



Appeal Decision

Site visit made on 23 October 2023

by P D Sedgwick BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 6th November 2023

APP/B1605/W/23/3319581

201 Gloucester Road, Cheltenham, Gloucestershire, GL51 8NJ

- 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 Alexis Wain against the decision of Cheltenham Borough Council.
 - The application Ref 22/01964/FUL, dated 2 November 2022, was refused by notice dated 17 February 2023.
 - The development proposed is 'Retrospective application for the installation of raised - split level patio area with boundary treatments'.
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Decision

1. The appeal is allowed and planning permission is granted for 'Retrospective application for the installation of raised - split level patio area with boundary treatments' at 201 Gloucester Road, Cheltenham, Gloucestershire, GL51 8NJ in accordance with the terms of the application, Ref 22/01964/FUL, dated 2 November 2022, and the plans submitted with it.

Preliminary Matter

2. The patio has been erected and therefore I am considering this appeal retrospectively.

Main Issue

3. The main issue is the effect of the development upon the living conditions of occupiers of neighbouring houses, with particular regard to privacy.

Reasons

4. The appeal site relates to a 2 storey semi-detached house with a relatively long rear garden. The patio extends from the rear of the property overlooked by the existing kitchen and dining area. The latter has floor to ceiling windows with a door opening onto the patio which has a glass canopy extending out approximately the same width as the dining area. To the side of the patio a ramped access leads to the garden which slopes down away from the house.
5. The boundary with the adjoining house, No 203, comprises an approximately 2m high brick wall extending from the rear elevation. A slightly lower horizontal board fence joins it and steps down following the gradient of the garden. These and the high hedges within 203's rear garden prevent any views from the patio into that neighbour's garden.

6. There are 2 storey flats in Stow Court to the rear of No 203. They are built on lower ground than the house and adjoining appeal site. Consequently, the first floor window in the appeal property overlooks first floor windows in the nearest flat, which are also clearly visible from the patio and rear garden below it. The Council acknowledge that a patio could have been built under permitted development rights and consider that to be an important fall-back position, which I also accord significant weight. The development is 55cm higher than that which would be permitted. However, because the appeal site is already on higher ground there would be little difference in the degree of overlooking if the fall-back position were implemented instead or as is already the case from the first floor and garden.
7. The boundary fence with No 199 and planting on its side of the fence significantly screens views into its rear garden from the appeal site. Even without the patio there is the potential for overlooking into No 199's gardens from the existing rear windows on the appeal property. Taking into account the fallback position described above, I do not consider that the patio has significantly reduced the privacy of occupiers of No 199 to a degree that it would warrant withholding planning permission. Overall, I consider that the development has not led to significant harm to the living conditions of occupiers of neighbouring properties from a loss of privacy and does not therefore conflict with Policy SL1 of the Cheltenham Plan (2020); Policy SD14 of the Gloucester, Cheltenham and Tewkesbury Joint Core Strategy (2017); the Council's Supplementary Planning Document - Residential Alterations and Extensions (2008) and Section 12 of the National Planning Policy Framework (2021) which only permit development which would not cause unacceptable harm to the amenity of adjoining land users.

Other Matters

8. I have had regard to comments regarding the potential increase in noise and disturbance and the effect of the boundary fence on the outlook from, and light to, No 199. I do not consider the noise and disturbance caused by the occupiers of the appeal property, and visitors to it, would be any greater if they congregated on the patio or in the rear garden. The orientation of No 199's garden is such that existing buildings already cause some level of overshadowing to the garden area closest to the house for most of the day. The gap between the boundary fence and the windows on No 199 is enough to ensure that it does not appear overbearing, and that overshadowing would not be so significant as to harm the living conditions of neighbouring occupiers.

Conclusion and conditions

9. Planning permission is sought retrospectively therefore no time limit for commencement is required. Because the development has already been constructed, there is no need to specify the plans to be followed or the materials to be used in construction. No other conditions are necessary.
10. For the reasons given above I conclude that the appeal should be allowed.

P D Sedgwick

INSPECTOR