
Appeal Decision

Site visit made on 16 January 2018

by H Baugh-Jones BA(Hons) DipLA MA CMLI

an Inspector appointed by the Secretary of State

Decision date: 26 January 2018

Appeal Ref: APP/J1860/W/17/3185135

54 West Malvern Road, Malvern, Worcestershire WR14 4NA

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
 - The appeal is made by Habitas Ltd against Malvern Hills District Council.
 - The application Ref 16/01768/FUL is dated 24 November 2016.
 - The development proposed is demolition of existing house and proposed 4no. three bed dwellings.
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Decision

1. The appeal is allowed and planning permission is granted for demolition of existing house and proposed 4no. three bed dwellings at 54 West Malvern Road, Malvern, Worcestershire WR14 4NA in accordance with the terms of the application, Ref 16/01768/FUL, dated 24 November 2016, subject to the conditions set out in the Schedule to this decision.

Procedural Matter

2. The appeal was made on the basis of the Council's failure to determine the application within the prescribed period. However, the Council states that they were not notified that an appeal had been made until 9 October 2017 by which time a decision notice had been issued. The appellant has addressed the reasons for refusal within his evidence and I have therefore determined the appeal on the basis of the reasons for refusal and the relevant planning policies set out in the Council's decision notice dated 7 July 2017.

Main Issues

3. The main issues in this appeal are (i) the effect of the proposal on the character and appearance of the area including on the setting of the Malvern Hills Area of Outstanding Natural Beauty (AONB); (ii) its effects on highway safety; and (iii) whether it would make adequate provision for green infrastructure (GI).

Reasons

Character and appearance and AONB

4. The appeal site comprises a substantial detached dwelling occupying an elevated position on steeply sloping land that rises towards the boundary of the AONB. The existing dwelling is sited close to the highway and appears as the end property on the northern side of the road before a break in development

formed by an area of woodland and a sharp bend in the road, which then heads south.

5. In addition to the appeal property, there are dwellings lining the road in front of the wooded hillside that forms the edge of the AONB. In views from lower-lying area nearby, the properties stand out against this backdrop particularly as they vary in design and proportion. Accordingly, prominent hillside dwellings are a feature of the landscape and are widely seen in front of the wooded AONB backdrop.
6. The existing dwelling on the appeal site is formed by one large mass, which in views from lower-lying areas including Cowleigh Road and Cowleigh Bank appears as a bulky four-storey building. Notwithstanding this, it is less visually prominent than the neighbouring dwellings to the south east because its overall form and fenestration help it to blend more successfully into the wooded background.
7. The proposed development would spread the built form on the plot further to the north-west but there would be large gaps between the end dwellings and the two joined together centrally positioned ones. This would break up the mass of the building. In addition, the appellant's submitted visual information shows a varied and subdued palette of materials including dark grey roofs. Materials are a matter that could be the subject of a suitably worded planning condition. Taking these features into account, although the dwellings would comprise an overall larger building than existing, the variation in their design, height and materials would not have a more pronounced effect on the area's character and appearance over and above that which already exists in views from lower-lying areas towards the AONB.
8. The design of the proposed development is such that substantial gaps would be maintained between the frontages of the end dwellings and the central ones when viewed from West Malvern Road. This would therefore accord with the general loose-knit arrangement of dwellings along the road. Furthermore, there is sufficient variety shown in the designs of the individual dwellings to conform to the general character of its surroundings and in particular along West Malvern Road.
9. Although the dwellings would be of greater depth than the existing building, this would not be readily perceptible in the majority of views apart from those at close quarters. However, neighbouring dwellings are of greater depth than the existing dwelling albeit that they are set back from the road. On balance, I do not consider the proposal's effects in this specific regard to be of sufficient magnitude to weigh against it.
10. For the above reasons, the proposal would assimilate satisfactorily into the local environment and would not therefore harm the character and appearance of the area. Thus, it would accord with policy SWDP 21 of the South Worcestershire Development Plan (2016) (SWDP). Amongst other things, this policy requires all development to be of a high quality design that integrates effectively with its surroundings. More specifically, it says that development should respond to surrounding buildings and the distinctive features or qualities that contribute to visual and heritage interests of the townscape, frontages, streets and landscape quality of the area.

