
Appeal Decision

Site visit made on 15 July 2022

by Lewis Condé BSc (Hons), MSc, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12 August 2022

Appeal Ref: APP/D1835/W/22/3295352

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 under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Mr Jabran Khalid against the decision of Worcester City Council.
 - The application Ref 21/00937/VARCO, dated 12 October 2021, was refused by notice dated 11 March 2022.
 - The application sought planning permission for the 'proposed erection of a new dwelling' without complying with a condition attached to planning permission Ref 20/00088/FUL, dated 29 September 2020.
 - The condition in dispute is No 2 which states that: 'The development hereby permitted shall be carried out in accordance with the following approved plans: General Layouts Drawing No. 1801-P-011'.
 - The reason given for the condition is: In the interest of certainty.
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Decision

1. The appeal is allowed and planning permission is granted for the erection of a new dwelling at Rose Villa, Nunnery Lane, Worcester, WR5 1RG without complying with condition 2 previously attached to planning permission Ref 20/00088/FUL, dated 19 January 2021, but subject to the conditions set out in the attached Schedule.

Application for Costs

2. An application for costs has been made by the appellant and is subject to a separate decision.

Preliminary Matters

3. The decision date of the planning permission (ref: 20/00088/FUL), in the banner heading above, is taken from the appellant's submitted application form. However, that planning permission was granted on 19 January 2021, via appeal¹.
4. Development at the site has commenced, however, works that have been undertaken are of a different design to that approved under permission 20/00088/FUL. Retrospective permission is therefore sought to vary condition 2. Given that I am assessing the proposal on the plans, any differences between that and what has been constructed are for the main parties to address as necessary.

¹ APP/D1835/W/20/3260790

Main Issues

5. The main issues are

- the effect of the development proposed on the character and appearance of the surrounding area, including its effect on a designated Green Space; and
- the effect of the development on biodiversity.

Reasons

6. The appeal site is located on Nunnery Lane, which is residential in nature and largely characterised by a mix of detached and semi-detached dwellings. Dwellings on Nunnery Lane are not consistent in style or appearance, with significant variations in scale, form, and architectural detailing.
7. The appeal scheme relates to a large, detached, three storey property that although substantially complete remains under construction. The building, as previously approved, was of a contemporary design that is visually unlike any of the nearby neighbouring properties. Its location on Nunnery Lane, alongside its scale means that it is prominent within the streetscene.
8. Several changes to the design of the approved scheme are proposed. However, the location of the dwelling, its footprint and general overall scale would be consistent with the previously approved scheme.
9. The reduction in height of the front gables together with changes to fenestration on the front elevation are relatively modest alterations. These completed alterations to some extent result in the building appearing less physically imposing. Similarly, the removal of a chimney stack and increase in height of the porch roof do not significantly alter the form of the building. Given the modest nature of these changes they do not harm the character of the surrounding area.
10. Other changes to the rear rooflights, ground floor door and window arrangements, as well as the use of alternative paving in the rear garden are minor in nature. These alterations are also not clearly visible from public vantage points and therefore have little discernible impact on the character and appearance of the area.
11. Collectively, whilst the proposed changes are numerous, they would have little meaningful effect on the scheme as a whole. In that context and given the variety in the surrounding context, the appeal scheme therefore accords with Policy SWDP21 of the adopted South Worcestershire Development Plan (2016) (SWDP), which amongst other matters, seeks for developments to be well designed, integrate effectively with its surroundings. Similarly, the development would align with the approach in the National Planning Policy Framework (the Framework) in respect of design.
12. I recognise that the appeal site is locally designated as a 'Green Space' within the SWDP. Policy SWDP38 seeks to protect, both private and public, designated Green Spaces from development. Various exceptions criteria are listed under the policy, but none are applicable to the proposed development. Consequently, the appeal scheme conflicts with Policy SWDP38.

13. However, two previous permissions have been granted for dwellings on the appeal site. The appeal proposal does not seek to alter the location of the dwelling on the site, its overall footprint, or general scale from the previous permission (ref 20/00088/FUL). The design changes would result in alterations to the dwelling's overall appearance as reasoned above. However, this would not have a significantly greater impact on the Green Space than the permission previously approved. Consequently, despite the conflict with Policy SWDP38, material considerations indicate that a decision should be taken other than in accordance with the development plan.

