
Appeal Decision

Site visit made on 19 July 2016

by Jonathan Tudor BA (Hons), Solicitor (non-practising)

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 21 October 2016

Appeal Ref: APP/J1860/W/16/3149406

Mortimer Lodge, Roberts End to B4209 Hanley Castle, Hanley Swan, Worcestershire WR8 0DN

- 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 J Forbes against the decision of Malvern Hills District Council.
 - The application Ref 15/01050/FUL, dated 21 July 2015, was refused by notice dated 22 March 2016.
 - The development proposed is described in the application as 'Amendments to Extant Planning Permission 09/00319/FUL – Insertion of Ground Floor Window, Insertion of 2no. Roof Lights, Realignment of Site Boundary and Boundary Wall.'
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Decision

1. The appeal is allowed and planning permission is granted for insertion of ground floor window, insertion of 2 no. roof lights, realignment of site boundary and boundary wall at Mortimer Lodge, Roberts End to B4209 Hanley Castle, Hanley Swan, Worcestershire WR8 0DN in accordance with the terms of the application, Ref 15/01050/FUL, dated 21 July 2015, subject to the attached schedule of conditions.

Application for costs

2. An application for costs was made by Mr J Forbes against Malvern Hills District Council. This application is the subject of a separate Decision.

Preliminary Matters

3. For clarity and succinctness I have omitted within the decision the reference to the extant planning permission contained in the description of the proposed development.
4. This appeal results from an application to amend aspects of a previous extant planning permission for the conversion of a coach house to a dwelling under ref 09/00319/FUL. The Council wish the matter to be considered as a new planning application replacing the original permission for conversion of the coach house despite the fact that it is substantially complete and a number of conditions related to that permission have been discharged. I disagree with the Council's view as the limited extent of the development for which approval is sought, amounting to relatively minor changes, is clear from the planning application and appeal documentation and is as described above. I will, therefore, consider the appeal on that basis.

5. I observed on my site visit that the ground floor window has already been installed. Therefore, the appeal is part-retrospective.
6. The appellants provided a day time bat survey during the course of the appeal which the Council has had the opportunity to comment upon. I do not believe that any party would be unfairly prejudiced by my determining the appeal taking into account that additional information and I have done so on that basis.
7. The first floor layout as built appears to differ from that shown on the submitted 'Proposed First Floor Plan'. Nevertheless, I am required to determine the appeal on the basis of the submitted plans.

Main Issues

8. The main issues are:
 - the effect of the proposal on protected species with particular reference to bats;
 - the effect of the proposed realigned boundary wall on trees in the immediate vicinity; and,
 - whether a contribution towards affordable housing should be made.

Reasons

Protected Species

9. The previous extant planning permission was granted with a condition relating to alternative provision for bats and nesting birds being made. The original intention was for a bat loft to be located in the roof of the double garage to the east of the coach house. Subsequently, the Council discharged the condition on the basis that a separate free-standing bat barn was provided nearby.
10. The Council in its reason for refusal advised that insufficient information had been provided about proposed biodiversity enhancement arrangements and species. It is apparent from the Officer's report that it was expected that they would be substantially the same arrangements agreed under the original 2009 planning permission, though updated information was required. The daytime bat survey indicates that potential for bats or other protected species to be present or affected by the proposed development is negligible. That evidence has not been disputed and I see no reason not to accept it. The Council suggests in its statement of case that if the bat survey had been provided before its decision, it could have negated the need for the appeal.
11. On the above basis, I conclude that the development is highly unlikely to cause any harm to protected species with particular reference to bats. It follows that the proposal does not conflict with Policy SWDP 22 of the South Worcestershire Development Plan¹ (the Development Plan) or paragraphs 7, 109 and 118 of the National Planning Policy Framework (the Framework) which, amongst other things, seek to conserve and enhance biodiversity. Neither does it conflict with the requirements of other relevant biodiversity legislation. I do not consider that Policy SWDP 21 of the Development Plan, which is primarily concerned

¹ South Worcestershire Development Plan adopted 25th February 2016

with ensuring that development is of high quality design and integrates effectively with its surroundings, is directly relevant to this issue.

Trees

12. The Council has clarified that its reference to 'protected trees' in its reasons for refusal was incorrect. It was also concerned about the possible effects of the realignment and construction of the boundary wall on other nearby trees including a spruce tree. Such concerns are in accord with Policy SWDP 22 of the Development Plan which states that development should, wherever practicable, be designed to enhance biodiversity which is consistent with the Framework.
13. There is disagreement between the parties as to whether sufficient information had been provided to assess the potential impact of the proposal on trees and vegetation. I agree with the appellant that this aspect can be dealt with by means of a suitable landscaping condition to mitigate any potential harm, which is included in the attached schedule.

