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# Appeal Decision

Site visit made on 8 October 2024

**by Jonathan Edwards BSc(Hons) DipTP MRTPI**

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

**Decision date: 13 November 2024**

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**Appeal Ref: APP/P1615/W/24/3343555**

**Disused Builders Yard To The West Of Wyndover, Larksfield Road, Harrow Hill, Gloucestershire GL17 9JP**

- 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 and Mrs R Boseley against the decision of Forest of Dean District Council.
  - The application Ref is P1346/23/FUL.
  - The development proposed is erection of a 3 bedroomed dwelling.
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## Decision

1. The appeal is allowed and planning permission is granted for erection of a detached dwelling and associated works and demolition of existing garages at Disused Builders Yard to the west of Wyndover, Larksfield Lane, Harrow Hill, Gloucestershire GL17 9JP in accordance with the terms of the application, Ref P1346/23/FUL, subject to the conditions in the schedule at the end of this decision.

## Preliminary Matters

2. The description of development in the header is taken from the application form. In their appeal submissions, the appellants use the description from the Council's decision notice of "Erection of a detached dwelling and associated works. (Resubmission). Demolition of existing garages". This more closely reflects the development as shown on the appeal plans and no injustice would be caused by basing my assessment on this revised description. However, in my decision I have omitted reference to a resubmission as this is superfluous.
3. The Council's refusal reason refers to paragraph 127 of the National Planning Policy Framework (the Framework). In its appeal submissions the Council confirms that this is a typographical error and it should read paragraph 135. In any event, since the Council's decision, a revised version of the Framework has been published that includes the re-numbering of paragraphs. The parties have had the opportunity to submit comments on the Framework through the appeal process.
4. While not a reason for refusal, it is evident from the submissions that a factor to be considered in the assessment of the appeal is the effect of the development on the integrity of the Wye Valley and Forest of Dean Bat Site of Area of Conservation (the SAC). Therefore, Natural England (NE) as the relevant statutory nature conservation body has been consulted and the main parties have had the opportunity to comment on its response.

## **Main Issues**

5. The main issues are (i) whether the development would provide acceptable living conditions having regard to privacy and the quality of garden space, (ii) the effect of the development on living conditions for occupiers of the neighbouring properties Hillcrest and Greenway in terms of access to light and overlooking, and (iii) the effect of the development on the integrity of the SAC.

## **Reasons**

### *Living conditions at the proposed development.*

6. There are first floor windows in the side elevations of the adjoining residence called Wyndover that face towards the appeal site. Photographs have been submitted that show these windows provide elevated and clear views of most of the plot. The concern is that such views would mean large parts of the rear garden to serve the proposed dwelling would be overlooked and so it would not provide a suitable private outdoor area for future residents. Also, concern is raised over the separation distance between the proposed house and Hillcrest and Greenway.
7. I am referred by the Council to its Residential Design Guide (RDG) in support of its objections on overlooking. On page 52, reference is made to a 21m distance requirement between dwellings. However, it would seem from the text that this was a stipulation set out in a previous local plan and I am taken to no similar requirement in the current development plan. As such, I consider the RDG's provisions on page 52 should not be determinative on this issue.
8. Concern is also raised that the amount of private garden space to serve the dwelling would be below 100m<sup>2</sup> and so contrary to guidance on page 35 of the RDG. However, the text on page 35 simply states that to place a house within 2-3 metres of the street boundary should result in gardens averaging 100m<sup>2</sup> on the private side of the house. It does stipulate a minimum garden size or that gardens to the rear of new housing should not be overlooked. Again, I find the referred to RDG provisions to be not determinative on the matter.
9. Consequently, the question as to whether the proposed garden is sufficient is a matter of planning judgment. In carrying out this assessment however, appropriate regard should be given to the provisions at paragraph 135(f) of the Framework that developments should create places with a high standard of amenity for future users.
10. The proposed dwelling would be 2 storeys high and so it would obstruct views from Wyndover towards a part of the garden on the other side of the site. The other adjoining properties called Hillcrest and Greenway are both bungalows with no windows at first floor level. As such, boundary fencing as shown on the appeal drawings would prevent easy overlooking from these properties onto the proposed development. Therefore, part of the proposed garden would not be overlooked from adjoining properties.
11. To my mind, the back garden would be of a sufficient size to allow normal domestic activities such as drying clothes, sitting out and gardening. Also, the screened area to the side of the house away from Wyndover would be sufficient to provide a private outdoor space. The garden size would allow the planting of small trees or other vegetation should any future residents require or desire relief from overlooking.

