Application Number | 19/00444/FUL
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Site Address | Mayfield, 282 Malvern Road, Worcester, WR2 4PA
Description of Development | Demolition of existing dwelling and erection of a detached block of 6no. 2-bed flats and 3no. detached bungalows with associated open space, car parking and road infrastructure.
Case Officer | Colin Blundel
Applicant | Mr Lockley
Ward Member(s) | Bedwardine Ward
Agent | Mr Joe Bennett
Reason for Referral to Committee | Ward Member referral
Expiry Date | 20 December 2019
Key Issues | The principle of development and whether the proposal would be sustainable form of development having regard to the 3 dimensions of sustainable development in terms of its economic role, social role and environmental role.
Web link to application | https://plan.worcester.gov.uk/Planning/Display/19/00444/FUL
Recommendation | The Deputy Director – Economic Development and Planning recommends that the Planning Committee is minded to grant planning permission, subject to the applicant and all persons having an interest in the land entering into an agreement under Section 106 of the Town and Country Planning Act 1990 in accordance with the agreed Heads of Terms, and subject to the Deputy Director – Governance being satisfied with the nature of such an Agreement delegate to the Deputy Director – Economic Development and Planning approval to grant the necessary planning permission, subject to the conditions set out in section 9 of the report annexed at Appendix 1.

1. **Background**

1.1 The Case Officer’s report to the meeting of the Planning Committee on 19th December 2019 outlined the planning policy context for the proposal and considered relevant material considerations. At the meeting on 19th December 2019 the Planning Committee resolved that it was minded to refuse planning permission on the grounds that the proposal would be unsustainable development in relation to:

- the loss of garden land/green space;
out of character with the surrounding area, and;
- over-looking/over-bearing impact.

1.2 A copy of the previous report to the meeting of the Planning Committee on 19th December 2019 is attached as Appendix 1.

2. Procedural Matters - Purpose of the report

2.1 As the Planning Committee is minded to make a decision that is contrary to Officer's recommendation the appropriate procedure to be followed is as detailed in paragraph 11 of the Council's Good Practice Protocol for Planning Matters, contained in Part 12 of the Council's Constitution.

2.2 In accordance with paragraph 11.1 The Planning Committee cited the grounds upon which it is minded to refuse planning permission. In accordance with paragraph 11.4 the application has therefore been deferred to a future meeting of the Planning Committee. This procedure was formally agreed by the Planning Committee at the meeting on 21st July 2008 and further endorsed by the Planning Committee at the meeting on 19th April 2018 to allow Officers to consider the matters that were confirmed by the Planning Committee as grounds to be minded to refuse planning permission and to provide a professional opinion on the likelihood of being able to defend an appeal. The application should therefore be considered in light of this report and recommendations in order for the Planning Committee to reach a formal decision in accordance with the agreed procedure.

3. Comments of Deputy Director – Economic Development and Planning

3.1 Taking each of the grounds referred to I would now comment, in turn, as follows:

1. The loss of garden land/green space

3.2 The NPPF sets out the emphasis for Local Planning Authorities to resist inappropriate development of residential gardens. Whilst the rear garden is segregated from the dwelling, nevertheless it was formerly part of the garden of the host property and remains capable of being used as such. Guidance set down in the National Planning Policy Framework (NPPF) sets out a preference for development on 'brownfield' sites. Following the re-classification of garden land, private rear gardens are no longer defined as 'brownfield' sites and are classified as development on greenfield land. The principle of residential redevelopment of this site for residential use would thereby be inconsistent with the guidance set out in the NPPF. Specifically the NPPF states (paragraph 111) that:

"Planning policies and decisions should support development that makes efficient use of land, taking into account:

d) the desirability of maintaining an area’s prevailing character and setting (including residential gardens), or of promoting regeneration and change."

