

Appeal Decision

Site visit made on 31 January 2017

by David Cross BA (Hons), PGDip, MRTPI

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

Decision date: 25 April 2017

Appeal Ref: APP/C3430/W/16/3162128

The Lane House, Top Road, Acton Trussell, Staffordshire ST17 0RQ

- 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 Gainlive Ltd against the decision of South Staffordshire Council.
 - The application Ref 16/00067/FUL, dated 21 January 2016, was refused by notice dated 24 June 2016.
 - The development proposed is residential development with four new dwellings.
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Decision

1. The appeal is dismissed.

Procedural Matter

2. The owners of Shakan have stated that the appeal site includes land that is within their ownership, and that they have not been served the requisite notices. The appellants have provided evidence that the correct notices were served as part of the planning application process. However, the appellants have confirmed that they did not notify the owners of Shakan when the appeal was lodged, but have since rectified this by serving the appropriate notice. I also note that the owners of Shakan are aware of the proposal and have provided comments at both the planning application stage and subsequent appeal. I am therefore satisfied that the interests of the owners of Shakan have not been prejudiced, and I have proceeded to determine the appeal on that basis.

Main Issues

3. The main issues in this appeal are the effect of the proposal on the:
 - Cannock Chase Special Area of Conservation (SAC);
 - character and appearance of the area; and
 - living conditions of residents of adjoining properties with regard to privacy, outlook, light and disturbance.
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Reasons

Cannock Chase SAC

4. Policy EQ2 of the Council's Core Strategy 2012 (CS)¹ safeguards the Cannock Chase SAC which has been designated under the Habitats Regulations². Evidence prepared to inform the production of the CS shows that the combined impact of development within a 15km radius of the SAC would have an adverse effect on its integrity unless avoidance and mitigation measures are in place; with a significantly higher proportion of visitors coming from development within 8km. The Council therefore requires a financial contribution towards the required mitigation for the SAC within the 8km Zone of Influence, which includes the appeal site.
5. The Council has prepared Guidance to Mitigate the Impact of New Residential Development on the SAC (the Guidance) which includes a table of mitigation measures. The Guidance also includes a draft Unilateral Undertaking (UU) requiring payment towards mitigation measures. The appellants have submitted a UU based on that in the Guidance which secures the provision of a contribution towards the mitigation measures.
6. Regulation 123(3) of the Community Infrastructure Levy (CIL) Regulations 2010 (as amended) states that a planning obligation "*may not constitute a reason for granting planning permission*" where it "*provides for the funding or provision of an infrastructure project or provides for the funding or provision of a type of infrastructure*" and there have been five or more planning obligations since 6th April 2010 which "*provide for the funding or provision of that project or provide for the funding or provision of that type of infrastructure*" (i.e. the 'pooling restriction'). The Council has confirmed that the contribution secured by the UU would be paid towards 'relevant infrastructure' under Regulation 123(2) of the CIL Regulations.
7. The Council contend that the UU would not constitute a reason for granting planning permission as it simply gives them the discretionary authority to grant planning permission as a "competent authority" under the Habitats Regulations 2010. They state it would not therefore fall under the restrictions set out in Regulation 123 of the CIL Regulations.
8. However, I am not persuaded that the Council's approach on this matter is valid. Policy EQ2 states that "*Development will only be permitted where it can be demonstrated that it will not be likely to lead directly or indirectly to an adverse effect upon the integrity of the Cannock Chase Special Area of Conservation (SAC)*", and that mitigation will be required. This means that, in the absence of the contributions secured by the UU, there would be a clear policy reason for refusal of the planning permission. Logically, therefore, the presence of the mitigation secured by the UU must be a reason for granting planning permission, and so is caught by the pooling restriction.
9. The Council has not confirmed whether the pooling restriction of 5 or more planning obligations has been exceeded. However, mindful of the extent of the Zone of Influence, I consider that it is likely that the pooling restriction will have been triggered. As the competent authority I have a duty to ensure that the required mitigation measures to prevent harm to the SAC are in place.

¹ A Local Plan for South Staffordshire: Core Strategy Development Plan Document 2012

² Conservation of Habitats and Species Regulations 2010

Due to the concerns identified above in relation to the UU, I cannot be certain that appropriate mitigation measures are in place to prevent harm to the SAC.

10. I note that the efficacy of the UU is not a matter of dispute between the parties. However, in the absence of evidence of suitable mitigation, I conclude that the development would be likely to have a significant detrimental effect on the Cannock Chase SAC, either alone or in combination with other development. Consequently, it would conflict with policy EQ2 of the CS which states that development will only be permitted where it can be demonstrated that it will not be likely to lead directly or indirectly to an adverse effect on the Cannock Chase SAC. The proposal would also conflict with the aims of the National Planning Policy Framework (the Framework) with regards to conserving and enhancing the natural environment.