11. Paragraph 115 of the National Planning Policy Framework (the Framework) says that great weight should be given to conserving scenic beauty in National Parks, the Broads and AONBs, which have the highest status of protection in relation to landscape and scenic beauty.
12. The appeal site lies outside the AONB boundary but is nonetheless in close proximity to it. The proposal therefore has the potential to affect the setting of the AONB and thus its landscape and scenic beauty.
13. However, for the reasons already given, the proposal would not have a material effect on the appreciation of the AONB when looking towards it from the surrounding areas within Malvern. Indeed, in my view the proposed building would be more attractive than the existing dwelling. Accordingly, I do not find that there would be harm to the setting of the AONB.
14. The proposal would therefore accord with policy SWDP 23 that broadly seeks to prevent development that would have a detrimental impact on the natural beauty of an AONB. It would also accord with the Framework. In addition to the proposal being acceptable against the above local and national policies, I do not see any overall conflict with the landscape protection objectives of policy SWDP 25.

Highway safety

15. The Council's reasons for refusal on highway matters reflect the concerns expressed by the local highway authority and I deal with each of these in turn.
16. The matter of encroachment onto highway land has been raised. However, this is a matter to be addressed between the appellant and the highway authority and is not for me to address in the context of a Section 78 appeal.
17. The visibility splay shown on the submitted plans between plots 1 and 2 has not been plotted from the centre of the access between those two dwellings. However, were it to be plotted accurately, it seems to me that there would be little material difference to the ability of drivers exiting the development to see approaching vehicles or to be seen by them. Indeed, it appears to me that visibility to the west would actually increase slightly. I am therefore satisfied that the necessary relevant visibility requirements could be achieved.
18. It is suggested that the car parking spaces and the aisle between them do not provide adequate provision for parking and turning to enable vehicles to enter and leave the development in a forward gear. I am satisfied that this requirement is necessary having regard to the classification of West Malvern Road. I note the vehicle overhang shown on the submitted swept path analysis and the absence of a swept path for reversing manoeuvres. In terms of the overhang, it is clear from the plans that the vehicles shown are not fully parked in their respective spaces and there is further room to drive in.
19. However, the submitted plans clearly show parking spaces for each plot of 5m length and a combined width for two cars of 5.9m with the aisle between the spaces of each plot shown to be 6.5m. These proportions exceed those set out in the Worcestershire Local Transport Plan 3 Highways Design Guide (2010). Although, this guidance is based on the now revoked Planning Policy Statement 3 and that its status has not been made clear, it nonetheless continues to provide a useful guide in relation to highway design in the County. I am therefore satisfied it can be relied upon for the purposes of this appeal.

20. On the basis of the available evidence, I consider the parking and turning provision within the development to be acceptable. There would also be adequate space at the end of each group of parking spaces for the provision of refuse and cycle storage with direct access from each dwelling.
21. There is no clear evidence before me to indicate that the proposal will result in parking on the highway or that the level of parking provision proposed is inadequate for the development it would serve. At my site visit and notwithstanding that a section of West Malvern Road was closed off for works, there was no apparent difficulty in finding a space to park on-street. Therefore, even if some on-street parking were to take place, I am not persuaded that it would have unacceptable cumulative effects that would compromise highway safety.
22. I accept that the parking of construction vehicles and demolition/construction works could affect the flow of traffic along West Malvern Road. However, I am satisfied that this matter could be addressed by a suitably worded condition. The appellant has already alluded to what this might contain and I have no reason to doubt that such a course of action would be effective in ensuring there were no unacceptable effects on the safe and efficient operation of the highway during demolition or construction.
23. Concerns have also been raised about maintaining the structural integrity of the highway during demolition and construction. However, there is no empirical evidence that direct harm will be caused and I am satisfied that this matter could be addressed by a suitably worded condition.
24. To conclude on this second main issue, the proposal would not run counter to policy SWDP 4, which amongst other things requires development to address road safety. Nor would it conflict with criterion ix of policy SWDP 21, which requires that traffic from the development should be able to access the highway safely and seeks to ensure the road network has the capacity to accommodate the type and volume of traffic arising from the development.
25. The available evidence and the specific highways reasons for refusal indicate that the Council is concerned with highway safety in itself and not that the proposal would result in severe residual cumulative impacts. Given the modest scale of the development proposed and that there would be a total of only eight vehicles associated with it and, in addition, that the construction period would be temporary, I do not take an alternative view. Nevertheless, the Council's decision notice also cites Framework paragraph 32. However, this Framework policy addresses matters of highway capacity and congestion in the context of the severe residual cumulative impact of the development envisaged in its third bullet point rather than highway safety considerations themselves¹. Accordingly, there is no conflict with Framework paragraph 32 although it could be argued that it is not relevant to my determination of the appeal at all.

