



Civic Centre, Riverside, Stafford

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Dear Members

Planning Committee

A meeting of the Planning Committee will be held on **Wednesday, 25 May 2022** at **6.30pm** in the **Craddock Room, Civic Centre, Riverside, Stafford** to deal with the business as set out on the agenda.

Please note that this meeting will be recorded.

Members are reminded that contact officers are shown in each report and members are welcome to raise questions etc in advance of the meeting with the appropriate officer.

A handwritten signature in black ink, appearing to read "I. Curran".

Head of Law and Administration

PLANNING COMMITTEE - 25 MAY 2022

Chairman - Councillor E G R Jones
Vice-Chairman - Councillor P W Jones

A G E N D A

- 1 Minutes
- 2 Apologies
- 3 Declaration of Member's Interests/Lobbying
- 4 Delegated Applications

Details of Delegated applications will be circulated separately to Members.

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MEMBERSHIP

Chairman - Councillor E G R Jones

F Beatty	P W Jones
A G Cooper	B McKeown
A P Edgeller	A Nixon
A D Hobbs	G P K Pardesi
J Hood	C V Trowbridge
E G R Jones	

PLANNING COMMITTEE – 25 MAY 2022

Ward Interest - Nil

Planning Applications

Report of Head of Development

Purpose of Report

To consider the following planning applications, the reports for which are set out in the attached **APPENDIX**:-

		Page Nos
2033151FUL	Casa De Lune, 32 Pool Lane, Brocton	4 - 12
	The application was called in by Councillor A G Cooper	
	Officer Contact – Sian Wright, Development Lead, Telephone 01785 619528	

Previous Consideration

Nil

Background Papers

Planning application files are available for Members to inspect, by prior arrangement, in the Development Management Section. The applications including the background papers, information and correspondence received during the consideration of the application, consultation replies, neighbour representations are scanned and are available to view on the Council website.

Application:	20/33151/FUL
Case Officer:	Della Templeton
Date Registered:	3 November 2020
Target Decision Date:	29 December 2020
Extended To:	21 April 2022
Address:	Casa De Lune, 32 Pool Lane, Brocton, Stafford, ST17 0TY
Ward:	Milford
Parish:	Brocton
Proposal:	Garage with living accommodation above
Applicant:	Mr C Hughes
Recommendation:	Approve, subject to conditions

REASON FOR REFERRAL TO COMMITTEE

This application has been called in by Councillor A G Cooper (Ward Member for Milford) for the following reason:-

"Concerns over impact on AONB. Overbearing construction impacting street scene, concern over proximity to tree roots, risking tree damage and potential safety issue to road users"

Context

The Application Site

The application relates to a residential property set within a substantial curtilage on the eastern side of Pool Lane within the village of Brocton.

The site fronts Pool Lane to its western boundary and slopes steeply upwards from west to east to the host dwelling which is set some 49m back from the highway boundary. Other boundaries are shared with neighbouring residential curtilages along Pool Lane to north and south and Brook Lane to the east.

Brocton is not identified under Policy SP3 as part of the Sustainable Settlement Hierarchy and is therefore categorised as open countryside.

The Proposed Development

It is proposed to erect a domestic garage with a footprint measuring 7m by 9.2m and a height of 6.5m to its ridge. Ancillary residential accommodation comprising one bedroom,

with en-suite shower room, an open plan living/kitchen/dining area and guest WC, would be provided within the roof space. This is stated to provide accommodation for an elderly relative of the occupiers of the host dwelling.

The building would be sited 3.841m back from the front boundary wall of the site with garage doors on its southern elevation. Due to the sloping nature of the site the new residential accommodation would be accessed from a higher level without the need for steps/staircase. The entrance door and living area window serving the apartment would be to the east elevation facing the host dwelling allowing access to amenity space which would be shared with the host. Two dormer windows would be provided to the southern elevation and the north and west elevations would be blank.

The proposal has been modified since its initial submission to reduce both the height and footprint of the building and provide greater separation to the highway boundary.

Designations

The application site lies within the 8km zone of influence for the Cannock Chase Special Area of Conservation (SAC) and within a SSSI Impact Risk Zone requiring consultation with Natural England on any net increase in dwelling units. It is also within the Cannock Chase Area of Outstanding Natural Beauty (AONB)

There are a number of Tree Preservation Orders (TPO's) within Brocton which include trees on or adjacent to the site.

Coal Authority Low risk area.

Officer Assessment – Key Considerations

Principle of the Proposed Development

Spatial Principle (SP) 3 seeks to direct the majority of development to the sustainable settlement hierarchy comprising Stafford, Stone and Key Service Villages (KSV). Brocton is not a KSV. SP7 outlines situations where development outside the sustainable settlement hierarchy may be supported including development according with Policy C5.

Policy C5 seeks to restrict extension to dwellings within open countryside to provide additions of no more than 70% of the original dwelling but will permit extensions over this figure if it can be demonstrated that the design and appearance of the additions is proportionate to the type and character of the existing dwelling and the surrounding area.

The original floor area of the dwelling is estimated to be in the region of 297sqm. Previous extensions comprising first floor and two storey additions to the northern end of the building amount to some 192sqm of additional floor area or approximately 65% increase over the existing dwelling. Although not an extension to the dwelling as such, the proposed garage building would increase floor area by approximately 100sqm equating to cumulative additions across the site of almost 100% over the original dwelling.

Given that this exceeds the 70% suggested in Policy C5(c), the proposed garage building should only be approved if it is considered to be proportionate to the type and character of

the existing dwelling and surrounding area which is assessed in the following section of the report.

The essential feature of an ancillary use is that there should be a functional relationship with the primary use of the planning unit. The test for whether one use is ancillary to another, or not, is a matter of fact and degree to be determined on the particular merits of each case. In applying a severability test it must first be determined whether the ancillary use could practically and viably operate on its own. In the case of *Uttlesford DC v SSE and White* [1992] JPL 171, the court considered that, even if the accommodation provided facilities for independent day-to-day living, it would not necessarily become a separate planning unit from the main dwelling. The *Uttlesford* case found that providing the planning unit remains in single family occupation and continues to function as a single household, no material change of use is involved.

It is stated that the annex accommodation proposed in this case would be for an elderly relative of the applicant who currently resides some distance away and needs daily monitoring and care and as such it is considered that the host dwelling together with the annex would remain as a single unit of occupation.

The annex is proposed to be self-contained, with accommodation to include bedroom, bathroom, kitchen and living space, however it would share vehicle access and parking with the host dwelling and would not have a garden if it was to be split into two planning units. Furthermore, the habitable accommodation would be above a substantial 2/3 car garage serving the host dwelling to which there would be no internal link. The annex would be accessed via a side doorway from a higher level within the garden of the host dwelling and the side of the garage would form a retaining wall to this part of the garden.

It is considered that a functional relationship between the proposed extension for ancillary use and the dwelling house has been demonstrated, this can also be secured by a condition.

Policies and Guidance:-

National Planning Policy Framework (2021) – Paragraphs 8 and 11

The Plan for Stafford Borough – SP1 Presumption in Favour of Sustainable Development; SP3 Sustainable Settlement Hierarchy; SP7 Supporting the Location of New Development; Policy C5 Residential Proposals outside the Settlement Hierarchy; N1 Design; Part 2 - Policy SB1 Settlement Boundaries

There is no adopted Neighbourhood Plan for this area

Character, Appearance and Amenity

Taken cumulatively, the current proposals, plus previous extensions to the dwelling, are considered to constitute a substantial increase over the size of the original dwelling. However, as a separate structure sited some 38m to the west of the host property, it is not considered that the development would alter the essential character of the existing dwelling.

Furthermore, although the garage would be forward of the existing building line within the plot, it is noted that the existing dwelling is set back from neighbouring development giving the impression of a second build line extending behind the main frontage to meet development fronting Deer Hill. The proposed garage would sit more in line with the frontage development extending to the north along Pool Lane. The degree of separation to the host dwelling further emphasises the impression of dual build lines.

