

**DCNE2006/0517/F - REMOVAL OF CONDITION NO 3
ON PP MH2181/90. OCCUPANCY COMPLIANCE 2,
BRIGHTON VILLA, WALWYN ROAD, COLWALL,
MALVERN, WORCESTERSHIRE, WR13 6QG**

For: Mr & Mrs R & L Stockton at above address.

Date Received:
20th February 2006

Ward:
Hope End

Grid Ref:
75667, 42588

Expiry Date:
17th April 2006

Local Member: Councillor R Stockton

1. Site Description and Proposal

- 1.1 The application site relates to the lawful residential curtilage of number 2 Brighton Villas, Walwyn Road, Colwall. The site comprises a three storey semi-detached house that fronts Walwyn Road, the second floor being within the roofspace, and an attached 'L' shaped predominantly single storey structure arranged around a courtyard. The rear garden of the house has a depth of 43 metres and a width of 10 metres.
- 1.2 The house is set back from the road such that the area in front of the house can accommodate the parking of one car. To the south-west of the site in the space between 2 Brighton Villas and Chester House is a shared driveway. Within this space there is adequate space for the occupiers of 2 Brighton Villas to park another two cars in tandem and occupiers of Chester House to park two cars in tandem.
- 1.3 The site lies within the defined village settlement of Colwall, the Area of Great Landscape Value and the Malvern Hills Area of Outstanding Natural Beauty.
- 1.4 Under planning permission MH 2181/90 the Local Planning Authority allowed the conversion of the store room to the rear of the main house to a "granny annexe". This was subject to a number of conditions, one of which was stated:-

"The accommodation hereby permitted shall not be occupied as an independent dwelling and shall only be used for purposes ancillary to the use of the existing dwelling known as 2 Brighton Villas, Walwyn Road, Colwall. The annexe shall not enjoy any permitted development rights under any General Development Order whatsoever;

Reason:- The Local Planning Authority are not prepared to allow a separate unit of accommodation in this position where no separate access or curtilage exists".

- 1.5 This permission was implemented but the owners of 2 Brighton Villas are now seeking the removal of this condition to allow the "granny annexe" to be occupied as a separate independent dwelling.
- 1.6 The application is retrospective as the applicants are currently occupying the "granny annexe" as a separate independent dwelling and, it is understood, rented out the

retained main five bedroomed house as a separate dwelling last year. It is understood that the main five bedroomed house is currently being advertised for rent.

- 1.7 A fence has been erected in the central courtyard such that the occupiers of the retained five bedroomed house have a private rear courtyard area of some 34 square metres. The occupiers of the smaller two bedroomed dwelling (i.e. the former "granny annexe") enjoy the remaining courtyard area of some 26 square metres together with the extensive rear garden of some 430 square metres. The parking is arranged in such a manner that the occupiers of the retained main five bedroomed house has the single car parking space on the frontage, whilst the occupiers of the smaller two bedroomed dwelling have access to two tandem car parking spaces upon the shared driveway.

2. Policies

2.1 Herefordshire & Worcester Country Structure Plan

H.16A – Housing in Rural Areas

H.18 - Housing in Rural Areas Outside the Green Belt

T.12 – Car Parking

CTC.1 – Areas of Outstanding Natural Beauty

CTC.2 Areas of Great Landscape Value

2.2 Malvern Hills District Local Plan 1998

Housing Policy 3 – Settlement boundaries

Housing Policy 18 – Tandem and Backland Development

Landscape Policy 2 – Area of Outstanding Natural Beauty

Landscape Policy 3 - Development in Areas of Great Landscape Value

2.3 Herefordshire Unitary Development Plan – Revised Deposit Draft

H4 – Main villages: settlement boundaries

H13 – Sustainable residential design

3. Planning History

MH2181/90 - Conversion of store room to granny annexe - Granted 17 December 1990

4. Consultation Summary

Statutory Consultations

4.1 None

Internal Council Advice

4.2 Transportation Manager: - No objections.

5. Representations

5.1 Colwall Parish Council comment as follows: "The Parish Council objects to this application on the basis that there has been no change that negates the condition applied on pp MH2181/90 by Malvern Hills District Council."

5.2 One resident of the Parish has objected on the following summarised grounds:-

- a) The occupiers of the retained main house would unduly overlook the occupiers of the "annexe";
- b) The retained main dwelling would have inadequate amenity/garden space;
- c) The development has a lack of on-site car parking leading to on-street parking problems adversely affecting the viability of the retail shops in the immediate vicinity.

