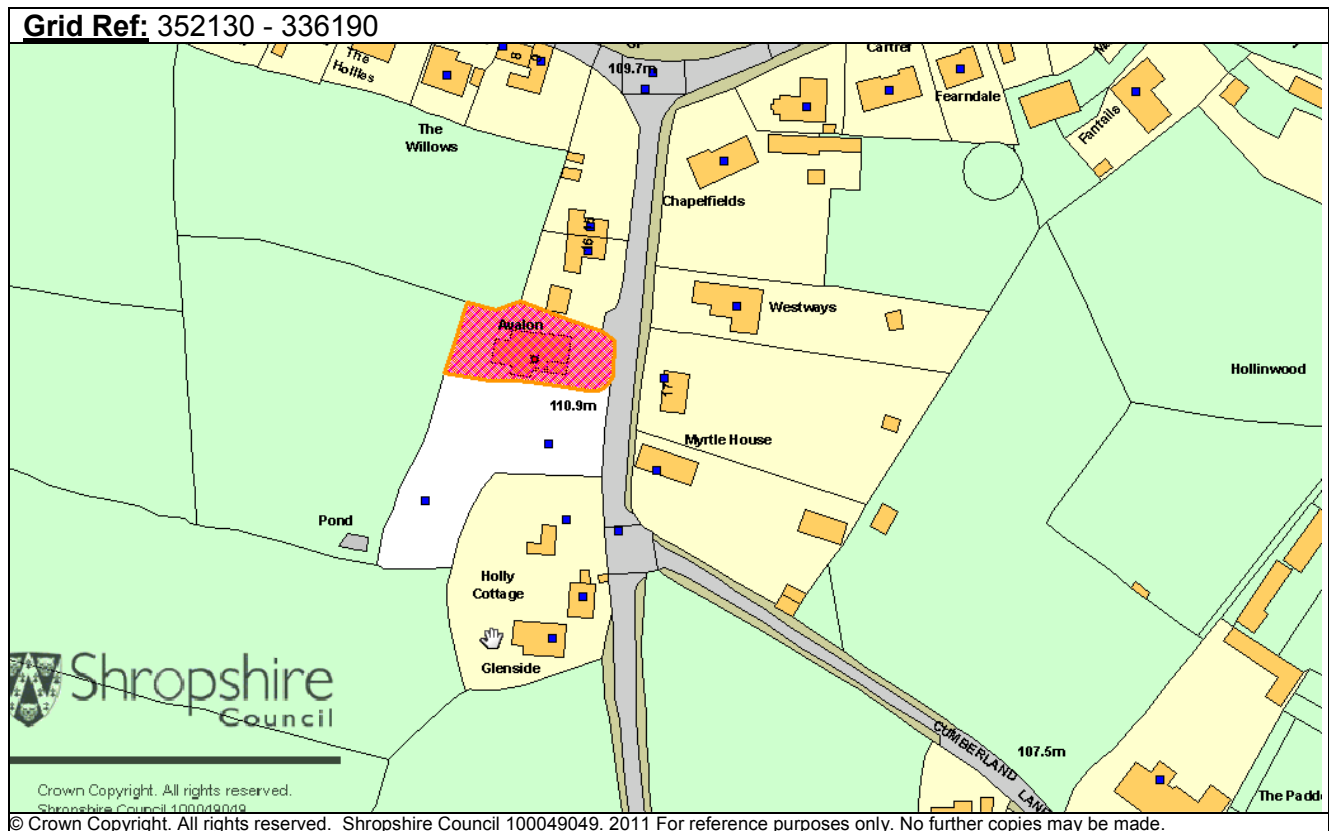


Development Management Report

Responsible Officer: Tim Rogers
email: tim.rogers@shropshire.gov.uk Tel: 01743 258773 Fax: 01743 252619

Summary of Application

Application Number: 14/00922/VAR	Parish:	Whixall
Proposal: Variation of condition no.2 attached to 13/00778/VAR to allow for reduction in height of infill boarding to the first floor doors		
Site Address: Avalon Hollinwood Whixall Whitchurch Shropshire		
Applicant: Mr B Allmark		
Case Officer: Jane Preece		email: planningdmne@shropshire.gov.uk



Recommendation:- Approve subject to the conditions set out in Appendix 1.

