



Appeal Decision

Site visit made on 16 September 2019

by Ben Plenty BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18th October 2019

Appeal Ref: APP/Y3425/W/19/3232359

The Orchard, Abbeylands, Weston, Stafford ST18 0DF

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Mr Granville Falshaw, on behalf of Falshaw Homes Limited, against the decision of Stafford Borough Council.
 - The application Ref 19/30516/FUL, dated 2 May 2019, was refused by notice dated 18 June 2019.
 - The application sought planning permission for Retrospective amendments to permission 12/17152/FUL for the development of 4 detached dwellings with garages, without complying with a condition attached to planning permission Ref 15/22092/FUL, dated 20 November 2018.
 - The condition in dispute is No 11 which states that: *Within 3 months of the date of this permission the gate within the southern boundary of the site shall be removed and replaced with a solid non-opening panel(s). The non-opening panel(s) shall thereafter be retained, and no other openings shall be created within the southern boundary of the site.*
 - The reason given for the condition is: *In the interest of highway safety to pedestrians. (Policy T2 of the Plan for Stafford Borough).*
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Decision

1. The appeal is dismissed.

Procedural matters

2. An appeal was allowed on the site in 2012¹ for the erection of ten dwellings. Furthermore, consent was granted in 2013² for 4 detached dwellings. A further submission was granted in 2018 to regularise the development following the realignment of some dwellings during construction. These decisions were approved subject to the provision and retention of a pedestrian access onto Furlong Close. This has been secured by a Legal Agreement³ and condition, the Agreement was required as the applicant does not own the land through the adjacent 'Abbeylands Apartments' site. The condition was originally applied to place a timeframe on its first provision. Separately, condition 11 required the closure of an alternative footpath access onto Green Road.

¹ Planning Appeal Reference: APP/Y3425/A/11/2163763

² Planning Application Reference: 12/17152/FUL

³ Legal Agreement in connection with application 15/22092/FUL- 16 November 2018

Main Issue

3. The main issue is whether condition 11 is reasonable and necessary in the interests of highway safety in regard to policies of the Development Plan and The National Planning Policy Framework (The Framework).

Reasons

4. The footpath, the subject of this appeal, connects the site directly to Green Road. The footpath is narrow, runs between two gardens and then turns through two tight 90-degree corners. The gate at the exit of the estate is spring loaded and the path provides steps down onto the second part of the footpath. The lower part of the pathway is unsurfaced and would be difficult to navigate in poor weather. It would also be difficult to use for cyclists or people with prams and wheelchair users due to its awkward terrain.
5. The access onto Green Road is on a side of the highway that does not benefit from a footpath. However, there is a footpath on the southern side of the highway. Consequently, many dwellings on the north side of Green Road do not have immediate access to a footway with residents having to cross the road to walk on a footway. Green Road has the appearance of a quiet village highway, with streetlights and a feeling of intimacy. The highway is relatively narrow and includes many driveways and cul-de-sac entrances. As such motorists and pedestrians would need to employ particular care and attention when using this highway due to its characteristics.
6. Policy T2 of the Plan for Stafford Borough 2014 (DP) states that development should not materially impair highway safety. The Framework further informs that development should only be prevented or refused on highway grounds if there would be an unacceptable impact on highway safety. The footway link runs between existing dwellings that have access onto the path. Furthermore, the occupiers of Abbeyland Cottage and 1 Green Lane have driveway access from the path. The access onto Green Road is relatively wide. Adjacent boundaries are sufficiently low to allow a pedestrian to take in a wide view of the highway before entering it. Moreover, the road is straight for a substantial distance and flat. These features aid visibility of the highway from the access.
7. Therefore, whilst I have found the pathway to be awkward and impractical, the use of it would be no less safe than the existing pedestrian access points serving residential properties from the northside of the highway. Accordingly, the use of the footpath and access would not significantly affect highway safety and condition 11 is therefore neither necessary nor reasonable. Therefore, without the condition the proposal would still comply with policy T2 of the DP, which seeks development that would have a safe and adequate means of access.
8. However, a more practical pedestrian access has been provided through Furlong Close. This appears to be both safer and accessible to all. This access has been established through previously approved development as necessary to the development and secured with a Legal Agreement. The access provides a useful link from the site to the main village without walking alongside the very busy A518. Therefore, notwithstanding the estate's frontage access, the footpath via Furlong Close is necessary as an alternative pedestrian route.

9. There is no evidence to illustrate that ownership has changed since the legal agreement was entered into in 2018. Furthermore, there is no mechanism within the appeal submission to ensure that the access can be secured in perpetuity. A condition would not be sufficient as no change to land ownership has been brought to my attention and therefore a legal mechanism would still be necessary. Without an Agreement any approval would take a retrograde position and disregard previous reasonable planning decisions taken on the site.

Other matters

10. Representations have identified that the access onto Green Road is safe and useful. I concur but find the alternative access through Furlong Close to be a preferred and a safer route for the reasons stated above.
11. Concerns have been raised in representations, that the access is less safe and would discourage the use of Furlong Close. It is also suggested that the use of the footpath puts it in conflict with cars using the adjacent two driveways. However, the low frequency of use and slow speeds associated with this action would limit this risk. Concerns have also been raised in regard to enabling access by burglars. However, there is no compelling evidence to illustrate that this would occur as a direct result of the increased use of the footpath. It has the appearance of a private access route to passing members of the public.
12. Abbeylands is a grade II listed building and St Andrews Church is Grade II*. I have a statutory duty⁴ to have special regard to the desirability to preserve the setting of a listed building. Due to its distance and the nature of the proposal, the variation to the consent would have no discernible effect on the setting of these heritage assets. As such the proposal would preserve the significance of these nearby listed buildings.

Conclusion

13. For the above reasons the appeal is dismissed.

Ben Plenty

INSPECTOR

⁴ section 66(1) of the Planning (Listed Building and Conservation Areas) Act 1990