



Appeal Decision

Site Visit made on 13 July 2021

by Rachel Hall BSc MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 05 August 2021

Appeal Ref: APP/J1860/W/21/3272466

Hillbrook House , 62 Albert Road North, Malvern WR14 2TL

- 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 P.M. Brooks against the decision of Malvern Hills District Council.
 - The application Ref 20/01473, dated 9 October 2020, was refused by notice dated 16 February 2021.
 - The development proposed is conversion of first floor area to provide an apartment for holiday let.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. I observed at my site visit that the triple garage with accommodation at first floor level has been constructed, but is not complete. The construction includes the front dormer which is understood to relate to the previous appeal¹, and is proposed to be replaced with a velux window in the scheme before me.

Main Issues

3. The main issues are the effects of the proposed development on the living conditions of:
 - the future occupants of the proposed holiday apartment, with respect to daylight, sunlight and outlook; and
 - the occupants of 4 Victoria Road, with respect to privacy in its rear garden.

Reasons

Living conditions of the future occupants

4. The proposal would provide facilities necessary for day-to-day living and hence would have the characteristics of a dwellinghouse. As such, and in light of established caselaw², I consider it appropriate to assess the scheme against policies that apply to proposals for a dwellinghouse. The scheme is submitted as holiday accommodation rather than as the main residence for its future occupants. I accept that some degree of flexibility could therefore be afforded to the standard of living conditions for future occupants, on the basis that their

¹ Appeal Ref APP/J1860/W/20/3248459

² *Gravesham BC v SSE & O'Brien* [1982] 47 P&CR 142; [1983] JPL 307

duration of stay and time in the accommodation would, in all likelihood, be shorter than for a main residence. I have taken this into account in my assessment of the scheme.

5. Policy SWDP21 (Design) of the South Worcestershire Development Plan (adopted February 2016) requires that developments provide adequate living conditions with reference to factors such as outlook, sunlight and daylight. Paragraph 130 of the National Planning Policy Framework ('the Framework')³ also requires that developments provide a high standard of amenity. Living conditions within the proposed holiday accommodation should therefore not be so compromised as to be wholly inadequate.
6. Similar to the previous proposal⁴, the proposed apartment would rely mostly on fairly small rooflights for natural light, along with what appears as a partially glazed door on one side. The building is positioned close to substantial trees on that side and to the rear meaning only the front velux windows would be located away from tree cover. Natural light within the property would consequently be very constrained. I do not consider that the proposal to replace the front dormer window with a roof light would materially change light levels experienced within, but it would inevitably further restrict outlook. Larger velux windows may improve light and outlook for the proposal but may not be acceptable in other respects, and in any event, no such proposal is before me.
7. I am aware of the basement apartment at Hillbrook House, although details of its approval and the circumstances under which the Council is said to have granted permission are not before me. In any event, each proposal is to be considered on its own merits. Moreover, the existence of accommodation that provides low levels of natural light and outlook in the vicinity does not justify allowing a scheme that I consider falls below acceptable standards of living for its future occupants, even taking into account the likely shorter stays. I therefore conclude that the proposal would result in unacceptable living conditions for its future occupants with respect to daylight, sunlight and outlook.

Living conditions of the occupants of 4 Victoria Road

8. I observed that there is good separation between the proposed garage and the house at No 4. However, the main area of rear garden at No 4 is open lawn which slopes down towards the boundary with the appeal site. In addition, there is a substantial drop in levels between the ground level of the rear garden and that of the garage. Consequently, the garage roof and the proposed rear velux windows are very visible from the rear garden of No 4. As a result, future occupiers of the proposal would be likely to have reasonably good visibility into the garden at No 4, even taking into account the degree of screening from some existing intervening foliage.
9. It would be feasible for the proposed bathroom window to be obscure glazed and for this to be secured by condition, however I consider the extent of overlooking of the garden at No 4 from the proposed bedroom and kitchen velux windows alone would nevertheless be unacceptably intrusive. Although there is an existing degree of overlooking of the garden from other properties, and a certain level of overlooking is not unexpected in this location, the

³ The latest version of the Framework as revised on 20 July 2021.

⁴ Appeal Ref APP/J1860/W/20/3248459

proximity and comparatively low level of the velux windows emphasises the sense of overlooking to an unacceptable degree. Whilst additional planting along the rear boundary of the appeal site could potentially reduce this, no such scheme is before me to demonstrate that sufficiently tall and dense landscaping could be established there, without further compromising light levels within the accommodation.

10. I am aware of the rooflight allowed at appeal for Apartment 8, Hillbrook House⁵, although in that instance the rooflight was at a higher level and is therefore not directly comparable. I also note the appeal at 20 Sutton Park Road⁶, albeit that was mainly concerned with the relationship between the appeal proposal and privacy in nearby properties rather than privacy within their gardens. Overlooking of the house at No 4 is not at issue here, given the site levels and intervening distance.
11. I therefore conclude that the proposal would unacceptably harm living conditions for occupants of the garden of No 4. As such, the proposal would be contrary to SWDP 21, which seeks to ensure developments provide adequate levels of privacy. It would similarly not accord with paragraph 130 of the Framework which seeks to ensure developments deliver high standards of amenity.

Other Matters

12. Were I to allow the appeal, I consider that suitably worded conditions could be applied here, to restrict the use of the accommodation to short term holiday lets and not as an independent dwelling. I also accept that there may be demand for holiday accommodation of this scale within Malvern, and that the current proposal is not considered to harm the character and appearance of the Conservation Area. However, a mechanism to control the nature of its use, the lack of harm to the Conservation Area (effectively neutral findings), and the small degree of associated benefits to tourism from one additional apartment, are not sufficient to outweigh the above harms I have identified to living conditions.

Conclusion

13. For the above reasons, having considered the development plan as a whole, the Framework and all other relevant material considerations, I conclude that the appeal should be dismissed.

Rachel Hall

INSPECTOR

⁵ Appeal Ref APP/J1860/A/12/2182308

⁶ Appeal Ref APP/R1845/W/20/3257948