



Appeal Decision

Site visit made on 19 November 2019

by D. Szymanski, BSc (Hons) MA, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17th December 2019

Appeal Ref: APP/Y3425/W/19/3226685

Broughall Grange, Woodside Road, Gnosall, Stafford, ST20 0JA

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for approval of details required by a condition of an outline planning permission.
 - The appeal is made by F and P A TOMKINSON against Stafford Borough Council.
 - The application Ref: 18/28053/REM dated 14 February 2018, sought approval of details pursuant to condition No. 1 of outline planning permission Ref: 16/25263/OUT which was granted on 10 February 2017.
 - The development proposed is construction of a permanent agricultural workers dwelling.
 - The details for which approval is sought are: vehicular access, layout of the site, the scale of the buildings, the appearance of the buildings including materials, landscaping.
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Decision

1. The appeal is allowed, and the reserved matters are approved, namely the details of the vehicular access, layout of the site, the scale of the buildings, the appearance of the building, and landscaping, submitted in pursuance of condition No. 1 attached to planning permission Ref: 16/25263/OUT dated 10 February 2017, subject to the following conditions:
 - 1) This approval of reserved matters in respect of access, appearance, landscaping, layout and scale is granted pursuant to outline planning permission 16/25263/OUT. The approved development shall comply in all respects with the terms of that outline permission and the conditions imposed on it, except where a condition on this approved reserved matters consent takes precedent.
 - 2) The development hereby permitted shall be carried out in accordance with the following approved drawing nos. RFR/BG/2018/1/a amendments a; RFR/BG/2018/2 amendments a; RFR/BG/2018/3 amendments a; RFR/BG/2018/4/a amendments a.
 - 3) Before any above ground construction works are commenced, samples of the materials to be used in the construction of the external wall(s) and roof(s) of the building shall be submitted to and approved in writing by the Local Planning Authority. The development shall thereafter be implemented in accordance with the approved details unless alternative materials are otherwise first approved in writing by the Local Planning Authority.

- 4) The development hereby permitted shall not be brought into use until the access, parking, servicing and turning areas have been provided in accordance with the approved plans.
- 5) Landscape and planting works shall be undertaken in accordance with the details shown in drawing RFR/BG/2018/4/a amendments a, and shall be carried out within eight months of the first occupation of the dwelling, unless an alternative timescale for implementation has been previously agreed in writing with the Local Planning Authority.
- 6) Notwithstanding the approved maintenance details indicated on plan ref RFR/BG/2018/4/a amendments a, any plants or trees that are removed or die or become seriously damaged or diseased within a period of 5 years from the date of planting, shall be replaced with others of similar size and species in the next planting season, unless the Local Planning Authority gives written agreement to any variation.

Application for costs

2. An application for costs was made by F and P A TOMKINSON against Stafford Borough Council. This application is the subject of a separate Decision.

Procedural Matters

3. The appeal form and application for costs was initially made in the name of Richard Tomkinson. However, it was confirmed in an email by the appellant's agent dated 22 November 2019 that the appellant is F and P A TOMKINSON, therefore I have used this in the banner heading above.
4. There are differences between the address set out in the appellant's appeal form and those set out in the costs application. As the address from the appeal form was also that used in the Council's decision notice, I have used it in the Costs decision.
5. This appeal is against a failure by the Council to give notice within the prescribed period of a decision on an application to approve reserved matters. This appeal was validated on 17 April 2019. The Council produced a delegated report for the application (which appears undated) and a decision dated 17 April 2019. The decision notice by the Council purports to grant permission for the application, subject to seven planning conditions. However, when the appeal is validated the jurisdiction for determining the application is removed from the Council. Therefore, the decision notice issued by the Council does not constitute a planning permission.
6. I have treated the Council's report and decision notice as the basis of the decision the Council would have made, had it been empowered to do so. Following the issue of the Council's report and decision notice the appellant has stated that they are unhappy with the conditions attached to the reserved matters approval, in particular condition 7. Suggested condition 7 seeks to withdraw permitted development rights from the new dwelling, under classes A – E of Part 1 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (herein the GPDO). The Council's decision notice indicates that the condition is necessary to protect the character and appearance of the area. I have drawn on the delegated report and reason for condition to inform the main issue in this appeal.

Main Issue

7. The main issue is whether the Council's suggested condition no. 7 is reasonable or necessary in the interests of the character and appearance of the area.

Reasons

8. The appeal site is located in the open countryside in a landscape of agricultural fields lined by mature hedgerows and trees, punctuated by occasional cottages and groups of farm buildings. The village of Gnosall is approximately 640m to the south although there is no inter-visibility due to the intervening topography and vegetation. The site is off an access track, being part of an open grass field next to the existing temporary agricultural workers dwelling. The field is relatively open, but the site is largely screened from the wider area by mature tree belts and hedgerows, considerably restricting any medium distance views.
9. The proposed dwelling and parking area would be sited towards the front of the plot and be enclosed by proposed tree and hedgerow planting. It would have three bedrooms, with a floor space of approximately 232 square metres and a ridge height of around 9.3m. The number and function of rooms are reasonable for a three bedroom dwelling, and whilst they might be generously proportioned, the accommodation appears reasonable. In the Council's delegated report, they state it would sit comfortably on the plot and appear of a comparable scale to other nearby detached countryside dwellings, concluding the scale of the dwelling would be acceptable.
10. The Council has suggested a condition removing five classes of permitted development, relating to alterations to the dwelling and certain other buildings and enclosures. The reason for the condition sets out that disproportionate extensions and incidental buildings would be detrimental to the character and appearance of the site and its surrounds, citing Policies E2 and N1 of The Plan for Stafford Borough 2011 – 2031 (June 2014) (the PSB).
11. Paragraph 53 of the National Planning Policy Framework (2019) (the Framework) states that planning conditions should not be used to restrict national permitted development rights unless there is clear justification for doing so. The Planning Practice Guidance advises that conditions restricting the future use of permitted development rights, or changes of use, are unlikely to pass the tests of reasonableness or necessity (paragraph 21a-017-20190723).
12. I note the Council's views in respect of character and appearance and conflict with Policies E2 and N1 of the PSB. However, there is little further explanation of how each of the classes would result in either an excessively sized dwelling or outbuildings, to such a degree, they would be harmful to the character and appearance of the site or wider area. The Council's delegated report acknowledges that substantial dwellings are not unusual in the countryside, and those I noted in the wider area appeared similarly sized.
13. Whilst the appeal site is part of an open field, medium and long term visibility is very limited. Any alterations would be largely screened from the wider landscape by existing trees and hedgerows and the topography of the land. Furthermore, within a few years it is likely the landscaping proposals accepted by the Council, would soften the appearance of the site, including from the adjacent Public footpath No. 27 of Gnosall.

