.
17. The building is an existing authorised structure and therefore would not result in any additional overshadowing towards neighbours. I have no reason to conclude that one new dwelling in this location would create additional noise, disturbance or levels of traffic that would be detrimental to the living conditions of neighbours.
18. In the absence of any other evidence on this point, I conclude that the proposed development would not have an adverse effect on the living conditions of neighbouring occupants. The proposal therefore complies with policy HQ1 in this regard. This policy requires, amongst other things, that there is not an unacceptable adverse impact upon nearby existing or permitted uses, including impacts on amenity and privacy.

Highway safety

19. Concern exists in relation to pedestrian visibility from the access with the highway. The Council's nominated solution was through the use of a planning obligation to require such pedestrian visibility splays to be kept clear.
20. However, the appellant's alternative approach is to provide a knee rail fence along the boundary with the highway within the pedestrian visibility splay. This would prevent vehicles accessing or egressing the site within these areas whilst also maintaining adequate sight lines. Indeed, I have noted the comments of the Highway Authority, and their satisfaction with this design outcome.
21. This solution resolves concerns relating to highway safety insofar as it ensures that pedestrian visibility from the access is maintained. I am further satisfied that a condition to this effect can be imposed on any permission. Moreover, I do not find it necessary, to require any provisions for this to be included in the UU. Therefore, with such a condition, as I have imposed here, the development complies with policy T2 of the CBLP and provisions of the Framework. These policies require that new development must not have a detrimental effect on highway safety and patterns of movement.

Infrastructure impacts

22. A signed and completed UU was submitted with the appeal. This provides £1,095.60 towards community facilities and £357.41 towards leisure and mitigates the infrastructure impacts due to the net increase of one dwelling. These would be directed towards improvement of existing community facilities at Clifton Community Centre sports facilities and at Whiston Crescent Playing Field respectively. The contribution is necessary to make the development acceptable, it is directly related to the development; and fairly and reasonably related in scale and kind to the development.
23. Both parties have confirmed they are satisfied with the terms of the agreement although I have noted the comments of the Council relating to the commencement date to be within 30 days of the receipt of the decision. I appreciate the context of this, however, as the existing residential use is unauthorised it has not lawfully commenced and the trigger for commencement, as drafted, is valid.
24. I conclude that the UU complies with the requirements of CBLP policies HQ2 and HQ3. These policies require developments to make appropriate contributions to provide new physical, social and environmental infrastructure or the enhancement of existing infrastructure, where necessary to mitigate the impact of the proposals. I further consider the development complies with R122 of the Community Infrastructure Levy Regulations 2010 and the provisions of paragraph 57 of the Framework.

Other Matters

25. I have noted that the Council's most recent five year housing land supply statement (January 2024) claims 5.52 years of supply. Although this is challenged by the appellant, albeit not to a position that falls below five years, the appeal is to be allowed and therefore the provisions of paragraph 11(d) of the Framework do not fall to be considered further.
26. In reaching my decision I have had regard to the views of interested parties including the Parish Council and neighbours. Most comments have been considered in my commentary above or are otherwise resolved through

planning conditions. However, it should be noted that land ownership and private issues with the developer of the estate are not planning matters that fall within my remit to consider.

Conditions

27. I have imposed the Council's suggested conditions with edits, re-ordering and modifications as detailed below in order to accord with the Planning Practice Guidance (PPG).
28. Condition 1 is a general time limit and is imposed to comply with the Town and Country Planning Act 1990 (the Act). Condition 2 is imposed to ensure adherence to the approved plans and in the interests of certainty.
29. Condition 3 requires the construction of the boundary fence as a close boarded feature to mitigate overlooking towards neighbouring homes. Conditions 4 and 5 relate to site access, including vehicle parking and measures to ensure the pedestrian visibility splay is not infringed, in the interests of highway safety including pedestrians.
30. Landscaping of the site is addressed in condition 6. This is to ensure there are enhancements to the site frontage, and that the rear amenity area is not solely paved. This is to ensure the development is acceptable in relation to the character of the area and in the interests of the future occupants living conditions. Condition 7 relates to the opening-up of the enclosed patio area to enhance the rear garden area's overall space.
31. Condition 8 is imposed to restrict overlooking from existing side facing windows and also to ensure that no additional windows are formed that could potentially overlook neighbours. This is to secure the amenity and privacy of neighbours.
32. I have imposed condition 9 which restricts 'permitted development rights' given the small size of the site and its proximity to neighbours and being mindful that further works, which could otherwise be constructed with deemed permission, may have an adverse effect on living conditions of the occupants of neighbouring homes. I have, however, limited this to extensions and roof extensions or alterations only. 'Permitted development rights' are granted by Government Order and, in accordance with the PPG, should only be removed in exceptional circumstances. In this case however, I am satisfied that the circumstances exist that warrant their removal in certain classes.
33. I have not included a condition relating to drainage given that this is an existing building and was constructed as part of the remainder of this estate. Moreover, I have not been provided with any evidence to indicate that this is a requirement. In any case, the proposed condition is unreasonable and unenforceable as it only requires plans to be submitted with no indication as to what is sought or any requirement to implement such works. In the absence of evidence to indicate what is sought, it is not possible for me to adjust this condition such that it complies with the PPG.