This guidance is a significant material consideration in the determination of any proposals for the redevelopment of this site.
3.3 At paragraphs 7.7 – 7.9 of my report to the Planning Committee on 19th December 2019 I commented as follows with regard to this aspect of the proposals:

“7.7 The definition of ‘previously developed land’ within the Glossary to the Framework specifically excludes *land in built-up areas such as residential gardens*. Therefore, as the site was formerly residential garden within a built-up residential area and is still capable of being used as such, it is not ‘previously developed’ or ‘brownfield’ land.

7.8 Whilst the efficient use of land and the use of previously developed or brownfield land is encouraged by the Framework, it does not specifically preclude development in residential gardens. Rather, paragraph 70 of the Framework says that ‘where an allowance is to be made for windfall sites as part of anticipated supply, there should be compelling evidence that they will provide a reliable source of supply. Any allowance should be realistic having regard to the strategic housing land availability assessment, historic windfall delivery rates and expected future trends. Plans should consider the case for setting out policies to resist inappropriate development in residential gardens, for example where development would cause harm to the local area.’

7.9 However, the South Worcestershire Development Plan (SWDP) does not contain any policies that specifically resist inappropriate development in residential gardens. Policy SWDP 2 of the Development Plan sets out the development strategy for the area, which, for housing, involves focussing most development on the urban areas. Part B of Policy SWDP 2 provides that windfall development is acceptable within development boundaries. Nevertheless, the Framework does indicate that, when considering the efficient use of land, the desirability of maintaining an area’s prevailing character and setting, including residential gardens, should be taken into account in decision-making.”

3.4 The NPPF does not prohibit housing sites coming forward on sites that are not in a five year supply where it is established that there is an existing adequate supply. Indeed, there is no policy which restricts housing coming forward, even if a five year supply is in existence. The application site is located in a predominantly residential area and the erection of further residential units is considered to be compatible with the adjoining land uses and is considered to be an efficient use of this land. Whilst the application site comprises land that was formerly private amenity space and is still capable of being used as such and is greenfield in nature, nevertheless the principle of the proposed development is not entirely unacceptable providing the wider impacts of the development are not adverse to a significant extent.

2. Impact on character of the surrounding area

3.5 The objection raised by the Planning Committee was that development of the site would be out of character with development in the surrounding area. The site comprises part of the rear garden of the host property and is surrounded by existing residential development on all sides and the surrounding area generally displays variety in terms of property age, design, plot size and shape and
density. The surrounding area is characterised mainly by detached bungalows in Charnwood Close and Sherwood Lane and larger detached properties along Malvern Road that are set back from the highway with large rear gardens. The rear garden of the host property is particularly generous. Along with the adjacent rear gardens the area forms a tranquil, verdant space, which adjoin the shorter rear gardens of the properties in Charnwood Close and Sherwood Lane.

3.6 Policy SWDP 13 seeks to ensure that housing development will make the most effective and efficient use of land, with housing density designed to enhance the character and quality of the local area, commensurate with a viable scheme and infrastructure capacity. Housing density will be greater on sites with a high level of accessibility, including sites located in or close to city and town centres, or close to public transport stations. Windfall housing developments will be assessed against the density criteria relevant to their location and the character of the built and natural environments around them, including heritage assets. These are consistent with the aims and objectives of the NPPF.

3.7 In addition, guidance contained in the council’s adopted South Worcestershire Design Guide SPD is also a material consideration. The SPD encourages locally distinctive design, design that reflects and enhances local character, design that incorporates contemporary and sustainable approaches to development and design that adheres to the latest best practice in layout and built form. The key objectives of the design guide are to raise the standard of residential design, create places where people want to live, incorporate sustainable design techniques, deliver a diverse mix of dwelling types, including affordable homes, and deliver adaptable housing.

