
Appeal Decision

Hearing held and site visit made on 22 September 2016

by C J Ball DArch DCons RIBA IHBC

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 12 October 2016

Appeal Ref: APP/Y3425/W/16/3145864

Land off Sutton Lane and Guild Lane, Aqualate, Newport TF10 8DE

- 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 & Mrs Mark Armitage against the decision of Stafford Borough Council.
 - The application Ref 15/22374/FUL, dated 29 June 2015, was refused by notice dated 10 September 2015.
 - The development proposed is described as a new 5-bedroom house with associated living, dining, kitchen and games room, together with energy research facilities and integral garage, as well as associated landscaping.
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Decision

1. The appeal is allowed and planning permission is granted for a new 5-bedroom house with associated living, dining, kitchen and games room, together with energy research facilities and integral garage, as well as associated landscaping on land off Sutton Lane and Guild Lane, Aqualate, Newport TF10 8DE in accordance with the terms of the application Ref 15/22374/FUL, dated 29 June 2015, subject to the conditions set out in Annex A.

Agreed matters

2. Before the hearing the parties submitted a statement of common ground. This lists the application plans, sets out the relevant development plan and emerging policies and confirms the acceptability of the proposal in some regards. It refers to the generally favourable MADE Design Review process and confirms agreement to some aspects of the landscape and biodiversity enhancement proposals.

Planning obligation

3. Before the hearing the appellants submitted a unilateral undertaking as a planning obligation under s.106 of the Act. The undertaking is intended to bind the appellants to constructing and operating the house as a zero carbon dwelling and, in collaboration with Birmingham City University (BCU), using it as a study project to aid research into constructional carbon offsetting.

Policy background

4. The local development plan currently consists of the recently adopted Plan for Stafford Borough (PSB) Part 1. Relevant policies include SP3, which sets out the sustainable settlement policy identifying towns and key service villages where the majority of future development will be delivered. Sutton, the small village

nearest the site, is not among them. Policy SP4 confirms the distribution of housing growth, allowing 8% outside the identified towns and key villages. This is intended to reflect the likelihood of the continuation of the current pattern of village infill and barn conversions in less sustainable locations. Policy SP6 promotes rural sustainability. Policy SP7 confirms that settlement boundaries will be established for the settlements identified in Policy SP3; development in other locations will only be acceptable where it supports rural sustainability. Policy E2 gives the requirements for sustainable rural development, while policy C5 sets out the strict criteria for residential proposals outside the settlement boundaries.

5. I understand that the PSB Part 2, which includes definition of the settlement boundaries in accordance with policies SP2 and SP7, is nearing adoption. The EiP Inspector's recommended modifications do not affect the policies relevant to this appeal so it carries substantial weight. The site is remote from any settlement boundary.
6. The proposal thus conflicts with all the relevant development plan policies. While it is argued that the proposed house is a high quality design, meeting criterion A3 of policy C5, the proposal does not meet the other essential criteria of that policy.

Main issue

7. The appellants recognise that the proposal generally does not accord with national and local settlement policies and rely instead on the exception made for special circumstances set out in paragraph 55 of the National Planning Policy Framework. The key issue therefore is whether there are special circumstances sufficient to justify the construction of a new isolated dwelling in the countryside.

Reasons

8. The site occupies a corner of an open field, some 500 metres from the small village of Sutton. The 0.6 Ha site is perhaps 150 metres from the outlying farmstead at Lower Sutton. The village has very limited facilities, with no convenient access to public transport, and, on narrow unlit lanes, the site is beyond reasonable walking and cycling distance to other settlements. All journeys for work, education, shopping and leisure purposes would depend on the use of the private car.
9. Paragraph 55 of the Framework confirms that, to promote sustainable development in rural areas, housing should be located where it will enhance or maintain the vitality of local communities, for example, where there are groups of small settlements, for development in one village supporting services in another. New isolated homes in the countryside should be avoided. This is consistent with PSB rural housing policies. However, Framework 55 allows, as an exception to policy, isolated new homes in the countryside where there are special circumstances – such as, in this case, the claim of exceptional quality or innovative nature of the design of the dwelling. Such a design should be truly outstanding or innovative, helping to raise standards of design more generally in rural areas; reflect the highest standards in architecture; significantly enhance its immediate setting; and be sensitive to the defining characteristics of the local area.
10. The appellants suggest that the design of the dwelling is particularly innovative through the unusual approach to zero carbon design. It is intended to achieve carbon neutrality through offsetting the total amount of carbon embodied in

construction and emitted in lifetime use through carbon sequestration in *Miscanthus* rhizomes for a period of 5 years. Thereafter the house would be carbon negative. An important feature is the involvement of BCU Zero Carbon Lab in the design approach and carbon calculations, its post-commencement monitoring and post-construction research and education programme.

