The Planning Inspectorate

Appeal Decision

Site visit made on 28 February 2017

by Daniel Hartley BA Hons MTP MBA MRTPI

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

Decision date: 08 March 2017

Appeal Ref: APP/B3410/W/16/3165004
61 Tower Road, Burton Upon Trent DE15 0NH

- 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 Steve Cassie against the decision of East Staffordshire Borough Council.
- The application Ref P/2016/00650, dated 9 May 2016, was refused by notice dated 3 October 2016.
- The development proposed is the erection of 3 No, 2 storey, 5 bedroom houses and a detached double garage serving the existing property.

Decision

1. The appeal is allowed and planning permission is granted for the erection of 3 No, 2 storey, 5 bedroom houses and a detached double garage serving the existing property at 61 Tower Road, Burton Upon Trent DE15 0NH in accordance with the terms of application Ref P/2016/00650, dated 9 May 2016, subject to the attached schedule of conditions.

Application for costs

2. An application for costs was made by Steve Cassie against East Staffordshire Borough Council. This application is the subject of a separate Decision.

Main Issues

3. The main issues are the effect of the proposal upon (i) the character and appearance of the area; (ii) the living conditions of the occupiers of neighbouring properties in respect of outlook and light, and (iii) whether or not the gardens for the proposed dwellings and the host dwelling would be acceptable in terms of size.

Reasons

Site and proposal

4. The appeal site comprises the side and rear garden areas of No 61 Tower Road which is a detached dwelling falling within the defined settlement boundary for the area. Tower Road is unadopted and the host property is the last dwelling on this side of the street. On the other side of the street there is a water tower.

5. It is proposed to demolish a collection of outbuildings consisting of a garage and three small sheds to the side of the host dwelling. In this area it is proposed to erect a new detached dwelling (Plot 1) and a detached garage for

the host property. This development would be set back from the main road and would broadly follow the common building line along Tower Road. It is also proposed to form a driveway to the side of Plot No 1 and to erect two detached dwellings in the rear garden.

6. The proposed materials for the three dwellings would be predominantly brick and tile with some cream coloured render and tile hanging. Each dwelling would have a garage and hard standing car parking.

Character and appearance

7. Whilst the majority of dwellings on Tower Road are arranged in linear form, the pattern of development immediately to the east of the appeal site is different in so far that it includes existing back land development comprising two detached dwellings (Nos 1 and 2 Southgate Drive). The appellant has provided me with a copy of an appeal decision for the aforementioned land, which related to the grant of planning permission for the erection of three dwellings on the site (Ref APP/B3410/A/02/1086325). I have taken the comments made by the Inspector into account as part of the consideration of this appeal.

8. In the context of the back land development at Southgate Drive, I do not consider that the erection of two dwellings (Plot Nos 2 and 3) to the rear of the host property would look materially out of place or cause significant harm to the character and appearance of the area.

9. In respect of the proposed detached dwelling (Plot No 1) fronting Tower Road, this would be positioned at an angle thereby complementing the orientation of No 61 Tower Road. Along with the detached garage (for the host property), this dwelling would be set well back from the main road. Whilst this would be a relatively large property, this would not in itself be harmful as most of the properties in the area are large and imposing.

10. I acknowledge that the proposal would result in the loss of some trees on the site, but those that would be lost do not have high amenity value and most of the existing boundary planting would be retained. I am satisfied that all of the dwellings (and the detached garage for No 61 Tower Road) would be well designed and that the proposed materials would be sympathetic to the surrounding area.

11. The Council considers that the proposal would lead to an unacceptable intensification of development in the area. I have considered the density information provided by the appellant as well as the existing development at Southgate Drive. I am not persuaded that the infill proposal would lead to an unacceptable intensification of development in the area.

12. For the reasons outlined above, I conclude that the proposal would not cause significant harm to the character and appearance of the area and that it would accord with the design aims of Detailed Policy 3 of the East Staffordshire Local Plan 2012-2031 (LP).