3.8 The Framework states that authorities should plan for a mix of housing based on current and future demographic trends, market trends and the needs of different groups. Policy SWDP 14 states under part A that all new residential developments of five or more units, having regard to location, site size and scheme viability, should contain a mix of types and sizes of market housing. The mix will be informed by the latest Strategic Housing Market Assessment and/or other local data, for example, Neighbourhood Plans, Parish Surveys, Parish Plans and developers’ assessments. In this respect, the proposed development would comprise a mix of apartments and bungalows that would be consistent with the development of bungalows in Charnwood Close and Sherwood Lane. Whilst there would be some conflict with policy SWDP 14, nevertheless, the development would contribute towards the five year housing land supply within Worcester and the City Council’s provision of housing and, as such, this is welcomed and weighs in favour of the proposal overall. As a consequence, the development would fulfil a social role which weighs in favour of granting planning permission.

3.9 Policy SWDP 13 of the South Worcestershire Development Plan encourages the effective and efficient use of land. As amended, the proposal would achieve an average density across the scheme of approximately 18 dwellings per hectare that would be broadly consistent with the density of development in the surrounding area with higher density development within the apartment block and lower density bungalow development to the rear of the site. Housing densities vary in the area and the proposed development would not be read as
a noticeably higher density scheme or having a tighter urban grain on the ground when compared to properties in the surrounding area. Consequently, the number of dwellings proposed and the layout would sit comfortably within the site and would be in keeping with the character and appearance of the area which includes developments of varying densities.

3.10 In terms of layout, the proposed layout shows an access road leading off Malvern Road with the main apartment building located in a similar position to the existing dwelling at the front of the site with the 3no. proposed bungalows located to the rear adjacent to the boundaries of the site with Charnwood Close and Sherwood Lane with provision for vehicle parking and soft landscaping.

3.11 The proposal would clearly have an inherent visual impact. However, change in the character and appearance of a site does not necessarily equate to harm. In my opinion, the general scale of development proposed in respect of the relationship with neighbouring properties is assessed to be acceptable. As such, I consider that the development accords with Policy SWDP 13 of the SWDP which seeks, amongst other things, that development will make the most effective and sustainable use of land with a density designed to enhance the character and quality of an area. It would also accord with Policy SWDP 21 of the SWDP which requires all development to be of a high design quality, integrated effectively with its surroundings in terms of form and function and reinforces local distinctiveness. It would also comply with the South Worcestershire Design Guide SPD which seeks, amongst other things, that proposals should demonstrate they achieve high quality and inclusive design and integrates into the existing area, in terms of landscape, character, design and density.

3. Over-looking/over-bearing impact

3.12 Policy SWDP 21 requires, amongst other matters, that new development should provide an adequate level of privacy, outlook, sunlight and daylight, and should not be unduly overbearing. This is consistent with paragraph 128 of the NPPF that has as one of its core principles that planning should always seek to secure high quality design and a good standard of amenity for all existing and future occupants of land and buildings. Similarly, pertinent advice is also contained in the South Worcestershire Design Guide SPD (SWDG SPD), which was adopted by the City Council on 6th March 2018.

3.13 The impact of the proposed development on neighbouring residents’ amenities is addressed in paragraphs 7.17 – 7.25 of my previous report:

“7.17 Objections were raised by the residents of 270 and 272 Malvern Road in relation to a previous version of the scheme. The block of flats has now been moved close to the southern boundary and away from 270 and 272 Malvern Road. Whilst the windows would face these properties, the separation distance would now be around 22m and the residents have not objected to the amended scheme to date. This separation distance complies with the requirements of the design guide. Whilst I note the objection from 268a Malvern Road, that property is around 55m away from the block of flats. At such a distance, there should not be a significant risk of unacceptable overlooking.”
7.18 Moving the block of flats to the southern side of the site has meant it would be closer to Stanhope Court. There would be a blank wall facing the boundary, although for much of its length it would be screened by trees that are proposed to be retained. I have applied the 45 degree rule to the first floor windows of the nearest wing of Stanhope Court. The 45 degree rule would clearly be infringed by the proposed building, but would be mitigated by the screening currently afforded by the existing tall conifer hedge in between which would remain. The nearest point that the new building would be visible from the windows of Stanhope Court would be more than 12m away. The wall would be on the north side of Stanhope Court, so there are no concerns in relation to direct sunlight to the building or grounds.