11. Attempts at zero carbon house design are not particularly innovative. Indeed, although the Building Regulations requirement for zero carbon design has recently been dropped, it still remains a national policy objective as indicated in Framework 95. BCU itself monitors its own zero carbon house as a study project, and *Miscanthus* growing is an established method of carbon sequestration. However, there is relatively little practical experience in this field and much current work concentrates on zero carbon in use. Where this proposal is somewhat unusual is in the offsetting of the aggregated total of embodied construction carbon and lifetime use carbon, with the information gained from close monitoring of the house during construction and use widely disseminated to inform future zero carbon design more generally. I agree that this combination represents a fairly innovative approach.
12. The Framework 55 exception relates specifically to the innovative nature of the design of the dwelling. The Council argues that it is not clear how the innovative combination of zero-carbon related factors has influenced the design of the house. BCU has been heavily involved in establishing the optimum energy efficiency of the house through a detailed reiterative process, and energy efficiency measures have to a great extent informed the design of the house in form and orientation. Construction materials have been selected for their low-carbon embodiment. These 2 factors would directly affect the area of *Miscanthus* it would be necessary to grow to sequester the whole carbon load over a 5 year period. That seems to me to show clearly that the zero-carbon aims are embodied in the design of the house.
13. The design concept is particularly interesting, with essentially lean-to structures against a central curved spine wall reflecting something of the simple long low roofs of traditional farm buildings. I consider that this modern interpretation of a defining characteristic of the local area would be entirely appropriate. The quality of the local landscape is high. One notable local characteristic is the small clumps of trees located at random intervals among the otherwise open fields. The new house would be located within a new clump of trees, reflecting this characteristic feature. The trees are not intended to hide the building but to anchor it in the landscape. The house would not be particularly prominent in the limited range of local views of the site. Built of local red brick, roof tiles and timber boarding, the house would harmonise with the character and appearance of its rural surroundings. The carefully designed landscaping scheme, increasing the biodiversity of the area, would complement the house and, taken altogether, in time would significantly enhance its immediate setting.
14. The Council finds the overall design approach to be positive but considers the external form and massing to be fragmented, with the oriel windows on the southeast elevation to be intrusive over-complication of the building form. This is a large house and I consider that the articulation of the various elements is necessary to ensure that it properly relates to the near-domestic scale of local farm buildings. The oriel windows were added for energy efficiency reasons but to my mind they humanise the scale of the sweeping roofs, ensuring that the building is perceived as a house. In my view the design is of the highest quality.

15. The design includes a garage for 4 cars. I heard that no account has been taken of the embodied carbon in the manufacture of so many cars or of their carbon emissions in lifetime use. No thought appears to have been given to the use of electric vehicles. It could be argued that this is a serious flaw in claims of carbon neutrality. However, there is an implicit acceptance in Framework 55 that isolated houses in the countryside are likely to be in inherently unsustainable locations where access by private car is necessary. While BCU may wish to reconsider the implications in their pre-commencement calculations, I do not consider this to be a fatal flaw.
16. The acceptability of the proposal is contingent on the certainty that the carbon offsetting measures can be secured. The appellants' unilateral undertaking commits them to 3 significant obligations:
- Pre-commencement; monitoring and data – a BCU-certified Register would be provided to the Council indicating the construction materials and products; the amount of carbon embodied in these, and emitted in the construction of the house and in its lifetime use, would be calculated; an assessment would be made of the corresponding area of Miscanthus to be grown to sequester the whole amount; concomitant growing contracts with local farmers would be entered into. The development would not commence until the Register has been approved by the Council, the appellants have entered into the growing contracts and the Miscanthus has 2 years growth.
 - Post- commencement provisions – regular assessments during the construction period of the validity of the calculations; submission of measures to amend the area of Miscanthus to suit if found necessary; certification of construction in accordance with the Register; and compliance with the growing contracts. Failure to comply would be in breach of the obligation and the Council would be able to suspend development and enforce compliance by injunction.
 - Education – The development would be promoted as a study project to aid research into the science of constructional carbon offsetting; appropriate data would be provided to BCU; access to the building would be made available to staff and students of BCU; BCU would have unlimited discretion in sharing and disseminating the data.
17. I consider that these 3 provisions fall squarely within s106(1)(a) of the Act and would be necessary to secure the carbon offsetting measures and ensure that the research data is widely disseminated, to the benefit of future zero-carbon design schemes. They would make the development acceptable in planning terms; they are directly related to the proposal and are fairly related to it in scale and kind. In this respect they meet the tests of CIL Regulation 122. I give little weight to 2 further provisions, relating to landscaping and ecology. It was agreed at the hearing that these matters are best dealt with by condition.
18. The Council's suggested conditions were discussed at the hearing. In view of the fact that Miscanthus requires 2 years growth before it can effectively sequester carbon, and the unilateral undertaking delays a start until then, I consider it reasonable to extend the time period for commencement to 4 years. Compliance with the submitted plans is necessary to ensure that the development is built as approved. (It should be noted that the reference to the net internal area in the accommodation schedule on plan 1054.15 P1 should in fact be to the gross internal area).