REPORT

1.0 THE PROPOSAL

1.1 The application seeks planning permission to vary condition number 2 (approved plans) attached to 13/00778/VAR to allow for reduction in height of infill boarding to the first floor doors on the north elevation of the dwelling now known as Avalon.

2.0 SITE LOCATION/DESCRIPTION

2.1 The site lies within the settlement of Hollinwood and originally formed part of the curtilage associated with a former dwelling (known as Sunnyside). The site sits amid residential development and is bounded to the north by 16 Hollinwood, to the east by the road (with residential development directly opposite), to the south/south west by two further building plots and to the west by fields.

2.2 The erection of a detached dwelling on each of the two adjoining building plots has yet to be completed by virtue of an extant planning permission issued in 2004.

3.0 REASON FOR COMMITTEE OF APPLICATION

3.1 Parish Council objection in conflict with officer recommendation and the Local Member is of the opinion the proposal will adversely affect residential amenities in conflict with officer opinion and that the application warrants a committee decision on this material issue.

4.0 Community Representations

4.1 Consultee Comments

Whixall Parish Council – Object. Whixall Parish Council supported the condition of original height of infill boarding and their position remains unchanged.

4.2 Public Comments

Four representations of objection have been submitted by local residents. The main objections relate to:

- Any reduction in the height of the cladding would increase potential overlooking of the neighbouring garden (16 Hollinwood) and would be contradictory to previous history of the site and committee decisions
- Applicants assertion that lowering the height of the cladding by 200mm will increase light and ventilation to the bedroom appears unlikely, as the doors are north facing
- This further variation appears to be the first stage of a plan whereby the height of the boarding is reduced until the point is reached where the doors and balcony come back into use. The doors openings should be properly blocked up from floor level and replaced by windows as shown in the original permission

- The application should be refused

5.0 THE MAIN ISSUES

- Background
- Impact on residential amenity
- Other matters

6.0 OFFICER APPRAISAL

6.1 Background

- 6.1.1 Planning permission 13/00778/VAR granted consent in retrospect for the variation of conditions No. 2 (approved plans) and No. 3 (removal of permitted development rights) attached to planning permission 10/02710/FUL to allow first floor windows to be changed to doors (including removal of unauthorised balcony guard rail and installation of solid infill to block external lower section of doors); removal of hedges to west boundary, retention of wall to northern boundary, removal of unauthorised boarded fence to northern boundary and replacement with hedge planted on original boundary; retention of existing greenhouse and garden store and take down/reduce height of southern wall, with the planting of a hedge behind.
- 6.1.2 This current proposal specifically relates to the infill panelling that blocks the external lower sections of the doors. Under 13/00778/VAR the infill panelling was approved to a height of 1100mm. This application seeks to lower the height of the infill panels from 1100mm to 900mm. A safety rail will be provided at 1100mm to comply with Building Regulations.
- 6.1.3 Planning law allows for the variation of any condition imposed on a planning application but the consideration of the proposal has to take into consideration the reason it was imposed. The reason for imposing condition 2 was "*To safeguard the residential amenities of the neighbouring property.*" Accordingly, providing the proposed variation of the condition does not adversely impact on residential amenities then there would be no reason to refuse it. This matters is considered below.
- ### 6.2 Impact on residential amenity
- 6.2.1 Policy CS6 of the Core Strategy refers to the need safeguard residential and local amenity and recognise the importance of ensuring that developments do not have unacceptable consequences for neighbours and/or residential amenity.
- 6.2.2 Neighbours object to the lowering of the infill panelling on the grounds that it would increase the size of the glazed opening above and therefore increase potential overlooking of the neighbouring garden (16 Hollinwood). However, whilst the height of the infill panelling will be reduced by 200mm from its current height the size of the glazed opening above will be no larger (deeper) than the window frame approved under the original planning permission reference 10/02710/FUL. Furthermore, it is not considered that the proposal will affect the residential amenities of the neighbouring property in terms of loss of privacy and overlooking to any greater degree in comparison with what has previously been accepted and approved in 2010. Accordingly, the proposal is considered to satisfy the requirements of Core Strategy policy CS6.

