



Appeal Decision

Site visit made on 15 September 2020

by S Hanson BA (Hons) BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16 October 2020

Appeal Ref: APP/J1860/C/20/3251666

Land at Falconrest, 16 Victoria Road, Malvern, Worcestershire WR14 2TE

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
 - The appeal is made by Mr Ben Roberts (Victoria Road Freehold Limited) against an enforcement notice issued by Malvern Hills District Council.
 - The enforcement notice, numbered ENF/19/0119, was issued on 31 March 2020.
 - The breach of planning control as alleged in the notice is without planning permission, the unauthorised erection of a horizontal boarded hit and miss timber fence on the land in the approximate position hatched green on the attached plan.
 - The requirements of the notice are: 1. To permanently remove the horizontal boarded hit and miss timber fence, as approximately shown hatched green on the attached plan.
2. To lawfully remove all resulting materials from the land edged red on the attached plan.
 - The period for compliance with the requirements is six calendar months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a) of the Town and Country Planning Act 1990 as amended.
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Decision

1. The appeal is dismissed and the enforcement notice is upheld. Planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act.

The appeal on ground (a) and the deemed planning application

Main Issue

2. This is the effect of the development on the character and appearance of the area and the setting of the Great Malvern Conservation Area.

Reasons

3. Falconrest, 16 Victoria Road is a newly-built contemporary development which provides residential apartments. It is located on the edge of the Great Malvern Conservation Area and occupies a prominent location within the street next to Malvern Police Station. The appeal site provides residents with a large open space to the front of the property for car parking.
4. A horizontal boarded hit and miss timber fence, which is over one metre in height has been erected to the front and side of the development behind the original low boundary wall. A closely-spaced row of pleached trees has been

planted behind the fence with the head of branches trained to fan out above the fence line. The trees are not subject to the notice.

5. The appeal site is within an established residential area of large properties that are set within verdant and spacious surroundings. The properties are set well back from the street predominantly with boundary walls and mature landscaping which front the road and make a significant contribution to the character and appearance of the area. The neighbouring police station with its open frontage appears as an anomaly within the street scene, reflecting its alternate presence within this largely residential area.
6. To the other side, the appeal site adjoins the CA's boundary and sits opposite properties which fall within the CA. The CA is far-reaching and extends a significant distance from the appeal site. Given the visibility of the site in relation to this, it contributes significantly to the setting of the CA. As such, I have a statutory duty, under Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990, to consider the impact of the proposal on the CA.
7. The Malvern Hills CA Appraisal and Management Strategy (MHCAAMS) highlights how the "planned setting out of the streetscape with boundary walls and mature planting add character to the area". It also draws attention to the removal of boundary hedges which have affected the character of the area and noted that how even small-scale changes can erode the special character of an area. Concern is apparent regarding the erosion of boundary trees and hedges to properties particularly where development results in the conversion of the frontages into carparks. The MHCAAMS provides that landscaping schemes for any such proposals will be expected to ensure the future retention of green frontages and appropriate boundary planting.
8. It is apparent from the evidence before me and from my site visit that the defining characteristics of the CA in this area of the town have been well-protected. The area retains its verdant character with large trees and mature landscaping to the front of properties, which create a visually attractive setting with a spacious feel. The appeal site is at odds with this. Its uncharacteristic appearance is conspicuous within the street scene, the impact is particularly noticeable due in part to the neighbouring Police Station which provides for extended views across its open frontage towards the appeal site. Given the relationship of the site to the CA and by virtue of the siting, use of materials and overall design, the boundary fence represents an unsympathetic addition in an area that is dominated by frontages defined by mature hedges and low walls.
9. The appellant argues that the adverse impact is the visual prominence of the car park, and that the fence and pleached trees have been put in place to provide adequate and immediate screening. It is also noted that insufficient space for planting a hedge is declared as a reason for the development and that it would have significantly impacted upon highway safety for parking and turning vehicles within the site. Whilst I acknowledge the reasoning regarding immediate screening, and the instant public benefit, the boundary treatment for the apartment development was considered an important part of the overall scheme and was subject to a condition to ensure the development did not have an adverse effect on the character or appearance of the area. Hedges can take time to establish, but it is the long term effect and the public benefits derived

from the visual harmony that is considered important in this location. I also have no evidence before me to show that a hedge in this position would cause highway safety issues.

10. Accordingly, I find that the development harms both the character and appearance of the surrounding area and the setting of the CA. The level of harm identified to the CA would be considered as 'less than substantial' in terms of paragraph 196 of the National Planning Policy Framework - February 2019 (the Framework). However, there are no public benefits in this case that weigh in favour of the development in the long term. The development is contrary to policies SWDP6, SWDP21 and SWDP24 of the South Worcestershire Development Plan, Policy MD1 of the Malvern Hills Neighbourhood Plan which seek development that integrates effectively with its surroundings and conserves and enhances heritage assets respectively; and the conservation requirements of the Framework.

Fall-back position

11. Permitted Development (PD) rights under the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the GPDO) are a material consideration in considering the planning merits of a development.
12. Under Class A.1 (a) (ii) of Schedule 2 Part 1, PD rights would allow for a fence of up to 1m in height to be erected in the same position that the fence subject of the enforcement notice has been erected. I note the Council consider the fence to extend to a height of 1.8m in part. However, the appellant provides that the majority of the existing fence along the frontage of the property measures around 1.2m in height and that a lower fence could be erected without the need for express planning permission.
13. The fence is a single structure and, where part of that structure exceeds the height permitted by the GPDO, the fence is unauthorised in its entirety. The GPDO would not 'permit' the retention of the existing fence up to a height of 1m but it would be possible for the appellant to remove the existing fence and erect a new fence to that height. It is important to note that distinction because the weight that I can attach to any suggested fall-back is not only dictated by its likely impact but also on the likelihood of the development being implemented.
14. Notwithstanding suggestions to the contrary, I have doubt as to whether the appellant would erect a 1m high fence if the current structure was removed. The stated rationale for the structure was for immediate screening to prevent views of the parked cars, and due to insufficient space to plant a hedge, to which, as detailed above, I do not consider there is compelling evidence. A 1m fence would do little to screen the parking area at the site because those passing by would be able to see over the top. Furthermore, it is likely that a reduction in the height of the fence would result in an expanse of bare wood tree stems due to the widened gap between the branches of the pleached trees and the top of the fence, thereby impairing the visual balance of the boundary treatment. This raises the question of whether the expenditure and time involved in erecting a 1m high fence would be worthwhile never mind visually pleasing to the development as a whole. Nevertheless, even if the fence was re-erected to a height of 1m, the additional harm of the development I have identified still justifies withholding permission.

Overall conclusion

15. For the reasons given above, I conclude that the appeal should not succeed. I shall uphold the enforcement notice and refuse to grant planning permission on the deemed application.

S Hanson

INSPECTOR