
Appeal Decision

Site visit made on 14 September 2016

by B Bowker Mplan MRTPI

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

Decision date: 24 November 2016

Appeal Ref: APP/J1860/W/16/3153506

The Garden House, Green Lane, Malvern, Worcestershire WR14 4HU

- 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 and Mrs M Pearson against the decision of Malvern Hills District Council.
 - The application Ref 16/00003/FUL, dated 25 November 2015, was refused by notice dated 31 March 2016.
 - The development proposed is full planning application for a new dwelling adjacent to the Garden House, Malvern, WR14 4HU.
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Decision

1. The appeal is allowed and planning permission is granted for full planning application for a proposed new dwelling adjacent to The Garden House, Green Lane, Malvern, Worcestershire WR14 4HU, in accordance with the terms of the application Ref 16/00003/FUL, dated 25 November 2015, subject to the conditions in the attached schedule.

Application for costs

2. Applications for costs have been made by Malvern Hills District Council and Mr & Mrs Copland. These applications are the subject of separate decisions.

Procedural matters

3. Following the Court of Appeal's judgment of 11 May 2016¹, the Council have confirmed they no longer seek a contribution towards affordable housing. As such, this decision will focus on the main issue below.
4. As the existing use of the appeal site is unclear, the description of development used in the banner heading above is taken from the appeal form.

Main Issue

5. The main issue is whether the proposal would result in a sustainable pattern and form of development, having particular regard to local and national planning policy, the effect on the character and appearance of the area and its location within the Malvern Hills Area of Outstanding Natural Beauty (AONB).

¹*West Berkshire District Council and Reading Borough Council v Department for Communities and Local Government* [2015] EWHC 2222 (Admin).

Reasons

6. The appeal site is to the rear of The Garden House and comprises a sloped green parcel of land bounded by trees to its rear and hedgerow to its side. The site is surrounded by residential properties to its north, east and west with an open field to its south. A public footpath runs along the east and south boundaries of the adjoining fields.
7. The site is located adjacent to the settlement boundary of Malvern as defined by South Worcestershire Development Plan Policy (SWDP) SWDP 2 and therefore for planning purposes is located in the open countryside. Policy SWDP 2 states that the Council's development strategy and site allocations are based on a number of principles, which of relevance to the proposal is to safeguard and where possible enhance the open countryside. SWDP Policy 2 part C notes that development in the open countryside will be strictly controlled, but does list a number of exceptions. However, the proposal would fail to meet any of the noted exceptions.
8. Still, National Planning Policy Framework (the Framework) paragraph 47 seeks to significantly boost the supply of housing. In addition, paragraph 55 of the Framework states housing in rural locations should be located to enhance or maintain the vitality of rural communities and not occupy an isolated location.
9. Whilst the proposal would be larger than the existing stable, it would be set into the hillside and predominantly screened by The Garden House. I note that the contemporary design would be different in appearance to surrounding properties. However, its scale, use of timber cladding and green roof would reduce its visibility and ensure it blends in with the surrounding area including trees to the rear of the site.
10. The proposal would be at its most visible from the footpath to the south of the site. However, views from the footpath would be of the proposal amongst surrounding dwellings and localised in extent. An appropriate landscaping condition could ensure that the south boundary of the site screens and further reduces views of the proposal. Long distance views of the proposal, including associated vehicular movement and parking at the site, would place it amongst surrounding dwellings and in this respect it would not look out of place. Further details of the surfacing to be used for parking and turning areas could be secured by an appropriately worded condition. In this respect, the proposal would not have a harmful effect on the scenic and landscape quality of the AONB.
11. Residential development at the site was dismissed at appeal in 1966 and 1988. However, the surrounding area has changed since the previous appeal decisions, with the construction of The Garden House and three dwellings at Chestnut Hill. In this context, the proposal would be seen as part of the built environment as opposed to development in the open countryside.
12. In summary, I acknowledge the proposal is located outside the settlement boundary of Malvern and would not meet the exceptions noted in Policy SWDP 2 for development in the countryside. I also note that the Framework seeks to ensure planning is genuinely plan led with local plans providing a framework for decisions. However, I am mindful of paragraphs 47 and 55 of the Framework outlined above and the proposal would not occupy an isolated location. Moreover, based on my reasoning in the preceding paragraphs, this modest

scale proposal would not conflict with the primary purposes of Policy SWDP 2 relating to safeguarding the open countryside and would not cause any material environmental harm.

