
Appeal Decision

Site visit made on 6 June 2023

by Paul Martinson BA (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17 August 2023

Appeal Ref: APP/B1605/W/23/3314132

125, 127, 129, 131 & 133 Promenade, Cheltenham GL50 1NW

- 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 Lucky Onion Group against the decision of Cheltenham Borough Council.
 - The application Ref 22/01373/FUL, dated 26 July 2022, was refused by notice dated 21 October 2022.
 - The development proposed is described as: 'Temporary Marquees at 125, 127, 129, 131 and 133 Promenade, Cheltenham'.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. I have taken the site address and description of development from the appeal form as they more accurately describe the appeal site and the proposal.
3. The marquees are understood to have been installed at the appeal site in June and October 2020 and replaced existing parasols within the frontages and external areas of 131 and 133 Promenade.
4. As part of the Council's response to the Covid-19 pandemic, it relaxed planning enforcement against temporary, moveable structures in order to allow businesses such as bars and restaurants to utilise external spaces and meet social distancing requirements. The appeal structures benefitted from these measures.
5. As the appeal site is located adjacent to listed buildings and within a conservation area, I have had special regard to sections 66(1) and 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the Act).
6. Whilst I have based my decision on the proposed plans, the appeal proposal is partly retrospective in that the marquees are predominantly in situ. Nonetheless, On the site visit I saw that the three marquees shown on the proposed plans immediately adjacent to the side elevation of No 133 were not present.
7. The appeal proposal seeks the retention of the marquees for an additional two years. As they are predominantly in place already, I was able to take into account the effects of the structures on the designated heritage assets that I observed on site. My assessment considers the effect of the proposed retention of the marquees for a further two years, notwithstanding that the appellant's final comments suggest that the structures could be removed by 20 October

2024. In this regard I am mindful that the appeal process should not be used to evolve a scheme and that it is important that what is considered at appeal is essentially the same as was considered by the local planning authority and interested parties at the application stage.

Main Issue

8. The main issue is the effect of retaining the marquees for a further two years on the special interest of the adjacent Grade II* buildings, with particular regard to setting, and whether their retention for this period would preserve or enhance the character or appearance of the Cheltenham Central Conservation Area.

Reasons

Special Interest and Significance of Listed Buildings

9. The appeal site comprises the outdoor spaces associated with a hotel and restaurant. The hotel/restaurant is comprised of three Grade II* listed buildings: 125 and 127 Promenade¹; 129 and 131 Promenade² (which are semi-detached); and 133 Promenade³ (detached). The three buildings are all sizeable elegant Regency villas constructed in the early 1830s and generally attributed to the architect John Forbes. The buildings are set back from the street edge, and each other, behind their own spacious garden plots, enclosed by railings and gated walls. The three sets of gate piers adjacent to No 133 are also individually Grade II listed.
10. Externally all three buildings are faced with stucco with individual architectural detailing, reflective of the neoclassical Regency style, primarily to the front facing elevations. No 133 has Doric pilasters with arcading details to the ground floor openings, whilst No 129 and 131 has four fluted central columns atop plinths with Prince of Wales capitals. No 125 and 127 has six central pilasters with entablature between the ground and first floor and includes prominent ground floor Doric porches to each end.
11. The ground floor of each of the buildings is elevated above street level and typically accessed via a series of steps which are often individually detailed. The ground floor windows to each villa are tall and elegant and an indication of the historical importance of the rooms on this level. Each ground floor features balconies with metal railings. Continuous balconies are present for much of the ground floor at No 133 and No 125 to 127, with tent roofs above those at No 133, whilst those at No 129 and No 131 are individual balconies served by French windows.
12. The design detailing of the appeal buildings contributes to an elegant appearance, reflective of the increasing prosperity of Cheltenham as a Regency Spa town. Whilst each building has individual design features, their materials, scale and spacious siting are unifying characteristics. Together they form part of an outstanding group of Regency villas along this part of Promenade overlooking Imperial Gardens and the Queens Hotel, also Grade II* listed. The elevated ground floor levels of the appeal buildings along with their elegant

¹ List Entry Name: Numbers 125 and 127 and Attached Railings. List Entry Number: 1387685.

² List Entry Name: Gloucester Lodge (No 129) and Sherborne House (No 131) Gate Piers and Gates. List Entry Number: 1387686.

³ List Entry Name: Clarence House and Attached Railings. List Entry Number: 1387687.

ground floor windows and balconies allow key views of the planned tree-lined avenue and Imperial Gardens beyond.