14. For the reasons set out above, by not applying suggested condition 7, I find that there would not be conflict with Policies E2 and N1 of the PSB. These amongst other things and in combination expect development to respect and protect the natural landscape, the built character, and preserve and enhance the character of the area. In its delegated report the Council has made reference to Policy N8 of the PSB. However, in the absence of any evidence to the contrary, I find no conflict with this policy by allowing the development without attaching the suggested condition. Therefore, it is not demonstrated that there is a clear justification for suggested condition 7 as required by paragraph 53 Framework. Nor do I find the imposition of the condition reasonable or necessary as set out in the Planning Practice Guidance.

Other Matters

15. The appellant sought reserved matters approval for the appearance of the dwelling including the external materials. It would be of traditional construction including brickwork walls and a tiled roof, however, the bricks and tiles to be used are not specified in the information before me. Therefore, whilst the general design and appearance is considered acceptable, in the absence of these details, and as proposed by the Council, a condition is necessary to agree the external brickwork and roof tiles. Having considered the Council's views, I consider the scale of the dwelling is acceptable.
16. The access would be via an existing access constituted of a wide concrete apron with good visibility serving the existing egg production unit. The layout of the site would be traditional in its nature, with the dwelling addressing the track, parking to the front, and a patio and garden area to the rear. The landscaping proposals provide for a limited number of trees and a comprehensive hedgerow surrounding the site comprising a conservation hedge mix of native species. The Council appears satisfied at the proposals in regard of these other reserved matters, and I have no reason to disagree.
17. The appeal site lies within the 8–15km zone of influence for the Cannock Chase Special Area of Conservation (CCSAC). The Council has come to the view that the appeal scheme would result in a net increase of residential dwellings within the zone of influence and undertaken and submitted a Habitat Regulation Assessment (HRA) Screening Matrix and Appropriate Assessment Statement. The Council concluded that subject to mitigation, there will be no adverse effect on the integrity of the CCSAC.
18. The Cannock Chase SAC Partnership has agreed Strategic Access Management and Monitoring Measures (SAMMM) with Natural England which requires mitigation payment per net residential dwelling from all new development within the 0-8km 'zone of payment'. Within Stafford Borough mitigation payments will only be sought from developments both within the 0-8km 'zone of payment' and which will deliver 10 or greater (net) new dwellings. Therefore, mitigation is secured by development of 10 dwellings or more. The Council has also consulted Natural England who has confirmed they have no objection to the proposal.
19. Notwithstanding the above, as this proposal is to discharge reserved matters and outline planning permission has already been granted, the principle is established, and a planning permission is already in place for a dwelling on the appeal site. Therefore, there would be no adverse effect on the integrity of the site as a consequence of approving the reserve matters.

20. It is understood that initially, the line of public footpath No. 27 of Gnosall cut across the south-eastern corner of the site of the outline permission. The subsequently amended layout excludes the south-east corner from the domestic curtilage so the right of way runs outside the boundary hedge with no need to divert the footpath.

Conditions

21. The appellant expressed that they were unhappy with the Council's suggested conditions. I have considered the conditions set out in the Council's decision notice having regard to paragraphs 54 and 55 of the Framework and advice contained in the Planning Practice Guidance. Where appropriate I have amended the wording to more closely align with the Planning Practice Guidance.
22. Conditions are required to ensure that the development is carried out in accordance with the approved plans and the outline permission, which are necessary for the avoidance of doubt and in the interests of certainty. I have omitted the Council's reference in proposed condition 2 to implementation in accordance with the approved plans '...as required by other conditions of this consent and those of outline permission 16/25263/OUT', as these requirements are implicit in the other conditions of this consent, and reference to the outline permission has already been referred to in condition 1.
23. In the interest of visual amenity, I attach conditions in relation to external materials. In the interests of ensuring the implementation of the proposed off-road car parking, it is necessary to impose a condition requiring the provision of the parking spaces in accordance with the approved plans. In the interests of the character and appearance of the area it is necessary to secure the implementation and maintenance of the landscaping scheme.
24. The Council is of the view that the proximity to Public footpath No. 27 of Gnosall merits an informative to draw attention to the existence of the footpath, that planning permission given does not construe the right to divert, extinguish or obstruct any part of the public path network, and the need to apply to divert the right of way under Section 257 of the Town and Country Planning Act 1990. The plans before me do not show any alteration to the footpath no 27 and any damage to the right of way would be addressed under other separate legislation. Therefore, the suggested informative is not considered necessary having regard to the Planning Practice Guidance.

Conclusion

25. For the reasons given above, I conclude that the appeal should succeed.

Dan Szymanski

INSPECTOR