Living conditions

13. I have considered the separation distances between the proposed and the existing dwellings and the position of windows. I do not consider that the proposal would give rise to any unacceptable overlooking of properties. I note that some first floor windows are proposed for the elevation of proposed Plot

No 3 which faces the rear garden area of No 59 Tower Road. However, these windows would have opaque glass and would be top hung only. This is a matter that could be controlled by planning condition. In addition, the submitted plans demonstrate that owing to the position of the proposed velux windows in the roof slope (i.e. proposed bedroom) facing the rear garden of No 59 Tower Road, it would not be possible for the occupiers of the property to look through such windows into the neighbouring garden. Additional screening (for example a new fence), to be secured by planning condition, would ensure that there was no overlooking of the garden area of No 59 Tower Road from the ground floor side windows of proposed Plot No 3. This would address the concerns raised by the occupiers of No 59 Tower Road about it being possible to see through the existing hedge during the winter months.

14. I acknowledge that the proposed dwelling on Plot No 3 would be built relatively close to the garden boundary with No 59 Tower Road. Even with the existing boundary treatment (and any additional screening), the house would be apparent when the occupiers of No 59 Tower Road were in parts of the rear garden. In addition, there would be some overshadowing of part of the rear garden of No 59 Tower Road, particularly at the end of each day. However, the garden belonging to No 59 Tower Road is very large and the affected area would be some distance from the main property (event taking into account the rear lounge extension).

15. I consider that a significant amount of garden would be unaffected by the proposal and, that overall, the scale and massing of the development would be minimised owing to the use of hipped roofs, stepped roof lines and existing/proposed planting/screening along the common boundary. In the context of the above, the dwelling would not be unacceptably overbearing or obtrusive and would not result in a material loss of light. However, I do consider that there would be exceptional justification for removing permitted development rights in respect of Plot No 3, as further development could lead to significant harmful impacts.

16. Whilst the dwelling may be visible from the rear elevation of No 59 Tower Road, the separation distance involved would be such that there would not be a material loss of outlook. I acknowledge that there may be some loss of open views, but the courts have held that the loss of a view is not a material planning consideration.

17. I have considered the relationship of all of the proposed dwellings with the existing neighbouring residential properties (including No 55 Tower Road and No 1 Southgate Drive), and the separation distances involved are such that the development would not cause material harm to the living conditions of the occupiers of such properties in terms of light, outlook or any other planning matter.

18. For the reasons outlined above, I conclude that the proposal would not cause significant harm to the living conditions of the occupiers of existing or proposed dwellings in respect of light or outlook. Therefore, the proposal would accord with the amenity aims of Detailed Policy 3 of the LP.

Gardens

19. The Council does not have any prescriptive policies regarding acceptable garden sizes. The dwellings along Tower Road are generally positioned within

large plots, although the garden area belonging to the host property is particularly large when compared to others.

20. The proposed garden areas for Plot Nos 2 and 3 would be large and proportionate and would suitably reflect the pattern of development in the area. The garden areas for proposed Plot No 1 and the host property would be smaller, but on balance they would still be large enough for day to day amenity purposes, and the spacing between dwellings (ie No 61 Tower Road and Plot No 3 and Plot No 1 and Plot No 2) would not be too dissimilar to the spacing between No 55 Tower Road and No 1 Southgate Drive. The imposition of a planning condition which removes permitted development rights from all three properties would have the effect of ensuring that (i) there was sufficient future control in place in respect of considering the impact of development proposals upon the living conditions of the occupiers of neighbouring residential properties and (ii) the retention of reasonably sized gardens and separation distances between dwellings.

21. For the reasons outlined above, I conclude that the proposed garden areas would be acceptable in terms of size and that the development would relate suitably to the spatial pattern of development in this part of Tower Road. Therefore, the proposal would accord with the design and amenity aims of Detailed Policy 3 of the LP.

Other Matters

22. I have considered the representations made by other interested parties. Some of the comments made have already been addressed in the reasoning above.

23. I do not consider that the proposal would set a precedent for similar development in the area. I have determined this proposal on its individual planning merits and in the context of the pattern of development in the immediate area.

