



Appeal Decision

Site Visit made on 5 January 2021

by Mr Stuart Willis MSc, BA (Hons), PGCE, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19 January 2021

Appeal Ref: APP/D1835/W/20/3260790

Land adjacent to Rose Villa, Nunnery Lane, Worcester, WR5 1RG

- 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 Jabran Khalid against the decision of Worcester City Council.
 - The application Ref 20/00088/FUL, dated 4 February 2020, was refused by notice dated 28 September 2020.
 - The development proposed is erection of a new dwelling.
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Decision

1. The appeal is allowed, and planning permission is granted for erection of a new dwelling at Land adjacent to Rose Villa, Nunnery Lane, Worcester, WR5 1RG in accordance with the terms of the application, 20/00088/FUL, dated 4 February 2020, subject to the conditions in the schedule below.

Applications for costs

2. An application for costs was made by Mr Jabran Khalid against Worcester City Council. This application is the subject of a separate Decision.

Preliminary Matters

3. I have taken the description of development above from the decision notice, as the appeal form indicates that a change from that given on the application form was agreed.
4. The application form indicates that works had not started when the application was made. I saw some building works had taken place at the site. The appellant's final comments indicate that a previously approved scheme at the site¹ has been implemented (previous appeal). I have therefore dealt with this appeal as a proposed development.

Main Issues

5. The main issues of the appeal are the effects of the proposed development on:
 - The character and appearance of the area, including its effect on the designated Green Space;
 - The living conditions of the occupiers of neighbouring/nearby properties, with particular regard to outlook, privacy, daylight and sunlight; and
 - Highway safety.

¹ APP/D1835/W/19/3234549

Reasons

Character and Appearance

6. The proposed dwelling would be located close to the boundary with Montana. Notwithstanding this, there is no steady rhythm to the built form with differing gaps between properties and the space to Rose Villa would retain some openness to the streetscene. The set back of the dwelling from the road and depth of the rear garden is comparable to the adjacent properties. While not the same as those adjacent, the plot size and plot coverage is not significantly different. Having the main garden space to the side of the property would reflect the layout of Rose Villa.
7. The appearance and mass of the dwelling would not match the existing properties it would be seen with. Moreover, it would be higher than the adjacent dwellings and the one allowed in the previous appeal at the site. Nevertheless, the streetscene in which it would be viewed already has considerable variation to its built form. In addition, there is no consistency to the height or roofscape of the nearby dwellings and it would not be significantly taller than them. In addition, the hipped roof, which is a feature found at some existing dwellings in the street, would reduce the bulk of the building. There is also variation to the external materials in the area and a condition is imposed to agree those.
8. There is a mix of boundary treatments with hard and soft landscaping nearby. The existing landscape features at the rear of the site form part of the wider greenery to the rear of plots. The protection and retention of existing features as well as additional planting can be secured by condition. This would soften the appearance of the site.
9. Therefore, the proposed property would not appear incongruous or dominant in the streetscene.
10. The appeal site is part of an area designated as Green Space in the DP². Policy SWDP 38 of the DP and its supporting text state that its aims are to protect Green Space from development unless exceptional circumstances are demonstrated and that they contribute to biodiversity, the character of the area and provide a sense of openness and space. The appeal scheme does not fall within any category of the exceptions set out and therefore conflicts with this policy.
11. Nevertheless, there has been a certificate of lawful development at the site for a detached garage/annexe³ and the previous appeal allowed a dwelling. While the dwelling before me would be taller than the dwelling allowed, it would be of a similar footprint and position within the plot to the one subject to this appeal. The effect on the openness and spaciousness of the area would not be significantly greater than the previous appeal scheme. In light of the above, I give the fallback position of the previous appeal scheme significant weight.
12. As such, the proposal would not harm the character and appearance of the area. It would accord with Policy SWDP21 of the DP where it requires the scale, height and massing of development to be appropriate to the setting of the site and the surrounding landscape character and townscape. It would comply with

² South Worcestershire Development Plan

³ P18G0023

the South Worcestershire Design Guide Supplementary Planning Document (SPD) where it aims to deliver a diverse mix of dwelling types and enhance local character.