The Council's adopted Design Supplementary Planning Document on Design states that detached garages will only be permitted forward of a principal elevation in exceptional circumstances where the building's frontage is either sufficiently deep or sufficiently wide, so as not to impact on the setting of the dwelling, the character and appearance of the street scene or impinge on the amenity of neighbours. It is further suggested that double width garages in such situations would ideally have their entrance doors at 90 degrees to the dwelling so that they do not dominate the front elevation. The proposals in this case are considered to meet these requirements having particular regard to the 49m frontage depth to provide separation to the host dwelling; the dual build line so that the garage structure would not impinge on the closest neighbours and the fact that the garage doors and upper floor dormers would be to the side rather than fronting the highway. A degree of screening would be retained in the existing boundary wall to the front and trees within the grass verge outside the wall.

Overall, despite its frontage location and size, it is considered that the garage building would be a relatively recessive feature within the streetscene.

There are no windows proposed to the north or west elevations of the garage and it is not considered that the dormer windows facing south, towards the front garden of number 30 or the window and door facing east, towards the host dwelling would result in any significant privacy concerns given the separation distances between neighbouring properties. Whilst the dormer windows would allow for a view over neighbouring properties gardens, this would be at a distance of at least 16m and would only affect the parts of the gardens closest to the highway boundary which are generally expected to be less private than the rear garden areas. Similarly, any views between east facing windows in the garage and front windows to neighbouring properties would be oblique and at a minimum separation distance of some 28m. Consequently it is not considered that the relationship would result in an unreasonable degree of overlooking or loss of privacy.

No other amenity concerns are likely to arise as a result of the proposal.

Policies and Guidance:-

National Design Guide (NDG)

National Planning Policy Framework (2021) – Paragraph 130/ Section 12. Achieving well-designed places

The Plan for Stafford Borough – Policy N1 Design, N8 Landscape Character

Supplementary Planning Document (SPD) – Design

Parking and Access

Dwellings with 4 or more bedrooms such as the host dwelling at Casa de Lune should be provided with 3 car parking spaces according to the standards set out in Appendix B of the Plan for Stafford Borough (TPSB). As the residential accommodation above the proposed

garage would effectively be an extension to that provided within the host dwelling this does not give rise to any additional car parking requirements thus the three spaces to be provided within the ground floor garage would be sufficient to meet the needs of the development. It is also noted that there would be space around the structure sufficient to accommodate at least a further two spaces.

There would be no change to the access arrangements to the site and sufficient car parking would be provided/retained to meet the Council's standard requirement as set out within Appendix B of TPSB.

Policies and Guidance:-

National Planning Policy Framework (2021) – Paragraphs 107, 108/Section 9. Promoting sustainable transport

The Plan for Stafford Borough – Policies T1 Transport, T2 Parking and Manoeuvring Facilities, Appendix B – Car Parking Standards

Other matters

Trees

There is no indication that any trees are to be removed as part of the proposal. There are however a number of trees on and adjacent to the site including some within Tree Preservation Orders. The Council's Tree Officer has therefore been consulted on the application and raised concern that there was insufficient information to demonstrate that trees would not be affected. The scheme has since been amended and a Tree Protection Plan (TPP) and Arboricultural Impact Assessment (AIA) have been provided. The Tree Officer is now satisfied that the proposal would have a minimal effect on the frontage trees provided that the protective fencing and ground protection measures recommended in the AIA and TPP are conditioned and implemented prior to any other works starting on site. It is considered appropriate to address these matters by condition.

SAC Impact

In addition, as the proposal is for ancillary residential accommodation and not a new dwelling it would not result in a net increase in dwellings within 8km of the SAC. As such it is considered that an appropriate assessment under the habitat regulations is not required. Natural England have confirmed that they have no objections.

Policies and Guidance: -

National Planning Policy Framework (2021)
Paragraphs: 179, 180, 181, 182

The Plan for Stafford Borough

Policies: N4 The Natural Environment and Green Infrastructure; N6 Cannock Chase Special

Area of Conservation

Conclusion and Planning Balance

In conclusion, on balance the proposals are considered to be proportionate to the type and character of the existing dwelling and the surrounding area and therefore comply with the objectives of Policy C5 and Policy N1 of The Plan for Stafford Borough. The proposed garage (which has been substantially reduced in size and more sensitively located within the site) is considered acceptable given the width and depth of the frontage of the dwelling the level of visual screening in the form of boundary treatments, trees and other planting and its relative footprint in comparison to the host dwelling. There are no significant amenity or parking concerns associated with the proposal. It is therefore recommended that planning permission be granted subject to conditions.

Consultations

AONB:

Following an initial objection due to “Potential impact on the character and natural beauty of the AONB and detrimental effect on the character of this part of Brocton” the AONB Officer was consulted on the amended plans and commented as follows:

Bearing in mind the previous approval for a 2-storey garage, similarly set back from the site frontage, and subject to retention of the existing boundary wall and tall hedge, the amended

proposal would be acceptable and therefore the AONB withdraws its previous objection.

Tree Officer:

Initial objection resulting in amended plans and provision of further information:

I consider that the proposal is acceptable in terms of having a minimal effect on the frontage trees provided that the protective fencing and ground protection measures recommended in the AIA and TPP are conditioned and implemented prior to any other works starting on site.

Natural England:

Based on the plans submitted, Natural England considers that the proposed development will not have significant adverse impacts on designated sites and has no objection.

Parish Council:

No response in respect of initial submission but responded as follows to consultation in respect of amended scheme:

It is the opinion of the Parish Council that this development is too tall, too close to the road and too imposing for a rural setting.

Neighbours (4 consulted):

Two representations received (from same address): Material planning considerations summarised below:

- Potential impact on trees
- Over development
- Prominent and obtrusive feature in the streetscene
- Potential for later sale as separate dwelling
- Overlooking/loss of privacy

A further similar letter was received from the same address in respect of the amended submission. No new planning considerations were raised.

Site Notice: 01.12.2020
 Expiry date: 22.12.2020

Relevant Planning History

11/15995/HOU - Proposed garage / games room - Approved 08.11.2011
 06/06035/FUL - Proposed split level garage, games room and swimming pool extension to front - Refused 08.05.2006
 05/03849/FUL - Retrospective application for construction of splash pool, pump house and steps - Approved 09.03.2005
 02/42728/FUL - Alteration and extension of existing domestic dwelling - Approved 25.09.2002

Recommendation

Approve, subject to the following conditions:

1. The development to which this permission relates must be begun not later than the expiration of three years beginning with the date on which this permission is granted.
2. This permission relates to the originally submitted details and specification and to the following drawings, except where indicated otherwise by a condition attached to this consent, in which case the condition shall take precedence: -
 2007:04 Revision A - Site Location Plan
 2007:05 Revision A - Plans and Elevations
 2007:06 Revision A - Elevations
 2007:07 Revision B - Site Plan
3. The annexe accommodation hereby permitted shall be occupied in a manner wholly ancillary to the residential use of the host dwelling at 32 Pool Lane, Brocton and shall not be used, sold, or let as a separate dwelling unit.
4. Before the development hereby approved, including any demolition and/or site clearance works is commenced or any equipment, machinery or materials are brought onto site, protective fencing and ground protection measures shall be provided in accordance with the recommendations in the Tree Protection Plan and Arboricultural Impact Assessment and retained for the duration of construction (including any demolition and / or site clearance works), unless otherwise agreed in writing by the Local Planning Authority. Other than to allow for the construction of the permitted development there shall be no other excavations, fires, changes in levels, storage of materials, vehicles or plant, cement or cement mixing, discharge of liquids, site facilities or passage of vehicles, plant or pedestrians within 2 metres of the 'outside' edge of the ground protection area or the protective fencing whichever is the greater distance from the trees. The approved scheme shall be kept in place until all parts of the development have been completed, and all equipment; machinery and surplus materials have been removed.
5. Notwithstanding any description/details of external materials in the application documents, the facing materials to be used for the external walls, roof and external

joinery in the development shall match in colour and texture, those of the existing dwelling at 32 Pool Lane, or as otherwise agreed in writing by the Local Planning Authority.

