

Application Number	21/00937/VARCO
Site Address	Rose Villa, Nunnery Lane, WORCESTER, WR5 1RG
Description of Development	Retrospective application to vary condition 2 of planning application 20/0088/FUL.
Expiry Date	8 December 2021. An extension of time has been agreed until 25 th February 2022.
Applicant	Mr Jabran Khalid
Agent	Mr Nick Carroll
Case Officer	Laura Williamson
	laura.williamson@worcester.gov.uk
Ward Member(s)	Nunnery Ward
Reason for Referral to Committee	Referred to the Planning Committee by the Director of Planning and Governance.
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/21/00937/VARC
Recommendation	The Corporate Director - Planning and Governance recommends that the Planning Committee approves the variation of Condition 2 of planning permission 20/0088/FUL and grants planning permission, subject to the conditions set out in section 9 of this report.

1. **Background**

- 1.1 The application was registered on 13 October 2021 and was due for a decision on 8 December 2021. An extension of time has been confirmed until 25th February 2022. The application was prepared for Planning Committee on 25 November 2021 but was withdrawn from the agenda prior to the consideration of the application. The deferral was to allow officers further time to assess changes between the development as built and the submitted plans and if necessary to allow the submission of amended plans. Officers have visited the site and have now received plans which reflect the as built situation to allow members to make a full and informed decision.

1.2 The application has been referred to the Planning Committee by the Director of Planning and Governance in accordance with the adopted Scheme of Delegation. The application has also been called-in to Planning Committee by Councillor Agar.

2. The site and surrounding area

2.1 The application site is located along Nunnery Lane the eastern side of the road adjacent to neighbouring property 'Montana' to the north of the site and bungalow property 'Rose Villa' to the south of the site. The character of the area is suburban in nature and is located within an established residential area characterised by a mix of detached and semi-detached dwellings of different architectural designs, set back from the road and away from each other, providing a pleasant spacious environment. It comprises part of a large private garden to the side of Rose Villa and is designated as Green Space within the South Worcestershire Development Plan (SWDP) along with nearby land forming the rear half of gardens along Nunnery Lane and Spetchley Road which link to Worcester Woods and Nunnery School playing fields.

2.2 Planning permission has been previously granted on appeal for the erection of a four-bedroom detached dwelling under application P18G0387. Following this, a further application was resubmitted and granted at appeal for the proposed erection of a new 6-bedroom detached dwelling under application 20/00088/FUL.

