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# Appeal Decision

Site visit made on 9 May 2024

**by Lewis Condé BSc, MSc, MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 25 June 2024**

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**Appeal Ref: APP/J1860/W/23/3333698**

**Land At (OS 7558 5996), Martley, Worcestershire WR6 6QA**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
  - The appeal is made by Mr Richard Banks against the decision of Malvern Hills District Council.
  - The application Ref is M/23/01165/FUL.
  - The development proposed is erection of detached three bedroom dwelling.
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## Decision

1. The appeal is dismissed.

## Applications for costs

2. The appellant has made an application for the award of costs against Malvern Hills District Council. This is subject to a separate decision.

## Preliminary Matters

3. The site address in the banner heading above has been taken from the appeal form, as opposed to the original application form, as this provides a more detailed and accurate location of the site.
4. The Council's third reason for refusal related to the lack of a mechanism to secure a financial contribution towards the delivery of off-site affordable housing. However, during the appeal an appropriately executed Unilateral Undertaking (UU) was submitted by the appellant which includes a financial obligation towards the provision of off-site affordable housing. I have taken this into account in my decision.

## Main Issues

5. The main issues are:
  - Whether the proposal would preserve or enhance the character or appearance of the Martley Conservation Area; and
  - The effect of the proposal on highway safety.

## Reasons

### *Martley Conservation Area*

6. The appeal site is a gently undulating parcel of land located to the north of the B4204 and to the south of Ivy Cottage, within the village of Martley. The site was a former orchard but is now mainly laid to grass, it is however significantly

enclosed by a mature and dense mix of trees to its southern and western boundaries. Additionally, well-established hedges with occasional hedgerow trees run along the site's eastern and northern boundaries. This dense boundary vegetation significantly restricts views of the appeal site from many public vantage points.

7. To the south of the site is an area of car parking, which lies adjacent to the B4204, with the highway curving around to the west of the appeal site. Access to the site is via 'Butchers Lane' (a private driveway) off the B4204 that serves a small number of existing dwellings. A public right of way runs along Butchers Lane.
8. The village of Martley is located within a rural setting, with the village principally surrounded by an open and undulating landscape of hills and agricultural land. The appeal site is located within the Martley Conservation Area (the CA) near its historic core. From my observations on site and the evidence before me, the CA's significance is largely derived from the quality of its buildings, including several listed buildings. Although buildings in the CA vary in age and precise design, many display a traditional rural vernacular and employ the use of natural, local building materials thus resulting in a harmonious relationship. Of equal importance, however, are the open spaces, including spaces between buildings, which give the village a loose knit character and spacious quality. An abundance of trees, hedgerows, and vegetation also results in this part of the CA having a pleasant and verdant character which contributes positively to its significance.
9. The Martley Conservation Area Appraisal (the MCAA) (adopted 2006) has not been updated for many years. Nevertheless, I find that it still provides an accurate reflection of the qualities of the CA.
10. Despite suggesting that the MCAA cannot be readily relied upon, the appellant puts forward that the appeal site is identified within the MCAA as only having a 'neutral' contribution to the conservation area. However, the MCAA's text when referring to the open space immediately to the south of Ivy Cottage (at page 5) is somewhat ambiguous. Notably, the wording seems to suggest that it is the car parking area (adjoining the appeal site) that only makes a neutral contribution. Indeed, the MCAA goes on to state that the former orchard to the south of Ivy Cottage, though privately owned and inaccessible to the public, forms a unique part of the CA. The importance of areas of open space as a feature of the CA is also emphasised in the MCAA.
11. In any case, from my own observations on site, I find the appeal site to have a pleasing, verdant quality that adds to the rural nature of the CA. It also provides a sense of informality and spaciousness to the CA, adding to its loose knit character. Although largely screened by mature vegetation, it remains that views of the site are available from the public right of way along Butchers Lane.
12. Indeed, the appellant's Heritage Statement and Impact Assessment (HSIA) acknowledges that the site is prominently located in the most historic part of the CA and that it contributes to the open green space at the heart of the CA, whilst also contributing to an understanding of the village's historical evolution. Although suggesting that the development is unlikely to diminish further the overall significance of the site, the HSIA states that the loss of the open space is regrettable.

13. Regardless of whether the design of the proposed dwelling reflects the architectural characteristics of the nearby historic built form, I find that the development of a dwelling on the site would have an urbanising impact. It would erode the verdant and open nature of the appeal site that positively contributes to the character of the CA. Despite views of the proposal being somewhat limited, it would nevertheless, cause harm to the character and appearance of the CA.
14. Given the scale and nature of the proposed development, I find that the overall harm to the CA would be modest. In the context of the Framework, it would amount to 'less than substantial harm'.
15. The Framework states that great weight should be given to the conservation of heritage assets. Any harm to the significance of a designated heritage asset therefore requires clear and convincing justification and in accordance with paragraph 202 of the Framework, I must weigh the harm against the public benefits of the proposal.
16. The proposed development would make a very limited contribution to housing provision, whilst there would be socio-economic benefits associated with the delivery of a new dwelling, including a financial contribution towards the delivery of off-site affordable housing. However, given the scale of the proposal such benefits would be limited and do not outweigh the harm to the designated heritage asset.
17. Therefore the proposal would fail to preserve the character and appearance of the Martley Conservation Area. Accordingly, the proposal conflicts with Policies SWDP 6 and SWDP 24 of the South Worcestershire Development Plan (adopted 2016) (the SWDP), and Policy MKD2 of Martley, Knightwick and Doddenham Neighbourhood Development Plan (Made 2018) (the Neighbourhood Plan). Together these policies, amongst other matters, seek to ensure that new developments conserve and enhance the character and significance of Martley Conservation Area.