5.3 The occupiers of the neighbouring dwelling known as "Chester House" do not object to the principle of the development but feel that the issue as to the adequacy of car parking provision should be addressed.

5.4 The full text of these letters can be inspected at Northern Planning Services, Blueschool House, Blueschool Street, Hereford and prior to the Committee meeting.

6. Officers Appraisal

6.1 The application site lies within the defined village settlement of Colwall as defined upon the Proposals Maps accompanying both the Malvern Hills District Local Plan 1998 and the emerging Herefordshire Unitary Development Plan. Housing Policy 3 of the Malvern Hills District Local Plan 1998 and policy H4 of the emerging Herefordshire Unitary Development allow for appropriate residential development within the settlement boundary provided that environmental quality is not unduly compromised. In this regard the criteria in Housing Policy 3 of the Malvern Hills District Local Plan 1998 need to be satisfied as well as the other relevant criteria based policies of the Development Plan.

6.2 By applying for the removal of the aforementioned condition the proposal would effectively create a separate dwelling in a backland scenario. The main issues of environmental quality that need to be addressed in this case are as follows:

- Whether the occupiers of the proposed two bedroomed dwelling enjoy a satisfactory level of privacy;
- Whether the occupiers of the main five bedroomed house enjoy a satisfactory outdoor amenity / garden area;

- Whether the use of the rear courtyard associated with the main five bedroomed house result in an unsatisfactory level of noise and general disturbance to the occupiers of the proposed two bedroomed dwelling.
- The adequacy (or otherwise) of on-site car parking provision and the consequences of any resultant on-street car parking.

6.3 It should be understood that planning is not only concerned with ensuring that existing occupiers of dwellings enjoy a satisfactory level of amenity but also that future occupiers of dwellings enjoy a satisfactory level of amenity.

Privacy

- 6.4 The two bedroomed dwelling to the rear of the main house has a primary window to the living room facing north-west. This window is 10.64 metres from the rear (south-east) elevation of the main five bedroomed house proposed. In the rear elevation of the main five bedroomed house is a first floor bathroom window, a first floor bedroom window and a second floor bedroom window. There is direct overlooking from all three of these windows into the primary living room window of the two bedroomed dwelling. Normally one would expect a privacy distance of 21 metres to be achieved. Whilst the Central Government advice contained within Planning Policy Guidance Note 3 encourages Local Planning Authorities to increase housing densities by innovative designs and avoiding inflexible standards, this should not be at any cost. To reduce the privacy distance to say 18 metres may be understandable but it is considered that to reduce it by some approximately 50% cannot, be justified. There are other circumstances, for example where the window concerned is beyond 45 degrees from the centre of the "offending" window(s), that one may recommend a relaxation of the normal requirements but in this case the overlooking is direct.
- 6.5 Whilst the concern with regard overlooking from the bathroom window could reasonably be overcome by way of a planning condition requiring obscure glazing, this is not the case with respect of the other "offending" windows.

Therefore on the first issue it is considered that the occupiers (including future occupiers) of the proposed two bedroomed dwelling would suffer an undue level of privacy within their living room due to overlooking from the first floor and second floor bedroom windows in the rear elevation of the main five bedroomed house.

Outdoor amenity / garden area

- 6.6 Normally one would expect a five bedroomed house to have a rear garden area of some 100 square metres and a two bedroomed dwelling to have a much smaller outdoor amenity area. In fact, in terms of say a two bedroomed flat a genuinely useable balcony area or courtyard area may often suffice. In other words one would expect the size of the private amenity/garden area to be commensurate to the size of the dwelling. In this case, due to the physical characteristics of the site, the reverse is the case. The two bedroomed dwelling has a private outdoor rear garden area of 430 square metres, whilst the retained five bedroomed house has a private rear courtyard area of 34 square metres. It is considered that the private rear courtyard area associated with the five bedroomed house is too small and that the occupiers of that dwelling (including future occupiers) would not enjoy a satisfactory level of amenity. Furthermore the parking and manoeuvring of the two cars associated with the two bedroomed dwelling would prejudice the enjoyment of this area. This parking/manoeuvring area is adjacent to their rear courtyard.

Noise and general disturbance

- 6.7 The small rear courtyard (34 square metres) associated with the main house is sited only 4.6 metres from the primary living room window of the two bedroomed dwelling. It is considered that the use of this area with say children playing and barbecues during the summer months when habitable room windows are likely to be open would, be likely to lead to the occupiers of the proposed two bedroomed dwelling suffering an undue loss of amenity by way of noise and general disturbance.