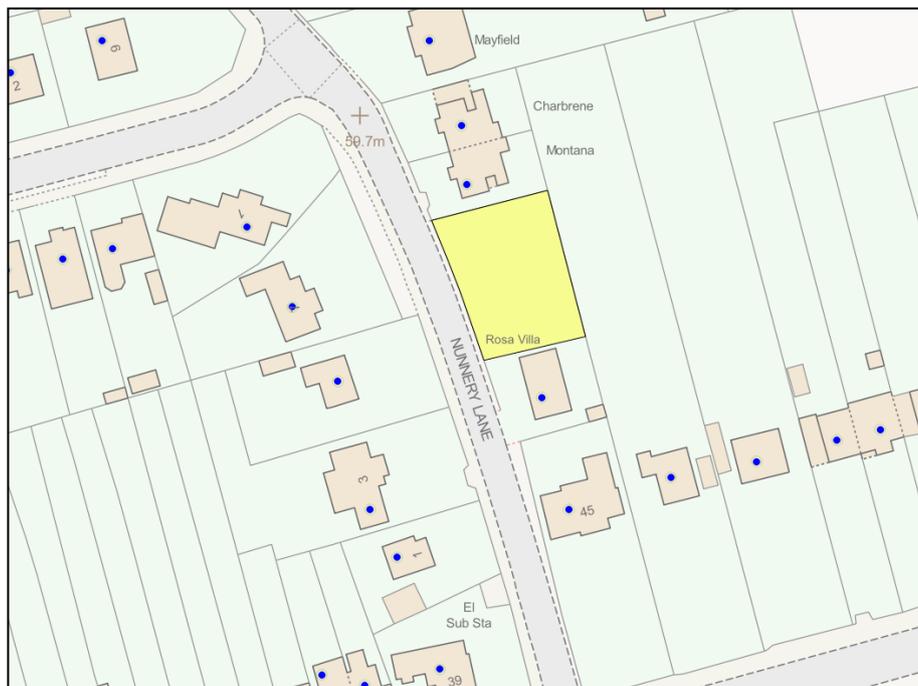


Figure 1: Site Location

3 The proposals

3.1 The retrospective application seeks to vary Condition 2 of Application No. 20/00088/FUL which was allowed at appeal. Some of the retrospective changes were previously sought under non-material amendment application 21/00567/NMA. This application was subsequently refused at planning committee as it was considered that the retrospective changes sought by the application were cumulatively not considered to be non-material in nature.

3.2 The retrospective amendments that are sought by this application relate to:

- re-siting of five roof lights to rear roof slope;

- addition of one new roof light to rear roof slope;
- alteration of the central first floor window in the front elevation;
- omission of the previously proposed chimney;
- alteration to first-floor Juliet balcony windows on the front elevation,
- alteration of the gable windows on the front elevation.
- alteration of the porch roof.
- reduction in height of the two front gables.
- Change from grasscrete paving at the rear of the site to permeable paving.

3.3 Figures 2 - 5 as follows illustrate the changes (highlighted in red) to the front and rear elevations between previously approved plan (Drawing No: 1801-P-01 I) and the current proposed plan (Drawing No: 1801-P-01 P).

