
Appeal Decision

Site visit made on 14 March 2017

by Keith Manning BSc (Hons) BTP MRTPI

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

Decision date: 31 March 2017

Appeal Ref: APP/B3410/W/16/3164075

38 Efflinch Lane, Barton under Needwood, Burton-on-Trent DE13 8ET

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant consent, agreement or approval to details required by a condition of a planning permission.
 - The appeal is made by Mr John Dutton against the decision of East Staffordshire Borough Council.
 - The application Ref P/2015/00553, dated 10 April 2015, sought approval of details pursuant to conditions 2 and 3 of a planning permission Ref P/2014/00148, granted on 8 April 2014.
 - The application was refused by notice dated 27 May 2016.
 - The development proposed is the erection of a dwelling including demolition of existing double garage.
 - The details for which approval is sought are: access, appearance, landscaping, layout and scale.
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Decision

1. The appeal is allowed and the reserved matters are approved, namely siting, design, external appearance of the building to be erected, the means of access to the site and the landscaping of the site submitted in pursuance of condition No 3 attached to planning permission Ref P/2014/00148 dated 8 April 2014, subject to the following further condition:-
 - 1) Notwithstanding the generality of the scheme indicated on drawing EFFL-1001 Rev J hereby approved, no development shall commence until a fully detailed scheme of landscaping incorporating the finished levels to be created on the site in accordance with condition 5) of planning permission P/2014/00148 and measures required to ensure the retention of trees subject to TPO 328 (as confirmed on 2 December 2016) has been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.

Main Issue

2. The main issue is whether, having regard to relevant policy and all the circumstances, including flood risk, the submitted details of the permitted new dwelling are acceptable.
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Reasons

3. The merits of the outline planning permission are not a matter for me. The local planning authority has seen fit to grant it and the only question remaining as far as this determination is concerned is that posed by the main issue. However, the background to the outline permission, and its substance, are relevant nonetheless.
4. Although the outline application indicated a house broadly coincident in terms of its position with the site of the double garage, all matters were reserved and these include both scale and layout. The officer's report recommending approval expressly recognised that constraining the footprint of the new dwelling proposed to that of the garage to be demolished could not produce a dwelling that would be in keeping with the others in the immediate street scene. It was therefore recognised at the time that a larger footprint would be required and the same report records that extra FRA work was therefore undertaken which demonstrated that a larger footprint could be accommodated without harming the site's flood storage capacity... *"by (1) lowering parts of the site and land at No. 38 (2) demolishing the existing garage and (3) having a car port designed to allow flood water ingress and storage during a flood."*
5. Notwithstanding that the officer's report at that time observed that... *"a carport that was open to the side facing the street would be out of character with the area"* the Council raises no objection to the reserved matters on aesthetic or amenity grounds. Although third parties disagree with that stance, I have no reason to. The submitted drawings show a house well-designed for its context which, although detached, is visually compatible with and of a comparable scale to the adjacent pair of semi-detached dwellings at 36/38 Efflinch Lane and there is sufficient scope for a well-conceived landscaping scheme to visually enclose and mitigate the effect of having a side elevation to the brick built car port proposed that is partially open as shown on drawing EFFL-1001 Rev J.
6. The northern flank of the proposed dwelling is very close to the existing large side window in the ground floor of but would be screened by a double picket fence of sufficient height to ensure privacy and, given that the property is controlled by the appellant, I have no doubt in any event that any necessary adjustments to the layout and use of the affected ground floor which also opens into a rear conservatory, can readily be made. The officer's report explains why the privacy and outlook of this and other neighbouring properties including No 36 Efflinch Lane and Barton Brook Cottage on Short Lane would not be unacceptably compromised. I concur with that assessment.
7. Barton Brook is a small brook which borders the site. Flood zone 3b, i.e. the functional flood plain of this watercourse includes the part of the application site containing the proposed car port, albeit flooding even in the most extreme events predicted in the various iterations of the Flood Risk Assessment (FRA), which accounts for climate change, indicate this to be at shallow depth. Significantly the Environment Agency (EA) at that time, having inspected the site and scrutinised the topographic data recommended that a dwelling of relatively limited size may be appropriate provided, amongst other things, that appropriate flood mitigation and floodplain measures as detailed in the revised FRA were completed and compensation for lost flood storage was created by regrading parts of the site to include an increase in capacity of 23.5 cubic

metres. On that basis the EA had no objection to outline planning permission being granted.