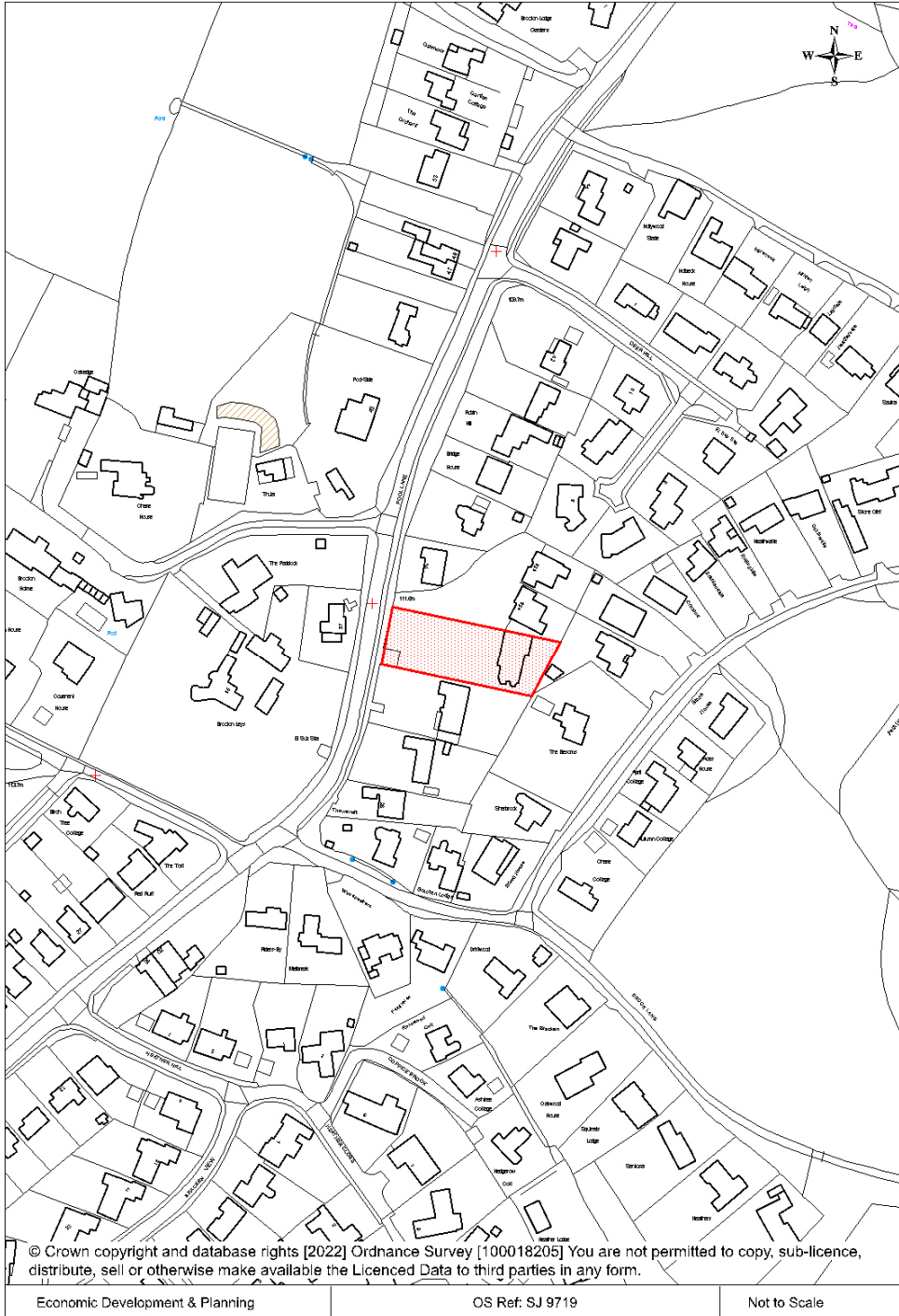
The reasons for the Council's decision to approve the development subject to the above conditions are:

1. To comply with the requirements of Section 51 of the Planning and Compulsory Purchase Act 2004.
2. To define the permission.
3. To safeguard the amenities of the area and because a new independent dwelling in this location would not provide adequate levels of privacy, amenity space and parking provision for potential occupiers and those of the host dwelling at 32 Pool Lane. (Policies N1e and T2 of The Plan for Stafford Borough).
4. To ensure adequate protection for trees during construction. (Policy N8 of The Plan for Stafford Borough)
5. To ensure the satisfactory appearance of the development (Policies N1 g and h of The Plan for Stafford Borough).

Informatives

- 1 In accordance with the requirements of Article 31 of the Town and Country Planning (Development Management Procedure) (England) (Order) 2010, as amended, and the National Planning Policy Framework 2021, the Council has worked in a positive and proactive way in determining the application and has granted planning permission.

**20/33151/FUL
Casa De Lune
32 Pool Lane
Brocton**



Ward Interest - Nil**Planning Appeals***Report of Head of Development***Purpose of Report**

Notification of new appeals and consideration of appeal decisions. Copies of any decision letters are attached as an **APPENDIX**.

Notified Appeals

Application reference	Location	Proposal
21/33764/COU Delegated Refusal	Osborne House 190B Main Road Milford	The change of use of land from agricultural to purposes incidental to the enjoyment of a dwellinghouse (domestic garden).
21/33736/FUL Committee Refusal	Middleton Livery Yard and Riding Tuition Old Road Barlaston	Erection of equine workers dwelling
21/34107/PAR Delegated Refusal	Barn At Kents Farm Church Lane Gayton	Conversion of redundant agricultural building to a dwelling house
20/33247/FUL Committee Refusal	Land At Unit 5B Grindley Business Village Uttoxeter Road Grindley	Expansion to provide additional office accommodation
21/34099/POR Delegated Refusal	Victoria Park House 2 - 9 Victoria Road Stafford	Prior Approval - Change of use from Offices (B1a) to Dwellinghouse (C3)
21/34279/POTH Committee Refusal	Victoria Park House 2 - 9 Victoria Road Stafford	Proposed extension of the existing building by way of a vertical extension to create one additional floor containing multiple residential apartments
21/35006/HOU Delegated Refusal	Waterstone Barn Lower Heamies Farm Lower Heamies Lane	Aluminium veranda with glass roof panels (11m wide x 3.5m deep) attach to side of house

Decided Appeals

Application Reference	Location	Proposal
20/32217/LDC Appeal Dismissed	Land South of Shirleywich London Road Pasturefields	Lawful Development Certificate - Commencement of Condition 1 on 15/22518/FUL
21/34182/HOU Appeal Dismissed	15 Balaams Lane Moss Gate Stone	Erection of wooden bike store on current hardstanding driveway to the front
20/32128/FUL Appeal Allowed	Rowley House Nursing Home 26 Rowley Avenue Stafford	Extension over existing wing

Previous Consideration

Nil

Background Papers

File available in the Development Management Section

Officer Contact

John Holmes, Development Manager Tel 01785 619302



Appeal Decision

Hearing held on 22 February 2022

Site visit made on 23 February 2022

by D Boffin BSc (Hons), DipTP, MRTPI, DipBldg Cons (RICS), IHBC

an Inspector appointed by the Secretary of State

Decision date: 28 March 2022

Appeal Ref: APP/Y3425/X/21/3275929

Land at Shirleywich, London Road (A51), Hixon, Staffordshire

Easting: 398660 Northing: 325516

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended (1990 Act) against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Mr William Harp of Harixon against the decision of Stafford Borough Council.
 - The application ref 20/32217/LDC, dated 24 April 2020, was refused by a notice dated 22 September 2020.
 - The application was made under section 191(1)(b) of the 1990 Act.
 - The development for which a certificate of lawful use or development is sought is whether planning permission 15/22518/FUL, for the construction of a 196 berth narrowboat marina, facilities building, dry dock/workshop, pump out building, car parking, access and landscaping, has begun and can lawfully be completed.
-

