

---

## Appeal Decision

Site visit made on 13 September 2016

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

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

**Decision date: 27 October 2016**

---

**Appeal Ref: APP/J1860/W/16/3152216**

**Southview, 48 Malvern Road, Powick, Worcestershire WR2 4RT**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant consent, agreement or approval to details required by conditions of a planning permission.
  - The appeal is made by Mr Sam Rutley of Trafalgar Villa Estates against the decision of Malvern Hills District Council.
  - The application Ref 15/01718/REM, dated 23 November 2015, sought approval of reserved matters pursuant to condition nos 1 and 2 of a planning permission Ref 15/00015/OUT, granted on 5 June 2015.
  - The application was refused by notice dated 16 May 2016.
  - The development proposed is up to four new dwellings with all matters reserved except for access off the U62019.
  - The details for which approval is sought are: appearance, landscaping, layout and scale. As well as condition clearance information for pre-commencement work.
- 

### Decision

1. The appeal is allowed and the reserved matters are approved, namely details of appearance, landscaping, layout and scale submitted in pursuance of condition nos 1 and 2 attached to outline planning permission Ref 15/00015/OUT dated 5 June 2015, subject to the attached schedule of conditions.

### Preliminary Matter

2. The Council Officer's report reminds the appellant that this appeal relates solely to the matters referred to within conditions 1 and 2 of the outline planning permission Ref 15/00015/OUT and all conditions requiring discharge of details that were imposed on the outline permission, as well as any new ones imposed on this reserved matters permission, will require the submission of a separate application for condition compliance. The latter reference in the details for which approval is sought to 'condition clearance information for pre-commencement work' does not fall within the scope of this reserved matters appeal and I have therefore omitted it from the description in the decision.

### Main Issues

3. The main issues are the effect of the development on:
  - the character and appearance of the area; and,
  - the living conditions of the occupiers of The Forge House with particular regard to privacy and outlook.

## Reasons

### *Character and Appearance*

4. The principle of erecting four dwellings on this site is already established by the original outline planning permission. The Council Officer's report suggests that when that application was considered, the Council had a reasonable indication of the likely layout of the dwellings having regard to the site's constraints and its surroundings.
5. The appeal site is a roughly rectangular area of land to the rear of the dwelling at Southview, 48 Malvern Road. It is reached via a reasonably long access drive to the side of the house. Though on higher ground, its position behind existing houses, mature trees and established vegetation means that there is very limited visibility of it from Parish Hall Lane and the A449 Malvern Road. It is also well screened to the west by a dense line of tall trees and a boundary hedge which separates it from Powick Parish Hall, a school and playing fields. Similar hedging and trees bound the site to the east and south separating it from neighbouring properties. To the north the land slopes down to the boundary which consists of some trees, vegetation and a close boarded fence. Additional tree planting is proposed for this area.
6. Though there would be some visibility from parts of the Old Malvern Road to the north, that road has no footway along much of its route and views would be limited by hedges and trees along many stretches. Any views that could be obtained from it or the public rights of way travelling north would be distant and in a context of mature trees, vegetation and/or the existing built environment.
7. The area is characterised mainly by sizeable detached or semi-detached, two-storey houses of various designs with brick or render finishes, set back from the road with large front and rear gardens. Parish Hall Lane has a leafy appearance with trees and hedges bounding front gardens and an established line of trees between it and the adjoining main road (A449). The proposed two-storey dwellings, also of brick and render finish with pitched roofs and gable ends, would be in keeping with the general appearance of other houses in the vicinity. The design, therefore, would not make the development obtrusive from the limited public vantage points.
8. In terms of scale, the two five bedroom houses with detached double garages are no larger than many of the houses along the road and their mass is mitigated by varying roof heights and design elements breaking up the main bulk. It follows that the two four bedroom houses with integral garages are similarly not uncharacteristic of the area in that respect. The scale and design comparisons are illustrated in the appellant's Design and Access Statement and reflected in the original Council Officer's report.
9. The Council comment in their Statement of Case that the dwellings would be set within an area of green space and would be at odds with the spatial pattern of development in the area. Whilst the appeal site is behind existing development in private green space, the principle of residential development for four dwellings has already been established by the outline planning permission. The location and constraints of the site would have been known at that time and though the gardens would not be as extensive as some other properties in the area, the layout provides sufficient spacing and the gardens

would provide more than adequate outdoor amenity space for future occupants.

