



Appeal Decision

Site visit made on 21 October 2024

by U P Han BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12 November 2024

Appeal Ref: APP/D1835/W/24/3347107

220 London Road, Worcester WR5 2JR

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 (as amended) for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Lilly Pad Ltd against the decision of Worcester City Council.
 - The application Ref is 24/00183/FUL.
 - The application sought planning permission for the erection of single detached dwelling with associated highways works (variation of condition 2 of planning approval 19/00409/FUL - various alterations to the external appearance of the dwelling and associated works) without complying with conditions 1, 2, 4 and 9 attached to planning permission Ref 22/00714/FUL, dated 29 November 2022.
 - The conditions in dispute are Nos 1, 2, 4 and 9 which state that:
 - No 1 - The development hereby permitted shall be carried out and completed in accordance with the following approved plans and associated documents and the specifications and recommendations contained therein, except where otherwise stipulated by conditions attached to this permission - Previously Approved and Proposed Block Plan (Drawing No: 1912-01H), Previously Approved and Proposed Elevations (Drawing No: 1912-3C), Previously Approved and Proposed Floor Plans (Drawing No: 1912-02H), Proposed Cycle Storage Details (Drawing No: 1912BR-01a), Proposed Landscaping Plan (Drawing No: 1912BR-04A); and
 - No 2 - The approved obscurely glazed balustrade on the east, west, and north elevations of the dwelling and proposed timber wall on the north elevation of the dwelling shall be installed prior to the first use of the roof terrace and thereafter retained and maintained in perpetuity; and
 - No 4 - Prior to their first use on site, details of the proposed timber cladding materials to be used in the construction of the proposed timber wall on the north elevation of the dwelling shall be submitted to and approved in writing by the Local Planning Authority; and
 - No 9 - No live, recorded, amplified or other type of music shall be played externally anywhere within the application site.
 - The reasons given for the conditions are:
 - No 1 - To ensure compliance with the approved scheme; and
 - No 2 - To ensure the proposal preserves residential amenity and to prevent overlooking to the detriment of neighbouring amenity contrary to policy SWDP21 of the South Worcestershire Development Plan; and
 - No 4 - To ensure that the new materials are in keeping with the surroundings and/or represent quality design in accordance with policy SWDP 21 of the South Worcestershire Development Plan; and
 - No 9 - To ensure the proposal preserves residential amenity in accordance with policy SWDP21 of the South Worcestershire Development Plan.
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Decision

1. The appeal is allowed and planning permission is granted for the erection of a single detached dwelling with associated highways works (variation of condition 2 of planning approval 19/00409/FUL - various alterations to the external appearance of the dwelling and associated works) at 220 London Road, Worcester WR5 2JR in accordance with the terms of the application, Ref 24/00183/FUL, without compliance with condition numbers 4 and 9 previously imposed on planning permission 22/00714/FUL dated 29 November 2022 and subject to the conditions in the attached schedule.

Background and Main Issues

2. Planning permission was granted for the erection of a single detached dwelling at the appeal site¹. Conditions attached to this original planning permission were varied by a second planning permission granted for the erection of single detached dwelling². The appellant seeks to vary conditions 1 and 2 and remove conditions 4 and 9 of this second planning permission. The dwelling is substantially complete.
3. Condition 2 requires the approved obscurely glazed balustrade on the east, west and north elevations of the dwelling, and the timber wall on the north elevation, to be installed prior to first use of the roof terrace. However, it is clear from the evidence and my site visit that the aspects referred to in the condition are incorrect and should have referred to obscurely glazed balustrades on the east, west and south elevations of the dwelling, and a timber wall on the east elevation to the staircase.
4. The appellant's Planning Statement states that the proposal seeks not to erect the balustrade on the north and east elevation, and not to erect the timber wall to the staircase. However, the appellant's Final Comments to the appeal refer to retaining the balustrade that has been installed on the south and east elevation. My site visit confirmed that the balustrade on the south and east elevation of the dwelling have been installed. Therefore, it is the balustrade on the north and west elevation that the appellant is seeking not to erect, as well as the timber wall to the staircase.
5. The appellant seeks to remove condition 4 which relates to the submission of details for the timber cladding materials and to vary condition 1 to substitute the plans/ drawings.
6. In addition, the appellant seeks to remove condition 9 which prevents live, recorded, amplified or other type of music to be played externally anywhere within the appeal site.
7. The main issues are the effect that varying conditions 1 and 2 and removing conditions 4 and 9 would have on the living conditions of neighbouring occupiers with regard to privacy and noise and disturbance.

Reasons

8. The appeal site relates to a part two, part three storey detached house located in a predominantly residential area. The front entrance of the dwelling faces Cromwell Crescent Lane which is a narrow lane that slopes down towards

¹ 19/00409/FUL

² 22/00714/FUL

Marlborough Street. The north elevation of the dwelling faces the A44 London Road which is a busy main route into and out of Worcester city centre.

