
Appeal Decision

Site visit made on 8 June 2021

by L Page BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18 June 2021

Appeal Ref: APP/J1860/W/21/3268994

8 Oakleigh Avenue, Hallow WR2 6NG

- 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 Stephen Gillgan against the decision of Malvern Hills District Council.
 - The application Ref 20/00149/OUT, dated 16 January 2020, was refused by notice dated 18 June 2020.
 - The development proposed is a single new bungalow.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The planning application was submitted in outline form with all matters reserved for future approval(s) apart from details of access. Matters not submitted for approval at this stage have been treated indicatively. It is clear that the quantum of development being sought is for one dwelling and the appeal has been dealt with accordingly.

Main Issues

3. The main issues are:
 - (a) whether planning obligations are necessary and suitably provided; and
 - (b) the effect of the proposal on the character and appearance of the area.

Reasons

Planning Obligations

4. Policy SWDP15 of the SWDP (insofar as it was originally published) applies to all residential development and requires affordable housing contributions therein. However, the SWDP Affordable Housing SPD 2016 (within Paragraph 3.5) makes clear that the Council should implement Policy SWDP15 differently to the originally published policy to account for national thresholds. Accordingly, the SPD goes on to establish that unless a proposal's total combined gross floorspace exceeds 1000 sqm, on sites of five dwellings or less, no affordable housing contributions will be sought across the whole of the plan area. The proposal is for a single dwelling and there is no evidence that its floorspace exceeds 1000 sqm.

5. Therefore, a planning obligation comprising an affordable housing contribution is not necessary in accordance with the SPD, which is a material consideration indicating that a decision should be made otherwise than in accordance with the development plan. However, the Council has put forward a revised position, pursuant to Paragraph 63 of the Framework, which is a competing material consideration, and set out that Policy SWDP15 of the SWDP should now be applied in a way that requires affordable housing contributions on sites of five dwellings or less in designated rural areas.
6. There is no evidence in front of me from the appellant that the site is not within a designated rural area, or that the Council's revised position should not be an overriding material consideration when compared to the SPD, and that affordable planning obligations are in fact necessary in this case. Consequently, the proposal is not supported by a planning obligation of the nature required and therefore, based on the evidence in front of me, it would conflict with Policy SWDP15 of the SWDP.

Character and Appearance

7. The site is located along Oakleigh Avenue, to the rear of No 8, which comprises a large dwelling that stands around one and a half storeys in height and sits on a spacious plot with a large rear garden area. As found in the forgoing appeal decision¹ Policy SWDP2 of the SWDP establishes the principle of infill development is acceptable. In this context, and during my site visit, I was able to observe a number of examples of infill and backland development within the locality. This corresponded with the evidence submitted by the appellant, comprising aerial photography.
8. Some examples of infill development² more obviously departed from the prevailing pattern of development in the area which comprises a uniform linear arrangement of dwellings fronting roads. However, other examples³ comprised backland development which appeared to preserve the prevailing pattern of development, predominantly due to layouts that restricted views to limited glimpses in between frontage dwellings. Altogether, the principle of infill and backland development is apparent in the area, which largely remains subservient to the prevailing pattern of development at frontage dwellings.
9. Moseley Road and Oakleigh Avenue are set at acute angles to one another and therefore although the dwellings here front their respective highways in a linear fashion, their backland areas comprise an amalgam of contrastingly shaped rear garden areas. Consequently, whilst it may be true that dwellings further afield are characterised principally by a uniform linear arrangement of dwellings fronting roads and perhaps elongated rear garden areas, within the immediate vicinity of the site at least, there is very little uniformity in terms of backland garden arrangements. Accordingly, there is no rigid pattern that might restrict how No 8 Oakleigh Avenue is evolved in backland development terms.
10. There are a number of mature trees present within the vicinity of the site, which contribute to the leafy character and appearance of the area. A mature cedar tree (T2) on the site itself makes a particular contribution and is identified for retention under Category B1 because of its moderate value. This is established within the accompanying Arboricultural Impact Assessment.

¹ APP/J1860/W/19/3225905

² 16/00205/REM

³ 19/00367/FUL, and others neighbouring but without planning references.

11. The proposal would comprise a single new bungalow, which given its limited size would sit comfortably within the large backland plot of No 8 Oakleigh Avenue. It would depart from the prevailing linear pattern of development observed in the wider locality; however, it would be similar to other proposals and other existing backland development⁴ nearby and would not be incongruous in the wider sense of the area. Its siting would be inconspicuous in the street scene, with only glimpses available to the rear, which again is similar to other backland development nearby, and altogether this would preserve the prevailing linear pattern of development along the frontage dwellings of Oakleigh Avenue. In addition, through reserved matters, it is likely that a robust landscaping scheme could be devised to further soften any effects and limit views of the proposal's built form, further mitigating potential effects on the character and appearance of the area that might arise through glimpses in gaps of frontage dwellings.
12. Measures for the protection and retention of important trees have been duly put forward within the accompanying Arboricultural Impact Assessment and the potential location of the dwelling and relationship with the cedar tree has not been objected to by the Council's landscape officer in their consultation response. Based on this evidence, I am satisfied that the proposal can come forward without placing undue development pressure on neighbouring trees, that might otherwise lead to their loss.
13. In addition, there is no evidence to suggest that a planning condition could not secure the long term retention of important trees in accordance with the details submitted. Similarly, any doubt surrounding the effects of the access could be subject to a planning condition which secures details of no dig construction methods in accordance with 4.1.2 of the Arboricultural Impact Assessment. Furthermore, at this juncture, the flexibility inherent in an outline proposal is an important consideration insofar as the siting of the new dwelling is not fixed, and therefore given the size of the backland area, can easily evolve through reserved matters if required as a result of emerging design details.
14. Although the existing access would serve an additional dwelling, the increase in movements associated with such a limited form of development are unlikely to give rise to a perceptible, or indeed material change in usage characteristics. Furthermore, as already indicated previously in my decision, a robust landscaping scheme could be devised to screen the proposal and manage any glimpses in gaps of frontage dwellings along the access drive.
15. At first glance, some of my conclusions would appear to differ from the conclusions reached under the foregoing appeal. However, the evidence submitted under that appeal is not in front of me and it has not been demonstrated that the local context within which it was considered is still consistent with the local context in front of me now. Importantly, I have been able to verify the aerial photographic evidence and local context during my site visit and have come to a view on prevailing backland development on this basis. Furthermore, it is important to recognise that the foregoing appeal comprised more intensive backland development and therefore the context within which it was considered is materially different to the proposal in this case. This would be particularly pertinent to the matter of development pressures on the site's trees, among other things.

⁴ 19/00367/FUL, and others neighbouring but without planning references.

16. Overall, the proposal would have an acceptable effect on the character and appearance of the area and would not conflict with Policy SWDP21 of the SWDP, which among other things requires proposals to come forward in a manner that reinforces local distinctiveness.

Conclusion

17. For the reasons given, although the proposal is acceptable in relation to the effects on the character and appearance of the area, the lack of planning obligation means it is in conflict with the development plan. There are no material considerations that indicate a decision should be taken otherwise than in accordance with the development plan and the appeal is therefore dismissed.

Liam Page

INSPECTOR