13. The special interest and significance of the Regency villas derives from, in part, their architectural and historic interest as high quality examples of Regency buildings within a planned setting. Important contributors in this regard are their elegant neo-Classical architectural detailing, spacious character, location within a formally planned street, grand proportions with a legible hierarchy across their floors, and their contribution to the consciously designed townscape. Their significance also stems in part from their value as a group.
14. Pertinent to the appeal, it is common ground between the parties that the appeal site lies within the setting of the three Grade II* listed buildings referred to above. The setting of a heritage asset is defined as the surroundings in which it is experienced, and its importance therefore lies in what it contributes to the significance of the heritage asset⁴. The buildings' consciously larger plots are distinctive compared to nearby terraces and, as noted by Historic England in its comments, are shaped by, and illustrate, the social trends of this part of the nineteenth century. The space around them adds to the spacious character of this part of Promenade and the deliberate setback from the road allows these sizeable buildings to be better appreciated by those walking along Promenade, a clear intention of the design of the buildings in the nineteenth century.
15. As noted in the historical note forming part of the List Description, Promenade was laid out in 1818 as a tree-lined avenue from the Colonnade in the High Street to the Sherborne Spa (on the site of the Queen's Hotel) and by 1826 it was a carriage drive with spacious gravelled walk on each side.
16. The open spaces around the buildings remain a key aspect of how the assets are appreciated today. Moreover, the open nature of these spaces allow the aforementioned ground floor elements that contribute to the significance of the buildings to be viewed and seen in the context of the building as a whole. The neoclassical detailing and the hierarchy of windows are particularly important aspects of how the buildings were designed. The open space forming the appeal site thus makes a major contribution to the significance of 125 and 127 Promenade, 129 and 131 Promenade and 133 Promenade.

Significance of Conservation Area

17. The CA encompasses a large area of the town which developed as a Regency spa town with many of the buildings here constructed in the early part of the nineteenth century. Stucco, painted a consistent colour, predominates as a characteristic external treatment and provides cohesion to the CA. Buildings typically comprise of formally laid out terraces and large villas set in spacious grounds. Trees are prevalent and streets are often tree lined. Formally laid out gardens including public spaces are features of the streetscene here that also contribute to the spacious feel.
18. Described in the Montpellier Character Area Appraisal (2007) (the CAA) as one of Cheltenham's most striking streets, and, as set out in the List Description, Promenade is a planned tree-lined space. Today Promenade is a wide and spacious thoroughfare bounded by Regency development, still lined by trees.

⁴ National Planning Policy Framework – Glossary.

19. The spacious, verdant character, prevalence of neoclassical Regency architecture and the resulting consistency in terms of architectural features, materials and detailing are characteristics of the streetscene that contribute to the significance of the CA insofar as it relates to this appeal.
20. The appeal buildings, being elegant Regency villas in a spacious and planned setting and forming a high-quality building group, reinforce those characteristics. All of these elements positively contribute to the CA's significance as a designated heritage asset. My conclusions in this regard are supported by the conclusions set out in the CAA.

Proposal and Effects

21. When considering the impact of a development on the significance of a designated heritage asset, the National Planning Policy Framework (the Framework) also provides that great weight should be given to the asset's conservation and the more important the asset, the greater the weight should be.
22. The marquees consist of a large number of adjoining individual units spread across the frontage of the three listed buildings. The marquees occupy much of the frontage of each of the buildings, whilst they are also shown on the proposed plans to the side of No 133. The roof of each unit is white in colour and typically takes the form of a square tent, peaking in the centre. On the site visit I saw that some had translucent plastic walls infilling the space between the floor and roofs. In some cases, the plastic had been pulled back in the manner of a curtain whilst in other instances, this was absent entirely. Within the units I saw that covered porches, doorframes and doors had been erected.
23. Owing to their considerable height, spread and form, the marquees almost completely obscure the ground and basement elevations of the buildings, radically reducing the visibility of their architectural detailing, such as the arcading and balconies to the ground floor areas referred to above. The peaks of the marquees also obscure parts of the first floors of the buildings. Visibility of the buildings in views from outside the site as well as from the entrance to Imperial Gardens opposite and from further along Promenade has been radically reduced. This severely restricts the ability to appreciate the significance of the buildings.
24. Within the site, views of the exterior of the buildings are extremely limited and diners within this space, in my view, are unlikely to be able to gain a realistic appreciation of the significance of the buildings that they are visiting. Similarly, views from inside the building, gained from the elegant windows and balconies, are predominantly obscured by the roofs of the marquees.
25. The scale of the development has drastically reduced the degree of spaciousness within the appeal site (despite three proposed marquees being absent on my visit). The development of the site has had a significantly diminishing effect on the legibility of the original conscious design as grand villas within a spacious setting, adversely affecting their significance. Moreover, the tented form and irregular positioning of the marquees within the site jars with the formal symmetry of the Regency buildings. This also has the effect of reducing the individuality between the three buildings and blurring the definition between them.