10. The factors detailed above lead me to conclude that the proposal would not harm the character and appearance of the area. Therefore, the development would not conflict with the objectives of Policies SWDP 21 and SWDP 25 of the South Worcestershire Development Plan<sup>1</sup> (Development Plan), which, amongst other things, aim to secure high quality design which successfully integrates with its surroundings and the character of its landscape setting. Nor would it be contrary to the similar aims of paragraphs 56-58, 61 or 64 of the National Planning Policy Framework (the Framework).

### *Living Conditions*

11. The Forge House dwelling to the north of the appeal site is already largely obscured from the appeal site by established trees and vegetation. In any event, the appellant advises that the distance between rear elevations of the proposed dwellings on Plots 1 and 2 and the existing dwelling is in the region of 50 or so metres, a figure that has not been disputed.
12. I appreciate the concerns about potential overlooking but they would be limited to a part of the garden area, driveway and turning area. The areas of garden at The Forge House are fairly extensive and the raised area of garden is separated by a driveway from other areas of garden closer to the house which would not be overlooked.
13. Though Plots 1 and 2 are in an elevated position in relation to The Forge House, as noted in the original Council Officer's report, the length of the rear gardens of the plots would be 15 metres and 10 metres respectively so there would still be a reasonable separation distance to the shared boundary. Parts of the area at issue beyond can, as I observed on my site visit, also be seen from the wide entrance to The Forge House on the Old Malvern Road so the area is already overlooked from a public highway to some extent.
14. Though the houses on Plots 1 and 2 would be visible from the driveway, turning area and parts of the garden, taking into account the separation distance, design, scale, position and gradients, I do not consider that they would have a significant overbearing effect.
15. Furthermore, the soft-landscaping scheme provides for additional tree planting on the northern boundary which would over time address the limited overlooking and any perceived effects on privacy and outlook. It has been suggested that the additional tree planting would itself affect sunlight reaching the garden areas and that the trees themselves could have an overbearing effect. Given that there are already mature trees and vegetation along the boundaries and in the garden of The Forge House I do not consider that some additional trees would have a significant detrimental effect.
16. Therefore, I conclude that the development would not cause significant harm to the living conditions of the occupants of The Forge House. Consequently, the proposal would not be contrary to Policy SDWP 21 of the Development Plan, which states that development should provide an adequate level of privacy, outlook, sunlight and daylight, and should not be unduly overbearing. Neither would it conflict with the requirement within paragraph 17 of the Framework

---

<sup>1</sup> The South Worcestershire Development Plan adopted on 25<sup>th</sup> February 2016

that development should always seek a good standard of amenity for all existing and future occupants of land and buildings.

### **Other Matters**

17. The Parish Council approved the proposal, subject to a condition restricting delivery times. A condition is imposed which reflects the times specified in the outline planning permission condition which restricted hours of demolition, ground works and construction. Prohibiting deliveries further to cover, for example, the whole weekend period would be unduly restrictive. I have therefore accepted the condition and times suggested by the Council.
18. I note that a number of other issues were raised by third parties. I have already dealt with the main planning issues above. The other issues referred to included effects on the road network, access, tipping, discrepancies in plans, works on trees outside the site and comments on the consultation process. With regard to any impact on the road network and access arrangements, those matters were considered as part of the outline planning permission and are not relevant to the reserved matters application before me. The Council advise that the tipping of waste material was also considered at the outline planning stage.
19. With regard to plans, the Council advise that corrected plans were received and I have considered the appeal on the basis of the plans submitted. The Council have clarified that no works are planned on trees outside the site. The Council have also confirmed that the correct statutory procedure was followed during the consultation process and I have no detailed evidence that suggests otherwise. Therefore, whilst I have considered these matters they have either already been addressed or are not directly relevant to this appeal and, in any event, they have not led me to alter my decision.