24. Whilst the proposal would increase the number of residential properties in the area, I do not consider that this would lead to any significant traffic congestion or highway safety issues. Whilst Tower Road does not have pavements, I noticed on my site visit that traffic speeds were low. Therefore, the sharing of the highway between pedestrians and motor vehicles would unlikely lead to material conflicts. Indeed, I have no reason to disagree with the comments made by the Highway Authority who has raised no objection to the proposal. I do not consider that it would be necessary for improvements to be made to the junction with Ashby Road, and any additional wear and tear to the unadopted road would be a private matter.

25. The site is not within an area which is at risk of flooding, and foul and surface water drainage could be dealt with by means of the imposition of a planning condition.

26. Reference has been made to a legal covenant for the site/wider area which would preclude the erection of dwellings. The grant of planning permission would not override any separate legal covenant for the site. Given the position and scale of development proposed, it would not cause harm to the Water Tower (this is not a listed structure) which is on the other side of Tower Road.

27. None of the other matters raised outweigh my conclusions on the main issues.

Conditions

28. The conditions set out in the accompanying schedule are based on those suggested by the Council. Where necessary, I have amended the wording of the suggested conditions, in the interests of precision and clarity, and in order to comply with advice in the Planning Practice Guidance.

29. Planning permission is granted subject to the standard three year time limit condition. Otherwise than as set out in this decision and conditions, it is necessary that the development shall be carried out in accordance with the approved plans, for the avoidance of doubt and in the interests of certainty. I have therefore imposed a condition to this effect.

30. In the interests of the character and appearance of the area, planning conditions are necessary relating to materials, landscaping, tree protection measures, boundary treatment details, roof lights and window/door reveals. I do not consider that there is exceptional justification for the removal of permitted development rights in respect of the means of enclosure as suggested by the Council. However, in order to ensure some consistency in terms of design, and to limit the impact of development upon the occupiers of neighbouring properties, I do consider that there is exceptional justification for the removal of photovoltaics/solar thermal equipment permitted development rights.

31. In the interests of the living conditions of the occupiers of the proposed dwellings and surrounding residential properties (as well as to maintain reasonably sized gardens), there is exceptional justification for a planning condition which removes specified permitted development rights relating to alterations to the dwellings and the erection of curtilage buildings; for a planning condition which requires the first floor windows on the eastern elevation of the dwelling to Plot 3 to be permanently obscure glazed (either top hung only or non-opening); for a planning condition which requires boundary treatment details to be fully implemented and thereafter retained, and for a planning condition relating to foul and surface water drainage details.

32. In the interests of nature conservation, planning conditions are necessary relating to biodiversity mitigation and enhancement measures. In the interests of highway safety and to minimise on-street car parking, a planning condition is necessary requiring access, car parking and turning areas to be provided and retained in accordance with materials to be approved by the local planning authority. In the interests of sustainability and climate change aims, a planning condition is necessary relating to energy and water efficiency measures. Whilst this latter condition is not prescriptive, I am satisfied that the appellant and the Council would be able to discuss this matter at pre-application stage so that only reasonable and proportionate details/measures are requested.

Conclusion

33. For the reasons outlined above, and taking into account all other matters raised, I conclude that the proposal would accord with the development plan for the area. Therefore, the appeal should be allowed.

Daniel Hartley

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 approved shall be carried out in accordance with the following plans: 09 Rev.A 1:1250 Site Location Plan; 002 Rev.K 1:500 Proposed Planning Layout; 05 Rev.B 1:100 Proposed floor plans of House Type C (Plot 3); 05 Rev.C 1:100 Proposed elevations of House Type C (Plot 3); 05 Rev.D 1:100 Proposed roof plan of House Type C (Plot 3); 06 Rev.E 1:100 Proposed elevations of House Type B (Plot 2); 06 Rev.E 1:100 Proposed floor plans and roof plan of House Type B (Plot 2); 10 Rev.E 1:50 Proposed floor plans and elevations of detached double garage; 11 Rev.C 1:100 Proposed elevations of House Type A (Plot 1) and 1 Rev.C 1:100 Proposed floor plans and roof plan of House Type A (Plot 1).