26. Having regard to the above, the marquees have become a prominent and incongruous feature of the streetscene along Promenade and due to their scale, colour and form are visible for much of its length. They are also prominent in views from Imperial Gardens. The marquees intrude into the space adjacent to the street trees, imposing upon them, unbalancing the symmetry of the avenue in views looking down Promenade from the Queens Hotel and adversely affecting the spacious, verdant character of the CA as a whole.
27. The submitted heritage statement sets out that retaining the marquees for two years would not be *'to the detriment of any of the features described in the Historic England listing details and will not result in the significant loss of any historical internal features or fabric'*. However, I have found that the development is harmful to the significance of the listed buildings through the development within their setting.
28. The appellant has set out that retaining the marquees for a further two years would allow time for the appellant to conceive an alternative, presumably more permanent, solution for external dining. In that regard, the appellant has provided a copy of a draft submission for pre-application advice to the Council. Whilst there may or may not be a suitable long-term solution, it is not for the appeal process to pre-determine this matter.
29. Nonetheless, I am mindful of the high importance of the heritage assets and that, were I to allow the appeal and grant permission to retain the marquees for a further two years, this harm would continue at least for the duration of that period.
30. As such, for the above reasons, I conclude that the proposed retention of the marquees would have a harmful effect on the special interest of the adjacent Grade II* listed buildings, particularly their setting. In addition, it would fail to preserve or enhance the character or appearance of the CA. As such, it would cause harm to the significance of these designated heritage assets.
31. Lying within its setting, the appeal site also contributes to the special interest and significance of the Grade II* listed Queens Hotel. This is through reinforcing the spacious character of the area and allowing views across it to the appeal buildings' facades as part of a conscious grouping of Regency buildings and development along this part of Promenade. Through interrupting the spacious character and views between the two buildings the development has adversely affected the significance of the Grade II* listed Queens Hotel through development within its setting.
32. Much of the significance of the Grade II listed gate piers located along the frontage of No 133 derives from their association with No 133, which lies within their setting. A further consequence of the appeal development has been that these gate piers have also been partly or totally subsumed by the structures, eroding their legibility within the site, to the detriment of their significance.
33. Whilst the effect on the special interest and significance of the Queens Hotel or the gate piers did not form part of the Council's reasons for refusal, I have a statutory duty under section 66(1) of the Act to have special regard to the desirability of preserving listed buildings or their settings. In that regard, my findings add to the harm to heritage assets I have described above.

Public Benefits and Balance

34. With reference to Paragraphs 201 and 202 of the Framework, in finding harm to the significance of a designated heritage asset, the magnitude of that harm should be assessed. Paragraph 202 advises that this harm should be weighed against the public benefits of the proposal, including, where appropriate, securing the asset's optimum viable use.
35. Having regard to the temporary nature of the proposal I am satisfied that the harm is less than substantial as described in the Framework. In that regard I note that the appellant has never disputed that the marquees affect the settings of the listed buildings and in this respect harms their significance.
36. The appellant argues that the harm arising is at the '*lower end of that less than substantial scale*'. However, I would note that case-law has confirmed that decision makers are not obliged to place harm that would be caused to the significance of a heritage asset, or its setting, somewhere on a spectrum in order to come to a conclusion. The only requirement is to differentiate between 'substantial' and 'less than substantial' harm for the purposes of undertaking the weighted balancing exercise.
37. The appellant is of the view that the marquees generate significant public benefits and that these '*far outweigh*' the less than substantial harm caused. The appellant sets out that the marquees allow the bar and restaurant to accommodate more customers '*across the less clement months of the year*', supporting the business and resulting in employment and economic benefits. In this regard the appellant has calculated that approximately 50 members of staff (a third of the workforce) would be made redundant, were the marquees required to be removed. The appellant also notes the potential for further job losses in the supply chain including food and drink suppliers and maintenance staff.
38. Whilst the appellant has not provided detailed evidence supporting the employment figures and their reliance on the marquees, a table showing financial information has been provided as part of their final comments. Whilst limited in detail, this table sets out that the external areas around the buildings generate a substantial portion of the income of the business.
39. I agree with the Council that there is a lack of supporting evidence with regard to the precise financial implications of the marquees and the extent to which the businesses are dependent upon them. However, having regard to the significant number of tables located within the areas covered by marquees, I do not doubt that these areas generate a substantial income throughout the year, as they are essentially an extension of the internal dining areas and bars, allowing for significantly more tables and more customers. This in turn will result in employment and a benefit to the local economy, including through diners going on to visit the nearby bars after a meal.
40. However, I would note that the issue is not that outdoor dining in itself is unacceptable in principle, the harm considered above is based around the number and form of the marquees covering these spaces. There is no evidence before me that the appeal proposal is the only means of providing outdoor dining and indeed, I saw no similar marquee structures at nearby restaurants and bars, which often included outdoor seating. I therefore attribute limited weight to the economic benefits described above.