Car Parking

- 6.8 The adopted car parking standards require 3 car parking spaces for the retained five bedroomed house and two car parking spaces for the two bedroomed dwelling. The two car parking spaces for the two bedroomed dwelling are achieved but the three car parking spaces for the five bedroomed house are not achieved. The five bedroomed house would only have one car parking space. Given the advice contained within Planning Policy Guidance Note 13 the provision of three shared generally accessible car parking communal car parking spaces would be acceptable. However, given the tandem nature of two of the spaces this is not achieved. Hence it is likely that up to two cars would be parked upon the street. The issue is whether this creates a hazard to highway safety. The highway hereabouts does not have parking restrictions and the highway hereabouts is of such a width that parking upon the street would not create an obstruction. The case officer has not observed a genuine on-street car parking problem and on-street car parking can assist in reducing traffic speeds. Thus, it is not considered that the proposal would cause demonstrable hazards to highway safety.

Other Issues

- 6.9 The applicant has stated to the case officer that he would not be willing to enter into a Section 106 Agreement or accept a planning condition requiring the land not to be sold off separately. In any event it is not considered that such an approach would be supported for the following reasons: -
- Planning should not be concerned with matters of land ownership. The amenities one would expect the occupiers of dwellings to enjoy should not be dependant upon their tenure. For example there is no reason as to why the occupier of a privately rented dwelling should enjoy a lower standard of amenity than an owner occupier; and
 - Paragraph 20 of circular 11/95 makes it clear that conditions affecting land ownership (requiring, for example, that the land shall not be disposed of except as a whole) would be ultra vires.
- 6.10 The applicant has made the case officer aware of other developments in the vicinity that he claims are similar. However, it is not considered that there are any directly comparable cases. Each site has different physical characteristics and must be considered on their individual merits. For example, the dwelling to the south at the rear of Chester House does not have any clear glazed first floor habitable windows in its north-western, north-eastern and south-western elevations and therefore matters of privacy to habitable rooms of neighbouring properties do not arise. Similarly that three bedroomed dwelling has a large garden extending some 44 metres in a south-easterly direction.

Conclusions

6.11 In conclusion, it is considered that the condition that the applicants are seeking to remove was appropriately imposed in 1995 and that there are no material changes in planning considerations that can justify its removal. The breach of planning control that this proposal seeks to regularise causes demonstrable harm to the amenities one would reasonably expect the occupiers (including future occupiers) of both dwellings to enjoy. The highlighted problems are typical of those associated with backland forms of development. Therefore it is recommended that planning permission be refused.

RECOMMENDATION

That planning permission be refused for the following reasons: -

- 1. The occupiers (including future occupiers) of the two bedroomed dwelling (former granny annexe) suffer an inadequate level of privacy within their living room window due to direct overlooking from the first floor and second floor bedroom windows to the rear elevation of the main five bedroomed house, contrary to criteria D of Housing Policy 3 of the Malvern Hills District Local Plan 1998, criteria A of Housing Policy 18 of the Malvern Hills District Local Plan 1998 and criteria 11 of Policy H13 of the Herefordshire Unitary Development Plan Revised Deposit Draft May 2004.**

- 2. The occupiers (including future occupiers) of the five bedroomed dwelling do not enjoy a satisfactorily sized rear amenity/garden area and the enjoyment of that area is prejudiced by the noise and general disturbance arising from the adjoining manoeuvring/parking area associated with the two bedroomed dwelling. As such the development is contrary to Housing Policy 3 of the Malvern Hills District Local Plan 1998, criteria A of Housing Policy 18 of the Malvern Hills District Local Plan 1998 and criteria 11 of Policy H13 of the Herefordshire Unitary Development Plan Revised Deposit Draft May 2004.**

- 3. The occupiers (including future occupiers) of the two bedroomed dwelling would not enjoy a satisfactory level of quietude within their living room due to noise and general disturbance likely to arise from the use of the private rear courtyard area of the five bedroomed house. As such the development is contrary to Housing Policy 3 of the malvern Hills District Local Plan, criteria A of Housing Policy 18 of the Malvern Hills District Local Plan 1998 and criteria 11 of Policy H13 of the Herefordshire Unitary Development Plan Revised Deposit Draft May 2004.**

