The Planning Inspectorate

Appeal Decision

Site visit made on 12 August 2019

by Ben Plenty BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 2 December 2019

Appeal Ref: APP/X3405/W/19/3229570
48 Anson Street, Rugeley WS15 2BA

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
- The appeal is made by Mr Craig Somogy against the decision of Cannock Chase District Council.
- The application Ref CH/18/388, dated 19 October 2018, was refused by notice dated 4 April 2019.
- The development proposed is detached dwelling.

Decision

1. The appeal is allowed. Planning permission is granted for the erection of a detached dwelling, at 48 Anson Street, Rugeley WS15 2BA, in accordance with the terms of application CH/18/388, dated 19 October 2018, and subject to the attached schedule of conditions.

Procedural Matters

2. The application was made in outline form, with all matters reserved apart from means of access. I have dealt with the appeal on that basis.

3. The Council's reason for refusal does not refer to policy. However, it is clear in evidence that the first main issue relates to Policy CP16 of the Cannock Chase Local Plan (Part 1) 2014 (LP). I have taken this into account as well as the National Planning Policy Framework (The Framework) as a material consideration in line with paragraph 212 of the Framework.

4. The site is within the influence of the Cannock Chase Special Area of Conservation (SAC). This is a European Designated Sites afforded protection under the Conservation of Habitats and Species Regulations 2017 as amended (the Habitat Regulations). Although not an issue raised by the Council, it is incumbent upon me as competent authority to consider whether the proposal would be likely to have a significant effect on the integrity of the SAC. As such, it is necessary to consider this matter as a main issue.

Main Issue

5. Accordingly, the main issues are:

   - whether the proposal would comply with local and national policy which seeks to steer new development away from areas at the highest risk of flooding, and

   - the effect of the proposed dwelling on the integrity of the SAC.

Reasons

Flooding

6. The site is within the settlement boundary of Rugeley. It is adjacent to Market Street and contains a domestic garage. The plot is separated from the main dwelling by a feather board fence that bisects the lower third of the original rear garden. The site is accessed from Market Street. It is also adjacent to a service road providing access to the rear of properties onto Anson Street and Market Street.

7. The site is partly within flood zone 1 and partly in flood zone 3. Policy CP16 of the LP seeks to tackle climate change and the sustainable use of resources. The Policy also indicates a preference to reuse brown field land and requires account to be had for future potential risks of flooding. It also states that development would only be allowed to take place in flood zone 3b where there are no alternative options and where the risk can be managed through upstream alleviation. Furthermore, policy CP16(3c) requires residential development to avoid high flood risk areas. It also states that the sequential and exceptions test will be applied, taking into account cumulative impacts upon flood risk to the catchment.

8. Paragraph 155 of the Framework states that inappropriate development in areas at risk of flooding should be avoided by directing it away from areas at highest risk. Moreover, where it is necessary, it should be made safe for its lifetime without increasing risk elsewhere. Paragraph 163 and footnote 50, require a Flood Risk Assessment (FRA) for all development in flood zones 2 and 3. Being for a dwellinghouse the proposal would be 'more vulnerable' to flooding and the lower part of the site would have a 'high' probability of flooding being within flood zone 3. In such circumstances table 3[1] of the National Planning Practice Guidance (The Guidance) explains that development would require an exception test if within zone 3a 'high probability' and development should not be permitted in 3b 'functional floodplain'.

9. The appellant's submitted FRA[2] confirms that the site is partly within flood zone 3. However, it also finds that the site has no history of flooding and the risk of fluvial flooding would be of low significance. It recommends that finished floor levels are set at 73.06m above ordnance datum. Furthermore, the appellant states that recent flood alleviation works have adjusted the local flood map and the site is now in flood zone 2. This alters the risk of flooding from 'high' to 'medium' probability of flooding. As such table 3 of the Guidance indicates, in such circumstances, that development should be considered appropriate without an exception test and only be subject to a sequential test.

10. In addition, the Environment Agency (EA) states that it has recently completed flood alleviation works locally. EA further confirms that the site will benefit from these works resulting in the creation of an updated flood map shortly. As a result, EA has raised no objection to the proposal as it was satisfied that the FRA was robust in this context. It has requested a condition that the finished floor levels be set in accordance with the FRA, thereby accepting the parameters of the sequential test in regard to the principle of development.

[1] Planning Policy Guidance: Paragraph 067 Reference ID: 7-067-20140306
[2] KRS Environmental, Flood Risk Assessment October 2018

11. The Guidance requires a sequential test to be applied to a whole local planning authority area to increase the possibilities of accommodating development which is not exposed to flood risk[3]. The sequential test, within the FRA, has not considered alternative sites on the basis that the appellant has located the proposed dwelling within the part of the site within flood zone 1. Furthermore, only the rear garden is within flood zone 3 and this designation is due to be revised. On this basis, and having had regard to the comments of EA, I find that there are compelling other material considerations that would permit the setting aside of the sequential test in this instance.

12. Although the site is currently designated as being within flood zone 3, the flood map will shortly be adjusted to exclude the site from this zone as advised by EA. I attach substantial weight to the comments of EA. As such, I have found that the living conditions of future occupiers of the proposed dwelling would not be adversely affected by flooding.

13. Consequently, the proposal would accord with policy CP16 of the LP, which seeks to avoid development of areas subject to a high risk of flooding and to reuse brown field land.

