



Appeal Decision

Site visit made on 3 May 2023

by James Blackwell LLB (Hons) PGDip

an Inspector appointed by the Secretary of State

Decision date: 21st July 2023

Appeal Ref: APP/J1860/C/22/3302269

Land adjacent to numbers 7 & 9 Hospital Bank, Malvern WR14 1PQ

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended.
- The appeal is made by Mr Paul Wild against an enforcement notice issued by Malvern Hills District Council.
- The notice, numbered ENF/20/0163, was issued on 6 June 2022.
- The breach of planning control as alleged in the notice is "Without planning permission, the unauthorised engineering operations consisting of the change in ground levels and the operational development consisting of the erection of retaining walls, the erection of brick piers, and the creation of a vehicular access on the land edged red on the attached plan".
- The requirements of the notice are to: "5.1 Permanently remove the unauthorised hardcore, brick piers and retaining walls; 5.2 Permanently remove all building materials and rubble arising from compliance with 5.1 from the land edged red on the attached plan; 5.2 Reinstate the garden and restore the land to its previous condition before the breaches took place".
- The period for compliance with the requirements is within 6 calendar months beginning with the date on which the notice takes effect.
- The appeal is proceeding on the grounds set out in section 174(2)(a), (f) and (g) of the Town and Country Planning Act 1990 as amended. 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 Decision

1. The appeal succeeds in part and the enforcement notice is upheld with the corrections and variations in the terms set out below in the Formal Decision.

Formal Decision

2. It is directed that the enforcement notice is corrected by:
 - a) deleting the word "unauthorised" from paragraph 3;
and varied by:
 - b) deleting steps 5.1, 5.2 and 5.2 from paragraph 5; and
 - c) inserting the following new steps at paragraph 5:
 - 5.1 Reinstate the land to its former ground levels prior to the breaches taking place;
 - 5.2 Remove the newly erected brick piers and reinstate the Malvern stone front boundary wall to its condition before the breaches took place;

- 5.3 Remove the newly created vehicular access;
 - 5.4 Reinstate the pedestrian path from the road to the front entrance to the adjacent properties; and
 - 5.5 With the exception of the newly constructed retaining walls, reinstate the garden to its previous condition before the breaches took place so that all areas formerly laid to grass have been re-seeded with grass and all plants previously in situ have been replaced with plants of similar size and species.
- f) deleting the words “within 6 months beginning with the date on which this notice takes effect” from paragraph 6; and
- g) inserting the following new provisions under paragraph 6:
- 6.1 Steps 5.1, 5.2, 5.3 and 5.4 within 6 months from the date on which this notice takes effect; and
 - 6.2 Step 5.5 within 18 months from the date on which this notice takes effect.
3. Subject to these corrections and variations, the enforcement notice is upheld.

Preliminary Matters

4. I have used the site address from the appeal form for the purpose of the banner heading above, as this more accurately describes the appeal site.
5. The steps required by the Enforcement Notice (EN) do not properly align with the matters alleged to constitute the breach. Nonetheless, the EN does include a general requirement to “reinstate the garden and restore the land to its previous condition before the breaches took place”. The appellant should therefore have been able to understand, with a reasonable degree of certainty, what steps are required to remedy the alleged breaches of planning control, particularly when these steps are read in conjunction with the reasons for issuing the EN. In turn, I do not consider the EN to be null or invalid. This approach is consistent with the principle established in the *Miller-Mead*¹, in which it was held that the bar for nullity should not be set too low.
6. Nonetheless, it is appropriate to make the corrections and variations set out above to remove any element of doubt, and to assist with its overarching precision and clarity. These corrections and variations do not make the requirements any more onerous on the appellant than previously worded, as they go no further than the catch-all requirement to restore the land to its previous condition. In turn, they would not cause injustice to the appellant.
7. The matters alleged to constitute the breach of planning control set out in the EN include the “creation of a vehicular access”. However, the steps required to remedy the breach as drafted do not include an explicit requirement to remove the vehicular access. The appellant therefore contends that planning permission for the vehicular access shall be treated as having been granted, by virtue of s173(11) Town and Country Planning Act (1990) (TCPA). However, as soon as the requirement to restore the land to its previous condition before the breaches took place is carried out, the restoration of the front boundary wall

¹ Miller-Mead v MHLG [1963] 2 WLR 225

would physically prevent vehicular access. In turn, my variation to the requirements to permanently remove the vehicular access would not cause injustice to the appellant, as the outcome would be the same in any event. I have proceeded on this basis.

GROUND A – DEEMED PLANNING APPLICATION

Main Issues

8. The main issues are:

- the effect of the development on the character and appearance of the area, including the Trinity Conservation Area; and
- whether the development preserves or enhances the setting of Redwood House, a grade II listed building.

