
Appeal Decision

Site visit made on 13 February 2018

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

an Inspector appointed by the Secretary of State

Decision date: 20 March 2018

Appeal Ref: APP/J1860/W/17/3188245

Land adjoining 184 Madresfield Road, Malvern WR14 2NS

- 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 C Arnold against the decision of Malvern Hills District Council.
 - The application Ref 17/00558/FUL, dated 27 February 2017, was refused by notice dated 25 August 2017.
 - The development proposed is redevelopment of builder's yard to provide single storey (2 bed) dwelling.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are the effect of the proposed development on:
 - the living conditions of occupiers of 189 Pound Bank Road, with particular regard to outlook and private outdoor space; and,
 - the character and appearance of the area.

Reasons

Living conditions

3. The main part of the appeal site comprises a roughly rectangular parcel of land to the rear of 189 Pound Bank Road. It faces a sizeable strip of green open space which separates it from Madresfield Road. A private service road, which runs to the side of No 189, provides access to the site from Pound Bank Road. It is proposed to construct a single storey, 2-bedroom dwelling on the site.
4. Although the site has the appearance of a small builder's yard, the Council advises that it forms part of the rear garden of No 189 and that, at some point in the past, a fence has been erected, dividing it from that property. Whilst the appellant submits that the site has been used as a commercial yard for 10 years, the Council advises that no application for a change of use has been received or certificate of lawful use obtained.¹ The Council further advises that the dwelling at No 189 and the appeal site are in the same ownership, which has not been disputed by the appellant. Therefore, in practical terms, the appeal site could be returned to its original garden use. I will consider the potential 'fallback' aspect later in my decision.

¹ ss. 191 and 192 Town and Country Planning Act 1990

5. The effect of the development would be to make the reduction in the size of the rear garden at No 189 more permanent. That would leave only a small area of private outdoor living space at the rear, which would be significantly less than the original garden area. It would contrast with the garden space enjoyed by the adjoining dwellings to the south, which form part of the same short terrace.
6. There is also some garden space to the side of No 189 but much of that area is occupied by a large shed and is enclosed by tall trees. Even if the shed were removed or reduced in size the area would still be shaded for much of the time by the trees. It is suggested that the trees would be removed as part of the proposal. However, if they were removed a high fence to separate the side garden area from the open access track would be necessary to maintain privacy. Either way, the result would be a small side strip of land situated between the northern elevation of the house and a high fence or tall trees. That would offer only a confined and unappealing private outdoor space. Therefore, permanent loss of most the main rear garden would have an adverse effect on occupiers of No 189 by depriving them of sufficient usable outdoor living space.
7. The appellant refers to other dwellings in the area with small gardens, citing 24a Sherrards Green Road as an example. However, as I observed on my site visit, that dwelling is a bungalow rather than a two-storey house. It might be expected that a small bungalow would have a lesser garden area than a larger two-storey dwelling, potentially suitable for a family. Therefore, it is not a relevant comparison. Limited details have been provided of other alleged small plots in the wider area. In any event, my role is to consider the proposal before me on its own merits.
8. The South Worcestershire Design Guide Supplementary Planning Document² advises that all family homes, which the dwelling at No 189 could be classified as, *'require a private garden that is sufficiently sized to allow for seating and play.'* I consider that the depleted remaining garden, which the proposal would make permanent, fails to meet that standard.
9. Furthermore, the largely blank eastern elevation and roof of the new dwelling would rise to a ridge height of 3.8 metres and would be sited only about 3 metres from the boundary with No 189. Although the new dwelling would be single storey, its wall and roof would still rise well above the existing fence. Given the limited outdoor space to the rear of No 189, the proximity of the new structure would be likely to have a dominant and overbearing effect, when viewed from its ground floor windows and remaining garden area.
10. It is submitted by the appellant that the adverse impact of the proposal would be far less than that caused by the existing Leylandii conifers and a storage unit, which is 2.5 metres high and positioned up against the boundary fence. Whilst it is proposed that the Leylandii trees would be removed, they are located to the side rather than directly to the rear of No 189. Therefore, views of them would be more oblique. The storage unit would be within view but the new house, although slightly further away, would be higher and more prominent. Consequently, I disagree that the adverse effect of the development would be less than the existing situation. In any case, replacing one set of adverse effects with another set does not weigh heavily in favour of

² January 2018

the proposal. Moreover, the Leylandii trees and the storage unit could be removed irrespective of the development.