19. Submission of details and finishes is necessary to ensure the satisfactory appearance of the house. A range of highways conditions relating to the access drive, visibility, drainage, parking and gates is necessary in the interests of highway safety. Landscaping and ecology conditions are necessary to control the impact of the development on its surroundings. It was agreed that there is no need for the suggested contamination condition. Conditions to control the impact of construction work are necessary to protect the amenity of local residents. There is an indication on the site plan of a solar panel array to be confirmed so to limit the visual impact it is necessary for details of any such proposal to be submitted for approval. The Council proposes the removal of an extensive range of permitted development rights. In view of the central importance of design quality and the rural location, I consider that to be reasonable and necessary.
20. I have adapted the wording of the suggested conditions in some cases to accord with the Inspectorate's published guidance.

Conclusions

21. I find that the proposal is truly innovative and would help to raise the standard of design, not just in rural areas but in the field of zero-carbon design more generally. The house would reflect the highest standards of architecture; it would be sensitive to the defining characteristics of the local area; and the development as a whole would significantly enhance its immediate setting. I come to the overall view that in this case, subject to appropriate conditions, there are special circumstances sufficient to justify the construction of a new isolated dwelling in the countryside.
22. For the reasons given above I conclude that the appeal should be allowed.

Colin Ball

Inspector

APPEARANCES

FOR THE APPELLANTS:

Mark and Mandy Armitage	Appellants
Niall Blackie LLB LARTPI	Solicitor Advocate, FBC Manby Bowdler
Sandy Greenhill RIBA ARB	Vivid Architects Ltd
Mike Ibbotson BSc MA CMLI	Ibbotson Studios
Ian Davidson-Watts PhD MCIEEM	Davidson-Watts Ecology Ltd
Prof Lubo Jankovic BSc PhD CEng MCIBSE	Professor of Zero Carbon Design, Director Zero Carbon Lab, Birmingham School of Architecture, Birmingham City University

FOR THE LOCAL PLANNING AUTHORITY:

Richard Wood BA(Hons) BTP MRTPI	Development Lead, Stafford Borough Council
Ed Handley BSc	Planning Officer, Stafford Borough Council
Dryden McNair-Lewis BA Arch Dip Arch Dip UD	Design Adviser, Stafford Borough Council

INTERESTED PERSONS:

Michael and Kathleen Bentley	Local residents
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ANNEX A

Conditions to be attached to the planning permission:

- 1) The development hereby permitted shall begin not later than 4 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans:
1054.10 P2, 1054.11 P2, 1054.12 P1, 1054.13 P1, 1054.14 P1, 1054.15 P1, 1054.16 P1, 1054.17 P1, 1054.18 P1, 1054.19 P1, 1054.20 P1, 1054.21 P1, 1054.22 P1, 1054.23 P1, 1054.24 P1, 1054.25 P1, 1054.32 P1, 030-03.
- 3) Notwithstanding the description of materials in the application documents, no development shall take place until details and samples of the materials and finishes to be used in the construction of the external surfaces have been submitted to and approved in writing by the local planning authority. The works shall be carried out in accordance with the approved details.
- 4) The development shall not be brought into use until the access drive off the public highway has been surfaced and thereafter maintained in a bound and porous material for a minimum distance of 5 metres back from the carriageway edge in accordance with the approved drawings.
- 5) The development shall not be brought into use until visibility splays measuring 2 metres x 60 metres to the west and 2 metres x 33 metres to the east have been provided as indicated on plan 1054.32 P1. The visibility splays shall thereafter be kept free of all obstructions to visibility over a height of 900 mm above the adjacent carriageway level.
- 6) The development shall not be brought into use until a surface water drainage interceptor, connected to a surface water outfall, has been provided in accordance with details to be first submitted to and approved in writing by the local planning authority.
- 7) The development shall not be brought into use until the access, parking and turning areas have been provided in accordance with the approved plan 1054.32 P1.
- 8) Any entrance gates shall be located a minimum of 5 metres back from the carriageway edge and shall open away from the highway.
- 9) No development shall commence until details of both hard and soft landscape works have been submitted to and approved in writing by the local planning authority. These details shall include:
 - i) a statement setting out the design objectives and how these will be delivered;
 - ii) earthworks showing existing and proposed finished levels or contours;
 - iii) means of enclosure and retaining structures;
 - iv) boundary treatments;
 - v) vehicle parking layouts;
 - vi) other vehicle and pedestrian access and circulation areas;
 - vii) hard surfacing materials;
 - viii) minor artefacts and structures [e.g. furniture, play equipment, refuse or other storage units, signs, etc.];