Reasons

Trinity Conservation Area

9. The appeal site comprises the frontage of two residential dwellings along Hospital Bank, a short residential cul-de-sac which sits within the Trinity Conservation Area (CA). The dwellings form part of a larger terraced block of properties, which is prominent along the road due to its elevated height and broadly open frontage. Many of the properties along the road are bordered by Malvern stone boundary walls, which are typical of the area. Frontages to properties are also abundant with mature trees and hedgerows. This gives the road a strong degree of verdancy, which contributes positively to its overarching character.
10. Prior to the development taking place, photos demonstrate that the appeal site was predominantly laid to grass, which was raised from street level. It was enclosed by a front boundary wall constructed in Malvern stone, which included a small opening providing access to a pedestrian path leading up to the entrance of the dwellings. These features were typical of the attractive qualities of the area and the CA, thereby contributing positively to its character.
11. The CA Character Appraisal and Management Strategy² (CA Appraisal) highlights the importance of Malvern stone to the special architectural and historic interest of the CA. It says “the current consistent boundary treatment should be retained wherever possible, and new development encouraged to use the same form. At present the use of Malvern stone walling for boundaries is a key element in the character of the area. The retention of these features is vital to the continued special interest of the area”. Contrary to the objectives of the CA Appraisal, the development has removed a substantial section of the Malvern stone front boundary wall to accommodate a new vehicular driveway. Its loss detracts from the architectural and historic interest of the CA, and in turn, harms its overarching character. The driveway has also been flanked by red brick piers which are notably wider than other brick piers in the immediate area. In turn, they sit uncomfortably with other boundary treatments along the road, which amplifies the harm.
12. The retaining walls, which are constructed from breeze blocks, also contrast sharply with the use of Malvern stone which is typical to the area. However,

² Malvern Hills District Council, Trinity Conservation Area, Appraisal and Management Strategy (2009)

subject to the requirements of the EN being complied with, the retaining walls would be hidden by the reinstated ground levels. In turn, this particular component of the development would have a neutral impact with regard to the character and appearance of the area, and to the wider CA.

13. The CA Appraisal also highlights the importance of green infrastructure to the overriding character of the CA. It says "mature trees, garden shrubs and hedges are similarly vital and should be retained wherever possible. Removal of green spaces and trees, particularly to the front of properties should be avoided and where necessary an appropriate landscaping scheme should be in place to mitigate against the removal of such features". Contrary to this guidance, the new driveway has eradicated the grassed areas which formerly fronted the dwellings. This loss of green space undermines the prevailing verdant credentials of the CA.
14. Whilst I acknowledge the proposed landscaping would reintroduce some grass to the appeal site, this would be limited to a relatively small area to the west of the site. In turn, it would not adequately compensate for the extensive loss of green space across the remainder of the site. Moreover, it would not overcome the harm arising from the loss of Malvern stone wall. This means the landscaping scheme would not properly mitigate the harm to the CA.
15. For the reasons outlined, the development harms the character and appearance of the area. In turn, it fails to preserve the character and appearance of the CA. Whilst I consider the harm to be less than substantial, as per paragraph 199 of the Framework, great weight must be afforded to any harm to a heritage asset, irrespective of whether such harm is less than substantial or otherwise. Paragraph 202 of the Framework goes on to say that where a proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal.
16. The appellant contends that the introduction of the driveway creates off-street parking for two vehicles, which helps reduce pressure on public parking along the road. Whilst this may be the case, the driveway opening reduces the extent of available on-street parking. This means the scheme ultimately leads to a net increase of just a single space. This benefit alone is not sufficient to outweigh the great weight which must be attributed to the harm to the CA.
17. In turn, the development conflicts with Policy SWDP21 of the South Worcestershire Development Plan (2016) (Development Plan), which seeks to ensure new development achieves high quality design which integrates effectively with its surroundings. In particular, this policy says materials should be high quality and appropriate to their context. The development conflicts with Policy SWDP6 of the Development Plan, which requires development to conserve and enhance heritage assets and their settings, which in this case includes the CA. The development conflicts with Policy MD1 of the Malvern Town Neighbourhood Plan (2019) (Neighbourhood Plan) which says development should respond to and reflect local character and should integrate positive attributes within the area into its design. Finally, the development conflicts with the objectives of paragraphs 193, 194 and 196 of the Framework, all of which seek to safeguard heritage assets.

18. For completeness, I have had special regard to the desirability of preserving the CA and its setting, in line with my statutory duty under section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990.