Decision

1. The appeal is dismissed.

Procedural Matters and Background

2. The application form associated with the LDC application does not state what the description of development, for which an LDC was sought, as section 8 of the form only states '*see attached report*'. A letter dated 12 April 2020 appears to be a covering letter for the LDC application and it states '*it is our view we have provided evidence that works have started on site and that planning 15/22518/FUL is now extant...*'. It was agreed at the Hearing that the appellant is seeking to establish that the development granted planning permission¹ on 20 March 2017 (the 2017 permission) has begun and can lawfully be completed. The 2017 permission was granted for the construction of a 196 berth narrowboat marina, facilities building, dry dock/workshop, pump out building, car parking, access and landscaping. Consequently, that forms the basis of the description within the banner heading above. The address in the banner heading is taken from the application form.
3. It became apparent during the Hearing that the planning application associated with the 2017 permission was considered by the Council's Planning Committee in 2015 (2015 report), when it was deferred, and in 2017 (2017 report) when the decision was made. The Officer's Reports relating to both Planning Committee meetings were provided by the Council at my request. The 2017

¹ Ref: 15/22518/FUL

report indicates that the application had been deferred to request more information on the quantities of soil to be removed and its destination, to respond to the concerns raised by Mr Rice in his letter and to determine existing and proposed ground levels.

4. I also requested the Council provide copies of a screening opinion relating to the need for an Environmental Impact Assessment (EIA) associated with the 2017 permission, the approved plans, decision notice and the hydrological assessments, letters and additional details submitted during the determination of the 2017 permission. Furthermore, I have also been provided with the details submitted in relation to the written confirmation of the discharge of conditions² on the 2017 permission.
5. The appellant raised concerns about; the complexities of the planning system; its associated timelines and the Council's treatment of him; at the Hearing. However, these are matters outside of my jurisdiction in determining this appeal.
6. The site associated with the 2017 permission (the appeal site) lies between London Road (the A51), Trent Lane and the Trent and Mersey Canal. The Pasturefields salt marsh Special Area of Conservation (SAC) and Site of Special Scientific Interest (SSSI) lies on the opposite side of the canal to the south of the appeal site. The canal lies within the Trent and Mersey Canal Conservation Area (TMCCA).

Reasons

7. Section 191(4) of the 1990 Act indicates that if, on an application under this section, the local planning authority are provided with information satisfying them of the lawfulness at the time of the application of the use, operations or other matter described in the application, they shall issue a certificate to that effect. In any other case they shall refuse the application. The planning merits of the development are not relevant in this appeal and the issue is whether the Council's decision to refuse to grant the LDC was well founded. My decision rests on the facts of the case, on relevant planning law and judicial authority. The burden of proof is with the appellant and the appropriate test of the evidence is the balance of probabilities.
8. The 2017 permission was subject to 39 conditions and the first condition within the decision notice for that permission states, as is normally the case, that '*the development to which this permission relates must be begun not later than the expiration of three years beginning with the date on which this permission is granted*'. The permission was granted on 20 March 2017.
9. There is no dispute that on 16 March 2020 that Meridan Consult carried out a site inspection with regard to a drainage excavation trench that had been dug between a corner of the proposed amenity building and the first inspection chamber towards the septic tank. The Council have also confirmed that it does not dispute that by that date soil had been stripped back at the proposed access point and along parts of the vehicular access. Moreover, vegetation and a hedge line had been removed/relocated to enable a visibility splay at that access point by that date.

² Ref: 20/32064/DCON

10. I acknowledge that the drainage trench relates to a foul water system that is not part of the works covered by condition 20 of the 2017 permission as that condition relates to surface water drainage. Nevertheless, section 56(4) of the 1990 Act sets out what "material operation" under section 56(2) means and it includes '*the laying of any underground main or pipe to the foundations, or part of the foundations, of a building...*' and '*any operation in the course of laying out or constructing a road or part of a road*'.
11. I observed on site that the drainage trench has been backfilled but either end is marked by a vertical 'pipe'. Furthermore, the hedge line has been moved and the soil scraped back and the area of the proposed vehicular access is clearly apparent at a lower level to the surrounding soil levels. It is more likely than not that the works carried out correlate with the corner of the proposed amenity block and the site access approved as part of the 2017 permission. As such, I find that these works are material operations under section 56(2) of the 1990 Act and that they began within three years of the decision date of the 2017 permission.
12. However, several of the 39 conditions attached to the 2017 permission required details to be submitted to and approved by the Council prior to the commencement of the development. A written confirmation application relating to the discharge of conditions 3, 5, 12, 18, 19, 20, 21, 24, 25, 26, 31, 32, 35, 36 and 39 was received by the Council on the 9 March 2020. That application remains undetermined, it has not been appealed and the fee associated with it has not been returned by the Council. The Council has stated that based on the information submitted with that application it would have refused the discharge of conditions 3, 5, 12, 20, 31, 32 and 35.
13. In the *Whitley*³ judgment Woolf LJ states that '*As I understand the effect of the authorities to which I am about to refer, it is only necessary to ask the single question; are the operations (in other situations the question would refer to the development) permitted by the planning permission read together with its conditions? The permission is controlled by and subject to the conditions. If the operations contravene the conditions they cannot be properly described as commencing the development authorised by the permission. If they do not comply with the permission they constitute a breach of planning control and for planning purposes will be unauthorised and thus unlawful. This is the principle which has now been clearly established by the authorities.*' This is known as the *Whitley* principle.
14. The *Whitley* principle was considered in the case of *R (oao Hart Aggregates Ltd) v Hartlepool BC* [2005] EWHC 840 (Admin) (*Hart Aggregates*) where it was held that a distinction had to be drawn between a condition which required some action to be taken before a development is commenced and a condition which expressly prohibits any development taking place before a particular requirement has been met. It was further found that it is necessary for the condition to be both expressively prohibitive of commencement of the development and to go to the 'heart of the permission'. Only when both tests were met would it be a condition precedent. A failure to discharge such conditions would result in development without planning permission.

³ *F G Whitley & Sons v SSW & Clwyd CC* [1990] JPL 678; [1992] JPL 856

15. The subsequent Court of Appeal decision, in *Greyfort Properties Ltd v SSCLG & Torbay Council* [2011] EWCA Civ 908; [2012] JPL 39 (*Greyfort*) applied both the *Hart Aggregates* judgment and the *Whitley* principle. It specifically endorsed the need for the condition to go to the “heart of the matter” to be a true condition precedent. It was also held that the wording of a condition need not be expressly prohibitive if its effect was prohibitive in substance and that if this was the case the condition was still capable of being a true condition precedent.
16. Several of the conditions attached to the 2017 permission required some action to be taken before the development was commenced. However, the Council considers that only conditions 5, 12 and 20 can be treated as condition precedents taking into account the judgments above. Based on the evidence before me, including the oral evidence given at the Hearing, I have no reason to disagree that the remainder of the pre-commencement conditions do not go to the heart of the permission.
17. Condition 5 of the 2017 permission relates to a scheme and specification for the construction and operation of the marina basin. The condition begins with the wording ‘*Notwithstanding any information in the application*’. Therefore, on a reasonable reading of those words the condition appears to be stating that despite the information within the planning application relating to the construction and operation of the marina basin a scheme and specification is required for its construction and operation prior to the commencement of the development. The last part of the condition requires the marina to be constructed in accordance with the approved scheme and specification. I consider that, in terms of its wording, this condition is expressly prohibitive in both parts.
18. The next question is whether or not condition 5 goes to the ‘heart of the permission’. It involves an assessment of the significance of the condition. The reason for the condition, as stated within the decision notice, is ‘*To ensure that there is no adverse impact on the Pasturefields salt marsh Special Area of Conservation and Site of Special Scientific Interest; to maintain and enhance biodiversity; and to safeguard the visual amenity of the rural locality*’.
19. Even though the condition contains the wording ‘*notwithstanding any information in the application*’, there is no indication within the 2017 report that the submitted details relating to the sections, extent and proposed contours of the marina basin were in any way unacceptable. Moreover, the condition contains an indication of the details that the scheme and specification was expected to include. These are an appropriate means of lining the basin, a construction and environmental management plan and the proposed operational standards for the use of the marina. In my judgement, it is reasonable to consider that, these latter details are those specifically required by the condition.
20. The 2015 and 2017 reports provide additional information and background as to why the conditions on the 2017 permission were required. The wording of condition 5 within the 2015 report is substantially different to that within the 2017 permission. It is apparent that the wording of condition 5 was amended to take into account the hydrology assessments, spoil calculations and amended drawings that were submitted after the application was deferred.

