
Appeal Decision

Site visit made on 20 February 2019

by JP Tudor Solicitor (non-practising)

an Inspector appointed by the Secretary of State

Decision date: 19 March 2019

Appeal Ref: APP/D1835/W/18/3214387

177 Malvern Road, St. Johns, Worcester WR2 4NN

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Mr and Mrs Taroun against the decision of Worcester City Council.
 - The application Ref P18C0084, dated 17 October 2017, was refused by notice dated 19 April 2018.
 - The development proposed is construction of new access and drive and erection of new dwelling.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. A revised version of the National Planning Policy Framework (the Framework) was published on 24 July 2018, after the Council had determined the application. The parties have had the opportunity to take account of or comment on any relevant changes during the course of the appeal.
3. The revised Framework was recently updated on 19 February 2019, although the changes are relatively minor. On that date, the Government also published its Housing Delivery Test (HDT) results for local authorities in England. The Council maintains that it can demonstrate a 5-year housing land supply (HLS) and that it in fact has a 7-year housing land supply, which has not been specifically disputed by the appellants. Moreover, the HDT results indicate that Worcester (as measured jointly with Malvern Hills and Wychavon) has met the HDT. In the circumstances, it is not necessary to revert to the parties further on those matters. I have determined the appeal on that basis and am required to consider the current Framework.
4. Although the proposal is in outline with all matters reserved, the appellants refer to the submitted plans as indicative. I have, therefore, considered the appeal on that basis.

Main Issues

5. The main issues are the effect of the proposed development on:
 - the character and appearance of the area; and,
 - an area designated as green space.

Reasons

Character and appearance

6. The appeal site comprises part of the rear garden which serves a detached dormer-style bungalow at 177 Malvern Road. The road is characterised mainly by detached bungalows and two-storey houses set well back from the highway with large front and rear gardens. This residential area has a pleasant, leafy, green character and appearance created by the prevalence of hedgerows, mature trees and extensive lawns.
7. The rear garden at No 177 is particularly generous as it wraps around the back of the garden at No 175, a neighbouring bungalow. Along with the adjacent rear gardens the area forms a tranquil, verdant space, which backs onto the shorter rear gardens of the semi-detached, two storey houses along Margaret Road. Indeed, the Council has designated a tranche of land comprising parts of the rear gardens of properties along Malvern Road, including the appeal site, as 'green space', acknowledging its contribution to the character of the area.
8. Whilst there are some outbuildings in rear gardens, the siting, as indicated on the submitted plans, of a sizeable, 1½ storey L-shaped building and a car parking and turning area would appear incongruous on this 'back land' site. Although any public views from the road would be very limited and there is partial screening from fences and vegetation on some boundaries, the new house would be clearly seen from the host dwelling and from surrounding properties and gardens. It would appear discordant and unrelated to the predominant pattern of development in the area, with houses fronting onto the road, albeit set back from it.
9. The appellants refer to an existing dwelling to the rear of 185/187 Malvern Road, as an example of existing back land development in the area. However, Nos 185/187 are the last dwellings on the relevant part of Malvern Road before a junction with Whites Road, which runs to the south. The relevant existing dwelling fronts onto that road and is not, therefore, perceived as a dwelling sited in a rear garden.
10. Another dwelling is referred to at 4 Foley Road, but whilst it is to the rear of properties fronting Malvern Road it is adjacent to a side road where patterns of development and building lines are more varied. Therefore, those examples contrast with the appeal site, where the rear garden is bordered on three sides by other gardens and is located behind a row of dwellings facing the road with a clear main rear building line.
11. Other developments on Droitwich Road are also cited by the appellants in support of their case, but I have limited details of the circumstances that led to those proposals being approved. Furthermore, they are some distance away from the appeal location and the Council advises that they do not fall within areas of designated green space.
12. An appeal decision relating to Land adjoining 21 New Street¹, referred to by the appellants, appears to concern a dwelling to the side rather than to the rear of existing houses. The appellants suggest that there is a parallel as that appeal considered an issue concerning 'open space'. However, that was in the context of a 'conservation area' (CA), a designated heritage asset, and the question

¹ APP/H1840/W/17/3181128

was whether that open space contributed to the significance of the CA. The statutory and policy framework for the protection of CAs is fundamentally different from that relevant to the appeal before me. Consequently, that appeal decision has limited relevance.