12. I am mindful of the Inspector's comments on appeal decision reference number APP/P1615/A/01/1057527 (the previous appeal). This relates to a proposal for a dwelling on the appeal site and the Inspector highlighted the potential problems of intervisibility between the development and the side windows in Wyndover. However, this decision was based on a planning application seeking outline planning permission and so no details of the layout and design of the proposal were before the Inspector. I have the benefit of full details of the proposed development and based on these I am satisfied acceptable garden space would be provided. Accordingly, I am not bound to arrive at the same conclusions as the previous appeal Inspector.
13. For the above reasons, I conclude the development would provide acceptable living conditions in terms of privacy and its garden space. In these regards, it would accord with policy CSP.1 of the Council's Core Strategy adopted 2012 (the CS) as well as policies AP1 and AP4 of the Council's Allocation Plan adopted 2018 (the AP). Amongst other things, these look for development to be of a high quality that respects amenity of residents. The Council's refusal reasons also refer to CS policies CSP.4, CSP.5 and CSP.16 as well as AP policy AP6. These contain no provisions relevant to the specific issue of living conditions.

*Effect on living conditions at Hillcrest and Greenway.*

14. Hillcrest adjoins the appeal site on the other side to Wyndover, although the bungalow itself is set back towards and beyond the plot's rear boundary. A close-boarded fence lies on the boundary of the site and near to the rear windows in Hillcrest. The drawings indicate that part of the fence would be increased in height to 2.25m. The concern is that this feature would obstruct natural light to the Hillcrest's window.
15. By reason of their close relationship, it seems the proposed fence would indeed reduce sunlight and daylight to Hillcrest's rear window. However, the Council has not sought to dispute the appellant's claim that a 2m high fence could be erected along the common boundary under permitted development rights. Also, I am advised that a hedge previously existed on the boundary and that this could be reinstated and allowed to grow taller than the proposed fence. There is a realistic possibility that these alternatives would be carried out in the event of this appeal being dismissed as it is fair to assume the appellant would wish to secure the site and demark its boundaries. Given these fallback positions, the appeal development would avoid any meaningful additional loss of light to Hillcrest so as to be detrimental to living conditions. Moreover, the provision of boundary treatment would prevent harmful overlooking from the appeal development into Hillcrest's rear windows.
16. While not mentioned in the Council's refusal reason, concern is raised in the officer's report on the overlooking effect on living conditions at Greenway, which is next to the back boundary of the site. However, the only window at first floor level in the rear of the proposed house would serve a bathroom. It would be reasonable to impose a condition that requires this window to be obscured glazed so that it would not allow views onto Greenway. Also, the proposed boundary fence would prevent harmful overlooking from ground floor rear windows and the raised part of the back garden. As such, the development would avoid a loss of privacy to Greenway.

17. I note the Inspector for the previous appeal found the development then under consideration would have unacceptable harmful effects on neighbouring residents. However, this decision was based on limited information provided with an outline planning application whereas I have full details of the proposal and boundary treatments to consider. Accordingly, I am not bound to arrive at the same conclusions as the previous Inspector.
18. For these reasons, I conclude the development would not cause harm to living conditions for occupiers of the neighbouring properties Hillcrest and Greenway in terms of access to light and overlooking. In these regards it would accord with CS policy CSP.1 and AP policies AP1 and AP4. Again, CS policies CSP.4, CSP.5 and CSP.16 as well as AP policy AP6 contain no provisions relevant to this issue.

*Effect on the integrity of the SAC.*

19. Comments from NE indicate that the appeal site is close to the SAC and falls within a sustenance zone for lesser and greater horseshoe bats. The Council's submissions include a preliminary screening for likely significant effects as required under regulation 63 of the Conservation of Habitats & Species Regulations 2017 (as amended). This concludes the buildings on the site are not suitable for bat roosts and that lighting from the development would not be excessive. It is also noted that there are no bat foraging features or areas within 15m and that the proposed building would not face ancient woodland which is stated as being 50m from the site.
20. The Council concludes the proposal would not have any conceivable or likely significant effect on the SAC both during construction and once occupied. Through its consultation response, NE agrees with the Council. I find no reason to disagree with the parties on this matter. Therefore, I conclude the development would not have a harmful effect on the integrity of the SAC or any of its qualifying features. In these respects, it would accord with AP policy AP7 which states proposals should take account of the SAC.

*Other concerns*

21. As well as the Council's refusal reasons, other objections have been raised by interested parties. The proposed house would be clearly seen from the side windows and back garden to Wyndover. However, ground levels on the appeal site are below those at the neighbouring property. Also, the proposed house would have a roof sloping up and away from the boundary on the side elevation facing Wyndover. Therefore, I am satisfied the development would avoid unacceptable harm to living conditions at the neighbouring property by reason of loss of light or outlook.
22. The garages on the site are dilapidated and of little architecture or aesthetic interest. Regardless as to the unkempt nature of the plot, the proposed house would be more in keeping with its surroundings compared to the garages.
23. The concerns raised do not justify refusal of planning permission. As such, they do not affect my overall conclusion.

**Conditions**

24. I have had regard to the Council's suggested list of planning conditions in light of the advice on conditions as set out in the Framework. Where necessary I

have amended the wording for reasons of precision and to avoid the unnecessary imposition of pre-commencement conditions.