21. The 2017 report states that more detailed cross sectional plans of the site had been received showing the depth of the basin and the ground levels. With regards to the SAC/SSSI the 2017 report states, amongst other things, that additional information to supplement the original hydrological assessment of the potential impact on the water conditions of the SAC/SSSI has been received. It goes onto state that ...*'there is no groundwater connection between the two sites. The development is therefore considered to have no likely significant effects on the SAC. Natural England concurs with this conclusion, and that conditions covering the submission of details of...a construction and environmental management plan....the lining of the marina and of the operational standards for the use of the marina would be acceptable mitigation'*.
22. The operational standards for the use of the marina clearly relates to the standards that would be put in place to operate the marina once it is in use. Whilst this is of importance these details in themselves would not stop the commencement of the development as a whole as they are details which could be agreed prior to the marina being used.
23. The method for lining the marina basin is not specified within the application. Nonetheless, the hydrological assessments submitted in support of the 2017 permission state that a stilling test is required by the Canals and Rivers Trust to be carried out to test the water-tightness of the excavation before the marina can be linked to the main canal network. It goes onto state that this can also be used to test that the basin is not leaching into the underlying strata and puddle-clay or reinforced concrete could be used to line the marina. The specific method for lining the marina is one of the factors that would ensure that the integrity of the SAC/SSSI is not adversely impacted. However, it is clear that any lining methodology would have to ensure the watertightness of the basin due to the requirements of the Canals and Rivers Trust. Furthermore, there is no reason to believe that a satisfactory lining methodology cannot be provided.
24. Nevertheless, the condition also refers to a construction and environmental management plan (CEMP). In my experience a CEMP details how a construction project would avoid, minimise or mitigate effects on the environment and surrounding area. It requires agreement to a methodology and framework for carrying out the construction of the marina basin. Carrying the development out in a particular way may well be significant for the visual amenity of the area and/or the biodiversity and ecology on the site and within the surrounding area. Given the sensitivity of the surrounding environment without having the detailed information prior to commencing development, harm could occur that may not always be possible to be undone. The marina basin is a substantial part of and the focus of the 2017 permission.
25. As such, I consider that in this case it was clearly necessary for a CEMP relating to the construction of the marina basin to be submitted to show how that construction would be carried out before any work towards the development had commenced. This matter clearly affects the fundamentals of how the development needs to be undertaken and goes to the heart of the planning permission. Consequently, condition 5 of the 2017 permission is, in my judgement, a true condition precedent.

26. Condition 12 relates to hard and soft landscaping works and it also includes the wording '*notwithstanding any information in the application*'. It also states that '*no development shall take place until full details of both the hard and soft landscaping... have been submitted to and approved...*'. It therefore expressly prohibits any development taking place before that requirement has been met.
27. The reason for the condition is stated to be '*To maintain and enhance biodiversity and to safeguard the visual amenity of the rural locality*'. The 2017 report points out that an overall indicative landscaping strategy for the site shows planting belts, grassed picnic areas, an access route and a seasonally wet wildlife habitat with areas of grass land. It goes on to state that conditions would secure a detailed landscaping scheme. It also indicates that an existing wetland area on the site and the area of Alder trees are identified as important to nature conservation. Part of the mitigation for the biodiversity impacts arising from the development was specified to be in the form of a comprehensive and ecologically informed planting scheme. The hard surfacing would be permeable and would also be integral to the surface water drainage scheme.
28. The site is in close proximity to the SAC/SSSI, mitigation was proposed in relation to the biodiversity and ecological impacts of the scheme and parts of the site are within the TMCCA. Nevertheless, the overall landscaping strategy forms part of the approved plans and it is the detail behind that strategy that is required by the condition. Ensuring that the detail complies with and facilitates the aims of the strategy is not a measure that I would deem affects the fundamentals of how the development needs to be undertaken, nor is it something that needs to be agreed prior to those works taking place. In the circumstances of this case, this is not a matter that goes to the heart of the planning permission. In the light of this and having regard to the judgments set out above, condition 12 of the 2017 planning permission is not a true condition precedent.
29. Condition 20 relates to the submission, approval and implementation of a detailed surface water drainage scheme. This condition expressly prohibits any development taking place before the scheme is submitted and approved. The reason given for the condition is '*to prevent the increased risk of flooding; to improve and protect water quality; to improve habitat and amenity; and to ensure the future maintenance of the sustainable drainage solutions*'.
30. Within the 2017 report it states that the surface water drainage would be by way of soakaways and hard surfaces would be permeable to allow water to drain through. It goes on to indicate that the Lead Local Flood Authority raises no objection subject to a condition securing a detailed surface water drainage scheme. It also states that Natural England considers that the information set out in Pam Brown Associates' letter of 3 January 2017 satisfactorily addresses the points raised previously and that they agree with the submitted information which advocates separating the control of the water quality of surface water runoff and the marina water body.
31. The 3 January 2017 letter from Pam Brown Associates states that '*The control of the chemical quality of surface water runoff (including from car parks and infrastructure) would need to be considered in the proposed design. In previous marina developments, this issue has been addressed by routing the surface water drainage through a 'treatment train'- essentially a series of filters and*

attenuation mechanisms...'. The wording of condition 20 that is within the decision notice is only slightly different to that contained within the 2015 report. The differences relate to the insertion of the wording 'treatment train' within it and it is reasonable to consider that it was inserted to reflect the contents of the Pam Brown Associates letter.

32. Drainage matters require technical solutions and are normally resolved by an appropriate and correct specification. I acknowledge that such information would be desirable prior to the commencement of the development. However, in this case the overall drainage strategy and the likely effects on the SAC/SSSI and flooding had been submitted through the hydrology reports and letters from Pam Brown Associates. As with condition 12 it is the detail behind the overall strategy that is required by condition 20. Ensuring that the detail complies with and facilitates the aims of the strategy is not a measure that I would deem affects the fundamentals of how the development needs to be undertaken, nor is it something that needs to be agreed prior to those works taking place. Furthermore, there is no reason to believe that a satisfactory detailed surface water drainage scheme cannot be provided. In the circumstances of this case, this is not a matter that goes to the heart of the planning permission. In light of this and having regard to the judgments set out above, condition 20 of the 2017 planning permission is not a true condition precedent.
33. Even though I have found conditions 12 and 20 are not true conditions precedents I have found that condition 5 is a true condition precedent. That condition has not been formally discharged by the Council. In such circumstances the appellant seeks to rely on the principle that it would be an abuse of power or irrational for the Council to take action to prevent the development from proceeding.
34. The appellant's case is that an application was made on 9 March 2020 to discharge all relevant conditions, and that the Council informed him that due to the Covid-19 pandemic it was not in the position to discharge the conditions and that a LDC application should be submitted. He also highlights that under section 93A of the 1990 Act (amendments made by the Business and Planning Act 2020) unimplemented planning permissions with time limits for implementation which passed after 23 March 2020 were restored and the time limit extended to 1 May 2021 (subject to Additional Environmental Approval) due to the pandemic.
35. I acknowledge that case law has established that, an exception to the *Whitley* principle is, if there is a condition requiring an approval before a given date, and the developer has applied by that date for the approval, which is subsequently given so that no enforcement action could be taken (albeit after the commencement deadline), then the work done before the deadline and in accordance with the scheme ultimately approved can amount to a start to development. In this regard I have some sympathy with the appellant as the application to discharge the conditions was submitted at a time when the country was about to go into a national lockdown. In addition, the Council appear to have not been prepared to accept any further details in relation to the discharge of conditions application as it considered that '*any new details will be outside the time limit to implement the permission*' even though the application has never been formally determined.