Character and Appearance

11. The appeal site includes a dwelling (part of which has two storeys) set in an extensive garden and amenity area. The site therefore has an open residential character. The proposal would replace this with four substantial dwellings arranged to the west and south of the site. The proposed dwellings would provide accommodation over three floors; however, the top floors would be included in the roofspaces and serviced by rooflights or dormer windows.
12. In relation to adjacent residential properties, the site has an elevated position and the dwellings would be visible from the adjacent residential area. However, I saw that this area contains a variety of dwelling designs and layouts and is typified by substantial two-storey properties. Although the proposed dwellings would include a third storey, the location of the top floors within the roofspaces would mean that the appearance of the proposal would not be at odds with the prevailing character of adjacent properties.
13. I saw that the site is visible from the countryside to the east, including from Bednall Road to the north east. However, the development would be viewed against the developed area of Acton Trussell including the visual context established by buildings in an elevated position on Bank Top Lane. Screening would also be provided by established planting along the eastern boundary of the site. The proposal would therefore not appear as incongruous development projecting into the countryside.
14. Whilst the proposal would be visible from surrounding properties and the wider area, the development would not be an incongruous or unduly prominent feature due to the design of the dwellings and the screening provided by established planting around the site.
15. Taking the above into consideration, I conclude that the proposal would not have an adverse impact on the character and appearance of the area. It would therefore comply with policy EQ11 of the CS which promotes high quality design. The proposal would also be consistent with the Framework in relation to protecting and enhancing the built environment.

Living Conditions

16. The Council's second reason for refusal states that the proposal would prejudice the amenity of adjoining properties because it would lead to overlooking and loss of privacy.

17. In relation to dwellings on Top Road and most properties on Bank Top Lane, the gardens of these properties are already overlooked by neighbouring properties and the proposal would not unduly exacerbate this. There would also be a significant separation distance between the rear elevations of the proposed houses and existing dwellings, and I note that the separation distance from those on Top Road exceeds the minimum separation distance required by the Council for three storey dwellings. Even allowing for differences in site levels and features such as balconies and upper floor windows on the rear of the proposed dwellings, the separation distances would ensure that the proposal would not have an unacceptable impact on the privacy of residents to the west and south of the site.
18. The rear elevation of the dwelling on plot 4 would face towards the rear garden of Ash House. However, overlooking from the proposed dwelling would only affect part of the rear garden of Ash House, and the view of the garden from the majority of first floor windows would be of an offset aspect. Furthermore, the rooflights to the second floor of the proposed dwelling would have obscured glazing. I also note that the Council Officer's report on the planning application states that the dwelling on plot 4 will not introduce any habitable room windows which fall short of the minimum required separation distance. Due to the nature of the view from the proposed dwelling and the separation distance from Ash House, I consider that the proposal would not have an undue impact on the privacy of residents of that property.
19. The residents of Shakan have expressed concern that the dwelling on Plot 1 would be located in close proximity to the southern elevation of their house. I saw that the aspect of Shakan closest to the proposed dwelling includes a conservatory, balcony, a window serving a lounge and windows to the first floor. However, I also saw that the southern boundary of Shakan consists of a high hedge and a sloped garden area which are visually dominant features and which result in overshadowing and loss of light to that property. Therefore, although a proposed dwelling would be located to the south of Shakan and in close proximity to the site boundary, I consider that it would not result in significant further loss of light or an overbearing appearance compared to the existing situation.
20. The access to the proposal would be via a shared driveway that passes through the large open plan garden of Shakan. The proposal would result in an increase in vehicle and pedestrian movements along this driveway, with a resultant effect on the privacy of residents of Shakan using this garden. The dwelling of Shakan is also visible from the driveway, although the effect on privacy is ameliorated due to the separation distance provided by the surrounding garden. Noise and disturbance would also be increased due to the extra traffic movements along the driveway. However, mindful that the driveway is already used to access a dwelling on the appeal site, the amenity of residents of Shakan is affected to a degree by the comings and goings associated with the existing dwelling. I consider that the increase in movements resulting from an extra three dwellings would not affect the privacy of residents of Shakan or increase noise and disturbance to a degree that would warrant the refusal of planning permission.
21. Taking the above into consideration, I therefore conclude that the proposal would not have an undue adverse impact on the living conditions of residents of adjacent properties with particular regard to privacy, outlook, light and

disturbance. The proposal would therefore not conflict with Policy EQ9 of the CS which relates to the protection of residential amenity. The proposal would also be consistent with the Framework, and in particular paragraph 17, in terms of securing a good standard of amenity for existing and future occupants of land and buildings.

Other Matters

22. The owners of Shakan state that the driveway which leads to the site is within their ownership, and that they would not agree to any improvements to the drive. However, the ownership of the driveway and associated rights of access are a private matter between the parties, and are not within my jurisdiction. I also note that the Highways Authority do not object to the proposal, subject to the access drive, parking and turning areas being provided in accordance with the submitted plans prior to the development being brought into use. I consider that this could be addressed by a condition as recommended by the Highways Authority and therefore this matter does not represent a reason to dismiss this appeal.
23. I have also taken into account other concerns raised locally, including the implications for highway safety, loss of trees, capacity of services including drainage, disturbance during construction, wildlife and the mix of housing. However, they do not add to my reasons for dismissing this appeal.

Conclusion

24. Notwithstanding my conclusions in relation to character and appearance and living conditions, the harm I have identified arising from the proposal in relation to the Cannock Chase SAC is decisive.
25. For the reasons given above, and having regard to all other matters raised, I conclude that the appeal should be dismissed.

David Cross

INSPECTOR