Affordable Housing

14. The Council include in their statement of case, a further reason for refusal, relating to a request for a contribution to affordable housing, relying on Policy SWDP 15 of the Development Plan. It requires a contribution to be made on sites of fewer than five dwellings, including conversions. I note that this aspect was not referred to in the Council Officer's Report or the Decision Notice even though the decision was issued just after the adoption of the Development Plan. Nevertheless, it has now been raised and requires careful consideration. The appellant does not accept that a contribution is appropriate and has also drawn my attention to a number of relevant appeal decisions².
15. As both parties acknowledge, earlier this year the Court of Appeal³ overturned the previous High Court challenge to the Written Ministerial Statement (WMS) of 28 November 2014. The Court of Appeal decision has restored the WMS as a material consideration to be taken account of in planning decisions. The relevant Planning Practice Guidance (PPG)⁴ has also been updated to reflect the WMS which indicates that affordable housing and tariff style contributions should not be sought from small scale developments of fewer than 10 units subject to limited exceptions such as designated rural areas.
16. Whilst planning applications and appeals must be determined in accordance with the Development Plan unless material considerations indicate otherwise, the WMS represents Government policy, as reflected in the PPG, and is a material consideration which must be given appropriate weight. It is clear that the thrust of Government policy is to promote house building and to ensure that smaller schemes are not discouraged by requests for social infrastructure and affordable housing contributions.
17. There may be exceptions, as with any planning policy, to national policy justified by local circumstances. The Council state that SWDP 15 and its sliding scale approach to affordable housing contributions reflects such local

² APP/V5570/W/15/3006426, APP/J1860/W/15/3140164, APP/H1840/W/15/314547

³ Secretary of State for Communities and Local Government v West Berkshire District Council and Reading Borough Council C1/2015/2559; [2016] EWCA Civ 441

⁴ Planning Practice Guidance: Planning Obligations

circumstances. I consider that this blanket approach to viability is not a local circumstance, by itself, sufficient to outweigh the clear intention of national policy on the facts of this appeal. In any event, this appeal relates to relatively minor additional works subsequent to but separate from an extant planning permission, dating from 2009. It is not a proposal to build or convert a dwelling.

18. Therefore, I conclude that, in the particular circumstances of this appeal, Government policy, as expressed in the WMS and PPG, is a material consideration which outweighs Policy SWDP 15 of the Development Plan and seeking a contribution towards affordable housing would not be appropriate.

Other Matters

19. I appreciate the concerns of the Parish Council and residents of adjoining properties about the possible effect of two additional roof lights on the western elevation on privacy. However, they are roof lights rather than windows and their primary function is to let in light whilst their size, angle and height within the eaves mean that they do not lend themselves to views outwards. One of the proposed roof lights high above a stairwell means that is inaccessible for views.
20. The windows of the habitable rooms of the adjoining property, Holmstead, are at right angles to the western elevation of the coach house and there would be no significant views towards them. The majority of the gardens of the two dwellings to the west are also well screened by a combination of mature trees, vegetation or close boarded fencing. Parts of the patio area of Holmstead would also be screened by its ground floor single storey extension close to the shared boundary with the converted coach house. The gardens are already overlooked to some extent from the respective first floor windows of each of the adjoining properties.
21. Furthermore, permission for two roof lights on this elevation was part of the extant planning permission and two roof lights are already in situ. I note that the Council Officer carefully considered this aspect and did not consider it a reason to refuse the planning application. I share the Council's assessment that there would not be any significant adverse impact through overlooking or loss of privacy as a result of these changes.

Conditions

22. I have considered the planning conditions recently suggested by the Council and modified them as necessary. A condition setting a time limit for the commencement of the development is included as it is required by statute. It is appropriate to include a landscaping condition to ensure that the environment of the development is protected in accord in Policy SWDP 21 of the Development Plan. The condition has been modified to protect the existing landscaping in the vicinity of the boundary wall to be constructed. The condition is not as extensive as that suggested by the Council as the contribution of the planting to the character and appearance of the area is limited. A materials condition is necessary to ensure that the boundary wall harmonises with the existing building to protect its character and appearance. I have modified the condition suggested by the Council as it refers to a garage which is not part of the proposed development.

23. A condition restricting further alterations or additions to the building is necessary to maintain the character and appearance of the building and to ensure that the living conditions of neighbouring properties are not compromised. I consider that the further condition suggested by the Council in relation to the garden area is unnecessary as the garden will be enclosed with limited visibility from the public realm. A condition requiring that the development is carried out in accordance with the approved plans was not suggested by the Council but has been included as it is necessary for the avoidance of doubt and in the interests of proper planning.

Conclusion

24. For the reasons given above, and having regard to all other matters raised, I conclude that the appeal should be allowed.

Jonathan Tudor

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 the following approved plans: Location Plan; Existing Plan PL-01; Existing Plan PL-02; Proposed First Floor Plan; Ground Floor Plan and Elevations Drawing no. 15-112-GA1; Proposed Block Plan Drawing no. 15-112-GA2A.
- 3) No development in connection with the erection of the boundary wall hereby approved shall commence until there shall have been submitted to and approved in writing by the local planning authority a scheme of landscaping. The scheme shall include indications of all existing trees and hedgerows on the land, identify those to be retained and set out measures for their protection throughout the course of development.
- 4) No development in connection with the erection of the boundary wall hereby approved shall commence until details / samples of the materials to be used in the construction of the boundary wall have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details / samples.
- 5) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order, 2015 (or any Order revoking or re-enacting that Order with or without modification), no new windows or other openings shall be made in the external elevations of the building and no additions, extensions or external alterations shall be made, other than those expressly authorised by this permission, without planning permission being granted by the local planning authority.