13. Moreover, the scheme would accord with the National Planning Policy Framework (Framework) where it states schemes should be sympathetic to local character.
14. The proposal would conflict with Policy SWDP 38 of the DP. However, it would not have a meaningfully greater impact on the Green Space designation than the fallback of the previous appeal.

Living Conditions

15. Given its scale and position, and the difference in land levels between the site and the adjacent plots, the proposed dwelling would undoubtedly feature in the outlook from the garden and property of Montana. However, Montana's main outdoor space is to the rear and would give an outlook away from the proposed dwelling. The ground floor openings on the side elevation of Montana facing the appeal site are fitted with obscure glazing. Therefore, the outlook from within the building would already be limited. The proposed dwelling would also be prominent from the first-floor side elevation window. Nonetheless, it is set back further from the appeal site and would allow a wider outlook from this room.
16. There is a lengthy garden at 47 Spetchley Road (No 47) with mature landscaping on the boundaries with the appeal site and within the garden itself. Consequently, although the property would be visible over and through these it would be partly screened. Moreover, there would be a range of outlooks away from the site from within the garden of No 47. Furthermore, even though it would be taller than the existing properties along this part of Nunnery Lane, there are already dwellings a comparable distance from the boundary with No 47.
17. The proposed dwelling would be higher than that of the previous appeal and I note comments regarding alterations to land levels. However, the footprint and depth of the building would be very similar. As such the effect on the outlook of the nearby properties would not be greatly different. The previous appeal dwelling represents a fallback position. This scheme would also have a hipped roof which would push much of the additional height and roof bulk further from Montana. The proposal before me would not be unacceptably overbearing and a condition is imposed to ensure confirmation of the proposed levels.
18. Some mutual overlooking is inevitable and tolerable in residential areas. The proposed rooflights would allow some views into the rear garden of No 47. The layout and number of the rooflights would be different to the previous appeal. Nonetheless, rooflights were included in that fallback scheme. Those now proposed would only allow views into parts of the garden area and much of this area can already be viewed from the windows of Montana and 4 Nunnery Lane. Therefore, there is already actual and perceived overlooking of this end of No 47's garden. Other areas would remain private and views would be filtered by landscaping.
19. There would be some shadowing effect from the dwelling on the gardens of the adjacent properties and the dwellings themselves at certain times of day. Given

the existing built form in the area, some shadowing of gardens and dwellings already occurs in many instances. Due to the course of the sun shadowing would only happen at certain times of the day. The details before me indicate that the closest windows at Montana, which would be most directly affected by the scheme, do not serve habitable rooms.

20. The Council found that the proposal would be acceptable with regard to effects on daylight and sunlight at neighbouring properties. There has been no compelling evidence provided to lead me to a different finding.
21. As the proposal is for a single dwelling, the construction period is likely to be short lived. There are already properties and gardens adjacent to each other. As such, some noise and disturbance of a residential nature from the occupation of property would not be unexpected. Concerns have been raised over the operation of plant at the property. However, full details of what is proposed are not shown on the plans to be agreed. A condition is included requiring agreement of the low and/or renewable energy measures.
22. Given the above and the fallback position, the proposal would not unacceptably harm the living conditions of the occupiers of nearby properties with regard to outlook, privacy, daylight and sunlight. It would accord with Policy SWDP21 of the DP where it states proposals should provide an adequate level of privacy, outlook, sunlight and daylight, and should not be unduly overbearing. Moreover, it would accord with the SPD where it aims to protect private amenity. Finally, the scheme would also comply with the Framework where it requires developments to provide a high standard of amenity for existing and future users.