9. The purpose of condition 2 is to prevent overlooking from the roof terrace and external staircase of the appeal property upon neighbouring occupiers.
10. The west elevation of the appeal property faces the side elevation and garden of 220 London Road (No 220) which is a two-storey detached house. No 220's garden wraps around its side and rear elevation. The first floor balcony of the appeal dwelling is close to the side boundary with No 220 and already affords a significant level overlooking into No 220's garden. Further overlooking from the roof terrace of the appeal site would not be easily achievable due to the height and depth of the existing parapet wall surrounding the rooftop. Therefore, a balustrade on the west elevation of the appeal dwelling would be unnecessary for the purposes of preventing further overlooking.
11. The north elevation of the appeal property faces London Road. The nearest houses to the appeal site on the opposite side of the road are in Silverdale Avenue which runs perpendicular to London Road behind a dense screen of trees. Given the distance of the nearest dwelling in Silverdale Road to the appeal site, and the height and density of the vegetation on London Road, the north balustrade is unnecessary for the purposes of preventing overlooking. Furthermore, as discussed above, the reference to a balustrade on the north elevation in condition 2 is erroneous.
12. A third party refers to the timber wall being necessary to contain noise and disturbance that would be generated from use of the external staircase. However, the reason for condition 2 only refers to the prevention of overlooking. Furthermore, the Officer Report states that the timber wall was "originally proposed to prevent overlooking from the proposed metal staircase."
13. The external staircase to the roof terrace is on the east elevation of the appeal dwelling. The staircase mainly overlooks the car parking area of the appeal site and Cromwell Crescent Lane.
14. Lyndhurst is a two-storey detached house on the opposite side of Cromwell Crescent Lane, set back from the lane behind a wall and double gates so that overlooking of this property would be difficult to achieve from the staircase. Furthermore, the scale and position of the outbuilding and boundary wall of 45 Cannon Street (No 45) partially screen Lyndhurst from view.
15. The two-storey dwelling at No 45 is located to the south of the appeal site but a considerable distance away from the staircase. Furthermore, No 45's outbuilding and high boundary wall, which abut Cromwell Crescent Lane, largely screens its garden from view.
16. Given that the view from the staircase is generally dominated by the appeal site's own car parking spaces, Cromwell Crescent Lane and the boundary wall and blank facade of the outbuilding of No 45, timber cladding to the staircase would be unnecessary for the purposes of preventing overlooking. Consequently, condition 4 which requires details of the timber cladding materials would also be unnecessary.
17. There is nothing about the dwelling as it stands to suggest that greater control should be exercised with regard to music or sound amplification than applies

to other dwellings in the surrounding area. Music played externally at other properties, for example in a garden, could have a similar effect. While a third party suggests that sound at ground level can be more “readily absorbed” than sound from a roof top, there is no substantive evidence before me to support this statement. Noise complaints can be adequately addressed by other regulatory provisions such as the Environmental Protection Act (1990) and the Noise Act (1996). Moreover, Worcestershire Regulatory Services raise no objections to the proposal.

18. For the reasons above, I conclude that varying conditions 1 and 2 and removing conditions 4 and 9 would not have a harmful effect on the living conditions of neighbouring occupiers with regard to privacy and noise and disturbance. Hence, it would comply with Policy SWDP 21 of the South Worcestershire Development Plan (February 2016) insofar as it requires development to provide an adequate level of privacy. It would also comply with the National Planning Policy Framework (the Framework) and the South Worcestershire Design Guide Supplementary Planning Document (March 2018) with regard to creating places with a high standard of amenity.

Other Matters

19. Third parties have raised concerns about rooftop paraphernalia such as a barbecue, hot tub and shed. They have also expressed concerns about the property being let out. However, these matters are not for my consideration in the determination of this appeal.

Conditions

20. Where planning permission is granted under section 73, it is not automatically subject to the conditions which were attached to the original permission. The National Planning Practice Guide therefore advises that the conditions which continue to have effect should be restated in the interests of clarity. I will therefore impose those conditions which are from the previous permission that appear still to be relevant.
21. I have considered the further conditions suggested by the Council and have amended condition 2 to reflect the outcome of my findings and to ensure the balustrades which have been installed on the south and east elevations are retained and maintained in perpetuity. In the interests of clarity, I have updated the drawing numbers in condition 1 in line with the Council’s suggested conditions.

Conclusion

22. For the reasons above, I conclude that the appeal should be allowed and grant a new planning permission substituting conditions 1 and 2 and deleting conditions 4 and 9.

U P Han

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall be carried out and completed in accordance with the following approved plans and associated documents and the specifications and recommendations contained therein, except where otherwise stipulated by conditions attached to this permission:
Previously Approved and Proposed Block Plan (Drawing no. 1912-01I)
Previously Approved and Proposed Elevations (Drawing no. 1912-03D)
Previously Approved and Proposed Floor Plans (Drawing no. 1912-02I)
Proposed Cycle Storage Details (Drawing no. 1912BR-01a)
Proposed Landscaping Plan (Drawing no. 1912BR-04A)
- 2) The approved obscurely glazed balustrade that has been installed to the south and east aspects of the roof terrace shall be retained and maintained in perpetuity.
- 3) The proposed windows shall be fitted with high specification acoustic glass and thereafter retained and maintained in perpetuity.
- 4) The development hereby permitted shall not be first occupied until cycle parking has been installed in accordance with the approved Proposed Cycle Storage Details (Drawing No: 1912BR-01a) and thereafter the approved cycle parking shall be maintained, retained, and kept available for the parking of bicycles only.
- 5) The development hereby approved shall not be occupied until the access, including pedestrian visibility, turning area and parking facilities shown on Drawing No. 1912-01H have been provided. These areas shall thereafter be retained and kept available for their respective approved uses at all times.
- 6) All planting and seeding/turfing shall be carried out in accordance with the submitted Proposed Landscaping Plan (Drawing No: 1912BR-04A) in the first planting and seeding/turfing seasons following the first occupation of the development.

The planting shall be maintained in accordance with the approved schedule of maintenance. Any trees or plants which, within a period of five years from the completion of the planting, die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species.
- 7) Prior to the first installation of any exterior lighting on the roof terrace, a lighting scheme shall be first submitted to and approved in writing by the Local Planning Authority. This shall detail the location of any exterior lighting, the type of lighting and the times of the day that lights will be turned on.

***** End of Conditions *****