36. However, that application was also submitted only a few days prior to the three year time limit date. Furthermore, even though section 93A of the 1990 Act was introduced it did not apply to the 2017 permission. Moreover, any informal advice that was given by a Council Officer (Mr N Lawrence) cannot later prevent the issue of an enforcement notice if it is found that the development does not have planning permission. This is a well-known aspect of planning law and requires no further elucidation here.
37. Whilst it is unfortunate that the circumstances outlined above hindered the determination of the discharge of condition application, it would have been open to the appellant to appeal the non-determination of that application. In addition, as the application is still to be determined it may be possible for the appellant to formally submit further details in relation to discharging condition 5 of the 2017 permission. The Council outlined at the Hearing that the submission of further details could be treated as being fundamentally different to that submitted and therefore could be determined to amount to a new application. Nevertheless, if those details are submitted and if they are formally accepted by the Council and eventually approved at that stage, in my judgement, an exception to the Whitley principle would then exist.
38. Nevertheless, at the date of the LDC application there is no dispute that the discharge of condition 5 had not been approved. In the absence of evidence to suggest that it would not have been expedient to do so, in the context of that condition, I am unable to conclude that the Council would have abused its powers or acted irrationally by preventing the development from proceeding at that time. These considerations do not therefore overcome the above findings in respect of that condition. Therefore, in light of and taking these matters into account, I consider that it has not been demonstrated that the 2017 permission has been begun and can lawfully be completed.

Conclusion

39. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development, in respect of the description set out in the header to this decision, was well founded and that the appeal should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act.

D Boffin

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Mr William Harp – Harixon

Katherine Else – Claremont Planning

FOR THE LOCAL PLANNING AUTHORITY:

Mr Richard Wood – Team Leader

Mr Ed Handley – Senior Planner

DOCUMENTS SUBMITTED AT THE HEARING

Officer Report relating to previous planning application - 13/19607/FUL

Determinations of need for Environmental Impact Assessment

Original Officer's Report - 15/22518/FUL

Deferred Officer's Report - 15/22518/FUL

Pam Brown Associates – Shirleywich Marina Hydrological Assessment June 2015

Pam Brown Associates – Shirleywich Marina and Pasturefields Salt Marsh Salinity Monitoring and Assessment October 2016

Pam Brown Associates – Letter dated 18 December 2015

Pam Brown Associates – Letter dated 3 January 2017

PLANS SUBMITTED AT THE HEARING

Contour Plan

Existing Sections

Proposed Sections

Spoil Calcs

Appeal Decision

Site visit made on 1 March 2022

by John Gunn DipTP, DipDBE, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16 March 2022

Appeal Ref: APP/Y3425/D/21/3287799

15 Balaams Lane, Moss Gate, Stone, Staffordshire, ST15 8RH

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr Andrew Kinsman against the decision of Stafford Borough Council.
 - The application Ref 21/34182/HOU, dated 9 April 2021, was refused by notice dated 7 September 2021.
 - The development proposed is the erection of wooden bike store on current hardstanding driveway to the front.
-

Decision

1. The appeal is dismissed.

Main Issues

2. The main issues in this case are:
 - whether the proposed development would be inappropriate development in the Green Belt;
 - the effect of the proposal on the openness of the Green Belt;
 - whether the proposed development would provide adequate parking; and
 - if the development is inappropriate, whether the harm to the Green Belt by way of inappropriateness and any other harm, is clearly outweighed by other considerations so as to amount to the very special circumstances necessary to justify it.

Reasons

Whether Inappropriate Development

3. Spatial Principle 7 (SP7) of The Plan for Stafford Borough 2011 to 2031 (LP) supports development within the Green Belt where it is consistent with national policy.
4. Paragraph 149 of the Framework establishes that new buildings in the Green Belt are inappropriate, subject to a number of exceptions.
5. The Council are of the view that none of the exceptions within paragraph 149 apply. That said, there is specific reference in their officer report to the exceptions included within paragraph 149 b) which allows the provision of appropriate facilities (in connection with the existing use of land or a change of use) for outdoor sport, outdoor recreation, cemeteries and burial grounds and allotments; as long as the facilities preserve the openness of the Green Belt

and do not conflict with the purposes of including land within it, and paragraph g) which relates to limited infilling or the partial or complete redevelopment of previously developed land, whether redundant or in continuing use (excluding temporary buildings).

6. I acknowledge that the proposed development would support the appellant's interest in motorcycling, which is a form of outdoor recreation. However, the proposal is, in itself, not a facility for outdoor recreation. Furthermore, from the evidence before me, and what I saw on my site visit, I also find that the appeal site is not previously developed land as defined in Annex 2 of the Framework. I have no evidence before me to indicate that it falls within any other exception.
7. In light of the above, I find that the proposed development would constitute inappropriate development in the Green Belt for the purposes of the Policy SP7 of the LP and the Framework.
8. Inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances

Openness

9. Openness is an essential characteristic of the Green Belt, which has a spatial aspect as well as a visual aspect. In this regard I find that the proposal would occupy space within the front garden of the property, where no development currently exists. The loss of this space would reduce both visual and spatial openness.
10. On my site visit I saw that the front garden of the host property was separated from its neighbours by high hedges. It had an open frontage to Balaams Lane. As a result, there would be only limited views of the top section of the proposed development above the hedges, or from the section of Balaams Lane directly in front of the appeal site. That said, any removal or reduction in height of the hedges would increase the exposure of the proposed development. In this regard I have no evidence before me that the appellant controls the hedges, and consequently there is no certainty that they will remain in the future.
11. In light of the above, I accept that the impact of the proposal on openness would be limited and localised. Nevertheless, harm to openness would result to the Green Belt, and I am directed by paragraph 148 to give 'substantial weight to any such harm'.

Parking provision

12. Policy T2 of the LP requires development to make provision for parking for residents and visitors in accordance with Appendix B. The requirement for the appeal property is 2 parking spaces, with each space should measuring 2.4 x 4.8m.
13. Policy T2, allows a reduction in parking requirements in certain circumstances. Accessibility to local facilities and services is one of the criteria specified. The appellant's evidence indicates that the distance to the GP surgery and supermarket is approximately 5 miles. It also indicates that the village does not have a frequent bus service. As a result, there is a reliance on private motorised vehicles as a mode of transport.

14. Balaams Lane is a narrow lane, without footpaths, that leads to open countryside to the south. Most of the dwellings that front the lane have forecourt parking. The appeal site currently has 2 parking spaces that accord with the size limits required by the LP. If the development was to be allowed one of the spaces would, according to the Council, be reduced to 4.3m in length. This would enable a small vehicle to be parked in front of the proposed bike store without encroaching onto Balaams Lane. I agree with the appellant that any additional parking on the lane, arising from the development would cause inconvenience to road users, in particular the large agricultural vehicles that often use the lane. Consequently, it is important that parking remains, wherever possible, within the curtilage of the property.
15. Notwithstanding the above, motorcycles would provide an alternative form of transport for the occupiers of the property and would provide flexibility in how family members travel. It could also have a positive benefit on their health and well-being.
16. I acknowledge that the proposal would not strictly accord with the parking standards set out in Appendix B. However, I am satisfied that adequate parking, including provision for storing motorcycles, would meet the everyday needs of the occupiers of the property, without adversely affecting other users of Balaams Lane. Consequently, I conclude that the proposal would not be contrary to Policy T2 of The Plan for Stafford Borough 2011 to 2031 which, amongst other matters, seeks to ensure that adequate parking is provided for developments.