7.19 I note that there was an objection from 203 Malvern Road about the appearance of the flats from the road. Whilst the flats would be of a more modern design than the adjacent properties, I consider that their scale and massing is appropriate to their location adjacent to Stanhope Court.

7.20 The bungalows on Sherwood Lane are located around 30m from the southern side boundary of the site. Due to the orientation, the new bungalows proposed adjacent to the southern boundary (Plots 8 & 9) would not affect daylight or sunlight to the bungalows. They would mostly have roofs sloping away from the shared boundary. The intervening distance is well in excess of the 20m minimum required by the Design Guide. There are some existing hedges on the boundary and additional hedge planting is also proposed.

7.21 The bungalows on Charnwood Close to the west of the site would be around 20m from Plots 7 & 8 of the new development. This would comply with the minimum separation distance in the Design Guide. Whilst Plots 7 & 8 include rear windows extending into the rear gables, there are no upper floors proposed that would cause concern through overlooking. There are some existing hedges on the boundary and additional hedge planting is also proposed.

7.22 The dwelling at 18 Hudson Close would be around 14m from the nearest bungalow on Plot 7. It would, therefore comply with the 45 and 25 degree rules in relation to impacts on the rear windows of No.18. Whilst Plot 7 would be clearly visible it would only be one storey and would slope away from No.18. The plans show a new hedge is to be planted to augment the existing 1.8m high fence.

7.23 The development is also satisfactory in terms of internal room sizes and the area of external amenity space proposed.

7.24 Overall, I consider that the development is acceptable and would not cause undue levels of harm to the surrounding neighbouring residents and their amenity though overbearing or overshadowing and that the relationship between the existing and proposed development is acceptable and meets the requirements of the Design SPD and policy SWDP 21- Design.
7.25 In the interests of ensuring amenity is safeguarded for adjacent neighbours, I consider that it would be reasonable and necessary to remove permitted development rights for household extensions and outbuildings to plots 7, 8 and 9. A condition to this effect is recommended accordingly.”

3.14 Although the development would be visible from adjacent properties and their garden areas, the test is not whether there will be any loss of amenity but, rather, whether the loss will reduce neighbouring residents’ amenity below a reasonable level such that it justifies a refusal of consent. In this case, it is not considered that the proposed development would equate to an unacceptable degree of harm to justify planning permission being refused on these grounds or that could be successfully defended if challenged by the applicant on appeal.

4. **Summary**

4.1 Notwithstanding the advice and recommendation contained within your Officer’s report of 19th December 2019, it remains the prerogative of the Planning Committee to make a contrary decision. Nevertheless, it is important to note that there may be consequences to the actions that members take should they be required to defend a reason for refusal at appeal. First of all, there must be a sufficiently robust reason for refusal for an expert witness to be prepared to defend the case. Furthermore, it will be necessary for any consultant appointed to defend any appeal to have sufficient commitment to the reason for refusal to be able to withstand barrister cross-examination should the appeal be considered at an inquiry.

4.2 Secondly, it must be demonstrated that the City Council has acted reasonably and has not caused wasted and unnecessary expense. Given the very clear position regarding the severity of the harm of the issues that might be considered unacceptable about the scheme, it is your Officers’ opinion that members run a risk of an award of partial or even full costs being granted against the Local Planning Authority in respect of the fees that would be incurred by the applicant in pursuing an appeal and which also causes Officers significant concern.

4.3 However, notwithstanding the above and without prejudice to my recommendation, in the event that Members resolve to refuse the application, contrary to my recommendation, and wish to defend any subsequent appeal the following comments are made for Members’ consideration with regard to their grounds of objection.

