



Appeal Decision

Site visit made on 4 August 2020

by Thomas Hatfield BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 26th October 2020

Appeal Ref: APP/P3420/W/20/3252100

Balterley Garden Centre, Balterley Green Road, Balterley, Newcastle Under Lyme, CW2 5QF

- 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 Peter Bower and David Wilson against the decision of Newcastle-Under-Lyme Borough Council.
 - The application Ref 19/00923/FUL, dated 21 November 2019, was refused by notice dated 13 March 2020.
 - The development proposed is demolition of existing structures on site and re-development for four residential units and associated works.
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Decision

1. The appeal is allowed and planning permission is granted for demolition of existing structures on site and re-development for four residential units and associated works at Balterley Garden Centre, Balterley Green Road, Balterley, Newcastle Under Lyme, CW2 5QF in accordance with the terms of the application, Ref 19/00923/FUL, dated 21 November 2019, subject to the conditions set out in the attached schedule.

Application for Costs

2. An application for costs was made by Mr Peter Bower and David Wilson against Newcastle-Under-Lyme Borough Council. This application is the subject of a separate Decision.

Preliminary Matter

3. Pre-commencement conditions are attached to this Decision. As required by Section 100ZA(5) of the Town and Country Planning Act 1990, the appellant has agreed to these conditions in writing.

Main Issues

4. The main issues are, firstly, whether the appeal site is in a suitable location for residential development having regard to local and national planning policy and, secondly, the effect of the development on the Black Firs and Cranberry Bog SSSI and Midlands Meres and Mosses Phase 2 Ramsar site.

Reasons

Suitable location for residential development

5. The appeal site consists of a retail premises that sells tropical fish, aquariums, and associated products. In addition to the main building, the site also contains large areas of hardstanding, as well as smaller ancillary structures. It is located outside any defined development boundary and is in open countryside for planning policy purposes.
6. Policy ASP6 of the Newcastle-under-Lyme and Stoke-on-Trent Core Spatial Strategy (2009) sets out a spatial policy for rural areas. It supports a maximum of 900 net additional dwellings primarily located on sustainable brownfield land within the village envelopes of key rural service centres. In addition, saved Policy H1 of the Newcastle-under-Lyme Local Plan (2003) states that permission for residential development will only be given where one of 5 requirements are satisfied, including that the site is within a 'village envelope' as defined on the Proposals Map. As the appeal site is not within a village envelope the development is in conflict with these policies.
7. The Council accept that Policies ASP6 and H1 are out-of-date for the purposes of Paragraph 11 d) of the National Planning Policy Framework ('the Framework'). In this regard, my attention has been drawn to a number of recent appeal decisions which support that position¹. Based on the evidence before me, I concur with this view.
8. Paragraph 103 of the Framework seeks to locate development in order to limit the need to travel. In this regard, the appeal site is located around 1.6 miles from shops and services in Betley, which is the nearest settlement of any size. The facilities in Betley include a primary school, a village shop / post office, a public house, and a church. However, the pedestrian route to Betley is via Post Office Lane, which does not benefit from a footway, and then along the A531 which is a busy main road with fast moving traffic. The footway along the A531 is also narrow and uneven in places and is not a pleasant route to walk along given the speed and volume of traffic, and the associated pollution. In my view, it is unrealistic to assume that future occupiers would make regular use of this route to access Betley. Other services and facilities that future occupiers would be likely to make regular use of are located further afield.
9. A bus stop is also positioned in walking distance of the site on the A531 that is served by the No 85. However, services along this route are relatively infrequent, and run only hourly during most of the day. In addition, the appellant states that a bus service to Alsager School is available in the area, with the precise route depending on demand.
10. In these circumstances, I consider that the site has poor accessibility to services and facilities and only limited accessibility to public transport. Accordingly, future occupiers would be reliant on the use of a private car. However, the existing retail use also has limited accessibility by public transport and is visited mainly by private vehicles. In this regard, there is a large car park at the front of the site that was busy at the time of my visit. The number of vehicle journeys generated by this existing use are likely to be significantly higher than those that would arise from the appeal proposal.
11. Notwithstanding this, it is agreed that the location of the appeal site is contrary to Policy ASP6 of the Newcastle-under-Lyme and Stoke-on-Trent Core Spatial

¹ APP/P3420/W/18/3215969, APP/P3420/W/18/3199376, APP/P3420/W/18/3219254, and APP/P3420/A/14/2219282.

Strategy (2009) and saved Policy H1 of the Newcastle-under-Lyme Local Plan (2003). There is also be some conflict with Paragraph 103 of the Framework. I return to this matter in my Overall Balance and Conclusion, below.

