



Appeal Decision

Site visit made on 19 November 2019

by R Cooper BSc (Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 31 December 2019

Appeal Ref: APP/J3720/W/19/3235558

203 Naunton Lodge, Banbury Road, Stratford-Upon-Avon CV37 7HT

- 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 A P Francis Builders Ltd against the decision of Stratford-on-Avon District Council.
 - The application Ref 19/01022/VARY, dated 12 April 2019, was refused by notice dated 7 June 2019.
 - The application sought planning permission for the demolition of existing dwelling and erection of building containing 5 apartments, widening of access, and all associated works without complying with a condition attached to planning permission Ref 17/03601/FUL, dated 26 January 2018.
 - The condition in dispute is No 2 which states that: The development hereby approved shall be carried out in accordance with the following plans and drawings - 550-03, 550-04, 550-05. The development shall also be carried out in accordance with the Design and Access Statement unless otherwise required by conditions attached to this permission.
 - The reason given for the condition is: To define the permission and to ensure that the development meets the design quality and environmental requirements of Policy CS.9 of the Stratford-on-Avon Core Strategy (2011-2031).
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Decision

1. The appeal is dismissed.

Procedural Matters

2. At the time of my site visit works had commenced with the demolition of the dwelling that previously stood on the site. The condition in dispute had not yet been breached because it requires only that the proposed development be carried out in accordance with the approved plans. I have therefore determined the appeal as one made under section 73 of the Act.
3. The variation of condition 2 relates to amended plans to include a car port, additional hard surfacing, and to remove reference to a design and access statement. The decision of the Council to refuse the application to vary condition 2 relates to the addition of the car port and its effect on the character and appearance of the area, and three trees which are the subject of a Tree Protection Order.
4. The original planning application Ref 17/03601/FUL (the application) sought planning permission for the demolition of the existing dwelling and erection of building containing 5 apartments, widening of access, and associated works.

This appeal seeks to vary planning conditions 2 so as to add an additional development, that was not previously included in the application. In the first instance I am required to consider whether or not this constitutes a materially different proposal.

Main Issues

5. In the context of the above, the main issues are (i) whether the requested variation of condition 2 would lead to a substantially different development from that approved as part of planning permission Ref 17/03601/FUL and, if so, (ii) if the changes are not substantially different, the effect of the proposal on the character and appearance of the area and on protected trees.

Reasons

6. The proposed car port would be sited to the front of the proposed apartment block, in the front garden of the demolished dwelling. The elongated building would be positioned parallel to the boundary shared with No 205, set off to allow for some landscaping in between. According to the case officer's report, and the appellant's statement, the car port would have significant footprint measuring approximately 18.5m in length by 5.8m in depth, and a maximum height at the front of 2.9m. The building would be open fronted, with the rear and side elevations enclosed and finished in render, and it would have a mono-pitched standing seam roof. In the context of the site, the overall scale of the proposed building would be a significant development proposal in itself, which did not form part of the original planning application.
7. The Planning Practice Guidance¹ states that, although conditions can be used to make a minor modification to a proposal, a condition that modifies the development in such a way as to make it substantially different from that set out in the application should not be used. In addition, there may be cases where removing a condition would significantly change the proposal.
8. The effect of varying the condition would result in a substantially sized building being erected between the front of the proposed apartments and the road. This would constitute a materially different proposal, to that which forms planning permission Ref 17/03601/FUL and which was the subject of public consultation.
9. Varying the condition would result in a material change in the proposal that would be prejudicial from a public consultation point of view. Therefore, I conclude that this appeal is not the appropriate mechanism for dealing with a proposal which represents a substantially and materially different type of development to that which was approved by the Council as part of planning permission Ref 17/03601/FUL. I have considered the implications of this decision and it does not affect the existing planning permission, which is extant and can still be implemented in accordance with the relevant planning condition, which should remain in place.
10. Given my above conclusion, it has not been necessary for me to consider the effect of the proposal on the character and appearance of the area and on the three protected trees.

¹ ID 21a-031-20140306 & ID 21a-012-20140306

Conclusion

11. For the reasons given above, I conclude that the appeal should be dismissed.

R Cooper

INSPECTOR