3.4 Front Elevation

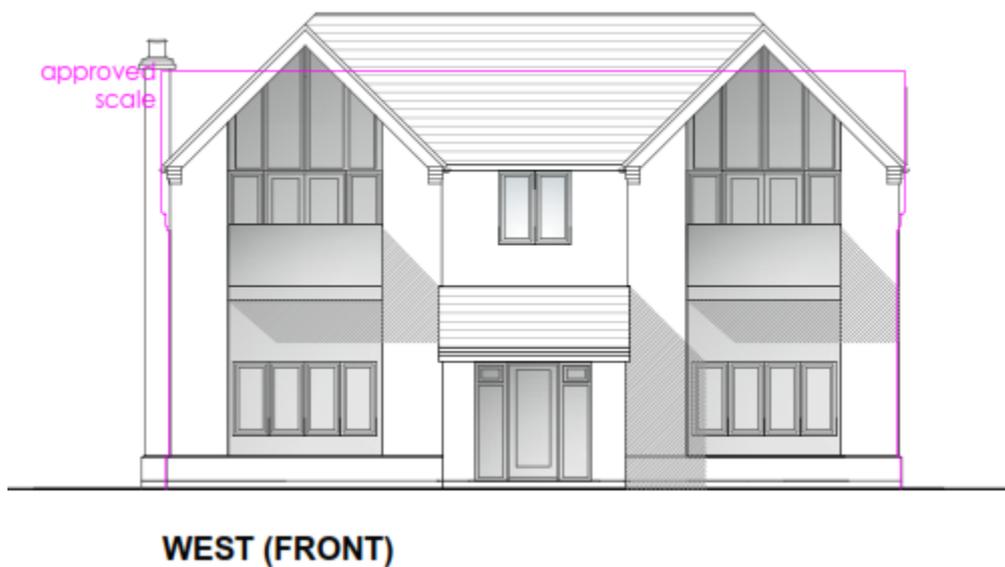


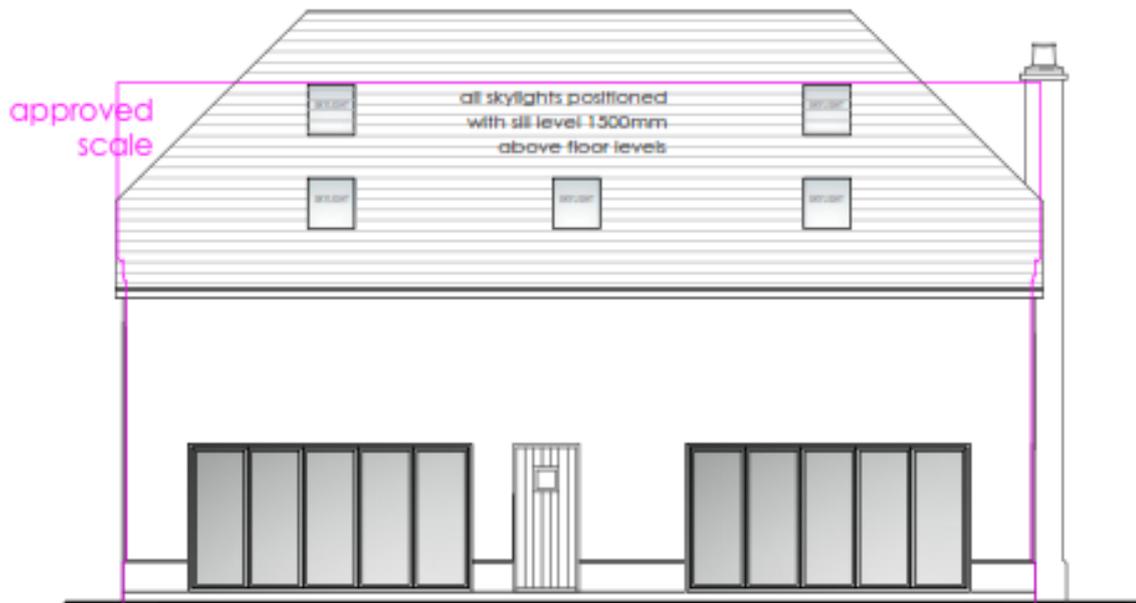
Figure 2: Previously Approved Front Elevation (Drawing No: 1801-P-01 I) (For clarity, the pink line relates to the original permission which was superseded by the most recently consented application).



Figure 3: Current Proposed Front Elevation (Drawing No: 1801-P-01 P)

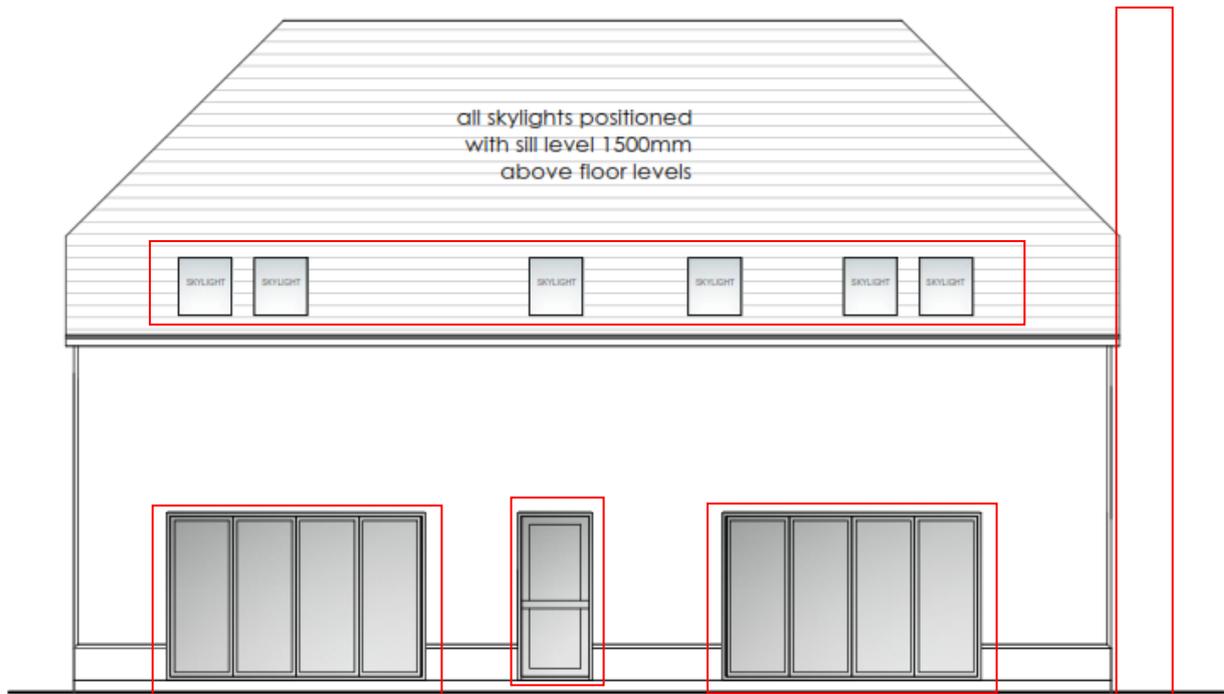


Figure 4: Photograph of front elevation.