13. In addition, a number of economic and social benefits are associated with the proposal including its contribution to housing supply and creation of construction work. The Council also consider proposal is sustainably located and in this respect it would help support services and facilities in Malvern.
14. Therefore I conclude that the proposal would result in a sustainable pattern and form of development, having particular regard to local and national planning policy, the effect on the character and appearance of the area and its location within the Malvern Hills AONB. Consequently, the proposal would not conflict with the purpose of Policy SWDP 2 relating to safeguarding the open countryside and would meet the requirements of Policies SWDP 21, 23 and 25. Combined, these policies seek to safeguard the open countryside and ensure development is designed to a high quality that conserves and enhances the special landscape qualities of the Malvern Hills AONB.

Other matters

15. I note that the parties have a different view on whether the Council can currently demonstrate a 5 year housing land supply. However, as I have identified no harm in relation to the main issue above, I have not had to consider this matter any further.
16. I agree with the Council's assessment that owing to the topography, location of proposed windows, separation distances involved and orientation of the dwelling, the proposal would not have a harmful effect on the privacy, day/sunlight and outlook of neighbours. This includes future occupants of the development at Chestnut Hill who would also retain a primary outlook to the east and north east. In addition, light arising from the site would not be unusual in the context of surrounding residential properties. Whilst no evidence is before me to demonstrate that the proposal would harm the viability of development at Chestnut Hill, in any event, this is a matter that could be afforded limited weight only.
17. Owing to the proposal's minor scale and use of the existing driveway, any noise and disturbance from vehicles would be limited and I note access widening works would not intrude onto the verge. In addition, securing planning permission does not remove the need to comply with other land ownership rights.
18. Whilst it is not clear if the appeal site is in agricultural use or as part of The Garden House's residential curtilage, in any event, this matter has no determinative effect on the appeal decision.
19. I agree with the Council's Conservation Officer that the dwelling's siting into the hillside alongside existing and additional landscaping and would ensure no harmful effect on the setting of the adjacent Conservation Area. In addition, owing to the separation distance involved, the proposal would not have a harmful effect on the setting of The Dell House.
20. I have considered concerns regarding precedent. However, each application and appeal must be determined on its individual merits and therefore a generalised concern of this nature would not justify dismissing the appeal.

21. I do not have full details of the appeal decision at 2 Assarts Lane. However, the Inspector considered that the proposal would harm the character and appearance of the surrounding area. This is not the case with the proposal before me.

Conditions

22. The conditions set out in the accompanying schedule are based on those suggested by the Council. Where necessary, I have amended the conditions in the interests of precision and clarity in order to comply with Planning Practice Guidance.
23. A condition specifying the relevant drawings is necessary to provide certainty. Prior to commencement of development conditions relating to materials, landscaping and boundary treatment details are necessary in the interests of the character and appearance of the surrounding area. The landscape condition would also ensure acceptable details are submitted regarding existing and proposed trees.
24. A condition requiring parking and turning areas to be approved and completed prior to occupation of the dwelling are included for highway purposes. The condition relating to parking and turning areas would also ensure appropriate surface materials are secured necessary based on my reasoning in paragraph 10. A condition requiring bicycle storage to be completed prior to occupation of the dwelling is included for sustainable transport purposes.
25. To limit disturbance to surrounding neighbours, the Council's suggested condition relating to the method of construction is necessary. Conditions relating to soakaway details are necessary based on the Council's Drainage Engineer comments and would address related concerns raised by neighbours.
26. Prior to commencement of development conditions requiring details of sustainability measures, water management and biodiversity enhancement are included in the interests of sustainable development. However, without a copy of the relevant policy, I cannot justify including a condition relating to broadband.
27. The National Planning Practice Guidance advises that conditions restricting permitted development rights should only be used in exceptional circumstances. I have not been provided with clear evidence or justification to remove permitted development rights, and therefore I have not included these conditions.

