



Appeal Decision

Site visit made on 9 March 2022

by **E Griffin LLB Hons**

an Inspector appointed by the Secretary of State

Decision date: 13th April 2022

Appeal Ref: APP/J1860/C/21/3287770

The Orchard, Bransford, Worcester, WR6 5JE

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended. The appeal is made by Our Place Group against an enforcement notice issued by Malvern Hills District Council.
- The notice was issued on 13 October 2021.
- The breach of planning control as alleged in the notice is: Without planning permission, the unauthorised erection of a building as approximately marked in blue on the attached plan.
- The requirements of the notice are to:
 1. Demolish the building as approximately marked blue on the attached plan
 2. Lawfully remove all resulting material from the land as edged blue on the attached plan
 3. Restore the land to its former condition before the breach took place
- The period for compliance with the requirements is 4 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 (the Act). Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.

Summary of Decision: The appeal is allowed and planning permission is granted subject to conditions and the enforcement notice is quashed.

Main Issue

1. The main issue is the effect of the development on the character and appearance of the area.

Reasons

2. The Our Place School (the School) is a residential institution for children with complex learning difficulties. The School has evolved from an original single dwelling following a series of permissions for a number of buildings. The buildings are largely located in a cluster towards the access drive for the School which runs parallel to the main road, the A4103. There are dwellings to the north of the School along Chapel Lane and also to the rear although both sets of dwellings are closer to the open areas of the School than its built development. The site is not level and has a significant slope downwards from the cluster to the south of the site.
3. The enforcement notice relates to the erection of a rectangular building towards the south of the site at the edge of the cluster of existing buildings with the appeal building being side on to the access drive. There is a lake and a lake building further south of the appeal building. The overall appearance of the buildings is of a mix of timber clad and brick built buildings with tiled roofs of

differing heights. In terms of appearance, the appeal building has timber cladding and a grey tiled roof and is not dissimilar in appearance to the other buildings.

4. The Council's evidence focusses on the differences between the appeal building and the permitted building particularly in terms of height and appearance. However, the allegation alleges the erection of a new building which needs to be assessed as such in the first instance on its planning merits.
5. The scale, height and massing of the appeal building is similarly not out of proportion when viewed as a building within a complex of other buildings. Whilst the building is in an elevated position due to the natural slope, nevertheless, it does not appear unduly prominent on terms of scale, height and massing when viewed from the access drive or within the site itself.
6. The Council has referred in its reasons for issuing the notice to the proximity of the public highway contributing towards the appeal building being visually intrusive. However, the presence of a visual buffer between the main road and the access drive in the form of foliage and trees on land that includes the verge to the A4103 means that views from the road of the School for car users are likely to be very limited. The curve at the beginning of the access drive also means that any views looking into the site from the pavement by passers-by are largely of the lake building which is located on the curve of the access drive not the appeal building which is situated further north and is set back further within the site from the access drive.
7. In 2016, planning permission¹ was granted for "Demolition of flat roofed extension and replacement with pitch roofed extension to provide 2 new bedrooms and bathrooms. Erection of teaching rooms and laundry building". The teaching rooms and laundry building (the permitted building) was for a building in the same location as the development.
8. The Council has provided an extract from the officer's report which resulted in the approval of the permitted building which states that "*Its scale and height would be subordinate to the host main building (the Orchard) and due to its position close to existing buildings it would be viewed as part of a cluster of built development from any glimpses from wider views.*"
9. Assessing the development on the same basis, it is subordinate and is still viewed as part of a cluster of built development as it is in the same location. The Council considers that the development is substantial and visually dominates when looking into the site from the road. However, I have found that not to be the case. The Council makes a number of comparison between the appeal building and the permitted building and for example says that the appeal building is higher than approved. However, the granting of planning permission for a building in a specific location does not mean that an alternative building could not be acceptable in planning terms.
10. There is a dispute between the parties about the extent of the difference with regard to height and materials in comparing the two buildings. However, those matters would only be relevant if I had found the development to be unacceptable as a new building in its own right and the appellant was arguing as a fall-back position that the differences between the two buildings were not

¹ 16/00071/FUL

significant. However, as I do consider that the development is acceptable on its own planning merits, those comparisons are not necessary as the appellant does not need to rely upon a fall-back argument. The Council has not raised any issues with regard to any other matters such as drainage or biodiversity impact that cannot be addressed by way of condition.

