



# Appeal Decision

Site visit made on 8 May 2024

by **S Rawle BA (Hons) Dip TP Solicitor**

an Inspector appointed by the Secretary of State

Decision date: 10 June 2024

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**Appeal Ref: APP/B1605/W/23/3332657**

**Hilltop Stores, Hilltop Road, Cheltenham, Gloucestershire GL50 4NN**

- 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 Pradeep Karadia against the decision of Cheltenham Borough Council.
  - The application Ref is 23/01137/FUL.
  - The development proposed is the construction of two dwellings.
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## Decision

1. The appeal is dismissed.

## Applications for costs

2. An application for costs has been made by the appellant against the Council and this is subject to a separate decision.

## Preliminary Matters

3. During the appeal process, the appellant has submitted amended plans, which I understand have also been submitted to the Council as a separate planning application. These plans represent a material amendment to the original proposal. The appeal process should not be used to evolve a scheme and interested parties have not had the opportunity to formally comment on these amended plans. Accordingly, it would not be appropriate for me to determine the appeal based on the amended plans.

## Main Issues

4. The main issues are the effect of the proposed development on:
  - the character and appearance of the area;
  - the living conditions of the occupants of the neighbouring property, 42 Tommy Taylors Lane; and
  - highway safety.

## Reasons

### *Character and appearance*

5. The appeal site is located within an established residential area comprising a mix of house types, including dormer bungalows, bungalows and two storey semi-detached and detached houses from different periods.

6. The appeal site is located on the corner of Hilltop Road and Tommy Taylors Lane. Most properties along both roads are set back on their plots behind front gardens. Although many have parking areas to the front, the prevalence of these setbacks results in properties that sit comfortably on their plots which creates a sense of spaciousness which contributes positively to the character and appearance of the area.
7. The appeal site itself is a narrow strip of land with an orientation and position at odds with other plots in the vicinity. Due to its functional appearance and position on the plot, the existing retail building does not make a positive contribution to the character and appearance of the area. However, the appeal property is set back from Tommy Taylor Lane by an open paved area to the front which reinforces the spacious appearance that helps to define the area, and this does make a positive contribution to the character and appearance of the area.
8. The proposal would result in the introduction of a pair of semi-detached dwellings. The rear elevation of the proposal would be located close to the side boundary of 42 Tommy Taylors Lane (also known as Bobs Worth) (No 42). Although, Plot 1 would align with this neighbouring property, Plot 2 would result in an increased bulk and building mass which would be set in only a short distance from its boundary with No 42. The height of the proposed dwelling, the pitch of the roof and the materials would be generally compatible with surrounding properties and the overall footprint of the proposed development would be reduced in comparison to the existing building.
9. However, due to the overall width of the proposed development, limited set in from the common boundary to the rear and increased height, mass and scale, the proposal would appear unduly cramped on the site, would not complement the existing pattern of development and would undermine the existing spacious character. As a result, it would appear as a discordant feature that would look harmfully out of place.
10. Moreover, although there would be side gardens at either end of the proposed development, these would be enclosed by permanent solid enclosures that in part would immediately abut the footpath. Such an arrangement, particularly the proposed enclosure treatment around the garden of plot 1 would enclose an area which is currently open, and which makes a positive contribution to the character and appearance of the area. This element would also significantly undermine the existing spacious character and would unacceptably harm the character and appearance of the area and I attach significant weight to that harm.
11. I therefore conclude that the proposal would have an adverse impact on the character and appearance of the area and would conflict with Policy D1 of the Cheltenham Plan adopted July 2020 (CP) and Policy SD4 of the Gloucester, Cheltenham and Tewkesbury Joint Core Strategy 2011-2031 adopted 11 December 2017 (JCS) which, among other things, seek to ensure that development should respect the character of the locality and respond positively to and respect the character of the site and its surroundings. The proposal also does not accord with the National Planning Policy Framework (the Framework) which seeks to ensure development is sympathetic to local character.
12. In addition, the proposal would be contrary to the Development on Garden Land and Infill Sites in Cheltenham Supplementary Planning Document, June

2009 (SPD), which seeks to ensure that new development complements and respects the character of the street.

