



Appeal Decision

Site visit made on 08 July 2024

by N Robinson BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19 July 2024

Appeal Ref: APP/B1605/W/23/3335635

Land Adjacent 1 Coltham Fields, Cheltenham, Gloucestershire GL52 6SP

- 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 Sara Richardson against the decision of Cheltenham Borough Council.
 - The application Ref is 23/00596/FUL.
 - The development proposed is erection of 1no. two storey dwelling on land adjacent 1 Coltham Fields.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. A Unilateral Undertaking (UU) dated 15th December 2023 pursuant to Section 106 of the Town and Country Planning Act 1990 (as amended) has been submitted with the appeal in relation to a contribution towards the mitigation of likely significant effects on the Cotswold Beechwoods Special Area of Conservation (SAC). The Council has been given the opportunity to comment on this UU. On this basis, I do not consider that any party would be unfairly prejudiced, and I therefore have had consideration to this in my decision. I will return to this matter later in my decision.

Main Issues

3. The main issues are the effect of the proposed development on:
 - the character and appearance of the area; and
 - the living conditions of the occupiers of neighbouring property 1 West Way with particular regard to overlooking.

Reasons

Character and appearance

4. The appeal site comprises a vacant plot enclosed by timber fencing. The site is located within an area comprising a mixture of commercial and residential land uses. Coltham Fields comprises predominantly 2-storey dwellings of varying forms and designs with limited set back from the road. Nonetheless, dwellings are typically traditional in design and modest in scale occupying small, shallow plots with small gardens. To the north of the site at Battledown Courtyard are 4 modern flat roof 3-storey dwellings which contrast with the traditional design and modest scale of properties on Coltham Fields. The northern side of

Coltham Fields borders the commercial units on King Alfred Way and large commercial buildings can be seen in street scene views above the boundary wall which runs along the north side of Coltham Fields. The layout and form of dwellings and proximity to surrounding land uses, in addition to the narrow width of the road and limited set back of dwellings from the highway, results in a tight-knit and varied character and appearance to the area.

5. The appeal proposal seeks to erect a detached 2-storey dwelling with a pitched roof and 2 projecting gables to the front elevation. The dwelling would have a 'U' shaped design which would incorporate car parking and amenity space in the gap between the projecting wings. The material palette would be consistent with that of dwellings in the surrounding area and the projecting gables would pick up on similar features found on dwellings nearby. Based on the information before me refuse and recycling storage would be accommodated in an area of sufficient size.
6. However, the proposed dwelling would span the entire width of the plot. It would be taller and bulkier than the properties in Coltham Fields and the combination of the excessive width and height of the dwelling would result in a building which would appear bulky and prominent within the street scene. The siting of the dwelling flush with the site boundaries on 3 sides would result in an unduly cramped appearance which would detract from the modest proportions of dwellings in the surrounding area. The provision of the amenity space within the first floor terrace, in addition to the incorporation of obscure glazing to windows in the first floor front elevation, would emphasise that the plot is of insufficient size to satisfactorily accommodate a building of the size proposed.
7. The proposed dwelling would be smaller than the 3-storey dwellings at Battledown Courtyard to the north of the site. However, whilst glimpses of these dwellings can be gained from Coltham Fields, these modern buildings have no frontage onto Coltham Fields and do not inform the predominant character and appearance of Coltham Fields. Additionally, whilst there are dwellings to the east of the site which also occupy the entire plot width, these dwellings typically occupy significantly narrower plots, are modest in scale and consistent in height with other properties in the surrounding area.
8. The appellant sets out that permission for residential development on the site has been approved¹ and that the proposal would make better use of the site including increased amenity space and levels of car parking, the incorporation of an air source heat pump and a layout which maximises solar gain. There is no dispute that this permission could be implemented although I have limited information about whether there would be an intention to build that dwelling if this appeal were dismissed. However, there would seem a greater than just theoretical possibility that this alternative would take place. The proposed dwelling would be wider, taller and bulkier than the approved dwelling. Given this, if the fallback scheme were implemented, it would be less harmful to the character and appearance of the area. I therefore give any improvements arising from the amended design limited weight in this decision.
9. Additionally, reference is made to a number of planning approvals in the local area which, it is stated, demonstrate the evolving type of development in the

¹ Application 22/00764/FUL

area². Each proposal must be considered on its individual merits, and my judgement is based on this proposal on this site and in this context. Whilst I am mindful that other schemes may have been approved, I do not know enough about these proposals, their layout, appearance or context. Judgements on character and appearance are inevitably case specific and these other schemes do not set a precedent that I am bound to follow.

10. For the reasons set out above, the proposal would result in a building which would appear as a dominant and incongruous feature in its immediate context to the detriment of the character and appearance of the area. I therefore find conflict with Policy D1 of the Cheltenham Plan (2020) (LP) and Policy SD4 of the Joint Core Strategy (2017) (JCS). Collectively these policies seek to ensure that development complements and respects neighbouring development and the character of the locality and demonstrates how new development responds positively to the character of the site and its surroundings.
11. I also find conflict with the Supplementary Planning Document: Development on Garden Land and Infill Sites in Cheltenham (SPD) (2009) which has similar aims. Conflict also arises with the Framework's aims that development should be visually attractive and add to the overall quality of the area.