Conclusion

28. For the reasons set out above, and having regard to all other matters raised, I conclude that the appeal should be allowed subject to the attached schedule of conditions.

B Bowker

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: AE01:0024:15, AP09:0024:15, AP03:0024:15, AP02:0024:15, AP01:0024:15, AP05:0024:15, AP06:0024:15, AP04:0024:15, AP08:0024:15.
- 3) Prior to the commencement of development samples and trade descriptions of the external facing and roofing materials to be used in the construction of the development hereby permitted shall be submitted to and approved in writing by the Local Planning Authority. Development shall be carried out in accordance with the approved detail.
- 4) Prior to the first occupation of the dwelling hereby permitted an area shall be laid out within the curtilage of the property for the parking and turning of two cars and this area shall be properly consolidated, surfaced and drained in accordance with details to be submitted to and approved in writing by the Local Planning Authority, This area shall not thereafter be used for any other purpose than the parking of vehicles.
- 5) Prior to the first occupation of the dwelling hereby permitted secure parking for 4 cycles to comply with the Council's standards shall be provided within the curtilage of the dwelling and these facilities shall thereafter be retained for the parking of cycles only.
- 6) No development shall take place, including any works of demolition, until a Construction Method Statement has been submitted to, and approved in writing by the local planning authority. The Statement shall provide for:
 - i) the parking of vehicles of site operatives and visitors;
 - ii) loading and unloading of plant and materials;
 - iii) storage of plant and materials used in constructing the development;
 - iv) wheel washing facilities;The approved Construction Method Statement shall be adhered to throughout the construction period for the development.
- 7) No development shall take place until a soakaway test has been carried out in accordance with BRE Digest 365, or such other guidance as may be agreed in writing by the Local Planning Authority. The results of the test shall be submitted to and agreed in writing by the Local Planning Authority and the agreed recommendations shall be implemented in full prior to the first occupation of the development.
- 8) No development shall take place until details on the location of any proposed soakaway have been submitted to and agreed in writing by the Local Planning Authority. Any soakaway should be located no less than 5m from any building or sub-structure and 2.0m from a site boundary. If soakaway drainage is not possible on this site, an alternative method of surface water disposal should be submitted for approval. The agreed recommendations shall be implemented in full prior to the first occupation of the development.

- 9) Prior to the commencement of the development hereby permitted, a specification (including methodology and programme of implementation) for the enhancement of biodiversity through the provision of features including the installation of two bat boxes and two bird boxes shall be submitted to and approved in writing by the Local Planning Authority. The works so approved, shall be carried out in accordance with the approved programme of implementation.
- 10) Prior to the commencement of the development, full details of soft landscape works shall be submitted to and approved in writing by the local planning authority. 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. All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding seasons following the occupation of the buildings or the completion of the development, whichever is the sooner; and any trees or plants which within a period of 5 years from the from the completion of the development die, are removed, or become seriously damaged or diseased, shall be replaced in the next planting season with others of similar size and species.
- 11) No development shall take place until there has been submitted to and approved in writing by the local planning authority a plan indicating the positions, height, design, materials and type of boundary treatment, including details of retaining walls, to be erected. The approved boundary treatment details shall be completed prior to the first occupation of the dwelling hereby permitted. Development shall be carried out in accordance with the approved details and retained as such thereafter.
- 12) Prior to the commencement of the development, details of sustainability measures from renewable or low carbon sources equivalent to at least 10% of predicated energy requirements to be incorporated into the design of the dwelling hereby approved, to reduce energy usage and running costs for future occupiers have been submitted to and approved in writing by the Local Planning Authority. The approved details shall be implemented in accordance with a timetable to be approved in writing by the Local Planning Authority and retained thereafter.
- 13) Prior to the commencement of the development a Water Management Statement, setting out water efficiency measures, shall be submitted to and approved in writing by the Local Planning Authority. The scheme shall be implemented in accordance with the approved details before the development is first brought into use and retained thereafter.