- ix) proposed and existing functional services above and below ground [e.g. drainage, power, communications cables, pipelines etc. indicating alignments, levels, access points, supports as relevant];
- x) renewable energy installations where relevant;
- xi) lighting, floodlighting and CCTV;
- xii) water features;
- xiii) an implementation programme, [including phasing of work where relevant].

The landscaping works shall be carried out in accordance with the approved details before any part of the development is first occupied.

- 10) No site clearance, preparatory work or development shall take place until a scheme for the protection of the retained trees, shrubs and bushes (the tree protection plan) and the appropriate working methods (the arboricultural method statement) in accordance with paragraphs 5.5 and 6.1 of British Standard BS 5837: Trees in relation to design, demolition and construction - Recommendations (or in an equivalent British Standard if replaced) has been submitted to and approved in writing by the local planning authority. The scheme for the protection of the retained trees shall be carried out as approved.
- 11) Notwithstanding any details shown in the application documents all works shall be in accordance with the provisions and recommendations of the Biodiversity Strategy by Davidson-Watts Ecology, dated 19 May 2015, and shall include the following:

Species-rich hedgerows; wildflower margins; wildflower meadow habitat; wetland area with reedbed; Miscanthus patches; bat and bird boxes; and south facing banks.
- 12) No works shall be carried out in the bird nesting season (March-August) unless it can first be demonstrated that breeding birds will not be affected by the works through the submission of and approval in writing by the local planning authority of a method statement for the protection of nesting birds.
- 13) No development shall take place, including any works of excavation, until a Construction Method Statement has been submitted to, and approved in writing by the local planning authority. The Statement shall provide for:
 - i) the parking of vehicles of site operatives and visitors;
 - ii) loading and unloading of plant and materials;
 - iii) storage of plant and materials used in constructing the development;
 - iv) the erection and maintenance of security hoarding, where appropriate;
 - v) wheel washing facilities;
 - vi) measures to control the emission of dust and dirt during construction;
 - vii) a scheme for recycling/disposing of waste resulting from excavation and construction works;
 - viii) delivery, excavation and construction working hours.

The approved Construction Method Statement shall be adhered to throughout the construction period for the development.

- 14) Any equipment which must be left running outside the approved working hours shall be inaudible at the boundary of the nearest of the nearest occupied residential property.
- 15) Notwithstanding any details shown in the application documents full details of any stand-alone solar equipment shall be submitted to and approved in writing by the local planning authority prior to their installation. The works shall be carried out in accordance with the approved details.
- 16) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that Order with or without modification), no development within the following classes of development shall be carried out without the prior approval of the local planning authority:

Schedule 2 Part 1 Class A - enlargement, improvement or other alteration; Schedule 2 Part 1 Class B - additions etc to the roof; Schedule 2 Part 1 Class C - any other alterations to the roof; Schedule 2 Part 1 Class D - porches; Schedule 2 Part 1 Class E - buildings etc incidental to the enjoyment of the dwelling house; Schedule 2 Part 1 Class F - hard surfaces incidental to the enjoyment of the dwelling house; Schedule 2 Part 1 Class G - chimney, flues etc ; Schedule 2 Part 1 Class H - microwave antenna; Schedule 2 Part 2 Class A - gates, fences, walls etc; Schedule 2 Part 2 Class C - painting of exterior; Schedule 2 Part 2 Class D - electrical outlet for recharging vehicles; Schedule 2 Part 2 Class E - electrical upstand for recharging vehicles; Schedule 2 Part 14 Class A - installation or alteration etc of solar equipment; Schedule 2 Part 14 Class B - installation or alteration etc of stand-alone solar equipment; Schedule 2 Part 14 Class C - installation or alteration etc of ground source heat pump; Schedule 2 Part 14 Class D - installation or alteration etc of water source heat pump; Schedule 2 Part 14 Class E - installation or alteration etc of flue for biomass heating system; Schedule 2 Part 14 Class F - installation or alteration etc of flue for combined heat and power system ; Schedule 2 Part 14 Class G - installation or alteration etc of air source heat pumps; Schedule 2 Part 14 Class H - installation or alteration etc of wind turbine; Schedule 2 Part 14 Class I - installation or alteration etc of stand-alone wind turbine.