Highway Safety

23. There are no on street parking restrictions on this part of Nunnery Lane. There are multiple access points on to the road, some with turning areas and some without. While only a snapshot in time, at my site visit there was some on street parking taking place.
24. There would be an increase in accommodation and potentially additional traffic movements in comparison to the previous appeal scheme. Nevertheless, both are for a single dwelling and the scheme before me would not lead to considerable additional traffic generation.
25. The size of car parking spaces would fall below the dimensions set out in Streetscape Design Guide (SDG) where circulation space is required. However, they do meet the minimum parking space sizes of the SDG. The small area for parking also reduces the amount of grasscrete surfacing needed which would represent a visual improvement from the previous appeal. A turning space has been provided that satisfied the Highway Authority and the Council. I see no reason to disagree. I also note that the previous appeal fallback made reference to plans with different layouts. One of which appears to show parking spaces of a similar size to those proposed in this scheme.
26. The proposed access would be the same as the fallback dwelling with new planting shown behind the visibility splays giving sufficient visibility in both directions. There has been no compelling evidence that these splays cross third party land.

27. The SDG does not include car parking standards for 6-bedroom properties with a 5-bedroom dwelling requiring 3 spaces being the largest referred to. There would be likely to be more occupants of the proposed property than the fallback dwelling. Nevertheless, in the absence of any clear justification for greater parking provision, or clarity of what would be sufficient, I consider that the level of off-street parking proposed would be appropriate.
28. I appreciate that at certain times of day and year, such as at school times, traffic flows would be greater than when I visited. Even if the proposal led to the need for some additional on street parking of a vehicle it would be possible for additional vehicles associated with the appeal site to park in relatively close proximity without causing an obstruction. It has not been shown that on-street parking or a lack of turning areas at existing properties is currently leading to, or that this scheme would lead to, highway safety issues.
29. Consequently, the proposed development would not unacceptably harm highway safety. It would accord with Policies SWDP4 and SWDP21 of the DP where they require vehicular traffic from the development to access the highway safely and that the road network should have the capacity to accommodate the type and volume of traffic from the development. In addition, that new development should have regard to the design criteria and principles. Despite a technical breach of the SDG the scheme would accord with its aims to ensure developments are designed to provide a safe and secure environment.

Other Matters

30. There is limited evidence provided regarding the biodiversity value of the site before works at the site and timing of works carried out to date. At the time of my visit, much of the site was already developed. A landscape condition would ensure the proposal contributes and enhances biodiversity at the site.
31. The site is partly within the Environment Agency maps for surface water and the Land Drainage Partnership indicated a preference for the position of the dwelling to be moved. Notwithstanding this, they indicate that flood risk from surface water is indicated to be low and the layout of the site is substantially the same as the fallback dwelling. Furthermore, they consider the use of soakaway acceptable in principle and recommend a condition to agree a surface water drainage system to reduce the risk of flooding. In the absence of any detailed information to the contrary, I see no reason why the development would lead to an increased risk of flooding. The removal of any septic tanks on the site would be covered by other legislation as would health and safety concerns and matters covered by building regulations.
32. The internal and external space at the appeal property would be larger than that remaining at Rose Villa. These would be sufficient for the size of the properties and I saw that garden areas on this part of Nunnery Road were generally smaller than those on Spetchley Road. Habitable rooms would be served by windows allowing sufficient natural light to enter them.
33. Compliance with conditions imposed on previous approvals at the site, including the works already undertaken at the site, or any potential breaches of those imposed on this scheme, are a matter for the Council to pursue separately.

Conditions

34. I have considered the conditions put forward by the Council against the requirements of the national Planning Practice Guidance and the Framework. Where necessary and in the interests of clarity and precision, I have altered the conditions to better reflect the relevant guidance.
35. In addition to the standard time limit condition, I have imposed a condition requiring that the development is carried out in accordance with the approved plans. This is in the interest of certainty.
36. In order to protect the character and appearance of the area, I have also imposed a condition requiring details of the external materials to be agreed. For the same reason and to protect living conditions of nearby occupiers a condition requiring confirmation of site levels is included. A condition requiring landscape details to be submitted and agreed are imposed for the same reasons as well as with regard to biodiversity.
37. To reduce risks from flooding a condition requiring the agreement of a surface water drainage system is required. The requirement for parking and turning facilities and visibility splays to be provided is covered by condition in the interest of highway safety. Given the Green Space designation, and the importance of space around the building a condition controlling extensions to the property and outbuildings is necessary. To ensure appropriate energy efficiency requirements are met a condition requiring agreement of renewable and/or low-carbon measures is imposed.
38. The conditions imposed on the previous appeal required certain details prior to the occupation of the dwelling. Other than the submission of levels information, there is no convincing evidence to indicate other details are needed earlier.
39. I note comments regarding the potential for archaeological remains. However, the condition of the site at the time of my visit indicates that the ground has already been disturbed and altered. Therefore, a condition for archaeological access is not necessary. The scale of the proposal means a condition limiting the hours of construction work being carried out is not reasonable.