13. Therefore, whilst there may be superficial similarities between some of the examples cited and the appeal proposal, there are also material differences. In any event, all proposals must be judged on their individual merits within their site-specific context. That is the basis on which I have considered this appeal.
14. There is a greenhouse in a state of disrepair and a small wooden shed on areas of hardstanding and a stoned path or driveway within the rear garden. The appellants say that a sizeable area of hardstanding formed the base of a large workshop which was demolished in 2015. A previous owner informed them that an earlier owner operated a business from the workshop accessed via the driveway. On that basis the appellants submit that the site is previously developed land, where the Framework encourages development.²
15. However, limited details have been provided and the nature of that previous business is unspecified. Whilst the appellants advise that there is a water and electricity supply to the site, it is not necessarily unusual to have such supplies to ancillary workshops or garages in domestic gardens. The Council considers that the workshop was an ancillary domestic structure. There is little independent corroborative evidence to demonstrate that the workshop formed a separate business premises or was more than ancillary to the main dwelling. Therefore, based on the information before me, I consider the site to be essentially a domestic garden, albeit with areas of hardstanding.
16. The definition of 'previously developed land' within the Glossary to the Framework³ specifically excludes '*land in built-up areas such as residential gardens*'. Therefore, as the appeal site is a residential garden within the built-up area of St. John's in the city of Worcester, it is not 'previously developed' or 'brownfield' land.
17. Whilst the efficient use of land and the use of previously developed or brownfield land is encouraged by the Framework, it does not preclude development in residential gardens. Rather, paragraph 70 of the Framework says that '*Plans should consider the case for setting out policies to resist inappropriate development in residential gardens, for example where development would cause harm to the local area.*'
18. However, the Council has not cited a policy within the South Worcestershire Development Plan (SWDP)⁴ which specifically resists inappropriate development in residential gardens. Nevertheless, the Framework does indicate that, when considering the efficient use of land, the desirability of maintaining an area's prevailing character and setting, including residential gardens, should be taken into account in decision-making.⁵
19. Therefore, whilst the host building is on a generous plot facing the road with large front and rear gardens, that is in keeping with most other dwellings along

² Paragraph 117

³ Annexe 2, P.70

⁴ Adopted February 2016

⁵ Paragraph 122

this part of Malvern Road. That pattern of development contributes positively to the green and spacious character and appearance of the area. The introduction of a sizeable dwelling within the rear garden of No 177, with no street presence, would be unsympathetic to the low-density urban grain of the immediate area.

20. The above factors lead me to conclude that the proposed development would harm the character and appearance of the area. Therefore, it would not comply with policy SWDP 21 of the SWDP which expects all development to be of high quality, integrate effectively with its surroundings, in terms of form and function, reinforce local distinctiveness and complement the character of the area. The proposal would also be contrary to similar policies within the Framework, such as paragraph 127.c).

Designated Green Space

21. SWDP policy SWDP 38 advises that 'green space', as identified in the SWDP Policies Map, includes a range of private and public open spaces. The 'reasoned justification' text supporting the policy explains, in paragraph 4, that whilst most open spaces are publicly accessible, some are in private ownership but nonetheless perform valuable functions such as contributing to biodiversity, the character of the area and providing a sense of openness and space.
22. Policy SWDP 38 states that development of 'green space' will not be permitted unless exceptional circumstances are demonstrated, as detailed in the policy. Whilst there are hardstanding areas and the appeal site is a private rear garden, it forms part of a designated area of 'green space' which stretches out along most of the back gardens on this section of Malvern Road. The appellants have not shown that the proposal meets any of the specified exceptions. Therefore, the proposal conflicts with SWDP policy SWDP 38.
23. I also note that the 'green space' leaves a reasonable area adjacent to the rear elevations of the dwellings to allow for extensions or changes near the existing main rear building line. It appears that a rational attempt has been made to strike a balance between protecting the 'green space' without preventing all change to the affected houses adjacent to it.
24. Whilst the appellants do not consider that the land should have been designated as 'green space', in my view, these domestic gardens, where development is mainly limited to sheds and outbuildings, do contribute positively to the character and appearance of the area. The designation helps to ensure that a relatively undeveloped green buffer zone is maintained between the dwellings on Malvern Road and Margaret Road which would be beneficial to the occupiers of those properties and the environment.
25. The Council also considers that the 'green space' provides a wildlife corridor and a stepping stone from one habitat to another, which can help to protect and enhance biodiversity, as recognised in paragraphs 171 and 174 of the Framework. Whilst the appellants have provided a 'Preliminary Ecological Appraisal' (PEA)⁶, that is mainly focussed on whether the site shows evidence of protected species or habitats and it does not address or refer to the function of the site as part of the designated 'green space' network.