#### *Highway Safety*

18. Vehicular access to the site would be from Butchers Lane, off the B4204. Although the lane is rather narrow in parts, I am satisfied that there is sufficient forward visibility along the lane and appropriate spaces to enable vehicles to pass without needing to reverse out onto the B4204. Likewise, given the visibility along the lane and the speeds at which vehicles are likely to be travelling I do not consider the proposal would result in any significant risks to the safety of pedestrians utilising the public right of way.
19. Existing visibility splays from Butchers Lane onto the B4204 are significantly hindered to the east by the presence of a neighbouring property and its retaining boundary wall, including an associated planter with vegetation. Therefore, the Council's suggested requirement of a visibility splay of 2.4m (x) 43m (y) cannot be achieved.
20. The appellant, however, advances that a reduced visibility splay is justifiable, having regard to actual vehicle speeds along the B4204 and advice contained within Manual for Streets 2 (MfS2). A week-long speed survey, undertaken by the appellant's transport consultant, indicates that the 85<sup>th</sup> percentile speeds along the B4204 in this location are slightly below the 30mph speed limit.

Based upon the speed survey data, the transport consultant's note indicates that this would equate to an appropriate visibility (Y) distance of 37m and sight stopping distance of 39m, having regard to MfS2 criteria.

21. Even if I were to accept the appellant's arguments that a 2m X Distance (offset 0.8m from the carriageway edge) was suitable at this junction, the identified 37m (Y) visibility to the east would still not be achieved. This is regardless of whether the highway authority ensures that any vegetation on the highway land is maintained at a maximum of 0.6m in height.
22. I recognise that MfS advises that a reduction in visibility below recommended levels will not necessarily be a problem, however, it is ultimately a matter of judgement whether the standard of access is suitable. Based on my observations on site and the evidence before me, I am not convinced that there is suitable justification for the reduced level of visibility.
23. Notably, whilst data from Crashmap or Worcester County Council may not reveal any records of accidents at this junction within the last five years, the data would not necessarily account for unreported incidents, while it is unclear whether there have been accidents in preceding years. A lack of previous recorded accidents therefore does not persuade me that an appropriate level of visibility would be provided.
24. Additionally, although the existing access driveway already serves a small number of other dwellings and the proposal would likely give rise to only a limited number of additional vehicle trips, this again does not overcome the fact that the visibility splay at the junction to the B4204 is sub-standard (even if the vegetation on highway land were to be maintained). Nor does it justify the proposed intensification of use.
25. In the absence of suitable visibility there is an increased risk of collision between vehicles exiting the site onto the B4204 and passing vehicles. As such, I find that the proposed development would have an unacceptable impact on highway safety. It therefore conflicts with Policies SWDP 4 and SWDP 21. Together these policies, amongst other matters, seek to ensure that development proposals are provided with appropriate access and are not detrimental to highway safety.
26. In respect of this main issue, the proposal would also conflict with the aims of the Framework, notably paragraph 115, which seeks to prevent development that would have an unacceptable impact on highway safety.

### **Other Matters**

27. As indicated the appellant has submitted a signed UU, this would provide a financial contribution towards the provision of off-site affordable housing. The financial contribution of £12,797<sup>1</sup> is in line with that calculated by the Council as being required having regard to Policy SWDP15 and the Council's Affordable Housing Supplementary Planning Document (SPD) (adopted 2016). The policy and SPD together set out the Council's adopted approach to securing affordable housing, which includes that sites of less than five dwellings should provide a financial contribution towards the provision of affordable housing.

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<sup>1</sup> Linked to Retail Price Index

28. The appellant has not contested the need to provide the financial contribution towards affordable housing. Based upon the evidence before me, I consider that this obligation would be fairly and reasonably related to the development proposed and that it passes the statutory tests contained in Regulation 122 of The Community Infrastructure Levy (CIL) Regulations 2010. The affordable housing contribution has therefore also been considered as a benefit in the planning balance.
29. Both main parties have referred to previous historic appeal decisions at the site. I have limited details of those previous schemes. However, given the passage of time since those appeal decisions there are likely significant changes to the physical context of the appeal site and its surroundings, including the use of the site as an orchard, maturity of vegetation and the surrounding highways network. Additionally, the current appeal scheme is seemingly of an alternative design to that proposed under the previous appeals. As such, the previous appeal decisions referred to have not been determinative in my findings.
30. I note the appellant's frustration with the way that the Council dealt with the original application. The appeal though has been determined on its own merits.

### **Planning Balance**

31. I have identified conflicts with development plan policies relating to highway safety and that seek to protect designated heritage assets. The scheme therefore conflicts with the development plan when taken as a whole.
32. It is common ground that the Council is unable to demonstrate a 5-year supply of deliverable housing sites, as such, paragraph 11(d) of the Framework is engaged.
33. This states that where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date, permission should be granted unless one of the two limbs of paragraph 11(d), (i) or (ii), indicates otherwise.
34. In this instance, I have found the harm to designated heritage assets would outweigh the public benefits of the scheme. Accordingly, the application of policies in the Framework that protect designated heritage assets provide a clear reason for refusing the proposed development in accordance with paragraph 11(d)(i). As such, the presumption in favour of sustainable development does not apply.

### **Conclusion**

35. The proposal would conflict with the development plan when taken as a whole and material considerations, including the Framework, do not indicate that a decision should be made other than in accordance with it. The appeal is therefore dismissed.

*Lewis Condé*

INSPECTOR