4.4 Whilst Members are perfectly entitled to reach a different decision to that recommended by Officers, nevertheless in relation to planning determinations generally, whether the relevant decision-maker is a local planning authority or an Inspector on behalf of the Secretary of State on appeal, the following should be borne in mind:

i) Section 70(2) of the 1990 Act provides that, in dealing with an application for planning permission, a decision-maker must have regard to the provisions of "the development plan", as well as "any other material consideration";
ii) "The development plan" sets out the local planning policy for an area, and is defined by section 38 of the Planning and Compulsory Purchase Act 2004 ("the 2004 Act") to include adopted local plans. Section 70(2) of the 1990 Act makes clear that the development plan is a material consideration; but it is more than that, because section 38(6) of the 2004 Act gives it a particular status:

"If regard is to be had to the development plan for the purpose of any determination to be made under the planning Acts the determination must be made in accordance with the plan unless material considerations indicate otherwise."

That requires the proposed development to be in accordance with the development plan looked at as a whole, rather than with every policy in the plan, which may well pull in different directions and some of which may be more relevant to a particular application than others (R v Rochdale Metropolitan Borough Council (2001) and R (Hampton Bishop Parish Council) v Herefordshire Council (2014). Section 38(6) thus raises a presumption that planning decisions will be taken in accordance with the development plan, looked at as a whole; but that presumption is rebuttable by other material considerations. If a proposed development is not in accordance with the development plan read as a whole, with a focus on its relevant objectives and the policies which give effect to those objectives, then there is a presumption against approval (R (TW Logistics Limited) v Tendring District Council (2013), and Crane v Secretary of State for Communities and Local Government (2015));

iii) "Material considerations" in this context include statements of central government policy which are now largely set out in the NPPF as supplemented by the Secretary of State's web-based Planning Practice Guidance ("the PPG"), launched on 6 March 2014, which replaced a plethora of earlier guidance documents and which is regularly updated;

iv) Whilst all material considerations must be taken into account, the weight to be given to such considerations is exclusively a matter of planning judgment for the decision-maker, who is entitled to give a material consideration whatever weight, if any, he/she considers appropriate, subject only to his/her decision not being irrational in the sense of 'Wednesbury' unreasonable (Tesco Stores Ltd v Secretary of State for the Environment (1995);

v) A decision-maker must interpret policy properly. The true interpretation of such policy, including the NPPF, is a matter of law for the court to be considered objectively on the basis of the relevant policy documents as they stand, the subjective view of the author being irrelevant (Tesco Stores Ltd v Dundee City Council (2012), Europa Oil & Gas Limited v Secretary of State for Communities and Local Government (2014)). Where a decision-maker has misunderstood or misapplied a plan or other policy, that may justify a challenge to his/her decision, if it is material, i.e. if his/her decision would or might have been different if he/she had properly understood and applied the guidance. However, if the misunderstanding or misapplication is immaterial – because the decision would inevitably have been the same despite the identified error(s) – then the courts have a discretion not to quash the decision (Simplex GE (Holdings Limited) v Secretary of State for the Environment (1989);
vi) An inspector's decision letter cannot be subjected to the same degree of interpretation that might be appropriate for a statute or a deed. It must be read as a whole, and in a practical, flexible and common sense way, in the knowledge that it is addressed to the parties who will be well aware of the issues and the arguments deployed at the inspector's inquiry, so that it is not necessary to rehearse every argument but only the principal controversial issues. The reasons for an inspector's decision must be intelligible and adequate to enable an informed observer to understand why he/she decided the appeal as he/she did, including his/her conclusions on the principal important controversial issues. They must not give rise to any substantial doubt that he/she proceeded in accordance with the law, e.g. in his/her understanding the relevant policies (Seddon Properties v Secretary of State for the Environment (1981); South Somerset District Council v Secretary of State for the Environment (1993), and; South Bucks District Council v Porter (No 2) (2004), and;

vii) Because the exercise of discretion involves a series of planning judgments, in respect of which an inspector or other planning decision-maker has particular experience and expertise, "The court must be astute to ensure that such challenges are not used for what is, in truth, a rerun of the arguments on the planning merits" (Newsmith v Secretary of State for the Environment, Transport and the Regions (2001).

