

**10 NE2003/1665/F - DEMOLITION OF CAFE & RESIDENCE AND ERECTION OF 2 STOREY HOUSE WITH PARKING FOR 2 VEHICLES AT CLOUD NINE, JUBILEE DRIVE, UPPER COLWALL, MALVERN, WR13 6DQ**

**For: M & A Searby per Meredith Architectural Design,  
34 Montpelier Road, West Malvern, Worcs WR14 4BS**

**Date Received:**

**4th June 2003**

**Expiry Date:**

**30th July 2003**

**Ward:**

**Hope End**

**Grid Ref:**

**76864, 43627**

Local Member: Councillor R Stockton & Councillor R Mills

## **1. Site Description and Proposal**

1.1 The site is located on the eastern side of the B4232 known as Jubilee Drive within Upper Colwall, at the base of the Malvern Hills. Currently occupying the site is a concrete block and timber framed structure which until this year was used as a café/tea room. Behind this is a two storey flat roof structure occupied residentially by the applicants and a timber chalet structure also used as residential accommodation. Immediately north and south of the site are existing residential properties, to the east are the Malvern Hills and to the west, on the other side of the road, are further dwellings. Ground levels fall steeply from the base of the Hills westward and to a lesser extent in a southerly direction. The site lies within an Area of Outstanding Natural Beauty, an Area of Great Landscape Value, the Hills immediately east are designated as a Site of Special Scientific Interest and the area is also designated as Historic Park and Garden.

1.2 The applicants propose the demolition of all the existing structures on site including the café and their replacement with a 3 bedroom pitched roofed dwelling largely on the same footprint as the existing café structure. The proposed dwelling is to be set back around 6 metres from the edge of the pavement to create 2 off-road parking spaces as there is no land currently available within the applicants ownership for off-road parking.

## **2. Policies**

### **Hereford & Worcester County Structure Plan**

Policy H16	Housing in Rural Areas
Policy H20	Housing in Rural Areas Outside the Green Belt
Policy E20	Tourism Development
CTC 1	Areas of Outstanding Natural Beauty
CTC 2	Areas of Great Landscape Value
CTC 6 & CTC 7	Landscape Features
CTC 9	Development Requirements

**Malvern Hills District Local Plan**

Housing Policy 4	Development in the Countryside
Landscape Policy 1	Development Outside Settlement Boundaries
Landscape Policy 2	Areas of Outstanding Natural Beauty
Landscape Policy 3	Development in Areas of Great Landscape Value
Recreation Policy 31	Retention of Existing Community Facilities

**Herefordshire Unitary Development Plan (Deposit Draft)**

Policy H7	Housing in the Countryside Outside Settlements
Policy H14	Re-Using Previously Developed Land and Buildings
Policy T11	Parking Provision
Policy LA1	Areas of Outstanding Natural Beauty
Policy LA2	Landscape Character and Areas Least Resilient to Change
Policy LA4	Protection of Historic Parks & Gardens
Policy RST 2	Recreation, sport and tourism development within Areas of Outstanding Natural Beauty
Policy CF6	Retention of existing facilities

**3. Planning History**

3.1 None.

**4. Consultation Summary**

- 4.1 English Nature state : 'Providing no top soil or subsoil is removed during construction is stored within the SSSI boundary, the proposal should not affect the interests of the Sites of Special Scientific interests.'
- 4.2 Responses by internal consultees that raise material planning issues are summarised and considered in the Officer's Appraisal.

**5. Representations**

- 5.1 Colwall Parish Council - 'No objection. There is potential of asbestos in the building and the sight line from the access should be extended.'
- 5.2 Malvern Hills Conservators - Conservators object to the application as they do not wish to see a two storey house built on the site which they feel would be obtrusive when viewed from their land, sited as it is in this prominent position high upon the hill. The Conservators would also wish to see the property retained as a café as it provides a valuable amenity for the area.
- 5.3 Four letters of objection have been received from :
- Richard Love & Lisa Dainty, The Haven, Jubilee Drive, Upper Colwall
  - Robin and Elizabeth Fish, 2 Glenview Cottages, Jubilee Drive, Upper Colwall
  - Mark & Jeanette Selvester, Hillside Cottage, Jubilee Drive, Upper Colwall
  - RS & D Bullock, Plateau Cottage, Jubilee Drive, Upper Colwall

The main points raised are :

- 1) The property has not been placed on the open market for sale. Plenty of people have expressed an interest in taking over the property as a going concern.