Other Considerations

17. I have taken into account alternative forms of storage, such as a trailer, could be provided. I accept that a trailer would be unlikely to require planning permission and, dependent on its size, may take up more space than the proposal. That said, this is not a matter before me. I have to judge the proposed development on its own merits.
18. I also note the potential to remove the proposed development should the appellant moves from the property, or when it is no longer required. Whilst acknowledging that the proposal might be removed, this would be at some future, unspecified, date. Any harm to the Green Belt would continue to occur whilst it was in existence.
19. On my site visit I saw the developments that have been carried out at 1 and 7 Balaams Lane and other properties in Moss Lane from the public realm, however I am not aware of the circumstances that led to their construction. In any event, from what I saw the extensions were attached to the dwellings and were set further back from the highway. Consequently, those developments are not comparable with the appeal proposal.

Conclusion

20. The proposed development would be inappropriate development in the Green Belt and would result in a small loss of openness. The Framework establishes that substantial weight should be given to any harm to the Green Belt. Therefore, whilst in this instance I find that the proposed development would provide adequate parking provision this benefit would not outweigh the substantial harm resulting in the loss of openness.

21. Given the substantial weight to be given to Green Belt harm, relative to the limited benefits of the proposed scheme, the harm is not clearly outweighed by the other considerations. Therefore, the very special circumstances necessary to justify the proposal do not exist, such that the appeal should be dismissed.

John Gunn

INSPECTOR



Appeal Decision

Site visit made on 15 March 2022

by Helen Smith BSc (Hons) MSc MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: Tuesday 12 April 2022

Appeal Ref: APP/Y3425/W/21/3283763

Rowley House Nursing Home, 26 Rowley Avenue, Stafford ST17 9AA

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr Taranjit Sanghera against the decision of Stafford Borough Council.
 - The application Ref 20/32128/FUL, dated 18 March 2020, was refused by notice dated 11 August 2021.
 - The development proposed is an extension over existing wing.
-

Decision

1. The appeal is allowed, and planning permission is granted for an extension over existing wing at Rowley House Nursing Home, 26 Rowley Avenue, Stafford ST17 9AA in accordance with the terms of the application, Ref 20/32128/FUL, dated 18 March 2020, subject to the conditions set out in the attached schedule.

Preliminary Matters

2. The Council's Design SPD (2018) requires a separation distance of 21m to safeguard privacy. While this proposal does not relate to a dwellinghouse, there is no substantive evidence to suggest the effect would be any different to a dwelling, given it is a residential nursing home. Therefore, I find the SPD to be suitable guidance against which to benchmark separation distances for privacy.

Main Issue

3. The main issue is the effect of the proposal on the living conditions of neighbouring occupiers, with respect to privacy and outlook.

Reasons

4. The appeal site comprises a detached building that is currently used as a residential nursing home. The surrounding area is residential and consists of a mix of dwelling types. The properties nearest to the appeal site are Nos 1, 2 and 3 Sandown Croft, and 27, 28 and 30 Rowley Avenue. These neighbouring properties are detached dwellings in spacious plots.
5. Permission is sought for a first-floor extension above an existing wing to create additional bedrooms. The footprint of the proposal would remain the same as the existing ground floor level, with the exception of a proposed 2-storey stairwell element.
6. The separation distances between the first-floor windows on the north elevation of the proposed extension, and the adjacent neighbouring property at No 30

Rowley Avenue, would be considerably greater than 21m, and therefore would exceed the minimum distance specified in the Council's Design SPD (2018) to safeguard privacy. The proposed extension would also be far enough away from No 30 to ensure that their outlook would not be harmed.

7. The rear elevation of the proposed extension would contain windows serving only a stairwell and a bathroom. Its separation distance from the front elevations of the neighbouring properties at Nos 27 and 28 Rowley Avenue would be sufficient in terms of privacy, as the proposal's rear elevation would not contain any principal windows to habitable rooms. The height and bulk of the proposed extension would not harm outlook to an oppressive degree and there is no potential for any harmful overshadowing.
8. Windows at first-floor on the proposed extension would face towards the side of the conservatory and rear garden of No 1 Sandown Croft. As the proposal would be approximately 21.5m from the side of the conservatory, this exceeds the minimum separation distance specified in the Design SPD (2018). The distance between the proposal and the rear garden is also sufficient, as the proposal would not abut the site boundary and there is a degree of separation created by the shared driveway of Sandown Croft, which would prevent direct overlooking. The proposal would therefore be sited far enough away to ensure that No 1 retained an adequate outlook and privacy, with no potential for any harmful overshadowing. Consequently, the effect of the proposal would not be significantly harmful to the occupiers of No 1.
9. Separation distances between the proposal and the neighbouring dwellings at Nos 2 and 3 Sandown Croft would exceed the Design SPD minimum distance. The proposed extension would also be sited far enough away to ensure that the dwellings retained an adequate outlook. Consequently, there would be no adverse effect on residents' living conditions in respect of privacy and outlook.
10. For the reasons given above, living conditions for residents surrounding the site would not be unacceptably harmed. The proposal therefore accords with Policy SP1, SP7, C3 and N1 of the Stafford Borough Plan (2014), where they seek to protect the amenity of neighbouring occupiers. The proposal is also compliant with Council's Design SPD (2018), which provides guidelines in relation to extensions.
11. In addition, the proposal would accord with the National Planning Policy Framework (Para 130) where it seeks a high standard of amenity for existing and future users.

Other Matters

12. Representations have been made about the car parking arrangements, including the ambulance parking bay. However, in their consideration of the revised parking layout, the Highways Authority concluded that the proposal meets the Council's parking standards and has not raised any highway safety concerns. From my assessment of the evidence, and what I have observed, I have no reason to disagree with the Highways Authority.
13. Third parties have raised concern about inaccurate block plan drawings. However, this has not been raised as an issue by the two main parties. In any event, as the proposal would be positioned on top of an existing structure, my

assessment of the proposal was not affected by any possible discrepancy in the block plan drawings.

14. There are trees on the site boundary, but the development would not come closer to them. Given the Council's Tree Officer comments that some works to trees would be required but no trees would be significantly impacted, there is no reason to conclude that harm would arise.
15. Third parties are concerned that the proposal would cause a loss of outdoor amenity space for the residents of the nursing home due to the relocation of bins and additional car parking spaces. However, the appellant has confirmed that the number of bins would not change and from my observations on site there was ample room for bin storage at the front of the property. With regards to car parking, the outdoor area to the rear already includes parking provision on a tarmacked surface. The proposal itself would not encroach onto the outdoor garden area that surrounds the rear building. Consequently, I consider there to be adequate outdoor amenity provision for the nursing home residents.
16. Noise disturbance and light pollution from the nursing home has been raised as an issue. However, there is no substantive evidence that there would be a material difference from the existing situation.
17. Concern has been raised about whether the development would result in over intensification of the site. However, the proposal would maintain a similar footprint to the existing ground floor building, and I have found that the availability of outdoor space would remain acceptable. Its overall height would be subservient to the main building. Therefore, the proposal would not erode the sense of spaciousness of the site or its ability to serve the needs of its residents.

Conditions

18. I have assessed the conditions put forward by the Council against the Framework (para 56), and I am satisfied that these conditions meet the tests. However, I have deleted conditions relating to construction management hours of work and hours of delivery, because these are covered in the Construction Environmental Management Plan.
19. I have imposed the standard time condition and the approved plans for reasons of certainty. In order to ensure a suitable quality external appearance, I have required that the external materials match those of the existing building.
20. A Construction Environmental Management Plan and a schedule of tree works are required to protect the visual amenities of the area, highway safety, and manage waste throughout the development works.