### **Conditions**

20. I have considered the planning conditions suggested by the Council and imposed them, with modifications if necessary. A condition requiring the development to be carried out in accordance with the approved plans is necessary for the avoidance of doubt and in the interests of proper planning. A condition defining the relationship of this decision to the outline planning permission and its associated conditions is appropriate for clarity. It is necessary for there to be a condition regarding materials in the interests of the character and appearance of the area.
21. A condition regarding the access, turning and parking areas is required in the interests of highway safety and to ensure the free flow of traffic. The condition relating to electric vehicle points and garages is necessary to comply with the Council's parking standards and to promote a low carbon economy in accordance with policies SWDP 4 and SWDP 21 of the Development Plan. A condition regarding protected species is required to protect this potential habitat for bats and related species. A condition restricting delivery times is included, modified to reflect that it relates to deliveries in connection with development works, to protect the living conditions of residents of the area during the construction period.

## **Conclusion**

22. 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 approved shall be carried out in accordance with the following plans and drawings – Zeb837/P/020 revision E, Zeb837-P-021, ZEB837/022 Revision E, ZEB837/023 Revision E, ZEB837/024 Revision E, ZEB 837/025 Revision E, ZEB837/026 Revision G, ZEB837/027 Revision D, ZEB837/028 Revision G, ZEB837/029 Revision D, ZEB837/P/35, Zeb837/P/040 Revision A, Zeb837/P/041, ZEB837/P/042 Revision A, ZEB837/P/043, 15-0766 100 D and W1993 1001 Revision B - unless otherwise required by conditions attached to this decision.
- 2) This decision relates solely to the reserved matters referred to within conditions 1 and 2 of the outline permission 15/00015/OUT issued on 05/06/2015. Nothing contained in this application or the decision shall be deemed to affect or vary the conditions imposed on that outline permission.
- 3) The development hereby approved shall be carried out in complete accordance with the schedule of materials annotated on drawing numbers ZEB837/023 Revision E, ZEB 837/025 Revision E, ZEB837/027 Revision D, ZEB837/029 Revision D and ZEB837/P/042 Revision A. In accordance with the submitted details, item 1 of the materials schedule, the roof tiles, shall be sandtoft 20/20 Tuscan interlocking clay tile and item 5, the facing brick, shall be weinerberger, chartham multi stock brick.
- 4) The development hereby permitted shall not be brought into use until the access, turning area and parking facilities shown on the approved plan have been properly consolidated, surfaced, drained and otherwise constructed in accordance with details to be submitted to and approved in writing by the local planning authority and these areas shall thereafter be retained and kept available for those uses at all times.
- 5) The development hereby permitted shall not be brought into use until the specification for the electric vehicle points proposed for the garages for plots 1, 2, 3 and 4 has been submitted to and approved in writing by the local planning authority and the electric vehicle points have been fitted. The garages shall be permanently retained for the parking of vehicles and shall not be used for any other purpose.
- 6) The works shall be carried out in strict accordance with the recommendations set out in the Protected Species Survey carried out by Red Kite Network Limited dated December 2014 and submitted with this application. In particular:

- As a precautionary measure any ditches or excavations for utilities/foundations should either be covered overnight with steel sheet or a 45° ramp should be installed in all trenches to allow badgers to escape if necessary.
- Should any active nests (from when the nest in the process of being built to until all the nestlings have fledged) be discovered during the works then works to the area around the nest must stop immediately and a suitably qualified ecologist must be engaged to check the nest and advise on the most appropriate way to proceed.
- If bats are discovered or observed prior to or during the construction then works should cease. A qualified and licenced ecologist should then be contacted to advise on the correct course of action.
- Bat boxes shall be provided in accordance with drawing number Zeb837/P/40 Revision A.

7) Deliveries in relation to demolition/ground works/ construction work shall not take place outside the following hours:

a. Monday to Friday 07.30-18.00 hrs.

b. Saturdays 07.30-13.00 hrs.

There shall be no such deliveries on Sundays or Public Holidays.