- 2) The café has existed since the 1920's and whilst reasonable capital investment is now required to upgrade the building, it is essential that the café should remain for future generations.
- 3) The owners frequently had a notice in the window requesting parties over 6 must make prior booking, this is ludicrous. Furthermore the range and quality of refreshments has deteriorated over the years. Someone with a more entrepreneurial spirit with capital and flair would make a success of the business.
- 4) The café is part of the village since the loss of the beacon café to fire. Other than the public house, there is no stop for refreshments from Malvern town until the 'Kettle Sings Café', midpoint along Jubilee Drive.
- 5) The extra height of the new dwelling would reduce the amount of sunlight into key parts of our garden and property including our patio, dining room and kitchen areas during Autumn, Winter and early Spring. The extra height will also be overbearing.
- 6) The development would deprive us a view of the sky and it would make us feel more enclosed and penned in due to the extra height.
- 7) The existing building may be partly constructed from asbestos, such material needs to be appropriately disposed of if permission is approved.
- 8) The development will result in a disturbance to a retaining wall running to the rear of our and other properties. This wall must be retained and fully restored.
- 9) There may be a loss of privacy from the Velux rooflights across our property and garden. The new garden patio will be sited at an elevated position and we will be unhappy if residents can peer into our garden.
- 10) The development encroaches onto our private drive, and will make access to rain water pipes, windows, gas/electric metres impossible.
- 11) We wonder how the applicants propose to gain access for construction of the dwelling given that it is to be constructed on the boundary.

5.4 It should be noted that two of the four objectors do not object in principle to the demolition of the café.

5.5 A further letter has been received from C E Stone, Chairman Ledbury & District CPRE. The points raised are :

- 1) Difficulty in parking and access would in our view pose problems for any alternative use of the existing building, and the proposal in this application seems to us to be a sensible solution to a failing business.
- 2) The new building should prove more visually attractive than the existing one.

5.6 A number of letters have also been received from the applicant. The main points raised are :

- 1) We have been the proprietors of the property for 18 years and lived on the premises for that time. On 30 March 2003 we closed the business down. The reasons for this are :
  - a. the extension of supermarkets and local pubs into the area of refreshment facilities
  - b. the removal of Sunday trading restrictions.
  - c. the location of the business being in a less favoured section of the hills for travellers stopping off.
  - d. imposition of double yellow lines along Jubilee Drive including the stretch of road directly in front of our premises.
  - e. the foot and mouth outbreak.

- f. raising overheads year by year which in balance against net profits, make maintenance of the property an untenable burden to bear.
  - g. consent by the Conservators to allow mobile refreshment outlets at strategic points on the hills, including ice cream vans,
  - h. competition from other similar outlets within the Malvern Hills area including St Anne's Well tearoom, The Wyche Inn, The Chase Inn , The Kettle Sings tearoom, Colwall Park Hotel, The Malvern Hills Hotel and nearby kiosk.
- 2) The business opens only at weekends during Spring, Autumn and Winter months, and seven days a week during the Summer months. It being self evident for many years that apart from Bank Holidays, there is insufficient people to justify doing otherwise.
  - 3) Contrary to what some individuals have asserted, the business has never served the local community or provided a focal point for it. If such a community exists, it would be found in the nearby Wyche Inn or Chase Inn as has always been the case.
  - 4) The building is in such poor condition and of a design that currently would not be acceptable either as a business or home. In particular, rain water leaks from an unidentified source into the cellar, the living accommodation with its flat roof suffers from intense heat during the summer and extreme cold during the winter. The only kitchens are below ground level and suffer from damp penetration. The existing problems would make renovation of the building an impossibility.
- 5.7 The full text of these letters can be inspected at Planning Services, Blueschool House, Blueschool Street, Hereford and prior to the Sub-Committee meeting.