#### *Living conditions*

13. I accept that due to the siting of the proposed development it would not have an adverse impact on the living conditions of the neighbouring property on Hilltop Road.
14. However, the rear elevation would be set in by a minimal distance from the common boundary of No 42. I note that the existing retail building is also close to this boundary. However, this is a single storey structure with a flat roof. Due to the increased height, scale and mass associated with the proposal and its position so close to the common boundary it would appear unacceptably overbearing when viewed from the rear garden area of No 42. The lack of an objection from the existing residents of this property does not justify harmful development at the appeal site which would impact any future residents of this neighbouring property. I attach significant weight to the unacceptable harm the proposal would have on the living conditions of the occupants of No 42.
15. I therefore conclude that the proposal would unacceptably harm the living conditions of the occupants of the neighbouring property, 42 Tommy Taylors Lane. Consequently, the proposal would conflict with Policy SL1 of the CP and Policies SD4 and SD14 of the JCS which, among other things, seek to ensure that development does not cause unacceptable harm to the living conditions of neighbouring residents in the locality and should avoid visual intrusion. The proposal also does not accord with the Framework which seeks to ensure developments create places with a high standard of amenity for existing and future users.
16. In addition, the proposal would be contrary to the SPD, which seeks to ensure that new development does not have an overbearing impact due to the bulk and proximity of buildings.

#### *Highway Safety*

17. The Council have indicated that it has not been possible to satisfactorily conclude that the scheme would be acceptable on highway grounds. Although the appellant sets out that no actual reasoning is included, it is clear from the Officer's report that the proposed access would result in the removal of the limited waiting bays, which in turn would require an amendment to the Traffic Regulation Order (TRO). Due to the potential conflict between the proposed access point and the existing parking bays, the highways authority indicated that if the appellant was not willing to pursue this course of action, then a complete revision of the site layout would be required.
18. Further, as this process would be subject to public consultation the highways authority points out that, although there was no in principle objection, there could be no guarantee that the amendment to the TRO would be approved and recommended that this process should be initiated prior to approval, rather than imposing a Grampian style condition.
19. The Council accept that this in itself is not reason to withhold planning permission but set out that at the time the application was determined it was not possible to satisfactorily conclude that the scheme would be acceptable on highway grounds.

20. While I understand the concerns raised by the Council and even at this stage, the appellant has not fully addressed the fact that without a change to the TRO there could be a conflict between the existing parking bays and the proposed access point, this issue on its own is not fatal to the scheme.
21. While it would have been preferable for the appellant to have engaged with this issue as suggested by the highway's authority, I note that the Council do not have an in principle objection to an amendment to the TRO. While such an application cannot be guaranteed, if in all other respects the proposal was acceptable, the imposition of a suitably worded Grampian style condition would have been reasonable in this case as there is a realistic prospect that such an amendment to the TRO would have been achieved within the time-limit imposed by such a condition. I am satisfied that subject to the imposition of an appropriately worded condition the proposal would not be harmful to highway safety.
22. I therefore conclude that the proposal would not be harmful to highway safety and there would be no conflict with Policy INF1 of the JCS which among other things seeks to ensure development provides safe and accessible connections to the transport network. The proposal would also not conflict with the Framework which sets out that development should only be prevented or refused on highway grounds if there would be an unacceptable impact on highway safety.

### **Other Matters**

23. The Council accept that there is no fundamental reason to suggest that the general principle of redeveloping the site for residential purposes is unacceptable. I agree, however, that general principle does not justify harmful development at the appeal site.

### **Planning Balance**

24. The Council accept that they cannot demonstrate a five-year supply of housing. Whilst the proposal would only deliver two new dwellings and this does temper this benefit to a certain extent, the proposal would undoubtedly be valuable in boosting housing stock in circumstances where there is an existing shortfall. The proposal would also have some social and economic benefits relating to construction employment and providing limited support to local services from future occupiers. Therefore, taken together, all the benefits of two units of additional housing, including the lack of a Framework compliant supply of housing land, should afford moderate weight in favour of approval.
25. Given that the Council are unable to demonstrate a five-year supply of housing, paragraph 11(d) of the Framework is relevant. However, I have found that the proposal would result in unacceptable harm to the character and appearance of the area and to the living conditions of the occupants of No 42. I have afforded these harms significant weight. It follows that the adverse impacts associated with the proposed development significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole. Consequently, the scheme would not represent sustainable development within the meaning of paragraph 11(d) of the Framework and this weighs substantially against the proposal.

**Conclusion**

26. The proposal conflicts with the development plan and the material considerations do not indicate that the appeal should be decided other than in accordance with it. The appeal should therefore be dismissed.

*S Rawle*

INSPECTOR