41. The appellant argues that the marquees help to maintain the buildings in their optimum viable use. However, notwithstanding that the buildings were vacant for a period of time before being incorporated into the current business, the appellant has not demonstrated why they consider the buildings' current use is their optimum viable use. In this regard I note the Planning Practice Guidance (PPG)⁵ sets out that where there are other economically viable uses, the optimum viable use is the one likely to cause the least harm to the significance of the asset, and, that this may not necessarily be the most economically viable one.
42. I accept that the economic climate has changed since the buildings were developed into their current uses by the appellant, and that these are challenging times for such businesses. However, the original investment in the buildings does not appear to have required provision of substantial areas of undercover dining areas and these only became necessary in order for the business to survive during the restrictions in place during Covid-19. Having regard to the PPG, and on the basis of the evidence before me, I am therefore not convinced that the marquees are fundamental to maintaining the buildings' optimum viable use.
43. I accept that, following the pandemic, there may be some people who remain nervous of being in crowded, indoor spaces, and that they may prefer to socialise in well-ventilated spaces where greater distancing can be achieved. However, given that the marquees predominantly have walls, internal doors and a roof, it is unclear how well-ventilated these spaces are. Nonetheless, the marquees may reassure some customers in this respect and may provide an option to those people at times where temperatures and weather conditions inhibit outside dining. This therefore represents a limited benefit.
44. Nonetheless, collectively, the limited weight I have attributed to recognised public benefits, are not sufficient to outweigh the considerable importance and weight I attach to the identified harm to the significance of the designated heritage assets.
45. The retention of the marquees for a further two years would adversely affect the special interest and significance of the adjacent Grade II* buildings, with particular regard to their setting. Similarly, the proposal would also fail to preserve or enhance the character or appearance of the CA. The retention of the marquees would not sustain or enhance the significance of the designated heritage assets and would not conserve them in a manner appropriate to their significance.
46. This harm would be contrary to the requirements of sections 66(1) and 72(1) of the Act and the provisions within the Framework which seek to conserve and enhance the historic environment. The harmful impact would also be contrary to Policies SD4 and SD8 of the Gloucester, Cheltenham and Tewkesbury Core Strategy (2017) and Policy D1 of the Cheltenham Local Plan (2020) which together seek to conserve and enhance heritage assets and safeguard local distinctiveness and the historic environment.

⁵ Paragraph: 015 Reference ID: 18a-015-20190723.

Other Matters

47. The appellant has referred to a previous decision of the Council relating to the construction of an orangery in Imperial Gardens. I have been provided with limited details of this decision. However, I was able to view this development on the site visit. This structure does not appear to obscure buildings in the manner of the appeal scheme, nor does it appear to involve the settings of multiple Grade II* listed buildings. I am therefore not convinced that this development represents a parallel with the appeal proposal. The Council's previous decision in this regard therefore carries little weight.
48. I note that there is some public support for the proposal. However public support does not necessarily equate to a lack of harm. Moreover, a number of third-party objections were also received as part of the appeal.

Conclusion

49. The proposed development would conflict with the development plan. There are no material considerations which indicate that the decision should be made other than in accordance with the development plan. Therefore, for the reasons given, I conclude that the appeal should be dismissed.