EAST (REAR)

Figure 5: Previously Approved Rear Elevation (Drawing No: 1801-P-01 I)



EAST (REAR)

Figure 6: Current Proposed Rear Elevation (Drawing No: 1801-P-01 P)



Figure 7: Photograph of roof lights in the rear elevation.

- 3.5 By virtue of the amendments proposed by this application it is proposed that Condition 2 is varied to substitute the approved plans with the following plans:

Drawing No: 1801-P-01 P

- 3.6 In accordance with Article 15 (7) of The Town and Country Planning (Development Management Procedure) (England) Order 2015 (as amended), full details of the application have been published on the Council's website. As such, Members will have had the opportunity to review the submitted plans and documents in order to familiarise themselves with the proposals prior to consideration and determination of the application accordingly.

4 Planning Policy

- 4.1 The application is submitted under Section 73 of the Town and Country Planning Act 1990 that allows an application to be made to vary conditions associated with a planning permission. Section 73 of the Town and Country Planning Act confirms that on such applications the Local Planning Authority shall consider only the question of the conditions subject to which planning permission should be granted, and:
- (a) if they decide that planning permission should be granted subject to conditions differing from those subject to which the previous permission was granted, or that it should be granted unconditionally, they shall grant planning permission accordingly, and

(b) if they decide that planning permission should be granted subject to the same conditions as those subject to which the previous permission was granted, they shall refuse the application

- 4.2 In terms of decision making a Section 73 application should be treated just like any other application, and in making their decisions Local Planning Authorities should focus their attention on national and development plan policies, conditions attached to the existing permission and other material considerations which may have changed significantly since the original grant of permission. A successful application to amend conditions results in the issue of what is in effect a new planning permission, but does not cancel the old permission.
- 4.3 Guidance for determining s73 applications is set out in the NPPG which states that a minor material amendment is one "whose scale and nature results in a development which is not substantially different from the one which has been approved". It is further stated that the development which the application under s.73 seeks to amend will by definition have been judged to be acceptable in principle at an earlier date. Consequently, the extent of the material planning considerations are somewhat restricted and only the amendments being applied for should be considered at this stage in light of current policy. In terms of decision making a Local Planning Authority therefore has to make a decision on the amendments being applied for with regard to relevant national or local policies which may have changed significantly since the original grant of planning permission as well as the merits of the changes sought.
- 4.4 The Town and Country Planning Act 1990 ('the Act') establishes the legislative framework for consideration of this application. Section 70(2) of the Act requires the decision-maker in determining planning applications/appeals to have regard to the Development Plan, insofar as it is material to the application/appeal, and to any other material consideration. Where the Development Plan is material to the development proposal it must therefore be taken into account. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires the application/appeal to be determined in accordance with the Plan, unless material considerations indicate otherwise.
- 4.5 The Development Plan for Worcester now comprises:
- The South Worcestershire Development Plan (SWDP) which was adopted February 2016, and;
 - The Worcestershire Waste Core Strategy, which was adopted on December 2012.

South Worcestershire Development Plan

- 4.6 The following policies of the SWDP are considered to be relevant to the proposal:

SWDP 21 Design

Material Considerations

1. National Planning Policy Framework

2. National Planning Practice Guidance

3. Supplementary Planning Documents

- 4.7 The following Supplementary Planning Documents (SPD) are relevant to the application proposals:-

- South Worcestershire Design SPD

5. **Planning History**

5.1 The site has been the subject of the following planning applications:

- For the purposes of this application the following permission is the only relevant application, as it is to amend this permission.
- 20/00088/FUL - Proposed erection of a new 6 bedroom detached dwelling. Refused. (24th September 2020). Allowed at Appeal.

