



Appeal Decision

Site Visit made on 5 July 2021

by B Plenty BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23 August 2021

Appeal Ref: APP/J1860/W/21/3272120

Northcot, Como Road, MALVERN WR14 2TH

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission
 - The appeal is made by Mr Jonathan Roe against Malvern Hills District Council.
 - The application, Ref 20/01905/FUL, is dated 29 November 2020.
 - The development proposed is Demolition of existing dwelling, and erection of 7 new residential apartments, and associated access, car parking, and landscaping.
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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 with immediate effect on 20 July 2021. Policies within the revised Framework are material considerations which should be taken into account in decision making. Main parties have been given an opportunity to comment on the new Framework and I have taken into account any subsequent comments received in arriving at my decision.

Background and Main Issues

3. The application was not determined by the Council within the statutorily prescribed 8-week timeframe. As such, following the submission of an appeal it falls to me to determine whether planning permission should be given. In consideration of the Council's non determination committee report, and the evidence before me, the main issues in dispute are:
 - Whether the proposed development would preserve or enhance the character or appearance of the Great Malvern Conservation Area, including the effect on the Horse Chestnut tree, and
 - Whether it would be necessary for the proposal to make provision towards local infrastructure.

Reasons

Character and appearance

4. Como Road is a relatively short residential street connecting Albert Road North to Victoria Road. The road slopes down from west to east, with houses stepping up the hill at regular intervals, many with sizeable gaps between them. The streetscene therefore mostly consists of large dwellings or blocks within spacious plots, with houses set back from the highway. The predominant

pattern of local development is regimented with many buildings having a strong vertical emphasis. Built form is largely arranged as a single line of ordered development along the highway. Development on the south side of Como Road is partly behind a screen of mature landscaping, although trees and hedge screening feature prominently on both sides of the street.

5. A large Horse Chestnut tree stands in the corner of the frontage of the site. This makes a strong contribution to the verdant streetscene. The appeal site forms half of a semi-detached property and includes a comparatively wide and deep plot. The dwelling within the appeal site consists of buff brick and is relatively small, modern and simplistic in form in contrast with many local buildings. As such the current dwelling, and its connected neighbour, have a negative effect on its surroundings. However, the plot itself is open and spacious and therefore the site makes a largely positive contribution to the character of the area.
6. The appeal site is within the Great Malvern Conservation Area (GMCA). My statutory duty¹, requires me to pay special attention to the desirability of preserving or enhancing the character or appearance of the conservation area. Furthermore, paragraph 199 of the Framework requires great weight to be given to an asset's conservation when considering the impact of the proposal on its significance. The Council's Appraisal and Management Strategy² (2008) identifies that the conservation area is important partly due to the attractive architecture of the buildings, the setting of the streetscape and the attractive backdrop formed by the Malvern Hills. The significance of the GMCA therefore seems to derive from the architectural interest of the buildings, their scale and vertical emphasis, the spacing of individual buildings and their setting within spacious and verdant plots.
7. The proposal would be wider and taller than the building it would replace. It would also include a second element, behind and conjoined to the first block, that would be offset from the shared boundary with 'Myrtles'. Both elements would include hipped roofs, with crown roofs and other flat roof areas to attempt to manage the overall mass of the building. Nevertheless, the effect of these combined forms would result in a disjointed mass with a confused roof-form. This effect would be clearly evident from views between buildings on Albert Road North and the access road into the site. The proposal also includes bays that would provide only limited vertical interest in contrast to the significance of this feature in local built form. Moreover, the use of brick and render sections would not adequately segregate the mass or meaningfully reduce its overall prominence.
8. The proposal would appear cramped within the plot and crowd the neighbouring building of 'Myrtles'. Although the scheme would retain a gap to its eastern boundary, this space would be partly occupied by a bin store, access road and car parking with limited landscaping opportunities to soften the setting around the new building. As such, the proposal would result in the loss of a sense of spaciousness currently evident within both the site and the wider area. Moreover, this contrast between buildings would be substantially more pronounced than that evident in the examples provided by the appellant on Tibberton Road, Imperial Road, Back Lane and Albert Road North.

¹ section 72(1) of the Planning (Listed Building and Conservation Areas) Act 1990