6.2.3 Officer note that there were no objections from neighbours to the windows approved within the elevation concerned as part of the 2010 plans and technically the applicant could remove the current glazed opening and infill panelling and insert the windows as approved in the 2010 scheme which would relate in an opening the same size as proposed in the current application.

6.2.4 As such it is officers opinion that, in these circumstances, refusal on the grounds of loss of amenity could not be sustained

6.3 **Other matters**

6.3.1 The works to the northern and southern boundaries as required under conditions 3 and 4 attached to 13/00778/VAR have been undertaken to the satisfaction of the Councils Enforcement Team. Therefore as part of this application conditions 3 and 4 will be reworded to reflect this position.

7.0 **CONCLUSION**

7.1 Having regard to the plans approved as part of application reference 10/02710/FUL it is considered that the proposed variation to planning permission 13/00778/VAR is acceptable in that the amendment proposed will not affect the residential amenities of neighbouring properties to any greater degree in terms of loss of privacy and overlooking such that would justify refusal. Accordingly, it is considered that the proposal satisfies policy CS6 of the adopted Core Strategy.

7.2 The works to the northern and southern boundaries as required under condition 3 and 4 attached to 13/00778/VAR have been undertaken to the satisfaction of the Councils Enforcement Team. Therefore as part of this application conditions 3 and 4 will also varied to reflect this position.

7.2 In arriving at this decision the Council has used its best endeavours to work with the applicant in a positive and proactive manner to secure an appropriate outcome as required in the National Planning Policy Framework paragraph 187.

8.0 **Risk Assessment and Opportunities Appraisal**

8.1 **Risk Management**

There are two principal risks associated with this recommendation as follows:

As with any planning decision the applicant has a right of appeal if they disagree with the decision and/or the imposition of conditions. Costs can be awarded irrespective of the mechanism for hearing the appeal, i.e. written representations, hearing or inquiry.

The decision may be challenged by way of a Judicial Review by a third party. The courts become involved when there is a misinterpretation or misapplication of policy or some breach of the rules of procedure or the principles of natural justice. However their role is to review the way the authorities reach decisions, rather than to make a decision on the planning issues themselves, although they will interfere where the decision is so unreasonable as to be irrational or perverse. Therefore they are concerned with the legality of the decision, not its planning merits. A challenge by way

of Judicial Review must be made a) promptly and b) in any event not later than three months after the grounds to make the claim first arose.

Both of these risks need to be balanced against the risk of not proceeding to determine the application. In this scenario there is also a right of appeal against non-determination for application for which costs can also be awarded.

8.2 **Human Rights**

Article 8 gives the right to respect for private and family life and First Protocol Article 1 allows for the peaceful enjoyment of possessions. These have to be balanced against the rights and freedoms of others and the orderly development of the County in the interests of the Community.

First Protocol Article 1 requires that the desires of landowners must be balanced against the impact on residents.

This legislation has been taken into account in arriving at the above recommendation.

8.3 **Equalities**

The concern of planning law is to regulate the use of land in the interests of the public at large, rather than those of any particular group. Equality will be one of a number of 'relevant considerations' that need to be weighed in Planning Committee members' minds under section 70(2) of the Town and Country Planning Act 1970.

9.0 **Financial Implications**

There are likely financial implications if the decision and / or imposition of conditions is challenged by a planning appeal or judicial review. The costs of defending any decision will be met by the authority and will vary dependent on the scale and nature of the proposal. Local financial considerations are capable of being taken into account when determining this planning application – insofar as they are material to the application. The weight given to this issue is a matter for the decision maker.