25. A condition requiring the development to be carried out in accordance with approved plans is imposed in the interests of clarity. Condition 3 is imposed to ensure construction works and associated activities do not unduly harm the living environments at nearby dwellings. Condition 4 is needed to ensure construction works do not prejudice highway safety. There is no need for this condition to require hours of operation as this is covered by condition 3.
26. Condition 5 is included to ensure the development is served by a suitable surface water drainage scheme that does not exacerbate flooding. Condition 6 is required to ensure foul water from the development is disposed of appropriately and without pollution to the surrounding area.
27. Condition 7 has been imposed to ensure the development avoids harm to the biodiversity value of the site and area. However, it would be unreasonable to require approval of a biodiversity scheme prior to site clearance as this would include removal of vegetation that could be carried out without the need for planning permission. Also, I have not been provided with the Council's precautionary method of working in respect of site clearance and construction. Accordingly, I find no need to impose the suggested condition that requires the development to be carried out in accordance with this document.
28. Condition 8 is imposed to promote cycle use and sustainable modes of travel. There is no need for this condition to refer to bin storage. Condition 9 is needed to ensure the development incorporates safe and suitable parking space for cars. I have included within this condition a requirement for the vehicular access to also be carried out. The suggested condition that requires an electric vehicle charging point is unnecessary as this would duplicate Building Regulation requirements.
29. While not suggested by the Council, I have included conditions 10 and 11 to ensure the development does not lead to unacceptable overlooking of the neighbouring properties. No objection has been raised by the main parties to the imposition of these conditions.

## **Conclusion**

30. For the reasons given above, I find the proposal would be acceptable in terms of the main issues and that it would accord with the development plan when read as a whole. Therefore, I conclude the appeal should be allowed.

*Jonathan Edwards*

INSPECTOR

## **SCHEDULE OF 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 drawings numbered LP-004A, BP-003B, E-001B, MG2513\_XS1, MG2513\_XS2, MG2513\_A3\_XS1, MG2513\_A3\_XS2 and un-numbered drawing scale 1:100 showing site layout.
- 3) There shall be no works consisting of development, construction, demolition or associated works such as deliveries outside 8.00am to 6.00pm on Mondays to Fridays and outside 8.00am and 1.00pm on Saturdays. There shall be no such works at all on Sundays or Bank Holidays.
- 4) Except for the demolition of the existing garages, the development hereby permitted shall not commence until a construction management plan or construction method statement has been submitted to and approved in writing by the local planning authority. The approved plan or statement shall be adhered to throughout the construction period. The plan or statement shall include details of:-
  - 24-emergency contact number;
  - parking for site operatives and visitors;
  - locations for loading and unloading and storage of plant, waste and construction materials;
  - measures to prevent mud being carried onto the highway;
  - measures to protect road users including cyclists and pedestrians;
  - any temporary traffic management measures;
  - arrangements for turning vehicles; and
  - arrangements to receive abnormal loads or unusually large vehicles.
- 5) Except for the demolition of the existing garages, the development hereby permitted shall not commence until details of a surface water drainage scheme and drainage management plan have been submitted to and approved in writing by the local planning authority. The scheme shall include details of exceedance flow routing plan for flows above the 1 in 100 year plus 40% climate change event. If a drainage scheme is proposed that involves soakaways, the details provided shall include results of 3 ground infiltration tests. The approved drainage scheme shall be fully carried out prior to the dwelling hereby permitted being first occupied and thereafter it shall be maintained in accordance with the approved management plan.
- 6) Except for the demolition of the existing garages, the development hereby permitted shall not commence until details of a foul water drainage scheme including plans detailing location of pipe work, inspection chambers, holding tanks and methods for disposal have been submitted to and approved in writing by the local planning authority. The approved drainage scheme shall be fully implemented and be ready for use prior to the dwelling hereby



permitted being first occupied and thereafter it shall be maintained so it is fully operational.

- 7) Except for the demolition of the existing garages, the development hereby permitted shall not commence until a scheme for the biodiversity enhancement of the site, including bat roosting features, hedgehog homes/log piles and swift or house martin nest boxes has been submitted to and approved in writing by the local planning authority. The approved scheme shall be fully implemented prior to the first occupation of the dwelling and thereafter it shall be retained. The details to be provided shall include description, design or specification of the type or feature or measures; materials and construction details and a drawing showing the location where the features or measures are to be installed.
- 8) Prior to the first occupation of the dwelling hereby permitted, details of cycle storage facilities to be provided as part of the development shall be submitted to and approved in writing by the local planning authority. Prior to the dwelling hereby permitted being first occupied, the approved cycle storage facilities shall be fully implemented at the site and thereafter they shall be retained for cycle storage use.
- 9) Prior to the first occupation of the dwelling hereby permitted, the car/vehicle parking areas and vehicular access as shown on the approved plans shall be fully completed and ready for use. The parking areas and access shall be surfaced in bound material for at least 5m distance from the edge of the public highway. Thereafter the approved parking areas and access shall be kept free of obstruction and available for the parking of vehicles associated with the development.
- 10) Notwithstanding the details as shown on the approved drawings, the dwelling hereby permitted shall not be occupied until the windows at first floor level in the south east and south west elevations as shown on the approved plans 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.
- 11) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that Order with or without modification), no windows/dormer windows other than those expressly authorised by this permission shall be constructed at first floor level or above on the south west elevation of the dwelling hereby permitted.