Biodiversity

14. The Council refer to conflict with policy SWDP22, which, amongst other matters seeks to ensure that development conserves on-site biodiversity and corridors/ networks. The Council's appeal statement explains at paragraph 5.2 that *'the cumulative visual impact of the proposed changes from the approved plans would have a detrimental impact on the character of the area and the wider green network to the detriment of biodiversity in terms of the proposed boundary treatment as built which blocks movement of protected species along the green corridor to the green space and woodland'*. There are also representations before me on this matter.
15. Nevertheless, there is a lack of evidence in support of that position. It is unclear how the 'visual impact' of the proposal would be to the detriment of any green corridor/ network, noting that I have reasoned above that the footprint of the proposed dwelling would match that already approved. There is no substantive evidence before me pointing towards the particular ecological value of the site, and in my view, as previously, suitable landscaping and planting would be capable of mitigating adverse effects. In that context the proposal, subject to an appropriately worded condition, would comply with the provisions of policy SWDP22.

Other Matters

16. From my observations on site, the changes to fenestration arrangements would not result in significantly different implications in respect of the living conditions of neighbouring residents with regards to privacy or outlook.
17. Concerns have been raised by residents that various features outlined under the previously approved scheme will not be accorded with, including the sustainability credentials of the development, parking arrangements, soft landscaping, and the method of drainage. Conditions attached to the previous permission required that these matters be appropriately addressed prior to occupation of the dwelling. The appeal before me does not seek to alter or remove these requirements.
18. The appeal scheme has been determined against the submitted plans. Should the development deviate from these it will be within the Council's gift as to whether to take any action. Likewise, any breaches of planning, including whether relevant conditions have been suitably discharged, are separate matters.
19. I appreciate that people react differently to development, acknowledge the planning history to the site, and empathise with the personal circumstances of

a neighbouring occupant detailed in the representations before me.² Nonetheless, as reasoned above the scheme before me would nonetheless be acceptable, and the concerns put to me in that respect relate to uncertainty, delays and conduct on site (matters which are principally addressed outwith of planning through other regimes). As such, I am of the view that any implications in terms of human rights or equalities of allowing the appeal, subject to appropriate conditions, would be appropriate and proportionate. Consequently, no other matters are sufficient to outweigh my overall finding that the development proposed would be acceptable.

Conditions

20. Allowing the appeal grants a new planning permission. The Council has suggested a list of conditions that primarily replicates those that were attached to the previous planning permission. I have considered the suggested conditions and amended only as necessary in the interests of precision, clarity and to comply with advice within the Planning Practice Guidance (PPG).
21. As the development has already commenced, it is not necessary to impose a standard time limit condition. It is necessary to attach a condition specifying the approved plans in the interest of clarity and certainty.
22. A condition requiring renewable and/or low-carbon measures to be agreed prior to the occupation of the dwelling is needed to ensure appropriate energy efficiency requirements are met, as per the requirements of Policy SWDP 27. A condition requiring provision of parking and turning facilities as well as visibility splays is necessary in the interests of highway safety. Conditions relating to landscaping are necessary to protect the character and appearance of the area, as well as in relation to biodiversity. Details of a surface water drainage system are needed to reduce the risks of flooding.
23. A condition is also required to control extensions to the property and for outbuildings and is justified within the terms of the PPG. This is to prevent the further loss of land around the property, due to the site's designation as Green Space, as well as the importance of space around the building.
24. The Council has suggested a condition requiring the removal of the front boundary wall that has been erected at the appeal property. From the evidence before me the boundary wall did not form part of the appeal proposal, while it is unclear whether it requires planning permission. Consequently, the imposition of such a condition would be unreasonable.

Conclusion

25. For the reasons outline above, having regard to the development plan as a whole and to all other material considerations, the appeal is allowed. I shall therefore grant a new planning permission with condition 2 varied and subject to the additional conditions below.

Lewis Condé

INSPECTOR

² Including with reference to the Human Rights Act 1998 and the Equality Act 2010.

SCHEDULE OF CONDITIONS

- 1) The development hereby permitted shall be carried out in accordance with the following approved plans: General Layouts Drawing No: 1801-P-01 P.
- 2) 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 have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details, which shall be retained as such thereafter.
- 3) 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-01 P have been provided. These areas shall thereafter be retained and kept available for their respective approved uses at all times.
- 4) 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.

Any trees or plants detailed in the agreed 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.

- 5) 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 agreed 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.

- 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 associated with the dwelling hereby permitted shall be created.