11. The combination of the above factors leads me to conclude that the proposal would harm the living conditions of the occupiers of No 189, with particular regard to outlook and private outdoor space. Therefore, the development would conflict with Policy SWDP 21 of the South Worcestershire Development Plan (SWDP)³ and paragraphs 17, 56 and 57 of the National Planning Policy Framework (the Framework)⁴. Amongst other things, they require that development should not be unduly overbearing, should achieve a good standard of amenity for all existing occupants of land and buildings and that it should contribute positively to making places better for people, including private spaces.

Character and appearance

12. As already established, the appeal site once formed part of the rear garden of No 189. That two-storey dwelling stands at the end of a short terrace of three properties. A further three-dwelling terrace of similar design lies to the south. The houses are set on relatively long narrow plots, and are set back from the road with good sized rear gardens. Whilst there are examples of smaller developments and bungalows in the area, it is the two-storey terraces and semi-detached houses on long narrow plots which represent the predominant character and pattern of development in this part of Pound Bank Road. Although there is a line of the bungalows to the west, they have reasonably sized front and rear gardens and relate well to each other.
13. The appellant refers to a small development of three bungalows on Sherrards Green Road, as an example of smaller plots being accepted in the vicinity. However, that is some distance to the south west of the appeal site. As that development involved three bungalows, they would establish a pattern and relationship with each other in a way that would not be possible with one bungalow juxtaposed with larger dwellings on more generous plots.
14. Furthermore, I do not have full details of the circumstances that led to the Sherrards Green Road proposal being accepted and so cannot be sure that it represents a parallel to the appeal proposal, including in respect of detailed plans or the development plan policies in place at the relevant time. The appellant refers generally to other infill developments but few specific details have been provided. In any case, I have determined the appeal before me on its own merits.
15. Within that overall context, the construction of a bungalow, immediately flanked by two storey properties, impinging on former garden land would be out of keeping with the established pattern of development in the immediate area. I note that a similar finding formed one of the reasons for the refusal of a previous application relating to the same site, albeit that proposal was for a two storey property.
16. I conclude therefore, that the development would be unsympathetic to the character and appearance of the area to its detriment. Consequently, it would be contrary to Policy SWDP 21 of the SWDP, which expects all development to integrate effectively with its surroundings, reinforce local distinctiveness and be

³ Adopted February 2016

⁴ Published March 2012

appropriate to the surrounding townscape, including the existing urban grain. It would also fail to accord with guidance within paragraphs 17, 56, 57 and 58 of the Framework.

Planning Balance and Conclusion

17. The appellant says that the bungalow is intended for his elderly mother, as it would be more suitable to her needs than her current two-storey property. Whilst I am sympathetic to those wishes, the planning system is generally concerned with the wider public interest rather than individual personal circumstances; unless they can be shown to be truly exceptional and alternative options are unavailable. On the basis of the evidence presented, I do not consider that to be the case here.
18. It is also submitted that the development would meet a more general need for smaller two-bed dwellings amongst older people. It is not disputed that the size of the dwelling and its outdoor space would be sufficient. However, the resulting adverse effect in reducing the garden of No 189, the impacts on outlook and the proposal's lack of sympathy with the pattern of development in the area all weigh against it. Moreover, the Council advises that it can demonstrate a 5-year housing land supply (HLS). Therefore, although the proposal would contribute to the supply and diversity of housing, the contribution and significance of one additional house would be limited, especially when the Council does not have a shortfall.
19. The appellant also submits that the use as a builder's or commercial yard represents a fallback position and such use would be unsympathetic to the surrounding residential environment. As I am dealing with an appeal in respect of a refused planning permission, it is not my role to conduct an exercise as to the lawful use of the site. In any event, the evidence presented is inconclusive.
20. Moreover, its primary relevance relates to the alleged fallback position. Little evidence has been presented regarding any harm caused by the current use of the site, beyond its effect in reducing the garden of No 189. In commercial terms, it is a small yard and it is largely screened by tall trees from public view. The site does not feature permanent structures. It is not apparent that its use has generated significant complaints from neighbours or local residents.
21. Therefore, even if the use continued, it is not clear that it would be significantly more harmful, or as harmful, as the appeal scheme. Indeed one of the main negative effects, being the occupation of much of the garden of No 189, would be made more permanent by the construction of a house. Therefore, I give limited weight to the alleged fallback.
22. The harm identified to the living conditions of the occupiers of No 189, with regard to outlook and garden space, combined with the adverse effect on the character and appearance of the area outweigh the limited benefits associated with the proposal and any harm from the posited fallback position.
23. Therefore, I conclude that, for the reasons given above and having regard to all other matters raised, the appeal should be dismissed.

JP Tudor

INSPECTOR