3) Notwithstanding the submitted details, no development shall take place until samples and details of all materials to be used externally (including colours and the materials for the garage doors, the front wall with railings and the framework of the open porches) have been submitted to and approved in writing by the Local Planning Authority. The development shall only be carried out in accordance with the approved details.

4) No development shall take place until a scheme for the disposal of foul and surface waters (including the use of sustainable drainage where ground conditions allow) has been submitted to and approved in writing by the Local Planning Authority. The approved foul and surface water drainage scheme shall be completed prior to the first occupation of each of the dwelling houses.

5) Notwithstanding the submitted details, no development shall take place until a full scheme of landscaping, fencing and walling (including suitable boundary treatment along the boundary with No.59 Tower Road) and the planting of native trees has been submitted to and approved in writing by the Local Planning Authority.

6) Prior to the first occupation of the development the approved scheme of fencing and walling (as per condition 5) shall be completed and thereafter retained.

7) All planting, seeding or turfing comprised in the approved details of landscaping (as per condition 5) shall be carried out in the first planting and seeding season following the first occupation of the dwellings or the completion of the development, whichever is the sooner, and any trees or plants which within a period of 5 years from the completion of the development die, are removed, or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species unless the Local Planning Authority gives written consent to any variation.

8) No development shall take place until measures for the protection of trees shown as being retained on the approved plans during the construction phase has been submitted to and approved in writing by the Local Planning Authority. The approved measures shall be installed before development commences and shall be

retained at all times whilst construction work is taking place with nothing being stored or allowed to remain within the fenced off areas.

9) No development shall take place until full details of sustainable construction, including energy and water saving measures, have been shall be submitted to and approved in writing by the Local Planning Authority. The development shall only be carried out in accordance with the approved details.

10) No development shall take place until details of ecological enhancement measures (including bird nesting and bat roosting facilities) to be installed on the site have been submitted to and approved in writing by the Local Planning Authority. The approved ecological enhancement measures shall be installed prior to the first occupation of the development and thereafter be maintained for their designated purposes.

11) The development shall only be carried out in accordance with the mitigation measures detailed in the submitted Preliminary Ecological Appraisal and Bat Survey unless otherwise first agreed in writing by the Local Planning Authority.

12) Prior to the first occupation of the development the access, parking and turning areas shown on the approved plan shall be provided in a bound porous material in accordance with details which shall first have been submitted to and approved in writing by the Local Planning Authority, and thereafter shall be made available at all times for their designated purposes.

13) New roof lights shall have a black finish and be installed so that their outer faces are flush with the plane of the roof unless. Once installed the roof lights shall not be replaced with any alternative type without the prior written consent of the Local Planning Authority.

14) All new windows shall be set back from the outer face of the wall by a minimum of 50mm and the non-glazed parts of the garage doors shall be of a vertically boarded design as per the approved plans.

15) The two first floor windows in the eastern elevation of the dwelling at Plot 3 (serving en suite rooms) shall be permanently glazed in a minimum of Level 3 obscure glass and be either non opening or top hung only.

16) Notwithstanding the provisions of Classes A, B, C, D and E of Schedule 2, Part 1 of the Town and Country Planning (General Permitted Development) (England) Order 2015, or any Order revoking and re-enacting that Order, the dwellings hereby permitted shall not be altered or extended, no new windows shall be inserted and no buildings or structures shall be erected within the curtilage of the new dwelling unless planning permission has first been granted by the Local Planning Authority.

17) Notwithstanding the provisions of Schedule 2, Part 14 of the Town and Country Planning (General Permitted Development) (England) Order 2015, or any Order revoking and re-enacting that Order, no solar photovoltaics or solar thermal equipment (except for any approved under the sustainable construction condition of this permission) shall be attached to the new dwellings unless planning permission has first been granted by the Local Planning Authority.