## **6. Officers Appraisal**

- 6.1 The applicants wish to demolish the existing structure on site and construct a 3 bedroom pitched roof detached dwelling in its place. The existing structure which was constructed in the 1920's comprises of a tea room/café with residential accommodation to the rear, the floor area being split approximately 50% café and 50% accommodation.
- 6.2 There are two key issues relevant to the consideration of this application, these being ;
- 1) The principle of the loss of the café business and
  - 2) The impact of the proposed development on the amenity of nearby neighbours and the landscape generally.

### The principle of the loss of the café business

- 6.3 Part of the existing structure has been used as a café since it was built in the 1920's. Based upon information supplied by the applicants, objectors and the Parish Council it would appear that the local or wider community does not use the facility. As such it is not possible in planning terms to class the business as a community facility in the same way as a Public House or Post Office may be. The development has therefore been assessed on the basis of it being a private business serving the tourist community visiting the Malvern Hills.

- 6.4 Whilst the applicants have struggled with the business in recent years, it has been suggested that there may be demand elsewhere for the continued operation of the premises as a café. The only manner in which this could be thoroughly explored would be through the placing of the business on the open market. However, you officers are satisfied that this procedure is not necessary and could even be regarded as unreasonable in this instance.
- 6.5 The reasons given by the applicants in para. 5.6(1) above are all plausible arguments as to why the business has struggled in recent years. Furthermore, due to the physical condition of the building, considerable expenditure would be required to bring the existing buildings even up to a basic standard and it is likely that such expenditure would make the business unviable. The alternative option would be for the existing structure to be entirely demolished and rebuilt as a purpose made café. Again, given the location of the site, proximity of other similar facilities, the fact that no off or on road parking exists to serve the development, it is highly unlikely that any person or company would be prepared to invest the necessary money in a business which appears to have increasingly struggled over the last few years.
- 6.6 Therefore, whilst the development does act as a tourist amenity in the area, the information and evidence provided is satisfactory to demonstrate that the business is no longer a going concern and that it would be unrealistic to expect there to be demand elsewhere for the business in its present form or even if renovated. In fact, the business is no different to other tourism facilities such as a gift shop, which it would be difficult in planning terms to insist upon being retained. In view of this the principle of demolishing the existing structures and the loss of the café is accepted.

#### The impact on neighbours and landscape

- 6.7 Housing Policy 4 of the Malvern Hills District Local Plan supports the replacement of an existing structure with a new dwelling outside of an identified settlement, provided the existing structure has established residential use rights and the new dwelling is of a comparable size to the existing. In terms of the size, the proposed new dwelling is smaller in footprint and cubic volume than the existing structures on site. As such it is of a comparable size to the existing in accordance with the relevant policy.
- 6.8 The proposed dwelling is of a 1½-storey construction with the first floor accommodation being provided within the roof space. This ensures that the increase in height between the existing and proposed structures and consequential impact upon neighbours is minimised. The slab level of the proposed dwelling is also to be lowered by ½ metre further minimising the impact both on neighbours and within the Area of Outstanding Natural Beauty. An assessment of possible loss of sunlight and daylight for the occupants of the two neighbouring properties has been undertaken. The results of which are the increase in height between the existing and proposed dwelling will not result in an unacceptable loss of sunlight or daylight. The privacy of both neighbours has also been safeguarded through ensuring that all windows directly looking on to neighbouring properties are to be obscure glazed. First floor light is to be provided by roof lights positioned at a height of 2 metres above floor level. As such there will be no direct window to window relationships between the proposed dwelling and both neighbouring properties.