² Great Malvern Conservation Area – Appraisal and Management Strategy 2008

9. The retained property of 'Myrtles' would appear subservient in comparison to the proposal. The neighbouring dwelling would not have improved verticality and would instead appear as a squat retained feature. Furthermore, the retained dwelling would be shorter than the proposal, contrary to the opposing rising land levels, thus emphasising this awkward relationship. The proposal would therefore fail to respond positively to the surrounding built form and would be a discordant addition to the streetscene.
10. The proposed car parking area would be close to the Horse Chestnut tree and would include development within its Root Protection Area (RPA). However, the RPA is already affected by the exiting driveway and the proposal would affect only a limited area of the RPA. Furthermore, the appellant's tree protection method statement³ describes a minimal-dig design resulting in no adverse impact on the tree. I tend to agree with these conclusions and do not find the Council's concerns in this matter to be compelling. Also, a detailed dig design could be specified by planning condition, to ensure the works would be limited within the RPA, if I had been minded to allow the appeal. The proposal includes the provision of a new stone wall and fencing, on the frontage, that could affect tree roots and be out of character with the streetscene. However, the means of enclosure, in terms of height, type and foundation design could also have been controlled by a planning condition to prevent harm to the tree and the area. Consequently, I find that the proposal would accord with policy SWDP 22 of the South Worcestershire Development Plan (2016) (DP) which seeks to prevent the loss of important individual trees.
11. Nevertheless, due to its form, design and proximity to 'Myrtles' the proposed development would result in harm that would fail to preserve or enhance the character or appearance of the GMCA. Accordingly, the proposal would fail to meet policies SWDP 6, SWDP 21 and SWDP 24 of the DP. These seek among other matters, for development to conserve and enhance heritage assets and integrate with its surroundings. The proposal would also fail to satisfy policy MD1 of the Malvern Neighbourhood Plan 2015-2030 (NP). This seeks development to fully integrate with an existing area and reflect local character. These policies are generally consistent with the Framework which seeks development to be sympathetic to local character.
12. In terms of the advice in paragraph 202 of the Framework, the harm to the conservation area would be 'less than substantial' affecting only its immediate surroundings. The Framework sets out the need to address 'less than substantial harm' in a balanced manner against the public benefits associated with such schemes. The proposal would deliver seven dwellings and provide some construction employment. In so far as these benefits may constitute public benefits, these would be insufficient to outweigh the harm identified to the conservation area.

Planning obligations

13. Policy SWDP 7(B) of the DP requires development to provide or contribute towards the provision of infrastructure needed to support it. Policy SWDP 39 requires development of 5 dwellings or more to make provision for Green Space and outdoor community uses. It identifies that this would be as an off-site contribution for those sites where on-site provision would be impractical

³ B J Unwin Forestry Consultancy, Tree Protection Method Statement 2020

and would be delivered in accordance with the Council's Developer Contributions Supplementary Planning Guidance (2018)(SPG).

14. The Government's Planning Practice Guidance states that planning obligations are necessary to be entered into to mitigate the impacts of development and can be used to make unacceptable development acceptable in planning terms. To be required obligations must be necessary to make the development acceptable in planning terms, directly related to the development and fairly and reasonably related in scale and kind to the development.
15. The Council has identified that the proposal would need to contribute towards the provision of public open space (including pitches), built community facilities and their maintenance. However, the Council's SPG states that the Council will not seek open space contributions from development that would be for 10 or less dwellings unless the site is within a Designated Rural Area, which is not the case for the appeal site. As such, policy SWDP 39 displays some inconsistency with the threshold set within the SPG in some circumstances.
16. Furthermore, the 2019 approval located on the same site for 7 apartments and a townhouse, did not require a planning obligation. I note that the SPG was in place, in its current form, when the earlier proposal was approved. The Council has not drawn my attention to any material considerations that might justify a different approach to this proposal. I am therefore unconvinced that the planning obligations sought by the Council for this proposal would be necessary or reasonable. These requirements would therefore fail the tests of the Community Infrastructure Levy (CIL) Regulations⁴. Therefore, policies SWDP 7, SWDP 37, SWDP 39 and SWDP 62 of the DP are not relevant to this proposal.

Other Matters

17. A proposal, for seven flats similar in style, scale and design to the proposal, was refused in 2016. Although, presented by officers for approval the Council refused the scheme for two reasons including its adverse impact on the character and appearance of the GMCA. That scheme was not challenged by appeal and therefore weighs against the proposal.
18. In contrast, the approved scheme in 2019 was deemed to be in character with the local area. The scheme included the demolition and replacement of 'Myrtles' and had a layout and design that resolved both plots in a more considered manner than the current proposal. This retained greater space to its sides and the design included a relatively simple roof form. That approved scheme therefore created a sense of separation to both the town house and Royal Albert Place. This was therefore materially different to the current proposal.
19. I recognise that the proposal has garnered some support from the local community. The proposal would develop land that is previously developed land and would provide convenient access to goods and services. It would also provide sufficient parking and an adequate provision of garden space. However, these merits would not outweigh the harm identified to the conservation area.

Planning balance and conclusion

20. The appellant has provided evidence indicating that earlier this year the Council could not demonstrate a 5 YR Housing Land Supply, with the possibility that

⁴ Paragraph 122(2), The Community Infrastructure Levy Regulations 2010

supply could be 3.87 years. Paragraph 11(d) of the Framework indicates in such circumstances the policies of most importance for determining the application are out-of-date, and the presumption in favour of sustainable development applies. However, this does not apply where the application of policies within the Framework, that protect areas or assets of importance including designated heritage assets, provide a clear reason for refusing the development. As I have found harm in this case, to the Great Malvern Conservation Area, the presumption in favour of sustainable development does not apply, an important consideration in the planning balance.

21. The Framework seeks to significantly boost the supply of housing and the proposal would make efficient use of previously developed land. Nevertheless, the proposed development would demonstrably harm the character and appearance of the area and would conflict with the development plan when taken as a whole. There are no material considerations that indicate the decision should be made other than in accordance with the development plan. Therefore, for the reasons given, I conclude that the appeal should not succeed, and planning permission is refused.

B Plenty

INSPECTOR