Paul Martinson

INSPECTOR



Appeal Decision

Site visit made on 28 July 2023

by Lewis Condé Msc, Bsc, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 08 August 2023

Appeal Ref: APP/B1605/W/23/3317776

Glenfell Way street works, Glenfell Way, Cheltenham GL52 6XX

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under Article 3(1) and Schedule 2, Part 16 Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).
 - The appeal is made by Mr Gallivan, Cignal Infrastructure UK Limited (formerly known as CK Hutchison Networks (UK) Limited), against the decision of Cheltenham Borough Council.
 - The application Ref 22/02190/PRIOR, dated 15 December 2022, was refused by notice dated 3 February 2023.
 - The development proposed is described as 'Proposed 5G telecoms installation: H3G 16m street pole and additional equipment cabinets'.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The description of development and appellant details in the banner heading above have been taken directly from the original planning application form.
3. Article 3(1) and Schedule 2, Part 16, Class A, Paragraph A.3(4) of the GPDO require the local planning authority to assess the proposed development solely on the basis of its siting and appearance, taking into account any representations received.
4. The relevant provisions of the GPDO also do not require regard to be had to the development plan. Accordingly, I have had regard to development plan policies only insofar as they are a material consideration relevant to matters of siting and appearance. They are not, in themselves, determinative.

Main Issue

5. The main issue in this appeal is therefore the effect of the proposed development on the character and appearance of the area, and if any harm is identified whether that harm would be outweighed by the need to site the installation in the location proposed.

Reasons

Character and Appearance

6. The appeal site is located to the north-west side of Glenfell Way between its junctions with Carisbrooke Drive and Lawrence Close. The proposed development would be located within a grass verge located to the side of the

- vehicular highway and also alongside a pedestrian footpath. Two mature trees are sited close to the appeal site, either side of the proposed installation.
7. The surrounding area is generally residential in nature and is characterised by primarily two-storey dwellings, although a primary school also sits approximately 100m to the north-east of the site. Despite its suburban nature the area has a rather verdant character, due to the presence of mature trees and vegetation, as well as grass verges, along the roadside.
 8. The proposed development would comprise a 16m high monopole to which antennae would be attached, along with associated ground level equipment cabinets. The proposal would be of a functional appearance, typical of telecommunications equipment that is generally found in urban and suburban areas.
 9. The proposal would be significantly taller than the surrounding residential dwellings. The monopole would be viewed in the context of other vertical elements, including the nearby streetlights and mature trees. However, it would still be taller and of greater girth than the streetlighting and therefore a more imposing structure within the streetscene.
 10. The close proximity of mature trees would help to screen the proposed development reducing its visual impact, particularly from longer distances. Nevertheless, due to its overall scale and appearance of the proposed monopole and antennae, it would still appear as a prominent and somewhat jarring feature in the streetscene, especially when trees are not in leaf. The proposed cabinets would also add visual clutter to the streetscene.
 11. Despite the lack of any statutory area designations, having regard to its siting and appearance, the proposed development would result in moderate harm to the character and appearance of the area.

Alternative Sites

12. Paragraph 117 of the Framework requires that applications for telecommunications development, including prior approval, should be supported by necessary evidence to justify the proposal. This should include, for a new mast or base station, evidence that the applicant has explored the possibility of erecting antennas on an existing building, mast or other structure. Due to the potential harm to the character and appearance of the area, it is important that an appropriate search of alternative sites has been undertaken to justify the proposal.
13. The appellant has provided a map demonstrating the cell area for the proposal and has identified a limited number of potential alternative sites within this identified area. Whilst I do not doubt the need for the proposal, and that the cell area may be highly constrained, there is a lack of robust evidence before me to demonstrate how the extremely limited search area has been identified. For example, I have no specific details of the location of existing masts/antennae in the wider vicinity, and if there is any existing infrastructure what area this covers and corresponding capacity levels.
14. Additionally, the appellant has provided reasons as to why the alternative sites within the identified cell area are inappropriate. Whilst these alternative sites may have been discounted for legitimate reasons, the appellant's justifications are brief and unsupported by any further evidence to suggest why they would

be more harmful than the appeal scheme, or are not viable. For example, each of the alternative sites have been discounted due to concerns surrounding highway visibility splays, but no detailed information (e.g. visibility splay drawings) has been provided to demonstrate the likely impacts on highway safety would be any greater than at the proposed appeal site.

15. The appellant has also discounted three of the alternative sites as they were not on adopted highway, but I have no details as to whether the appellant has engaged with the relevant landowners about use of the sites. As such, I am unable to determine whether these alternative sites are not viable or merely less convenient for the appellant.
16. In the absence of clear and persuasive evidence as to how the cell area has been selected and why alternative sites within the cell area have been discounted, I am unable to establish that the appeal scheme is the most suitable in its siting and appearance.
17. Overall, the development proposed would cause harm to the character and appearance of the area, and I am not satisfied that less harmful alternatives have been properly explored. For these reasons I find the siting and appearance of the proposed development to be unacceptable.