- 6.9 The dwelling has been designed in a manner, which respects the constraints of the site, the general vernacular in the area and also ensures that the dwelling will not appear prominent within the Area of Outstanding Natural Beauty. The proposed materials will be the same as a number of other dwellings within close proximity-rendered walls under a natural slate roof. Ultimately, the proposal will be a significant visual improvement on the dilapidated and rather unsightly structures, which currently occupy the site. The view is supported by the landscape officer who considers the appearance of the existing structures to be detrimental to the character of the AONB.
- 6.10 The Transportation Manager raises concerns regarding the proximity of the access to the junction with the B4232, the proposed parking arrangements to serve the property and the lack of vehicle manoeuvring area. Whilst the proposed parking arrangements may not meet current highway standards, the proposal would result in a considerable improvement over the existing situation. The existing premises has no parking provision and despite the entire section of the main road in front of the property having double yellow lines, vehicles do park on the highway and pavement. The situation is exacerbated by the lawful café use potentially generating significant numbers of vehicles. Therefore, the provision of 2 off-road parking spaces serving a 3 bedroom private dwelling is considered to be an improvement over the existing situation of no off or on street parking provision. In terms of the proximity of the access to the junction, it is no different to the majority of other properties along Jubilee Drive, the majority of which have to reverse in or out of their parking spaces onto the highway.
- 6.11 The acceptability of loosing the café use very much hinges upon the planning classification of the existing business, its importance to the tourism community and realistic likelihood that the business will continue to be economically viable. Your officers are satisfied that there is sufficient justification to be able to support the loss of the existing business use and its replacement with a dwelling. The design and materials are acceptable and impact upon neighbours will not be unacceptably greater than is already the case. The principle planning concerns of the objectors have been satisfactorily addressed; other issues raised are largely civil matters. These factors allied with the considerable visual improvement to the area through demolishing the existing structures provide sufficient justification to be able to support the proposal in accordance with the relevant development plan policies.

## **RECOMMENDATION**

**That planning permission be granted subject to the following conditions:**

- 1 - A01 (Time limit for commencement (full permission) )**  
**Reason: Required to be imposed by Section 91 of the Town and Country Planning Act 1990.**
- 2 - A09 (Amended plans )**  
**Reason: To ensure the development is carried out in accordance with the amended plans.**
- 3 - B01 (Samples of external materials )**  
**Reason: To ensure that the materials harmonise with the surroundings.**
- 4 - E01 (Restriction on hours of working )**  
**Reason: To safeguard the amenities of the locality.**

- 5 - E16 (Removal of permitted development rights )  
Reason: In order to clarify the terms under which consent is granted and bring any future development under the control of the Local Planning Authority.
- 6 - E18 (No new windows in specified elevation ) (north and south elevations)  
Reason: In order to protect the residential amenity of adjacent properties.
- 7 - E19 (Obscure glazing to windows ) (the windows in the south elevation on the ground floor )  
Reason: In order to protect the residential amenity of adjacent properties.
- 8 - G01 (Details of boundary treatments )  
Reason: In the interests of visual amenity and to ensure dwellings have satisfactory privacy.
- 9 - H04 (Visibility over frontage )  
Reason: In the interests of highway safety.
- 10 - H09 (Driveway gradient )  
Reason: In the interests of highway safety.
- 11 - H13 (Access and parking )  
Reason: In the interests of highway safety and to ensure the free flow of traffic using the adjoining highway.
- 12 - Prior to commencement of the development hereby permitted, details of the means and site for the disposal of all waste materials arising from the demolition of existing structures on site shall be submitted to and approved in writing by the Local Planning Authority. The demolition shall be carried out in accordance with the approved details.  
Reason : To ensure the appropriate disposal of waste materials.
- 13 - The existing timber chalet located east of the existing structure on site shall be permanently removed within one month of occupation of the dwelling hereby permitted.  
  
Reason : In order to clarify the terms under which consent is granted and in the interests of visual amenity.
- 14 - H27 (Parking for site operatives )  
Reason: To prevent indiscriminate parking in the interests of highway safety.

**Notes to applicants :**

- 1 - HN01 - Mud on highway
- 2 - HN04 - Private apparatus within highway
- 3 - HN05 - Works within the highway
- 4 - HN10 - No drainage to discharge to highway
- 5 - N03 - Adjoining property rights
- 6 - N14 - Party Wall Act 1996
- 7 - It is believed that parts of the existing structures on site may contain asbestos. The applicant is advised to contact the Health and Safety Executive on 0121 607 6292 prior to work commencing to ensure the appropriate disposal of such materials.

Decision: .....

Notes: .....

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**Background Papers**

Internal departmental consultation replies.