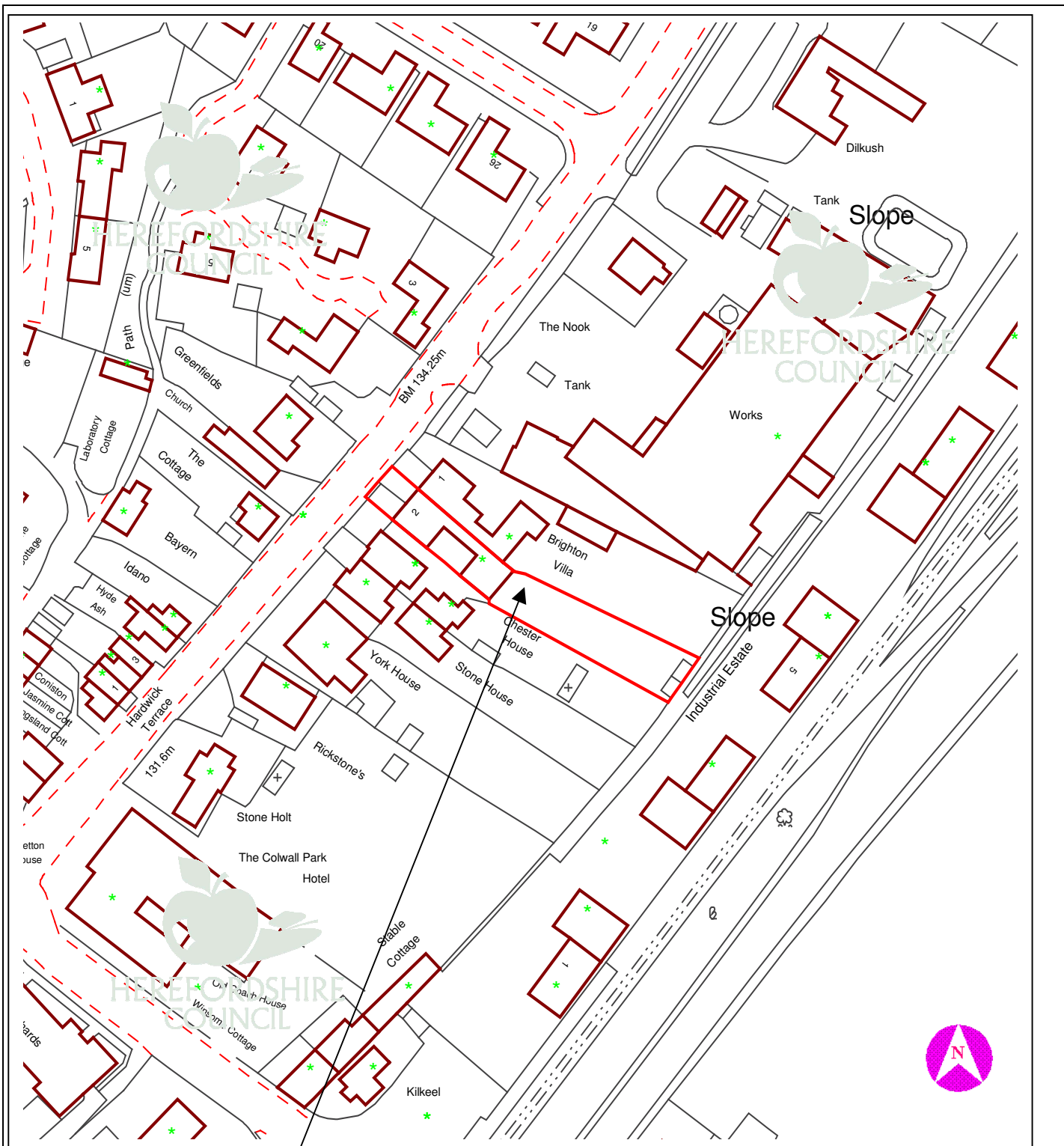
Decision:

Notes:

.....

Background Papers

Internal departmental consultation replies.



This copy has been produced specifically for Planning purposes. No further copies may be made.

APPLICATION NO: DCNE2006/0517/F

SCALE : 1 : 1250

SITE ADDRESS : 2, Brighton Villa, Walwyn Road, Colwall, Malvern, Worcestershire, WR13 6QG

Based upon the Ordnance Survey mapping with the permission of the controller of Her Majesty's Stationery Office, © Crown Copyright. Unauthorised reproduction infringes Crown copyright and may lead to prosecution or civil proceedings. Herefordshire Council. Licence No: 100024168/2005