GI

26. Subject to financial viability, policy SWDP 5 requires development to contribute to GI. It sets out that greenfield sites of less than 1ha but more than 0.2ha (gross) require a contribution of 20% GI. The proposal covers an area of

¹ See *Mayowa-Emmanuel v Royal Borough of Greenwich* [2015] EWHC 4076

marginally greater than 0.2ha and therefore technically falls within this requirement.

27. The appellant has proposed that an area be laid out as GI within the site and I am satisfied that this matter could be addressed by suitably worded conditions relating to GI provision and management. I see no reason why the GI could not be provided with suitable access for maintenance and management operations. Dependant on the location of the GI, it could also assist in addressing matters of overlooking of the properties below the site as raised by interested parties.
28. Accordingly, I consider that subject to condition, the proposal would be acceptable in relation to this main issue and would thereby accord with policy SWDP 5.

Other Matters

29. In addition to the matters covered under my considerations on the main issues, interested parties have raised a number of other matters, including effects on protected species and flooding. However, there are no objections from the Council on either matter and I have no evidential basis on which to take an alternative view. The appeal proposal would not materially affect the amount of green areas within the site. There is no substantive evidence that the proposal would increase flood risk in the area and in any case drainage matters can be adequately covered by condition.

Conditions

30. The Council has suggested a number of conditions that it considers appropriate were I minded to allow the appeal. Where necessary, I have amended, replaced or amalgamated some of the suggested wording for clarity and to more closely reflect the circumstances of the appeal proposal and to ensure consistency with national policy and guidance².
31. I have imposed a condition specifying the relevant drawings as this provides certainty. Conditions relating to balcony details, materials and landscaping are necessary to ensure the appearance of the development is satisfactory. I note the Council's suggested arboricultural condition but do not consider it necessary given the extent to which existing trees and shrubs might be affected. Moreover, tree and shrub protection is adequately covered within the landscape scheme conditions.
32. Conditions relating to drainage including soakaways are necessary to protect the water environment. For the same reason and in the interests of sustainability, a condition relating to water efficiency measures is necessary. Also in the interests of sustainability conditions are necessary in relation to waste and recycling facilities and energy use.
33. I have imposed conditions relating to the provision of visibility splays and parking/turning areas and highway engineering works in the interests of highway safety. Also in the interests of highway safety and to safeguard the amenity of neighbouring occupiers, a condition relating to a Construction Method Statement is necessary. The Statement requires details of the hours of work and delivery times and therefore the Council's additional condition in respect of working hours is not necessary. I have imposed related conditions

² Framework paragraphs 203 and 206 and Planning Practice Guidance: Use of Planning Conditions

regarding GI in order to benefit the local environment and to ensure overall compliance with the development plan.

34. A boundary treatments condition is necessary in order to provide a satisfactory living environment. It is not necessary to include a reference to the General Permitted Development Order as this is covered by the imposed condition restricting certain permitted development rights. That condition has been imposed in order to ensure that further development that could otherwise be undertaken without the need for planning permission does not have an adverse effect on the area's character and appearance or on the setting of the AONB. Given the site's setting, I consider the exceptional circumstances exist in this specific case to justify withholding permitted development rights.
35. The Council has suggested a condition requiring the development to be carried out in accordance with the recommendations in the appellant's Bat Survey. However, the Survey dates from September 2015 and clearly says that an update survey will be required should development not take place within 12 months of the Survey date. In order to be certain that bats will be safeguarded, it is therefore necessary to impose a condition requiring an updated survey and adherence to the recommendations therein.
36. In order to ensure satisfactory connectivity, a condition relating to broadband is necessary. In order to ensure the safety of the development, its future occupiers and neighbouring occupiers, I have imposed a condition relating to landfill gas.

Conclusion

37. There is no dispute that the Council can demonstrate more than a five-year supply of deliverable housing land. However, this does not place a ceiling on further development and in any case I have found that the proposal would accord with the development plan.
38. For the above reasons and having had regard to all other matters raised, the appeal succeeds.