Background history

- P18G0023 - Application for a Lawful Development Certificate for Proposed erection of a detached garage. Granted under delegated powers on 9th May 2018.
- P18G0387 – Proposed erection of a new 4 bed dwelling. Refused. (23rd May 2019). Allowed at appeal.
- 21/00567/NMA – Application for a retrospective non-material amendment for the re-siting of five roof lights to rear roof slope, addition of one new roof light to rear roof slope, alteration of the central first floor window in the front elevation, omission of the previously proposed chimney, alteration to first-floor Juliet balcony windows on the front elevation, alteration of the gable windows on the front elevation and the alteration of the porch roof. Refused. (2nd November 2021).

6. **Consultations**

6.1 Formal consultation has been undertaken in respect of the application. The following comments from statutory and non-statutory consultees and interested third parties have been received in relation to the original and amended proposals and are summarised as follows:

Neighbours and other third party comments: At the time of writing this report, responses have been received from the following neighbouring properties:

- Montana, 2 Nunnery Lane.
- 47 Spetchley Road
- Charbrene, 4 Nunnery Lane.

In summary, these comments relate to the following concerns:

- The proposals representing a deviation from the appeal scheme.
- Pre-application Advice/ reasons for accepting this application.
- Concerns relating to the height of the building.
- Alterations to the windows to the front and the rear of the dwelling.
- The omission of the chimney and concerns relating to whether the air source heat pump will be used.
- Septic tank
- Works to TPO Tree

- Enforcement at the site
- Internal changes
- Principle of development, drainage, parking/access
- Build standards.
- concerns do not constitute material planning considerations.
- Front wall / approved hedge
- Fencing around the site

Any responses that are subsequently received will be reported to the committee by way of late paper.

Worcester City Council Landscape and Biodiversity Adviser: No objections to the amendments.

Worcestershire Regulatory Services (Air Quality): WRS ref: 21/16051/PLAN WRS have reviewed retrospective application to vary condition 2 for potential air quality issues of which none have been identified, therefore WRS have no adverse comments to make with regards to air quality.

Members have been given the opportunity to read all representations that have been received in full. At the time of writing this report no other consultation responses have been received. Any additional responses received will be reported to members verbally or in the form of a late paper, subject to the date of receipt.

7. Comments of the Corporate Director – Planning and Governance

7.1 Policy SWDP1 of the South Worcestershire Development Plan sets out overarching sustainable development principles and these are consistent with the Framework. The policy seeks to ensure that the amenity of neighbours is protected and where relevant maintained. Due to the scale and nature of the changes to the approved scheme, following issues are considered to be relevant in the assessment of this application:

- Design
- Impact on neighbouring amenity

Design

7.1 Policy SWDP 21 of the South Worcestershire Development Plan 2016 requires all development to achieve a high standard of design, having regard to the character of the area and to harmonise with its environment, whilst not having a detrimental impact on the amenities of the neighbouring properties.

7.2 In this case, the principle of the erection of a new dwelling at the site has already been established by the Planning Inspector's appeal decision. It is noted that the retrospective changes are visible from the street scene, however it is not considered that the changes would have a detrimental impact on the design of the dwelling. It is therefore considered that the retrospective changes accord with the expectations of South Worcestershire Development Plan Policy 21 and do not detract unacceptably from the appearance or setting of the host property.

Impact on neighbouring amenity

7.3 The retrospective amendments that are sought by this application relate to:

- re-siting of five roof lights to rear roof slope;
- addition of one new roof light to rear roof slope;
- alteration of the central first floor window in the front elevation;
- omission of the previously proposed chimney;
- alteration to first-floor Juliet balcony windows on the front elevation,
- alteration of the gable windows on the front elevation.
- alteration of the porch roof.
- reduction in height of the two front gables.

7.5 A number of neighbour objections have been received in relation to the proposed changes, these will each be addressed as follows:

- ***Development not being built in accordance with the conditions/planning consent granted by the Planning Inspectorate at appeal***

A number of concerns have been raised with regards to the development not being built in accordance with application 20/00088/FUL. This application for a variation of conditions seeks to retrospectively regularise these changes.