Conclusion

21. For the reasons given, having considered the development plan as a whole, the approach in the NPPF, and taken account of all other material considerations, I conclude that the appeal should be allowed.

Helen Smith

INSPECTOR

SCHEDULE OF CONDITIONS

- 1) The development hereby permitted shall begin not later than 3 years from the date of this permission.
- 2) The development hereby permitted shall be carried out in complete accordance with the following approved plans, except where indicated by a condition attached to this permission, in which case the condition shall take precedence:
 - a. Site Location Plan (dated: April 2020)
 - b. Drawing No. G002621/04 – Existing floor layouts (dated: April 2020)
 - c. Drawing No. G002621/05 – Existing elevations (dated: April 2020)
 - d. Drawing No. G002621/06a – Proposed floor layouts (dated: April 2020)
 - e. Drawing No. G002621/07a – Proposed elevations (dated: August 2020)
 - f. Drawing No. G002621/08c – Proposed block plan (dated: June 2021)
- 3) The external finishes of the development hereby permitted shall match in colour, style, bonding and texture to those of the existing building.
- 4) No development (including demolition) shall take place until a Construction Environmental Management Plan (CEMP) has been submitted to and approved in writing by the Local Planning Authority. The CEMP shall include: details relating to construction access; hours of construction; delivery times and the location of the contractors compounds, cabins, material storage areas and contractor parking; and a scheme for the management and suppression of dust and mud from construction activities including the provision of a vehicle wheel wash. It shall also include a method of demolition and restoration of the site. All site operations shall be carried out in complete accordance with the approved CEMP for the duration of the construction programme.
- 5) No development (including demolition) shall commence until a schedule of tree works has been submitted to and approved in writing by the Local Planning Authority, and the development shall be carried out in complete accordance with the approved details.

*****End of Conditions*****

PLANNING COMMITTEE – 25 MAY 2022

Ward Interest - Nil

Enforcement Matters

Report of Head of Development

Purpose of Report

To consider the following reports.

- (a) **WKS3/00143/EN21**
The Studio, Wootton Lane, ST21 6JF

Page Nos

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Previous Consideration

Nil

Background Papers

File available in the Development Management Section

Officer Contact

John Holmes, Development Manager Tel 01785 619302

ITEM NO 7

PLANNING COMMITTEE – 25 MAY 2022

Ward–Eccleshall

WKS3/00143/EN21 The Studio, Wootton Lane, ST21 6JF

Report of Head Development and Head of Law and Administration

Purpose of Report

To consider the erection of a grain bin gazebo approximately 3.2m high freestanding structure.

1 Detail

- 1.1 A report was originally received in Planning Enforcement on 13 September 2020 regarding the erection of a 4.3m high structure to the rear of The Studio, Wootton Lane.
- 1.2 A Planning Enforcement officer wrote to the owners on the 14 October 2020 advising that the works carried out might not fall under permitted development rights and sent them a copy of Schedule 2 Part 1 Class E of The Town and Country Planning (General Permitted Development) (England) Order 2015, as amended, which covers buildings incidental to the enjoyment of the dwelling-house.
- 1.3 On 2 November.2020 the owners responded stating that the structure is moveable and under the required height limits to be considered within permitted development rights.
- 1.4 On 16 November 2020 the original case reference WKS/00179/EN20 was closed with an outcome of No Further Action.
- 1.5 A further complaint was received in November 2021 with regards to a fence being erected and the grain bin gazebo at The Studio having permitted development rights.
- 1.6 The barn conversions, of which The Studio is one of three dwellings created out of the original barn, have a complicated history.

Planning permission 04/02678/FUL was granted on 15 September 2004 for 'conversion of redundant farm buildings to form dwelling with associated garaging and conversion of former milking parlour to ancillary residential annex' However the developer did not convert the farm buildings to a dwelling and annex, but instead to 3 separate dwellings.

The Council took the view as part of the consideration of an application for a lawful development certificate in 2016 that the planning permission was not implemented in accordance with that granted and consequently that the actual development was unlawful (at that stage). The Council then granted a lawful development certificate for 3 independent residential dwellings.

Consequently, the planning permission (04/02678/FUL) has no relationship to the development authorised by the lawful development certificate and the current 3 residential units. As such, the conditions attached to planning permission 04/02678/FUL are not relevant. This is particularly relevant as conditions 17-21 removed various permitted development rights from the development.

The result is that in this case permitted development rights exist under The Town and Country Planning (General Permitted Development) (England) Order 2015, as amended, which provides that planning permission is granted for the classes of development described as permitted development in Schedule 2.

Schedule 2, Part 1, Class E, paragraph E, grants permission for:

"The provision within the curtilage of the dwelling house of—
(a) any building or enclosure, swimming or other pool required for a purpose incidental to the enjoyment of the dwelling house as such, or the maintenance, improvement or other alteration of such a building or enclosure;
..."

The definition of "building" in Article 2 of the Order " includes any structure or erection and ... includes any part of a building." The grain bin gazebo would come within this definition, and the gazebo is within the curtilage of the Studio.

- 1.7 The only relevant limitations imposed by Schedule 2, Part 1, Class E, paragraph E in this case is the height of the structure. The gazebo would not be permitted development if it is within 2 metres of the boundary of the curtilage and exceeds 2.5 metres in height, or it exceeds 3 metres if not within 2 metres of the boundary of the curtilage.
- 1.8 The original Enforcement Officer considered the grain bin gazebo to be permitted development, however following his departure from the Council the case was reallocated and a further site visit was conducted on the 13th July 2021. The fence erected measured 1.9m in height and did not require planning permission. Measurement of the grain bin gazebo showed it measured 3.75m in height and had been situated within 2m of the boundary therefore requiring planning permission and a letter was sent to the owner advising that planning permission is required.
- 1.9 A planning application reference 21/34693/HOU for the grain bin gazebo was submitted on 19 July 2021, but was invalid on receipt. The applicant did not proceed to provide the information required to validate the application, instead

deciding to move the grain bin gazebo so that it would be further than 2m away from the boundary.

- 1.10 At this stage the applicant understood that this would now be permitted development, but that was on the basis that the structure had a dual pitched roof. Following advice from the Council's Legal Services it was determined that the roof could not be considered to be dual pitched and therefore to be permitted development the grain bin gazebo it would need to not exceed 3m in height.
- 1.11 A further site visit was conducted on 1 February 2022 where a measurement of the structure showed the grain bin gazebo to be 3.2m in height and more than 2m away from the boundary.
- 1.12 The current situation is that the grain bin gazebo is 0.2m too high to be permitted development and therefore the structure is currently unauthorised.
- 1.13 The fact that the grain bin gazebo is unauthorised does not necessarily mean that it is expedient to enforce against. It is necessary to consider the expediency of taking enforcement action.
- 1.14 The structure is somewhat industrial in appearance but is not readily viewed from any public vantage points, but it is visible from the garden of the neighbouring barn conversion. However, as it is now over 2m from the boundary and has been reduced from 3.75m to 3.2m it is less visible over the 1.9m high boundary fence.
- 1.15 It is also the case that the grain bin gazebo if reduced in height by a further 0.2m would be permitted development and would not require planning permission. Therefore in effect enforcement action could only require its reduction in height by 0.2m. It is not considered expedient to take enforcement action to secure this reduction in height.

2 Policies

- 2.1 The Plan for Stafford Borough - Policy Spatial Principle 1 – Presumption in favour of sustainable development; Policy N1 – Design, and of the Plan for Stafford Borough.
- 2.2 National Planning Policy Framework; Section 4; Decision Making - Paragraph 59 (enforcement),

3 Conclusion

- 3.1 The structure requires planning permission due to being 3.2m tall.

4 Recommendations

- 4.1 That it is not expedient to take enforcement action.

Background Papers and History

WKS3/00143/EN21- Unauthorised structure

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