Cannock Chase Special Area of Conservation

14. Policy CP13 of the LP states that development would not be permitted where it would be likely to lead directly or indirectly to an adverse effect upon the integrity of the European Site network, and the effects cannot be mitigated. It also states that in order to retain the integrity of the SAC all development resulting in a net increase in dwellings will be required to mitigate adverse effects. In 2018, the Court of Justice of the European Union ruled that the decision maker, when considering the effect that a proposal may have on a European Site, must consider mitigation within the Framework of an Appropriate Assessment (AA) rather than at the screening stage[4]. This responsibility now falls to me within this appeal.

15. The SAC is designated as such as it provides dry heathlands, valley mires, broadleaved woodland and invertebrate assemblages, especially on old trees, fungi and bare sand. The proposed residential development would be likely to increase activity within the SAC especially from recreation use which may include horse riding, cycling and dog walking[5]. These activities would be likely to result in the creation of new paths, path widening and soil erosion. The development would therefore be likely to have an impact on the integrity of the SAC when considered alone or cumulatively with other development. This would result in a significant adverse effect.

16. The Habitats Regulations state that permission may only be granted after I have ascertained that the development will not affect the integrity of the SPA. As part of my assessment, I must therefore consider whether the impact of the development could be mitigated. The Council, and other adjacent authorities have been operating a joint strategy for the protection of the European Site within combined guidance[6]. This seeks financial contributions to provide appropriate mitigation measures to prevent an adverse effect on the integrity of the SAC. This is in the form of Strategic Access Management and Monitoring

[3] Planning Policy Guidance: Paragraph: 020 Reference ID: 7-020-20140306
[4] People over Wind and Sweetman v Coillte Teoranta ECLI:EU:C:2018:244
[5] Cannock Chase SAC Mitigation Report, footprint ecology 2012
[6] Cannock Chase Special Area of Protection Guidance 2017

Measures (SAMMM). These are listed at chapter 3 of the guidance. Contributions are required through the Council's Community Infrastructure Levy. The Council's 'Regulation 123 list', at appendix 1 of its CIL charging schedule[7], explains that sums collected will contribute towards the SAMMM.

17. Furthermore, Natural England[8] supports the Council's approach to the mitigation. It has observed, in support of this appeal, that a CIL contribution towards the SAMMM would be sufficient to avoid an adverse impact to the integrity of the European Site and relevant features.

18. Accordingly, I am satisfied that following Appropriate Assessment that the proposal would provide for clear and certain mitigation. It would therefore not have an adverse effect on the integrity of the SAC. The proposal therefore would accord with policy CP13 of the LP.

Other matters

19. The site is within the setting of the listed Grade II Old Church of St. Augustine. Its significance derives from the retention of its early English tower and Norman and Early English north aisle arcade, chancel and north chapel. Furthermore, its churchyard includes several Grade II listed buildings, including its boundary wall, churchyard cross and the tomb of Elizabeth Cutting and Emma Hollinhurst. Also, the site is within the setting of the Church of St. Augustines, which is a Grade II* Listed building. Its significance derives from its loosely perpendicular gothic style and originating from 1822-23. I have a statutory duty[9] to have special regard to the desirability of preserving the setting of a listed building. Due to their distance, screening and intervening buildings, the proposal would have a negligible effect on the setting of these heritage assets. As such the proposal would have a neutral impact on the significance of these nearby listed buildings.

Conditions

20. I have considered the use of conditions in line with the advice set out in the Government's Planning Practice Guidance. I shall impose some of the Council's suggested conditions and have altered the wording where relevant in the interests of clarity and precision.

21. The flood related condition is required to reduce the risk of flooding for future occupiers of the proposed development. The Council's conservation officer has requested an archaeological condition, however it is not clearly stated in evidence why this would be required, and the Council has not requested it in its statement. I have therefore not imposed such a condition as I am unconvinced that one would be necessary. I have joined the Council's suggested conditions 2 and 6 for simplicity.

22. I have therefore attached the following conditions; for clarity and to define the consent [1, 2 and 3], to prevent flood risk in order to protect the living conditions of local residents [4]; to ensure satisfactory drainage arrangements [5]; and to meet sustainability objectives of policy CP16 [6].

[7] Cannock Chase Council, Community Infrastructure Levy 2015
[8] Letter from Natural England 19 October 2019
[9] section 66(1) of the Planning (Listed Building and Conservation Areas) Act 1990

Conclusion

23. For the above reasons the appeal is allowed, and planning permission is granted.

Ben Plenty

INSPECTOR

Schedule of Conditions

1) Application for approval of the reserved matters shall be made to the local planning authority not later than 3 years from the date of this permission, and the development to which this permission relates shall begin no later than the expiration of two years from the final approval of the reserved matters or, in the case of approval on different dates, the final approval of the last such matter to be approved.

2) Details of the appearance, landscaping, layout, and scale, (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development takes place and the development shall be carried out as approved.

3) The development shall be carried out in accordance with the submitted block plan in so much as indicating the location of the access. Details showing the footprint of the dwelling is indicative only and not agreed until 'siting' has been approved in association with condition 2.

4) The development shall be carried out in accordance with the submitted flood risk assessment (ref: KRS.0016.002.R.001.A dated October 2018, compiled by KRS Environmental) and provide a finished floor level of no lower than 73.66m above Ordnance Datum. These mitigation measures shall be fully implemented prior to occupation of the dwelling and undertaken in accordance with the schemes timing/phasing arrangements. The measures detailed above shall be retained and maintained thereafter throughout the lifetime of the development.

5) Development shall not commence until drainage plans for the disposal of foul and surface water have been submitted to and approved in writing by the Local Planning Authority. The agreed works shall then be completed prior to the first occupation of the approved dwelling.

6) Development shall not commence until details of an electric charging point for the approved dwelling have been submitted to and approved in writing by the Local Planning Authority. The agreed details shall then be implemented prior to the first occupation of the approved dwelling.

End of conditions