10. **Background**

Relevant Planning Policies

Central Government Guidance:

National Planning Policy Framework

Core Strategy and Saved Policies:

CS6 - Sustainable Design and Development Principles

RELEVANT PLANNING HISTORY:

10/00559/FUL Erection of a detached dwelling with integral garage and formation of vehicular access GRANT 12th April 2010

10/02710/FUL Erection of a detached dwelling with integral garage and formation of new vehicular access (amendment to planning approval reference 10/00559/FUL dated 12th April 2010) GRANT 25th August 2010

12/03765/VAR Variation of Conditions No. 2 (approved plans) and No. 3 (removal of permitted development rights) attached to planning permission 10/02710/FUL to allow first floor windows to be changed to doors and Juliet balcony; removal of hedges to west boundary and erection of a wall REFUSE 29th January 2013

12/03766/FUL Application under Section 73a of the Town and Country Planning Act 1990 for erection of greenhouse and garden shed and erection of boundary walls and gate (retrospective) REFUSE 29th January 2013

13/00778/VAR Variation of Conditions No. 2 (approved plans) and No. 3 (removal of permitted development rights) attached to planning permission 10/02710/FUL to allow first floor windows to be changed to doors (including removal of unauthorised balcony guard rail and installation of solid infill to block external lower section of doors); removal of hedges to west boundary and retention of wall and removal of unauthorised boarded fence to northern boundary and replacement with hedge planted on original boundary; retain existing greenhouse and garden store and take down/reduce height of southern wall, planting of a hedge (amended application) GRANT 2nd May 2013

13/00779/FUL Application under Section 73a of the Town and Country Planning Act 1990 for erection of greenhouse and garden shed; removal of hedges to west boundary and retention of wall and removal of unauthorised boarded fence to northern boundary and replacement with hedge planted on original boundary; and take down/reduce height of southern wall, planting of a hedge and erection of gate piers (retrospective) (amended application) GRANT 2nd May 2013

11. Additional Information

List of Background Papers (This MUST be completed for all reports, but does not include items containing exempt or confidential information)
Cabinet Member (Portfolio Holder) Cllr M. Price
Local Member Cllr Pauline Dee Cllr Chris Mellings
Appendices APPENDIX 1 - Conditions

APPENDIX 1

Conditions

STANDARD CONDITION(S)

1. The development shall be carried out strictly in accordance with the approved plans and drawings.

Reason: For the avoidance of doubt and to ensure that the development is carried out in accordance with the approved plans and details.

CONDITION(S) THAT REQUIRE APPROVAL DURING THE CONSTRUCTION/PRIOR TO THE OCCUPATION OF THE DEVELOPMENT

2. Any hedge plants that have planted as part of the approved hedge planting work that, within a period of five years after planting, are removed, die or become, in the opinion of the Local Planning Authority, seriously damaged or defective, then they shall be replaced with others of species, size and number as originally approved, by the end of the first available planting season.

Reason: To ensure the establishment and maintenance of a reasonable standard of hedge in accordance with the approved boundary details.

CONDITION(S) THAT ARE RELEVANT FOR THE LIFETIME OF THE DEVELOPMENT

3. The works undertaken to northern and southern boundary treatments that replaced the boarded fence with the planting of a hedge of indigenous species and reduced the height of the southern boundary wall (to a maximum of 900mm) with the planting of a hedge directly behind the lowered wall shall be retained and maintained in accordance with the approved details.

Reason: To safeguard the visual amenities of the area.

4. The solid infill cladding shall be retained in accordance with the approved details.

Reason: To safeguard the residential amenities of the neighbouring property.

5. The garage hereby approved shall not be used for any purpose other than those incidental to the enjoyment of the dwelling but not including use as living accommodation.

Reason: To safeguard the character of the neighbourhood and to ensure the provision on adequate on-site parking.

6. Other than the proposals hereby approved and notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any order revoking or re-enacting that order with or without modification), the following

development shall not be undertaken without express planning permission first being obtained from the Local Planning Authority:-

- extension to the dwelling
- free standing building within the curtilage of the dwelling
- addition or alteration to the roof
- erection of a porch
- fences, gates or walls
- any windows or dormer windows

Reason: To enable the Local Planning Authority to control the development and so safeguard the character and visual amenities of the area, and to ensure that adequate private open space is retained within the curtilage of the building.

-