
Appeal Decision

Site visit made on 21 October 2019

by M Savage BSc (Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19 November 2019

Appeal Ref: APP/B3410/W/19/3235916

Pipers Croft, Wood Lane, Uttoxeter ST14 8JR

- 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 and Mrs Jones against the decision of East Staffordshire Borough Council.
 - The application Ref P/2019/00714, dated 12 June 2019, was refused by notice dated 30 July 2019.
 - The development proposed is described as the 'erection of a replacement dwelling and detached garage'.
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Decision

1. The appeal is dismissed.

Procedural Matter

2. The appellant asserts that the previous occupants of the property used the entire plot as their amenity space. However, I have no substantive evidence of this, and am not aware that a certificate of lawfulness has been granted. It is not for me, under a section 78 appeal, to determine the lawfulness of the plot. Furthermore, it would be open to the appellant to apply for a determination under sections 191/192 of the Act.

Main Issue

3. The main issue is the effect of the proposed dwelling on the character and appearance of the area.

Reasons

4. The appeal site comprises a detached dwelling set in spacious grounds, accessed via a private drive off Wood Lane in a generally rural area. The site slopes considerably towards the access track and is bound by mature vegetation. Given intervening vegetation and the scale and massing of the dwelling, public views outside of the site are limited. Nevertheless, I saw that there are public views of the dwelling from Toothill Road which is located uphill of the appeal site.
5. Strategic Policy 24 of the East Staffordshire Borough Council Local Plan (Local Plan) 2012 - 2031¹ seeks to ensure that proposals contribute positively to the area in which they are proposed. Detailed Policy 4 of the Local Plan states that planning permission for replacement dwellings in the countryside will only be granted where: i) The proposed new dwelling is not significantly larger than

¹ Adopted 15th October 2015

- that which it replaces; and ii) The proposed new dwelling is not more intrusive in the landscape than that which it replaces.
6. The appeal scheme would comprise a substantial dwelling set over three floors and a detached two storey garage. The lower ground floor of the dwelling would be set below ground level and an attic would be located on the second floor. The proposed dwelling would be significantly taller than the existing dwelling and would have a significantly greater massing, despite the proposal that the lower ground floor of the dwelling would be set below ground level.
 7. The Council also assert that the proposal would result in a significant increase in the established domestic curtilage. Detailed Policy 3 of the Local Plan states that extensions of residential curtilages within the countryside will only be permitted where they do not adversely affect landscape character by the intrusion of urban features, amongst other things. Whilst there would be limited public views of the garden, it would nonetheless result in encroachment into open countryside. Paragraph 170 of the National Planning Policy Framework (the 'Framework') seeks to ensure that decisions should contribute to and enhance the natural and local environment by, amongst other things, recognising the intrinsic character and beauty of the countryside.
 8. The appellant advises that planning permission P/2015/00817 was granted in 2015 for 'the erection of significant part single storey part two storey front and side extensions to the existing dwelling' and that works pursuant to the permission have commenced. The appellant has drawn my attention to R(on the application of Zurich Assurance Ltd) v North Lincolnshire Council [2012]. It is not disputed that the planning permission is extant and is therefore capable of implementation. In the event that this appeal is dismissed, I consider that there is a greater than theoretical possibility that the development might take place. Accordingly, the fall-back position is a significant material consideration.
 9. The proposed dwelling would be taller and would have a much greater volume and massing than the approved dwelling. The appellant asserts that the proposed dwelling would not be significantly larger than the fallback position established by the extant permission and permitted development rights. However, in this regard I am mindful of the fact that any new dwelling would also benefit from permitted development rights. I have considered whether such rights could be restricted by condition. The Planning Practice Guidance advises that conditions restricting the future use of permitted development rights or changes of use will rarely pass the test of necessity and should only be used in exceptional circumstances. I do not consider that such a condition would be reasonable in this instance. As such, the fallback position would have a lesser effect on the character and appearance of the area than the appeal scheme.
 10. Whilst there are a number of substantial dwellings in the area, the overriding character of the area is open countryside. The appellant has drawn my attention to substantial replacement dwelling at Forest Gate. However, I do not have full details of this scheme. The Council advise that in this case, the scale and massing of the revised replacement dwelling was not considered to be significantly larger than the approved extant dwelling. Moreover, I must consider the appeal on its own merits.
 11. The appellant asserts that the existing property is of little visual merit and is poorly constructed. Whilst it is proposed to retain existing hedgerows and

established trees and would be possible to carry out additional planting, the proposed dwelling would be far more obtrusive in the landscape than the existing dwelling or the fallback due to its height and massing. This would harm the character and appearance of the area, contrary to Detailed Policies 3 and 4 and Strategic Policy 24 of the Local Plan and the Framework, the details of which are set out above.

Other Matters

12. A letter from an interested party received in response to the publicity for the appeal stated that they have no objection to the appeal scheme. However, this does not outweigh my conclusions on the main issue.

Conclusion

13. For the reasons given above, and taking into account all matters raised, the appeal is dismissed.

M Savage

INSPECTOR