5. **Suggested Reason for Refusal**

5.1 Without prejudice to my recommendation, in the event that the Planning Committee resolves to refuse the application against the advice of the Case Officer the following reasons for refusal are suggested, albeit it remains my opinion that these reasons are not sufficiently robust to be defended in the event of an appeal for the reasons set out in this report:

1. The proposal seeks consent for the residential re-development of the site known as 'Mayfield', Malvern Road for the erection of a detached block of 6no. 2-bed flats and 3no. detached bungalows. The National Planning Policy Framework sets out the emphasis for Local Planning Authorities to resist inappropriate development of residential gardens. The site currently comprises a private garden and is surrounded by low density residential development on all sides. Guidance set down in the National Planning Policy Framework (NPPF) sets out a preference for development on 'brownfield' sites. The principle of residential re-development of this private garden for residential use would thereby be inconsistent with the guidance set out in national planning policy.

   In the opinion of the Local Planning Authority the proposal is considered to be unacceptable in principle and contrary to the aims and expectations of the National Planning Policy Framework.

2. The application site is situated in an area which is characterised by low density residential development. The properties in Malvern Road are set back within large plots with a prominent building line to the site frontage at Malvern Road.
Policy SWDP 21 of the South Worcestershire Development Plan requires all development proposals, amongst other matters, to integrate effectively with its surroundings, compliment the character of the area and to achieve a high standard of design, having regard to the character of the area and harmonising with their surroundings and to make a positive contribution to the character and quality of its environment through good layout and design. which seeks, amongst other things, that proposals should demonstrate they achieve high quality and inclusive design and integrates into the existing area, in terms of landscape, character, design and density. This is consistent with South Worcestershire Design Guide SPD and is reflected in the aims and interests that the National Planning Policy Framework seeks to protect and promote with regard to the impact of residential development proposals.

In the opinion of the Local Planning Authority, the proposal would result in the loss of the garden area that makes a positive contribution to the character and appearance of the site and surrounding area. The layout of the proposed development would be an isolated block of development, unrelated to the prevailing pattern of development that would contrast unfavourably with the relatively open character of the surrounding rear garden areas. The combination of the floor area, siting and height of the proposed development would result in a development of overall scale and mass that would be unduly intrusive in this particular location in short range views from nearby properties. The proposal would thereby detract from the character and appearance of the surrounding area and would fail to integrate with the existing pattern of development.

The proposal would thereby be contrary to policy SWDP 21 of the South Worcestershire Development Plan and the aims and interests that the South Worcestershire Design Guide SPD and National Planning Policy Framework seek to protect and promote with regard to the impact of residential development proposals.

3. Policy SWDP 21 of the South Worcestershire Development Plan requires, amongst other matters, that new development should provide an adequate level of privacy, outlook, sunlight and daylight, and should not be unduly overbearing. This is reflected in in the South Worcestershire Design Guide SPD, and is consistent with paragraph 128 of the NPPF that has as one of its core principles that planning should always seek to secure high quality design and a good standard of amenity for all existing and future occupants of land and buildings.
In the opinion of the Local Planning Authority, the proposed development would unacceptably compromise standards of residential amenity for neighbouring residents of the proposed development by reason of the proximity and spatial relationship between the dwellings proposed that would result in a loss of privacy from actual and the perception of overlooking and/or encroachment by a visually prominent and intrusive form of development that would be both uncomfortably oppressive and overbearing on the outlook from habitable room windows and rear garden areas.

The proposal would thereby be contrary to policy SWDP 21 of the South Worcestershire Development Plan the aims and interests that the South Worcestershire Design Guide SPD and National Planning Policy Framework seek to protect and promote with regard to the impact of residential development proposals.