- ***Pre-application Advice/ reasons for accepting this application***

Concerns have been raised within comments relating to pre-application advice and the reasons for accepting this application. Some of the proposed retrospective amendments were previously sought under application No. 21/00567/NMA, which was an application for a non-material amendment, this allowed the Local Planning Authority to consider whether the retrospective changes were considered to be 'non-material' changes when compared to the original planning consent for the scheme. This application was subsequently refused as it was not considered that these changes were 'non-material' in nature. As such, this current application for a variation of conditions was submitted which allows for minor material changes to be applied for.

- ***Loss of chimney and the impact on the eco-friendly air source heat pump heating system***

With regards to the loss of the chimney, whilst it is considered that this may have a minor visual impact, it is however not considered that the loss of the chimney would have a detrimental impact on the character of the area or the host property.

With regards to heating systems, the agent has confirmed that the heating method will be subject to previous approved details, which included an air-source heat pump. It is noted from neighbour responses that the dwelling appears to have been connected to the gas network. Whilst these concerns are noted, this matter is dealt with under building regulations legislation and the planning authority cannot prevent connection to the gas network. Therefore whilst noted this is not a material planning consideration in the assessment of this application.

- ***Concerns relating to the roof height of the dwelling being higher than as consented by the Planning Inspectorate***

Concerns have been raised in relation to the height of the dwelling as constructed. Measurements have been taken and checked on site with the Planning Enforcement Officer and it is considered that the overall height of the dwelling is in accordance with the approved plan. It is however considered that the two front gables are lower than as shown on the plans as approved at appeal. The current plans have therefore been revised to include these changes.

- ***Concerns relating to overlooking***

When considering the impact of overlooking from the relocated/ additional roof lights in the rear elevation, it is considered that that due to the height of the rear roof lights above head height and the angle of the roof slope it is not considered that there would be a detrimental level of overlooking. The rooms were also viewed on site by the Planning Officer and Planning Enforcement Officer.

When considering the impact of the proposed changes to the windows in the front elevation, whilst it is noted that there would be a visual difference between the previously approved window arrangement and the retrospective changes sought by this application, it is however not considered that the proposed changes would result in a detrimental level of overlooking to neighbouring properties opposite the front elevation at the site.

- ***Concerns relating to the potential for changes to the internal layout of the dwelling***

With regards to internal changes to the layout of the dwelling, as these are not material planning considerations, it is not possible to assess them as part of this application.

- ***Concerns relating to the discharge of the 'Prior occupation' conditions imposed by the Inspector***

As the 'prior-occupation' conditions imposed by the Inspector under application 20/00088/FUL are 'prior-occupation' rather than 'pre-commencement', the applicant is therefore required to discharge these before the dwelling is occupied.

- ***Works to a TPO tree at the site***

The concerns regarding works to a TPO tree at the site are noted, it is understood that this matter has been passed onto the Council's Tree Officer. Nevertheless, these works do not form part of the assessment of this application.

- ***Planning Enforcement at the site***

With regards to planning enforcement at this site, the submitted application was invited as a result of an enforcement investigation to regularise the amendments that have been undertaken.

- ***Septic Tank***

A number of concerns have also been expressed by neighbouring properties in relation to the removal of a septic tank on the site. However, this is covered by other legislation and it is not a determining factor in this case.

- ***Principle of development, drainage, parking/access***

The concerns that have been expressed surrounding the development as a whole regarding drainage, parking and access are noted. As consent for the erection of the 6-bedroom dwelling has been previously granted by the Planning Inspectorate, these issues therefore do not form part of the assessment of this application.

- ***Build Standards***

The concerns relating to build standards are noted, however these concerns do not constitute material planning considerations.

- ***Health and safety of construction workers.***

The concerns regarding health and safety of the construction workers on site are noted, however concerns also do not constitute material planning considerations.