SSSI / Ramsar site (including Appropriate Assessment)

12. The appeal site is positioned next to the Black Firs and Cranberry Bog SSSI, and the Midlands Meres and Mosses Phase 2 Ramsar site. The latter consists of 18 lowland open water and peatland sites across the Cheshire / Shropshire / Staffordshire / Wrexham Plain. The majority of these sites are nutrient-rich with associated fringing habitats, reed swamp, fen, carr and damp pasture. Peat accumulation has resulted in the nutrient-poor peat bogs (mosses) forming in some sites on the fringes of the meres or completely infilling basins. The wide range of resulting habitats support nationally important flora and fauna. Factors that have been identified as adversely affecting the Ramsar site's ecological character include eutrophication, introduction / invasion of non-native plant species, and pollution.
13. Given the position of the appeal site, the development could result in changes to the hydrology and chemistry of the SSSI / Ramsar site. Moreover, run off, light pollution, and dust arising from the construction phase could also have an effect. Accordingly, there are likely significant effects on the Ramsar site arising from the development.
14. At present, the nutrients produced and discharged on site are derived from an existing package wastewater treatment plant, and from the separate fish waste treatment systems. The various fish systems comprise 336 aquariums together with their associated reservoirs, fish vats, and wet display aquariums and total more than 73,000 litres of water. The development proposes 4 x 4 bedroomed houses (equating to a design population of 22 persons) which would be served by a package wastewater treatment plant and a larger drainage field than at present. This would be expected to produce 22 grams of Ammoniacal Nitrogen per day, which is significantly less than the current combined effluent output of 180 - 194 grams per day. Accordingly, the development would result in a significant reduction in pollution entering the ground. The precise details of the proposed drainage field and other drainage arrangements could be secured via planning condition. In this regard, the submitted Outline Below Ground Drainage Strategy² indicates that surface water would be dealt with by a series of soakaways and permeable pavements. Moreover, the position of the proposed drainage field would be on the southern side of the site which would allow for a buffer to be maintained to the SSSI/Ramsar site.
15. A Construction Environmental Management Plan could also be secured by condition. This would ensure that any run-off, dust, or light pollution arising from the construction programme would be controlled. Taken together, these measures would ensure that the proposal would not adversely affect the integrity of the SSSI/Ramsar site. Natural England has also been consulted on these measures and are content that they are sufficient to avoid an adverse impact, and could be secured by condition.

² Ref 20195589 (BDI, June 2019)

16. The development would therefore accord with Policy CSP4 of the Newcastle-under-Lyme and Stoke-on-Trent Core Spatial Strategy (2009), and guidance in the Framework, which seek to conserve designated natural assets.

Other Matters

17. The appeal site is located in the Green Belt. However, it comprises previously developed land and is currently occupied by a large building and other structures. The development would have a similar built volume to the existing structures and a reduced visual impact. In this regard, it would not have a greater impact on the openness of the Green Belt than the existing development. Accordingly, it would not constitute inappropriate development in the Green Belt.
18. The dwelling at Plot 3 would be positioned close to the boundary of the site and near to an existing oak tree. This is identified as being in poor condition with limited long-term potential in the submitted Arboricultural Impact Assessment³. The Council's Landscape Officer also concurred with that view. In any case, the proposed incursion into its Root Protection Area ('RPA') would be relatively minor at 6% and rooting in this area is likely to have been restricted by existing hard standing. The development is therefore unlikely to have a significant detrimental effect on this tree.
19. An attractive multi-stemmed common alder is also positioned close to the site boundary. The indicative position of the drainage field is shown as encroaching into its RPA by around 11%. However, rooting in this area is likely to have been restricted by existing structures and hard surfacing. The development is therefore unlikely to have a significant detrimental effect on this tree. Separately, an attractive blue atlas cedar is also positioned close to the site entrance. However, the development would not encroach into its RPA, and it could be protected during the construction phase via planning condition.
20. The submitted drainage scheme is in outline only. However, the submission of a detailed scheme could be secured by condition to ensure that surface water from the site is effectively managed so as not to increase flood risk elsewhere.
21. Any concerns regarding due process and appropriate consultation during the processing of the planning application fall outside of the remit of this decision.

Conditions

22. The Council suggested a number of conditions, some of which I have edited for clarity and enforceability. In addition to the standard time limit condition, I have imposed a condition that requires the development to accord with the approved plans. This is necessary in the interest of certainty.
23. I have also imposed a condition relating to foul and surface water drainage. This is necessary in order to protect the adjacent SSSI/Ramsar site and given that the submitted Below Ground Drainage Strategy is in outline only. A Construction Environmental Management Plan is also necessary to protect the SSSI/Ramsar site, and to protect neighbour amenity during the construction phase. Further conditions relating to land contamination and retained trees are necessary to ensure that the site is appropriately remediated and to protect trees identified for retention. These conditions are pre-commencement in

³ Ref 200117-1114-AIA-V2 (SEED, 17 January 2020)

nature as any site works could harm retained trees or disturb contaminants within the ground. Similarly, all site works will be informed by the Construction Environmental Management Plan and the proposed drainage arrangements.

24. Conditions relating to the access width, gating, and surfacing of the parking and turning areas, are necessary in order to provide a safe and suitable access to the development. Further conditions relating to facing materials and soft landscaping are necessary in order to protect the character and appearance of the area. A condition requiring the installation of electronic charging points is also necessary in the interests of air quality and in order to comply with Paragraph 110 of the Framework.
25. Separately, the Council suggested a condition that would have required the testing of soil brought onto the site. However, this is unnecessary as this matter is covered by other legislation.