Conclusion

40. Representations were made to the effect that the rights of nearby occupiers, under the Human Rights Act 1998, including Article 1 and Article 8 of the First Protocol, would be violated if the appeal were allowed. In addition, in exercising my function on behalf of a public authority, I have had due regard to the Public Sector Equality Duty (PSED) contained in section 149 of the Equality Act 2010, which sets out the need to eliminate unlawful discrimination, harassment and victimisation, and to advance equality of opportunity and foster good relations between people who share a protected characteristic and people who do not share it. I acknowledge the personal health circumstances of a neighbouring occupier.
41. Notwithstanding this, I have found that the proposed development would not cause unacceptable harm to the living conditions of the occupiers of nearby properties. The degree of interference that would be caused would be insufficient to give rise to a violation of rights under the First Protocol. Moreover, from my findings above it does not follow from the PSED that the appeal should fail.

42. For the reasons given, and having considered all matters raised, I conclude that the appeal should be allowed, subject to the conditions in the schedule below.

Mr Stuart Willis MSc, BA (Hons), PGCE, MRTPI

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: General Layouts Drawing No. 1801-P-01I.
- 3) The development hereby approved shall not be occupied until supporting evidence and details of renewable and/or low- carbon measures proposed to meet the requirements for 10% of proposed energy use to be met through on-site measures shall be submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details and retained as such thereafter.
- 4) The development hereby approved shall not be occupied until the access including visibility splays, turning area and parking facilities including cycle parking shown on Drawing No. 1801-P-01I have been provided. These areas shall thereafter be retained and kept available for their respective approved uses at all times.
- 5) Prior to their implementation as part of the development hereby approved, samples of external facing, roofing and surfacing materials shall be submitted to, and approved in writing by, the local planning authority. The development shall thereafter be carried out in accordance with the agreed materials.
- 6) 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 extensions or outbuildings shall be erected other than those expressly authorised by this permission.
- 7) The development hereby approved shall not be occupied until soft landscaping works have been carried out in accordance with the details that have first been submitted to and agreed in writing by the local planning authority. The submitted details shall include planting plans, trees to be retained, written specifications (including cultivation and other operations associated with plant and grass establishment); schedules of plants noting species, plant supply sizes and proposed numbers/densities.
- 8) Any trees or plants detailed in the approved landscaping scheme 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.
- 9) The development hereby approved shall not be occupied until surface water drainage works have been implemented in accordance with details that shall first have been submitted to and approved in writing by the local planning authority. Before any details are submitted to the local planning authority an assessment shall be carried out of the potential for disposing of surface water by means of a sustainable drainage system, having regard to Defra's non-statutory technical standards for sustainable drainage systems (or any subsequent version), and the results of the assessment shall have been provided to the local planning authority.

Where a sustainable drainage scheme is to be provided, the submitted details shall:

- provide information about the design storm period and intensity, the method employed to delay and control the surface water discharged from the site and the measures taken to prevent pollution of the receiving groundwater and/or surface waters;
 - include a timetable for its implementation; and,
 - provide a management and maintenance plan for the lifetime of the development which shall include the arrangements for adoption by any public authority or statutory undertaker and any other arrangements to secure the operation of the scheme throughout its lifetime.
- 10) No alteration to ground levels shall take place until full details of the finished levels, above ordnance datum, of the ground floor of the proposed building, in relation to existing ground levels have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved levels.