Redwood House

19. The appeal site is bordered to the east by Redwood House, a grade II listed building, which was formerly known as Malvern Rural Hospital. The dwellings which are served by the appeal site form of a larger terraced block, which is understood to have been used as nurses' accommodation in conjunction with the hospital. The appeal site therefore has a clear historical link to Redwood House, which contributes to its significance. Visually, the appeal site is also part of the immediate setting to the hospital, given its close proximity.
20. Prior to the development, the extensive areas of grassed land within the appeal site provided an attractive sense of verdancy to the setting of the hospital. As with the CA, the loss of these grassed areas detracts from the verdant quality of the land surrounding the hospital, thereby causing harm to its setting. As above, the proposed landscaping, which is limited in scope, would not adequately compensate for this harm.
21. I acknowledge that the development does, to some degree, echo the properties neighbouring the hospital to its east which encompass driveways. However, these dwellings are much less prominent in the street-scene, as they are located at the very end of the cul-de-sac. Conversely, the frontages to nos. 3 to 11 Hospital Bank are readily seen on the approach to Redwood House from the main road, and therefore make a greater contribution to its setting. Irrespective of any mirroring of the driveways elsewhere along the road, the appeal site's loss of verdancy is therefore especially prominent, and is therefore harmful regardless.
22. On account of these factors, the development harms the setting of Redwood House. As with the CA, I find this harm to be less than substantial, however, as highlighted, great weight must be attributed to this harm. Once again, there are no public benefits which would be sufficient to outweigh this harm. In turn, the development conflicts with Policy SWDP6 of the Development Plan, the content of which is outlined above. Similarly, it conflicts with the objectives of paragraphs 193, 194 and 196 of the Framework insofar as they seek to safeguard heritage assets. Once again, I have had special regard to the desirability of preserving this heritage asset and its setting, in line with my statutory duty under s66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990.

GROUND F – REQUIREMENTS

23. As per s173(4) of the Town and Country Planning Act 1990, the purpose of the EN is to remedy the breach of planning control. The requirements set out in the notice must therefore achieve this purpose.
24. The proposed landscaping would not achieve the purpose of the notice, as the breaches would still remain. In any event, the identified harm in this instance primarily relates to the loss of the Malvern stone and to the loss of verdancy. As highlighted, the landscaping scheme would not overcome this harm, as the loss of Malvern stone wall would remain and the scheme would fail to adequately compensate for the extensive loss of green space across the site.

Even if the purpose of the EN was to remedy injury to amenity, the landscaping scheme would therefore still not achieve this purpose.

25. Nonetheless, the Council does accept that the retaining walls may be required to ensure the ongoing stability of the appeal site. I could also see evidence of land slippage on my site visit, supporting this position. In turn, I agree that the retaining walls should remain. Moreover, their retention should not adversely affect the CA nor the setting of Redwood House, as subsequent planting would mean they would not be seen. I have therefore deleted the requirement to remove these walls. Upon compliance with the EN, planning permission will therefore be treated as having been granted for these walls, by virtue of s173(11) of the Town and Country Planning Act 1990 as amended. In this regard, the appeal on ground (f) succeeds.
26. Notwithstanding the above, the appellant has presented little substantive evidence to support their argument that structurally, it would not be possible to reinstate the land to its former condition prior to the breach. Without evidence to support this supposition, I see no reason why the appeal site could not be restored to its former condition, at least in a visual sense, particularly if the retaining walls were to remain.
27. As set out in the preliminary matters to this decision, I have made a number of corrections and variations to the EN, to ensure that the requirements properly align with the alleged breaches of planning control. These variations include greater detail and precision with regard to the requirements. As highlighted, these alterations would not cause injustice to the appellant, given that the EN already required the land to be restored to its condition prior to the breach. The varied requirements go no further than this.
28. To the extent outlined above, the appeal on ground (f) therefore succeeds.

GROUND G – TIME FOR COMPLIANCE

29. The appellant contends that a longer period for compliance should be allowed to give sufficient time for a further planning application to be prepared, submitted and determined by the Council. However, there are no guarantees that any such application would be approved by the Council, so this would not be reason in itself to extend the time period for compliance. In the circumstances, a period of 6 months seems reasonable.
30. Nonetheless, the Council concedes that a longer period for compliance may be appropriate with regard to any necessary planting or re-seeding, to ensure this is carried out during a suitable time of year. I have therefore extended the time for compliance with regard to this particular requirement. The appeal on ground (g) therefore succeeds to that extent.

Conclusion

31. The requirement to remove the retaining walls should be deleted. The appeal on ground (f) succeeds to that extent. The appeal on ground (g) also partly succeeds, to allow any re-seeding to take place during the appropriate planting season. However, for the reasons outlined above, the appeal on ground (a) should not succeed. Subject to the corrections and variations outlined, I shall therefore uphold the enforcement notice and refuse to grant planning permission on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

James Blackwell

INSPECTOR