⁶ Prepared by Focus Ecology Ltd dated December 2017

26. The introduction of a sizeable residential dwelling into this relatively open area which, despite elements of hardstanding, conforms to the appearance of a domestic garden, would to some extent adversely affect its role as a wildlife corridor. That function is recognised within the appellant's PEA as it recommends gaps in fences to facilitate the passage of hedgehogs and other small mammals from the site to other gardens.
27. I conclude, therefore, that the construction of a sizeable building within this rear garden would reduce the area of undeveloped 'green space' and have an adverse effect on the positive contribution it currently makes to the character of the area and to biodiversity. The proposal would also conflict with policy SWDP 38 of the SWDP which seeks to limit development in green spaces to exceptional circumstances. The imposition of conditions requiring, for example, additional landscaping or gaps to facilitate the passage of small mammals would not sufficiently mitigate the harms identified.

Other Matters

28. In its reasons for refusal the Council submitted that an additional entrance onto Malvern Road would have an adverse visual effect on the street scene. A second access onto Malvern Road has subsequently been approved under planning permission P18C0290 for extensions and alterations to the existing dwelling at No 177. However, that does not affect the harm identified above that would be caused by the appeal proposal. Therefore, that factor does not lead me to alter my decision.
29. Paragraph 8.9 of the Council Officer's Report to the Planning Committee, alluding to paragraph 14 (now paragraph 11) of the Framework, suggests that planning permission should be granted '*unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits*' when assessed against policies in the Framework taken as a whole. The appellants have also referred to that test in their submissions.
30. However, that test, often referred to as the 'tilted balance', would only apply if, as stated in paragraph 11.d) of the Framework, there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date. That is not the case here, where there are relevant policies in an up-to-date development plan (the SWDP) and the Council can demonstrate a 5-year HLS and has met the HDT.

Planning Balance and Conclusion

31. There would be economic benefits during the construction period in the form of the provision of short-term employment opportunities and the purchase of building materials. Future occupants would contribute to the local economy. In social terms, they would potentially participate in the community and be likely to use nearby facilities and services. A new, energy-efficient house would contribute to the supply of housing. However, given that the Council has a robust 5-year HLS and the proposal would provide just one dwelling, the above benefits are relatively limited.
32. Whilst I appreciate that the appellants take a different view, the clear environmental harm that has been identified to the character and appearance of the area and the adverse effect resulting from development within a designated 'green space', outweigh the limited benefits associated with the

scheme. In any event, the overarching economic, social and environmental objectives of the planning system are interdependent and need to be pursued in mutually supportive ways, as stated in paragraph 8 of the Framework.

33. Moreover, where a planning application conflicts with an up-to-date development plan, as is the case here, permission should not usually be granted unless there are material considerations which, in a particular case, indicate otherwise. There are no material considerations of sufficient weight to override the conflict with SWDP policies and the development plan as a whole.⁷
34. For the reasons given above, and having regard to all other matters raised, I conclude that the appeal should be dismissed.

JP Tudor

INSPECTOR

⁷ s38(6) Planning and Compulsory Purchase Act 2004, s70(2) Town and Country Planning Act 1990 and paragraph 12 of the Framework