11. There are objections to the development from local residents who refer to a number of matters including the retrospective nature of the development and this not being the first time that retrospective permission has been sought, together with light, noise, and traffic pollution issues and the building being an eyesore and not what was permitted and the precedent effect of granting planning permission in these circumstances.
12. However, it remains the case that when an enforcement notice is served, an appellant is entitled to apply under ground (a) for planning permission for the development being enforced against which is assessed on the same basis as an application for a planning proposal. There is therefore no precedent effect in the sense that any appellant can apply for planning permission when served with an enforcement notice. The history of the site in terms of how any previous decisions have been reached and how the site has evolved are not matters that I can consider in assessing the planning merits of this particular building in this location. The Council in serving the notice has not alleged harm to living conditions of nearby occupiers as a result of any cumulative impact arising from the appeal building due to light, noise and traffic issues.
13. For the reasons given, I have found that the development does not harm the character and appearance of the area. It is therefore not in conflict with Policy 21 of the South Worcestershire Development Plan (SWDP), which amongst other things, refers to materials, scale and massing of development respecting the character of the area. There is also no conflict with Policy SWDP 25 which requires development to be appropriate to and integrate with the character of the landscape setting.
14. I find no conflict with Paragraph 134 of the National Planning Policy Framework (the Framework) which states that development should be refused which is not well designed especially when it fails to reflect local design policies. For similar reasons, I find Paragraph 174 of the Framework to be less relevant than other policies which address the building's location within a defined site rather than references to the intrinsic beauty of the countryside. The development is not in conflict with Paragraph 130 of the Framework which states the development should be sympathetic to the local character including the surrounding built development and landscape setting.

Conditions

15. The Council had suggested conditions and the appellant was given the opportunity to comment upon them. Conditions relating to plans and submission of materials are not necessary when the development already exists and I have found the appearance to be acceptable. Other suggested conditions relate to landscaping, drainage, lighting and limiting use of the permitted building to residents only. The conditions relating to landscaping and drainage have similar wording. They are drafted in this form because, unlike an application for planning permission for development yet to commence, in the case of a retrospective grant of permission it is not possible to use a negatively worded condition precedent to secure the subsequent approval and

implementation of the outstanding matter because the development has already taken place. Should the requirements of the condition not be met in line with the strict timetable, then the building would have to be removed. A drainage condition is required to ensure adequate drainage and to minimise flooding. A landscaping condition is required to enhance the character and appearance of the area. A condition to restrict use of the building to residents for educational purposes provides certainty. A condition to prohibit external lighting being attached to the permitted building is appropriate and forms part of the ecology survey² recommendations in ensuring that external lighting does not deter use of the area by wildlife including bats and birds.

Conclusion

16. For the reasons given above, I conclude that the appeal succeeds on ground (a). I shall grant planning permission for the development as described in the notice subject to conditions.

Formal Decision

17. The appeal is allowed, the enforcement notice is quashed and planning permission is granted on the application deemed to have been made under section 177(5) of the 1990 Act as amended for the development already carried out, namely the erection of a building as shown on the plan attached to the notice and subject to the following conditions:

1. The development hereby permitted shall be demolished and all materials resulting from the demolition shall be removed within 4 months of the date of failure to meet any one of the requirements set out in i) to iv) below:
 - i. Within 3 months of the date of this decision a scheme for landscaping including details of existing trees to be retained and size, species, planting heights, densities and positions of any soft landscaping, shall have been submitted for the written approval of the local planning authority and the scheme shall include a timetable for its implementation.
 - ii. The scheme shall also include a schedule of proposed planting indicating species, sizes at time of planting and numbers/densities of plants.
 - iii. a schedule of maintenance including watering and the control of weed growth for a minimum period of five years from first planting.
 - iv. If within 5 months of the date of this decision the local planning authority refuse to approve the scheme or fail to give a decision within the prescribed period, an appeal shall have been made to, and accepted as validly made by, the Secretary of State.
 - v. If an appeal is made in pursuance of iv) above, that appeal shall have been finally determined and the submitted scheme shall have been approved by the Secretary of State.
 - vi. The approved scheme shall have been carried out and completed in accordance with the approved timetable.

² Ecological Survey by Elizabeth McKay September 2021

- b. Upon implementation of the approved scheme specified in this condition, that scheme shall thereafter be maintained and retained for the life of the development
 - c. In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.
- 2. The development hereby permitted shall be demolished and all materials resulting from the demolition shall be removed within 4 months of the date of failure to meet any one of the requirements set out in i) to iv) below:
 - i. Within 3 months of the date of this decision, details of foul and surface drainage incorporating sustainable drainage systems shall have been submitted for the written approval of the local planning authority and the details shall include a timetable for its implementation in the event of the approved details not forming part of the existing foul and surface drainage for the building.
 - ii. If within 5 months of the date of this decision the local planning authority refuse to approve the scheme or fail to give a decision within the prescribed period, an appeal shall have been made to, and accepted as validly made by, the Secretary of State.
 - iii. If an appeal is made in pursuance of ii) above, that appeal shall have been finally determined and the submitted scheme shall have been approved by the Secretary of State.
 - iv. The approved scheme shall have been carried out and completed in accordance with the approved timetable.
- b. Upon implementation of the approved scheme specified in this condition, that scheme shall thereafter be maintained and retained for the life of the development
- c. In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.
- 3. No external lighting shall be attached to the permitted building.
- 4. The use of the permitted building shall be restricted to educational use for the residents of the School.

E. Griffin

INSPECTOR