Other Matters

18. I recognise that there are various social and economic benefits associated with the proposed development. However, the GPDO is clear that consideration of the appeal is limited to matters concerning siting and appearance only. Accordingly, these wider benefits have not been taken into account.
19. The scale of the proposed monopole is indicated by the appellant as being the minimum necessary to meet its technical requirements. It nevertheless remains that it is of a size, appearance and siting that would result in harm to the character and appearance of the area.

Conclusion

20. For the reasons given above, the appeal is dismissed.

Lewis Condé

INSPECTOR

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Appeal Decision

Site visit made on 12 July 2023

by **L Page BSc (Hons) MSc MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 9 August 2023

Appeal Ref: APP/B1605/D/23/3317915

4 Dymock Walk, Cheltenham, Gloucestershire GL52 5GE

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant approval required under Article 3(1) and Schedule 2, Part 1, Class AA of the Town Country Planning (General Permitted Development) (England) Order 2015 (as amended) (GPDO).
 - The appeal is made by Ms G Hole against the decision of Cheltenham Borough Council.
 - The application Ref 22/02075/PRIOR, dated 22 November 2022, was refused by notice dated 19 January 2023.
 - The development proposed is provision of an additional storey by removing and raising the existing roof - to include removal of existing roof trusses, installation of new roof trusses, together with building up existing walls to new height.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. Under Article 3(1) and Schedule 2, Part 1, Class AA of the GPDO planning permission is granted for enlargement of a dwellinghouse by construction of additional storeys subject to limitations and conditions.
3. Paragraph AA.2.(3)(a)(ii)(aa) and (bb)¹ set out that before beginning the development, the developer must apply to the local planning authority for prior approval as to the external appearance of the dwellinghouse, including the design and architectural features of the principal elevation of the dwellinghouse and any side elevation of the dwellinghouse that fronts a highway.
4. The principle of development is established by the GPDO, and I have only had regard to policies in the development plan and the National Planning Policy Framework (the Framework) insofar as they are relevant to making a planning judgement on matters of prior approval.
5. The appellant submitted additional plans with their appeal. However, I am mindful that these plans provide for development that would be substantially different in design² compared to the proposal subject to the original application.

¹ which is the correct citation of the relevant provisions and matters in dispute which include the principal elevation and side elevation based on the officer's report, and notwithstanding the Council's decision notice.

² Including different roof styles and heights

6. Consequently, in considering the Wheatcroft Principles, I cannot accept or consider the additional plans because to do so would unfairly prejudice those who were party to the original application.

Main Issue

7. The main issue is the effect of the proposal on the character and appearance of the area.

Reasons

8. The site is located at 4 Dymock Walk which is a semi-detached two storey dwelling. It has been subject to single storey side and rear extensions, but these are sympathetic to the original dwelling and have not changed its scale to any significant degree.
9. When the principal elevation is viewed from Dymock Walk, it can be seen that the scale and proportions of the dwelling are such that it generally forms a symmetrical pair with its adjoining neighbour.
10. There are other dwellings of similar type, scale, and proportions within the immediate area. However, there are also other types of dwellings that exhibit different scales and proportions. Indeed, these have been arranged in a manner that does not create a uniform street scene, as evidenced by the appellant.
11. For example, there are terraced dwellings, including those directly opposite the site, that contrast with semi-detached pairs elsewhere in the immediate area. Furthermore, dwellings are generally varied in storey height and roof form, among other things.
12. However, my view is that these variations in scale and proportions remain coherent when taken in context. For example, there are semi-detached dwellings with stepped roofs, but the extent of each step and difference in ridge height between each dwelling is relatively modest. Therefore, when taken together, the appearance of such semi-detached dwellings remains coherent.
13. In relation to the terrace opposite, whilst the roof form is stepped and differences in ridge heights are more pronounced, the taller central dwellings are of similar heights and the shorter end dwellings are of similar heights. As such, when taken together, the terrace retains a degree of symmetry and coherence.
14. I note the Kempley Close example, and other similar examples identified by the appellant elsewhere in the immediate area. However, in my judgement the differences in height between the dwellings in these examples are not substantial.
15. Moreover, the dwellings in question are of markedly different styles and there is clear contrast between them in this regard. As such, given this difference in style, differences in height are not incoherent. Therefore, these examples are not comparable to this case, where the dwellings are consistent in appearance and more akin to symmetrical pairs.
16. In this context, the proposal would result in a substantial increase in the height of the existing dwelling. This would not exceed or be incongruous with the height of some other three storey dwellings in the immediate area.