Living conditions

12. The bottom 2/3 of the first floor windows would be obscurely glazed and the proposal would not give rise to opportunities for overlooking of neighbouring properties or their associated private amenity spaces from these windows. However, there would be opportunities for overlooking over the top of the wall enclosing the first floor terrace as well as through the holes in this pierced enclosure. Given the elevated nature of the external terrace, this would result in opportunities for the overlooking of windows in the front elevation of 1 West Way and the side garden to this property. Whilst a degree of overlooking can be expected in urban areas, such a degree of overlooking would go beyond existing and reasonable levels. The overlooking and associated loss of privacy would compromise the ability of the occupiers of 1 West Way to use their garden space and rooms in the front of the property, making them unpleasant places in which to spend time, to the detriment of the living conditions of the occupants of this property.
13. For the foregoing reasons the proposal would harm the living conditions of the occupants of 1 West Way as a result of loss of privacy. I therefore find conflict with those aims of LP Policy SL1 and JCS Policies SD4 and SD14. Collectively these policies seek to ensure that development does not cause unacceptable harm to the living conditions of adjoining land users. I also find conflict with the SPD which has similar aims.

Other Matters

14. The Council also refused planning permission due to effects on the SAC. The SAC is designated due to it comprising an internationally important area of Beech forests, dry grasslands and scrublands. The woodlands are recognised as amongst the most diverse and species-rich of their type, whilst the grasslands exemplify calcareous pastures for which the area is renowned. Increased recreational activity associated with new housing developments is placing

² Applications 19/01421/FUL, 22/00492/FUL, 23/00444/FUL, 17/02110/FUL, 18/02621/FUL, 19/00423/FUL

pressure on the SAC. There is a reasonable likelihood that the SAC would be accessed for recreational purposes by future occupiers of the development. Although small in itself, this may lead to the harmful disturbance of the habitat and is likely to have a significant adverse effect on the integrity of the SAC, when considered in combination with other residential development in the surrounding area. Mitigation is required to ensure that such pressure is avoided or limited to such a degree that would preserve the integrity of the SAC.

15. A UU has been submitted which proposes mitigation that may avoid any likely significant effects on the SAC. However, that obligation does not clearly define the appeal site with a site plan or provide evidence of the signatory's title to the land. I cannot therefore be satisfied that all persons with an interest in the site are a signatory to the obligation. Given this, the obligation before me is incomplete and its implementation would be uncertain. Without that certainty, I cannot conclude that the proposal would not have an adverse effect on the integrity of the SAC. Given my responsibilities under The Conservation of Habitats and Species Regulations 2017, the absence of a mechanism to secure mitigation against the proposal's impacts on the SAC would result in the scheme having a significant adverse effect on the integrity of the SAC.
16. Nevertheless, if I were to accept that the UU did provide adequate mitigation, then, as the Council accept that they do not have an up-to-date 5 year housing land supply, it would be necessary to consider Para 11 d) ii of the Framework. In that situation, the proposal would make a small contribution towards the borough's housing supply on a site with good access to facilities, services and public transport, contributing to the Government's objective to significantly boost the supply of homes. The delivery of one additional housing unit, which would be energy efficient and incorporate renewable technologies, would weigh in favour of the scheme and, when factoring in the supply shortfall, would attract moderate and meaningful weight as a scheme benefit.
17. Nonetheless, in conflict with the Framework, the proposal would cause harm to the character and appearance of the area and to the living conditions of the occupiers of a neighbouring property. In that scenario these would be decisive considerations that, even in the context of the Council's poor housing supply position, would represent adverse effects of such weight that they would significantly and demonstrably outweigh the identified benefits when assessed against the policies in the Framework when taken as a whole. Therefore, even if I had found that the proposal would not adversely affect the integrity of the SAC, in this hypothetical situation the proposal would not benefit from the presumption in favour of sustainable development outlined at Paragraph 11 and, as a material consideration, the Framework would not indicate that permission should be granted.
18. I note that the proposal has been amended during the course of the planning application including a reduction in the height of the building, removal of dormer windows, amendments to the roof terrace enclosure and to windows in the front elevation. However, the amendments would still result in a proposal that would harm the character and appearance of the area and the living conditions of the occupiers of neighbouring properties for the reasons outlined.
19. The Council raised no objections to the proposal on grounds of the proposed access, highway safety or the proposed parking arrangements. However, compliance with the relevant development plan policies on these matters would

be required in any case. Thus, these matters weigh neutrally, rather than in favour of the proposal.

Conclusion

20. The proposal conflicts with the development plan and there are no material considerations, either individually or in combination, that outweigh the identified harm and associated development plan conflict. Therefore, I conclude the appeal should be dismissed.

N Robinson

INSPECTOR