- **Front wall / approved hedge**

Officers are aware that a front wall has been erected on site, this has also been raised as a concern by local residents. To ensure the removal of the wall a condition has been proposed to ensure that the wall is removed and replaced with a hedge as previously approved. The condition also requires that the details of the proposed hedge are submitted to and approved in writing by the Local Planning Authority. This would ensure that the development maintains the character of the area and street scene and would support the requirements of Policy SWDP38 and the National Planning Policy Framework which seeks to ensure that streets are supported by trees and hedgerows.

- **Fencing around the site**

The concerns regarding fencing to the side and rear of the site are noted, these are included as an annotation to the proposed plans (Drawing No: 1801-P-01 P).

7.6 On balance, it is considered that the retrospective amendments sought are acceptable in terms of the impact on the design and appearance of the dwelling and do not have an impact on neighbouring residents' amenities.

8. Conclusion and planning balance

8.1 The NPPF identifies a series of the components that are considered critical to achieving sustainable development. It is considered that the above assessment of the planning application proposals against the planning policy framework demonstrates that the application is in accordance with, the requirements of the adopted planning policy within the development plan and material considerations relevant to the determination of the application.

8.2 The following material planning issues are relevant to this application:

- Design

- Impact on neighbouring amenity

8.3 Whilst the assessment is not an exhaustive list of all policies that are potentially applicable to this site, it seeks to address how the proposals respond to the key planning criteria in the planning policy framework against which the planning application will be determined.

8.4 All comments received as part of the consultation process have been acknowledged and it is considered that all material planning issues have been considered in the determination of this application. On balance, it is considered that the amendments to the approved scheme are relatively minor and do not have any detrimental impact on the amenities of the neighbouring occupiers with regard to loss of light, outlook or privacy and do not impact on the acceptability of the overall design.

9. Recommended Conditions

9.1 In the event that members resolve to grant planning permission, the following conditions are recommended:

1. The development hereby permitted must be commenced not later than the expiration of three years from the date of appeal decision APP/D1835/W/20/3260790 to application 20/00088/FUL dated 19th January 2021.

Reason: To conform with the requirements of Sections 73 and 91 of the Town and Country Planning Act 1990 (as amended).

2. 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

Drawing No: 1801-P-01 P

Reason: To ensure compliance with the approved scheme.

3. Within two calendar months of the date of this permission, the front wall as erected on site shall be removed and replaced with a hedge. Prior to its installation details of the hedge shall be submitted to and approved in writing by the Local Planning Authority. Any planting which form part of the agreed scheme pursuant to this condition and which should die or require replacement within the first 5 years after completion of the scheme shall be replaced as soon as practicable in the first available planting season.

Reason - To ensure that the new development is in keeping with the surroundings, support the green space policy to develop a network of green spaces and retains the character of the street scene and represents quality design in accordance with policy SWDP21 and SWDP 38 of the South Worcestershire Development Plan and the aims and objectives of Paragraph 131 of the National Planning Policy Framework.

4. 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 be submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details and retained as such thereafter.

Reason: In order to ensure the development includes appropriate renewable energy and energy saving in accordance with policies SWDP21 and SWDP27 of the South Worcestershire Development Plan and the aims and objectives of the National Planning Policy Framework.

5. 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-01I have been provided. These areas shall thereafter be

retained and kept available for their respective approved uses at all times.

Reason: In the interests of highway safety and to ensure the free flow of traffic using the adjoining highway.

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 shall be erected other than those expressly authorised by this permission.

Reason: For the avoidance of doubt and to secure a satisfactory form of development in accordance with policy SWDP21 of the South Worcestershire Development Plan and aims and objectives of the National Planning Policy Framework.

7. 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.

Reason: To maintain the visual and environmental quality of the site and surrounding area in accordance with policies SWDP21 and SWDP25 of the South Worcestershire Development Plan and aims and objectives of the National Planning Policy Framework.

8. Any trees or plants detailed in the approved 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.

Reason: To maintain the visual and environmental quality of the site and surrounding area in accordance with policies SWDP21 and SWDP25 of the South Worcestershire Development Plan and aims and objectives of the National Planning Policy Framework.

9. 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 approved 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.

Reason: To ensure the proposed development does not exacerbate flood risk and deals with surface water run-off from the site in a sustainable manner, in accordance with policies SWDP28 and SWDP29 of the South Worcestershire Development Plan.