17. However, it is clear that in relative terms there would be a substantial difference in height between the dwelling subject to the proposal and the neighbouring dwelling adjoining it when viewed in the context of the principal elevation from Dymock Walk.
18. Consequently, whilst I am mindful of the variation in the scale and proportions of other dwellings seen elsewhere in the immediate area, the increase in height at the site would be of such a scale that the external appearance of the principal elevation would result in an incoherent relationship between the semi-detached pair of dwellings.
19. The side elevation of the proposal would not be viewed in the context of the neighbouring dwelling adjoining. As such, any perception of incongruity would be limited, and the dwelling's scale would not be imposing in the context of other buildings of substantial height along the footpath. Consequently, the proposal would not be unacceptable in relation to Paragraph AA.2.(3)(a)(ii)(bb) of the GPDO.
20. Nonetheless, this does not change my conclusions about the proposal's effects in relation to the principal elevation. As such, it would not be acceptable in relation to Paragraph AA.2.(3)(a)(ii)(aa) of the GPDO and the proposal would appear out of proportion and overly prominent within the street scene and be harmful to the character and appearance of the area.

Other Matters

21. The appellant questions the relevance of the development plan documents, and guidance cited by the Council, in that they were adopted before the GPDO provisions came into force.
22. However, age alone does not determine relevance. It is obvious that permitted development rights facilitating an additional storey is unlikely to be subservient to the host building, and therefore the applicability of some of the Council's guidance citations is arguable.
23. Notwithstanding, it is still clear that the development plan documents, and guidance are relevant in a general sense. This is because they establish general principles requiring development to respond to the character and appearance of the area and be appropriate within a given context.
24. As such, the development plan documents, and guidance cited by the Council are generally consistent with the prior approval matters before me and therefore I have given the appellant's contentions about the relevance of the development plan documents and guidance limited weight in my decision.
25. I appreciate the appellant's point that they have sought to keep the increase in height to the minimum necessary to facilitate useable internal space.
26. I also acknowledge the principle of development around the effective use of land and that extensions help provide different types of housing configurations to meet population needs.
27. However, such increases in scale need to occur in an appropriate context, in accordance with the relevant matters of prior approval, and this is the basis of my decision.

28. The Council does not dispute the finer details of the proposal, including the use of materials and fenestrations, separation distances to neighbouring dwellings in relation to living conditions or land designations, among other things. Consequently, it has not been necessary to address these matters in my decision when assessing disputes relating to prior approval.

Conclusion

29. For the reasons given above, the proposal would harm the character and appearance of the area and prior approval cannot be granted in accordance with relevant limitations and conditions of the GPDO under Paragraph AA.2.(3)(a)(ii)(aa). Consequently, the appeal is dismissed.

Liam Page

INSPECTOR



Appeal Decision

Site visit made on 1 August 2023

by **E Worley BA (Hons) Dip EP MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 17 August 2023

Appeal Ref: APP/B1605/D/23/3314545

28 Westdown Gardens, Cheltenham, Gloucestershire GL52 6AY

- 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 Peter Bailey against the decision of Cheltenham Borough Council.
 - The application Ref 22/01679/FUL, dated 15 September 2022, was refused by notice dated 11 November 2022.
 - The development proposed is the erection of a detached garage (revised scheme to ref: 21/01789/FUL).
-

Decision

1. The appeal is dismissed.

Main Issue

2. The main issue is the effect of the proposed development on the character and appearance of the area.

Reasons

3. The appeal property is a 2 storey semi-detached dwelling located at the end of the Westdown Gardens cul-de-sac, which comprises matching pairs of semi-detached dwellings. Whilst the properties have been subject to various extensions and alterations, they are set back a similar distance from the highway, with parking and gardens to the front, which contributes to a pleasant sense of openness to the street scene.
4. The proposal is for a new single detached garage with a flat roof, to be located on land to the front of the existing dwelling. It would be adjacent to the boundary fence which denotes the termination of the cul-de-sac. Despite the design and modest scale of the garage, which would be similar in height to the adjacent boundary treatment, due to its siting to the front of the dwelling, it would appear as an anomalous feature that would fail to reflect the prevailing layout of the surrounding development. Moreover, it would erode the spaciousness to the front of the dwelling and the overall open character of the cul-de-sac. The use of sympathetic materials in the construction of the garage would not outweigh this harm.
5. Whilst the existing planting to the front of 24 Westdown Gardens would offer a degree of screening in some views towards the garage, the wellbeing and longevity of the planting cannot be relied upon in perpetuity. Furthermore, as the proposed hedge planting adjacent to the side and rear of the garage is not a feature of the street it may draw attention to the structure and in any case would not mitigate the harm I have identified.