Conclusion

34. I conclude that the development would not be harmful to the character and appearance of the area, nor would it result in harm to the living conditions of the future occupants of neighbours. It would not result in harm to highway safety and secures sufficient infrastructure contributions to mitigate its effects.

There are no other material considerations which warrant a decision other than in accordance with the development plan and therefore the appeal should be allowed.

Nick Bowden

INSPECTOR

Schedule of conditions:

1. The development hereby permitted shall begin not later than three years from the date of this permission.
2. The development hereby permitted shall not be carried out except in complete accordance with the details shown on the submitted plans, numbers 2117.PL.04A; 2117.PL.05A; 2117.PL.06A; 2117.PL.07B.
3. Prior to the first occupation of the dwelling hereby permitted, the existing trellis fencing shall be replaced with close-boarded timber fencing to match the existing boundary treatment, as shown on approved drawing ref: 2117.PL.06A. The boundary treatment shall be completed in accordance with the approved scheme and shall be thereafter retained.
4. Prior to the first occupation of the dwelling hereby permitted, the car and cycle parking (with access thereto) shall be provided in accordance with the approved plans. The spaces for each dwelling shall be retained throughout the lifetime of the development and shall thereafter be kept available for parking at all times.
5. Prior to the first occupation of the dwelling hereby permitted, full details shall be submitted demonstrating adequate pedestrian visibility splays in accordance with Central Bedfordshire Highways Guidance at the junction of the front of the dwelling with Earl Close. Such details must include details of a knee rail fence to prevent vehicle access within the pedestrian visibility splay. The development shall be implemented in accordance with the approved details and the knee rail fence and pedestrian visibility splays shall thereafter be retained.
6. Prior to the first occupation of the dwelling hereby permitted, a landscaping scheme to include all hard and soft landscaping, including the amenity area to the front of the dwelling as shown on approved drawing ref: 2117.PL.06A, and a scheme for landscape maintenance for a period of five years following the implementation of the landscaping scheme have been submitted to and approved in writing by the Local Planning Authority. The approved scheme shall be implemented by the end of the full planting season immediately following the completion and/or first use of any separate part of the development (a full planting season means the period from October to March). The trees, shrubs and grass shall subsequently be maintained in accordance with the approved landscape maintenance scheme and any which die or are destroyed during this period shall be replaced during the next planting season.
7. Prior to the first occupation of the dwelling hereby permitted, the covered external amenity space as shown on drawing ref: 2117.PL.06A shall be implemented and made available for use. The external amenity areas shall thereafter be retained as shown on approved drawing ref: 2117.PL.06A.
8. Notwithstanding the provisions of Part 1, Classes A, B or C of Schedule 2 to the Town and Country Planning (General Permitted Development) Order 2015 (or any order revoking and re-enacting that Order with or without modification), no extensions to the building hereby permitted, including roof extensions or roof alterations shall be carried out without the grant of further specific planning permission from the Local Planning Authority.
9. The windows in the western side wall of the development hereby permitted shall be permanently fitted with obscured glass of a type to substantially

restrict vision through them at all times and shall be non-opening, unless the parts of the windows which can be opened are more than 1.7 metres above the floor of the rooms in which the windows are installed. No further windows or other openings shall be formed in any side elevation.

End of Schedule