8. In other words it was clear overall that the design scale and layout of the dwelling, amongst all else, were yet to be resolved but that the principle of the development was unobjectionable to both the local planning authority and the EA, bearing in mind also that the sequential and exception tests required by the National Planning Policy Framework ('the Framework') were confirmed to have been satisfied by the Council. Moreover, in granting planning permission the Council imposed conditions including the suspension of permitted development rights. To put this another way, the principle of development of a single dwelling house has been endorsed by both the Council and the EA on the basis of satisfaction that practical measures to adequately mitigate flood risk can in this instance be engineered into the design of the site and the dwelling.
9. I have no reason to fundamentally disagree with that assessment leading to in-principle approval by the Council and in-principle endorsement by the EA. Moreover, having reviewed the extensive correspondence between the EA, the Council and the appellant in this case concerning detailed design, it does seem that the messages are mixed in that, whilst the EA on the one hand now seeks to maintain an in-principle objection to the reserved matters at issue, it nevertheless accepts that there is a technical solution involving lowering of the land associated with the proposed dwelling as proposed to be incorporated in the landscaping scheme required, thereby providing flood storage betterment of around 23 cubic metres. In addition, the keeping open of the car port at both ends would allow the occasional shallow floodwater in extreme events to pass through unimpeded and the proposed picket fencing at the site boundaries seems to me an improvement on the existing fencing as it would allow the water to readily pass through whilst taking full advantage of the increased storage available.
10. The appellant has striven to accommodate the concerns raised and in my estimation has substantially succeeded in devising a detailed design of house and garden that enables a larger footprint than the existing garage to be occupied whilst not materially exacerbating flood risk or any attendant dangers to potential occupiers or third parties.
11. I acknowledge the reluctance of the EA to now formally endorse a proposal that on the face of it is materially different to that indicated in the outline permission. However, it is very clear that there was no commitment to the siting or scale indicated and that in any event the Council recognised, in granting outline permission that, for aesthetic reasons, the development could not be restricted to simply the site of the double garage. Moreover, it seems to me, on the basis of the evidence, that the situation here is wholly exceptional in that a 'technical' solution is available and has been deployed successfully in design terms notwithstanding the enlarged footprint. I am also conscious that the proposed development is well below the relevant thresholds of 10 dwellings or 0.5 hectares defining "major development" for the purposes of the, Town and Country Planning (Consultation) (England) Direction 2009 and yet the EA and the applicant have nevertheless tried to agree what changes could be made to the application, which is for the approval of reserved matters, that would enable the EA to withdraw its objection to those reserved matters.

12. However, whilst seemingly endorsing the technical solution embodied therein the EA persists with an in-principle objection to the reserved matters which, in terms of the harm to be avoided in principle, does not reflect the reality of the circumstances. In practice, as the evidence demonstrates, there would be no significant harm in terms of safety or flood exacerbation and some betterment would accrue as far as flood storage for the Barton Brook. This is clearly not what might normally be expected or indeed achievable, but the site circumstances and the appellant's diligence in addressing practical concerns through practical solutions in the context of an outline planning permission which effectively anticipated, through the supporting site-specific FRA, a design of the type now advanced, enables the principle of not placing more vulnerable development in a floodplain to be flexibly applied in this particular instance. With landscaping works incorporating appropriate level adjustment the design is capable of meeting the expectations of the original endorsement in principle.
13. On that basis, I consider that the reserved matters proposed do not actually conflict harmfully with the basic intentions of policies SP1 and SP27 of the East Staffordshire Local Plan, concerning sustainable development and flood risk, or those of the Framework, even though in the great majority of cases offence to the principle of avoiding the floodplain would be decisive against such a proposal at outline application stage. In this instance, as the Council points out, the outline planning permission it has granted is in any event given specific form and substance to make it acceptable through the suite of conditions imposed, which will need to be adhered to by the appellant. Those conditions would not be negated by the approval of the reserved matters submitted.
14. I acknowledge the concerns of third parties both in terms of the principle of the proposed development and the effect of the proposal on the character and appearance of the area, amongst other things; but the principle is established by the outline permission and in practice the design is visually acceptable in context and practically acceptable in terms of flood risk mitigation.
15. There are limited economic and social benefits to be derived from even the construction of a single dwelling and while the design of the building is compatible with the street scene, the landscaping should ultimately represent a significant improvement environmentally whilst also providing increased flood storage. All things considered the proposed design does on balance represent sustainable development for the purposes of the development plan and the Framework and the appeal should therefore be allowed. In doing so I am clear that this is on the basis of the exceptional circumstances and particular individual merits of the proposal and my decision should not be taken as endorsement of other similarly located development proposals which of course must be considered, whether in outline or detail, on the basis of their own merits and circumstances in the context of relevant policy.
16. In concluding that the reserved matters are acceptable in the context of relevant policy I have also taken into account that the Council has granted a further outline permission for a dwelling on the site, on 28 July 2016¹, broadly corresponding in concept to the current scheme, albeit with all matters reserved, with the endorsement of the EA conditional on matters effectively satisfied by the detailed scheme and the governing conditions on the outline permission to which the reserved matters at issue in this appeal are pursuant.

¹ Ref P/2016/00708

17. The Council suggests only three conditions in the event of the reserved matters at issue in this appeal being approved because the planning permission itself is governed by a comprehensive suite of conditions that will have to be discharged or adhered to as the case may be. However, whilst only one further condition requiring further landscaping details is in my view actually necessary - to amplify the rudimentary detail indicated on the submitted drawing and to take into account the recent protection afforded to two trees - I consider it necessary for this to cross-refer for consistency and the avoidance of doubt to the regrading required under condition 5) of the governing outline permission. The time limit condition suggested is not necessary because the last of the reserved matters to be approved will be under the auspices of the outline permission in any event, subject to the necessary further landscape details being approved in the context of the reserved matters. Moreover, the fencing, walling and boundary treatment is required to be approved by the local planning authority under condition 8) of the governing permission.
18. For the above reasons, and having taken all other matters raised into account, I conclude that the appeal should be allowed.

Keith Manning

Inspector