Hayden Baugh-Jones

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: OS Deed Plan Drawing No 1325/10; No 54 West Malvern Road Drawing No 1325/01; General Layouts Drawing No 1325/03d; Plans 1 Drawing No 1325/05c; Plans 2 Drawing No 1325/06d; Plans 3 Drawing No 1325/07; Plans 3 Drawing No 1325/08b; Site Section Drawing No 1325/02d; General Side Elevations Drawing No 1325/04d.
- 3) Notwithstanding condition 2 no development shall take place until details of the rear facing balconies including their means of enclosure have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
- 4) No development shall commence until details / samples of the materials to be used in the construction of the external surfaces of the dwellings hereby permitted 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) None of the dwellings hereby permitted shall be occupied until a soakaway test has been carried out in accordance with BRE Digest 365 or other guidance that may be agreed in writing by the local planning authority.
- 6) None of the dwellings hereby permitted shall be occupied until works for the disposal of surface water shall have been provided on the site to serve the development hereby permitted, in accordance with details that have first been submitted to and approved in writing by the local planning authority. The details shall provide for soakaway drainage where the soakaway test in condition 5 has established it to be feasible.
- 7) Where soakaway drainage is to be provided to serve the development hereby permitted, details of the location of soakaways shall be submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details before the development is occupied.
- 8) No part of the development hereby permitted shall be brought into use until visibility splays of 2.4m (measured from the nearside edge of the carriageway) x 33m (measured along the nearside edge of the carriageway) have been provided in each direction from the centre of each access. The visibility splays shall be free from any obstruction to visibility over 0.6m relative to the nearside carriageway level and shall be retained thereafter.
- 9) No dwelling shall be occupied until space has been laid out within the site in accordance with drawing no. 1325/06d for cars to be parked and for vehicles to turn so that they may enter and leave the site in forward gear and that space shall thereafter be kept available at all times for those purposes.

- 10) 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) parking and turning for delivery vehicles;
 - iii) loading and unloading of plant and materials;
 - iv) storage of plant and materials used in constructing the development;
 - v) the erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate;
 - vi) wheel washing facilities;
 - vii) delivery, demolition and construction working hours.

The approved Construction Method Statement shall be adhered to throughout the construction period for the development.

- 11) No demolition / construction works shall commence until details of engineering works to the public highway during demolition and construction works including supporting structures have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details before any of the dwellings hereby permitted are occupied.
- 12) No development 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 in accordance with BS 5837:2012.
- 13) 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 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.
- 14) Notwithstanding what is shown on the approved plans, the development shall not be occupied until 20% of the site area has been laid out as green infrastructure in accordance with details that shall have first been submitted to and approved in writing by the local planning authority.
- 15) Before the development is first occupied or brought into use a landscape management plan, including long term design objectives, management responsibilities and maintenance schedules for all green infrastructure areas, shall be submitted to and approved in writing by the local planning authority. The landscape management plan shall be carried out as approved.
- 16) None of the dwellings hereby permitted shall be occupied until details of all boundary treatments have been submitted to and approved in writing by the local planning authority. The approved boundary treatments shall

- be implemented before the development hereby permitted is occupied and shall be retained thereafter.
- 17) None of the dwellings hereby permitted shall be occupied until details of waste and recycling facilities and their locations within the development have been submitted to and approved in writing by the local planning authority. The approved waste and recycling facilities shall be implemented in accordance with the approved details before any of the dwellings hereby permitted are occupied and shall be retained thereafter.
 - 18) Demolition and construction works shall be carried out in accordance with the recommendations that shall form part of an updated Bat Survey Report that shall have first been submitted to and approved in writing by the local planning authority.
 - 19) None of the dwellings hereby permitted shall be occupied until details of facilities to provide super-fast broadband for each dwelling have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
 - 20) No development shall commence until details of measures for 10% of the predicted energy use of the development to be generated from renewable and low carbon sources have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details and the approved measures shall be retained thereafter.
 - 21) No development shall commence until details of water efficiency measures to be incorporated into the development hereby permitted shall have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details and the water efficiency measure shall be retained thereafter.
 - 22) No development shall commence until an assessment of the risks posed by any landfill gas shall have been submitted to and approved by the local planning authority. Where risks are identified, gas protection measures to address the level of risk posed shall be incorporated into the buildings hereby permitted in accordance with details that shall have first been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
 - 23) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that Order with or without modification), no development falling with Schedule 2, Part 1, Classes A, B, C and E and Schedule 2, Part 2, Class A shall be carried out to any part of the development hereby permitted.

End of conditions.