Overall Balance and Conclusion

26. As set out above, the development is outside of the village envelope and would be contrary to the development plan in this regard. However, the policies which are most important for determining the application are out of date. In these circumstances, Paragraph 11 of the Framework states that permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.
27. In addition to the conflict with the development plan, the appeal proposal would have relatively poor accessibility to services, facilities, and public transport, and future occupiers would be reliant on the use of a private car. However, it would replace an existing retail use that generates significantly more car journeys. The development would therefore result in a significant reduction in vehicle movements in the area and would remove a busy retail use from a rural location. It would also provide 4 new dwellings on a previously developed site, and there would be some economic benefits generated during the construction phase. I attach significant weight to these benefits.
28. Whilst there would be some conflict with Paragraph 103 of the Framework, overall, the adverse impacts of development would not significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole. In this case, the conflict with the development plan would therefore be outweighed by other material considerations.
29. For the reasons given above I conclude that the appeal should be allowed.

Thomas Hatfield

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: 15518 P-250 Rev 03; 15518 P-015 Rev 02; 15518 P-011 Rev 02; 15518 P-100 Rev 02; 15518 P-110 Rev 02; 15518 P-120 Rev 02; 15518 P-200 Rev 02; 15518 P-210 Rev 02; 15518 P-220 Rev 02.

Pre-commencement conditions

- 3) No development shall take place until a detailed surface and foul water drainage scheme has been submitted to and approved in writing by the Local Planning Authority. The approved scheme shall accord with the principles set out in the Outline Below Ground Drainage Strategy by BDI (Ref 20195589, date June 2019). There shall be no surface water connection to the public sewer. The development shall be completed in accordance with the approved details.
- 4) No development shall take place, including any works of demolition, until a Construction Environmental Management Plan has been submitted to, and approved in writing by the Local Planning Authority. The Plan shall provide for:
 - i) measures to control run off and light pollution in relation to the Black Firs and Cranberry Bog SSSI/Ramsar site;
 - ii) measures to control the emission of dust and dirt during construction;
 - iii) the parking of vehicles of site operatives and visitors;
 - iv) loading and unloading of plant and materials;
 - v) storage of plant and materials used in constructing the development.The approved Plan shall be adhered to throughout the construction period for the development.
- 5) No development shall take place until a scheme of intrusive site investigations and chemical testing is submitted to and approved in writing by the Local Planning Authority. The approved scheme shall accord with the recommendations of the Phase 1 Site Investigation Report by TerraConsult (Ref 4326/01 Issue 1, dated 23 April 2019) and shall be undertaken prior to the commencement of development. A report specifying the measures to be taken, including the timescale, to remediate the site to render it suitable for the approved development shall then be submitted to and approved in writing by the Local Planning Authority. The site shall be remediated in accordance with the approved measures and timescale and a verification report shall be submitted to and approved in writing by the Local Planning Authority. If, during the course of development, any contamination is found which has not been previously identified, work shall be suspended and additional measures for its remediation shall be submitted to and approved in writing by the Local Planning Authority. The remediation of the site shall incorporate the approved additional measures and a verification report for all the remediation works shall be submitted to the local planning authority

within 30 days of the report being completed and approved in writing by the Local Planning Authority.

- 6) No development shall take place until a detailed construction phase Tree Protection Plan in accordance with British Standard BS 5837: Trees has been submitted to and approved in writing by the Local Planning Authority. The approved Tree Protection Plan shall be implemented throughout the construction program.

Pre-slab level conditions

- 7) Notwithstanding condition 2, no development shall take place above slab level until a revised layout has been submitted to and approved in writing by the Local Planning Authority with a minimum access width of 5 metres for the first 10 metres into the site from the B5500. The access shall be constructed in accordance with the revised details prior to the first occupation of the development, and shall thereafter be retained.

Pre-occupation conditions

- 8) Prior to the first occupation of the development, details of the surfacing materials for the access road, parking and turning areas shall be submitted to and approved in writing by the Local Planning Authority. The access road, parking and turning areas shall be surfaced in accordance with the approved details prior to the first occupation of the development, and shall thereafter be retained.
- 9) Prior to the first occupation of the development, full details of soft landscape works shall be submitted to and approved in writing by the Local Planning Authority. All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding seasons following the first occupation of the dwellings or the completion of the development, whichever is the sooner; and any trees or plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species.
- 10) Prior to their first occupation, each dwelling shall be provided with a fully operational dedicated electric vehicle charging point. The installed charging points shall be a minimum of 32Amp with Type 2 Mennekes connections, Mode 3 (on a dedicated circuit).

Other conditions

- 11) No development involving the use of any facing or roofing materials shall take place until details of the materials to be used in the construction of external surfaces of the dwellings hereby permitted have been submitted to and approved in writing by the Local Planning Authority. Development shall be carried out in accordance with the approved details.
- 12) The access into the site from the B5500 shall remain ungated.
- 13) No construction or demolition works shall take place other than between the hours of 08:00 to 18:00 Monday to Friday, 08:00 to 13:00 on Saturdays, and not at all on Sundays or Bank / Public Holidays.