6. My attention is drawn by the appellant to recent planning permissions granted by the Council for extensions to nearby properties. However, the additions which have taken place do not affect the overall openness of the street scene. Furthermore, whilst I note the examples of detached garages positioned to the front of dwellings in other parts of the borough, I do not have full details in respect of such works so I cannot be sure of the circumstances. In any case, I have determined the appeal on its own merits, based on the evidence before me.
7. For the forgoing reasons, I conclude that the proposed development would have a harmful effect on the character and appearance of the area. In that regard it would fail to accord with Policy D1 of the Cheltenham Plan adopted July 2020 in so far as it requires development to complement and respect neighbouring development and the character of the locality and Policy SD4 of the Gloucester, Cheltenham and Tewkesbury Joint Core Strategy adopted December 2017 which seeks development that responds positively to and respects the character of the site and its surroundings. It would also conflict with the high quality design aims of the National Planning Policy Framework which seek to ensure among other things that developments are sympathetic to local character.

Other Matters

8. The appellant indicates that there may be some biodiversity benefits of planting a hedge. However, this is not substantiated with any evidence, and I give this matter little weight. The fact that the proposal would not harm the living conditions of the neighbouring properties is an ordinary requirement for new development and would not represent a positive benefit that would weigh in favour of the development.
9. I have had regard for the appellant's need for additional storage space at the property. However, I am mindful that the harm identified would be permanent and is not outweighed by the appellants' particular circumstances.
10. Whilst I have not been provided with specific details of such, the appellant has suggested that alternative temporary storage solutions would be likely to have a greater impact on the street scene. Even if this was a realistic and lawful fallback position, there would be no guarantee that temporary storage structures would be retained by future occupiers of the property. In any case, they would not be a permanent building that would cause the harm I have found and would therefore not justify the proposal.
11. I am sympathetic to the fact that the appeal proposal is a resubmission of a previously withdrawn application, taking into account issues previously raised by the Council. However, I can only assess the current proposal based on the information before me.

Conclusion

12. For the reasons given, the appeal scheme would conflict with the development plan and there are no material considerations worthy of sufficient weight that would indicate a decision other than in accordance therewith. The appeal is therefore dismissed.

E Worley INSPECTOR

REPORT TO: Planning Committee September 2023
LEAD OFFICER: Interim Head of Planning

Enforcement Report

Summary

On 13th September 2023 there were 157 open cases, including 24 High St cases.

During August 2023, 24 new cases were opened and 20 investigations were closed.

During July 2023, 25 new cases were opened and 21 investigations were closed

Updates to Service Delivery

The purpose of this report is to give an indication to the Committee of workload and progress on major cases. In providing this information there is a need to abide by the appropriate guidance in relation to the Data Protection Act and Regulations. These reports will be provided to Committee on a quarterly basis. Should Members wish for specific updates then these can be requested from the Interim Head of Planning (and for the future Head of Development Management, Enforcement and Compliance).

The Planning Enforcement Team Leader, Daniel Lewis has now left CBC. The intention moving forward is to appoint an interim enforcement officer to assist with the workload. A review of structure and resources will be undertaken by incoming Head of Development Management, Enforcement and Compliance.

This document is a work in progress; therefore should members have comments on the approach for this report moving forward then please contact the Interim Head of Planning.

Updates to significant cases

A list of current Notices is attached at Appendix 1.

There are currently 13 enforcement notices in effect.

There are two further notices ready to be issued and two in the pipeline. Two prosecutions relating to unauthorised advertisements have been prepared and an additional is to be prepared as well as a prosecution for failure to comply with an appealed enforcement notice. The intention is to stagger serving the notices to manage the workload of the team.

Appendix 1

5 Clarence Square
11 Welland Drive
2 Boleyn Cottages, Church Road, Swindon Village
Flat 1 Laurel Lodge, Wellington Square
Restoration Inn, 57 High Street
3 Suffolk Road
46 Victoria Street
5 Pinewood Walk
3 Hill View Villas, Harp Hill
55 Cleavelands Avenue
14 Queen Street
99 St Pauls Road
49 Grosvenor Street