



Appeal Decision

Site visit made on 23 March 2021

by Bhupinder Thandi BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 29 April 2021

Appeal Ref: APP/J3720/W/20/3263958

The bungalow, land adjacent Grafton Lodge Nurseries, Binton Hill, Binton CV37 9TX

- 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 Mr D J Dudfield against the decision of Stratford on Avon District Council.
 - The application Ref 20/01526/VARY, dated 12 June 2020, was refused by notice dated 27 August 2020.
 - The application sought planning permission for demolition of existing bungalow and outline planning permission for replacement dwelling together with associated infrastructure including roads, drainage and access from Binton Hill without complying with a condition attached to planning permission Ref 19/02933/OUT, dated 17 April 2020.
 - The condition in dispute is No 5 which states that: *The development hereby permitted shall be restricted to a maximum roof height of 6.5m when measured from natural ground level.*
 - The reason given for the condition is: *To prevent harm being caused to the openness of the Green Belt having regard to Policy CS.10 of the Stratford-on-Avon Core Strategy (2011-2031).*
-

Decision

1. The appeal is allowed and planning permission is granted for demolition of existing bungalow and outline planning permission for replacement dwelling together with associated infrastructure including roads, drainage and access from Binton Hill at The bungalow, land adjacent Grafton Lodge Nurseries, Binton Hill, Binton CV37 9TX in accordance with application 20/01526/VARY without complying with Condition 5 previously imposed on planning permission Ref 19/02933/OUT, subject to the other conditions set out in the Schedule to this decision.

Procedural Matter

2. The Council have stated that Policy CS.10 of the Stratford-on-Avon District Core Strategy (2016) (CS) has been incorrectly referred to in the reason for imposing the condition. I have taken this into account in making my decision.

Background

3. In April 2020 outline planning permission was granted for a replacement dwelling with all matters reserved for future consideration save for access. In doing so the Council imposed a condition limiting the roof height of the dwelling to a maximum of 6.5m. The application sought to remove this condition.

Main Issue

4. The main issue is whether condition 5 is necessary and reasonable having regard to the character and appearance of the area.

Reasons

5. The appeal site comprises a detached bungalow sitting within a generous plot located within the countryside. The site is next to a commercial premises and there are existing dwellings within the area. These dwellings are individual in design, form and scale and vary in terms of plot sizes and set back from the road resulting in a diverse built form in an otherwise rural setting.
6. The height limit stated by the Council, in my view, is somewhat arbitrary and there is nothing before me to suggest that a scale appropriate to its countryside setting and context could not be secured at reserved matters stage. As scale was a reserved matter, the condition is unnecessary and its size constraints needlessly restrictive. The condition unnecessarily fetters the flexibility of an outline planning permission whose purpose is to provide a decision on the general principles of development.
7. I acknowledge that the replacement dwelling would be larger than the existing bungalow. However, there is no substantive evidence before me to indicate that a dwelling taller than 6.5m would unduly diminish views across the surrounding landscape or be visually intrusive resulting in harm to the rural character and appearance of the area.
8. I conclude that the condition is unnecessary as scale is a reserved matter. The dimensional limitation is unreasonable and restricts a matter to be properly considered at a later stage. In my judgement the deletion of Condition 5 would not conflict with the requirements of CS Policy 20.

Conditions

9. The guidance in the Planning Practice Guidance (PPG) makes clear that decision notices for the grant of planning permission under section 73 should also restate the conditions imposed on earlier permissions that continue to have effect. In the interests of clarity, I have imposed conditions on the original planning permission that remain relevant.
10. The PPG also indicates that a grant of planning permission under Section 73 should not extend the time period for implementation. I have therefore amended Condition 1 to include the date of the original permission.

Conclusion

11. I therefore have found that the Condition is not necessary or reasonable. For this reason, the appeal is allowed and the planning permission varied by deleting Condition 5.

B Thandi

INSPECTOR

Schedule of conditions

- 1) Application(s) for the approval of the matters reserved by conditions of this permission shall be made to the Local Planning Authority before the expiration of 3 years and 6 months from the date of 17 April 2020. The development hereby permitted shall be begun no later than whichever is the latest of the following dates:-
 - i. The expiration of three years and six months from the date of 17 April 2020; or
 - ii. The expiration of two years from the final approval of the reserved matters; or
 - iii. 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 commences and the development shall thereafter be undertaken in accordance with the approved details.
- 3) The development hereby approved shall be carried out in accordance with the following plans and drawings: Site Survey dated June 2019, ref 5438.01; Red line plan ref PF.8329.02 Rev B and Site access proposals plan ref 15356-07 in so far as it relates to land within the red line boundary of this application only.
- 4) Prior to progression above slab level of any building which forms part of the development hereby permitted, a schedule of materials and finishes (including samples and trade description/brochure details where appropriate) of materials to be used in the construction of the external surfaces of the development shall be submitted to and approved in writing by the Local Planning Authority. The development shall be constructed in accordance with the approved details and completed before the development is first occupied or used and thereafter shall be retained and maintained in that form, unless the Local Planning Authority gives prior written approval to any subsequent variation.
- 5) Access to the site for vehicles shall not be used unless a bellmouth has been laid out and constructed within the public highway in accordance with the standard specification of the Highway Authority.
- 6) Gates erected at the entrance to the site for vehicles shall not be hung so as to open within 5 metres of the near edge of the public highway carriageway.
- 7) The application for reserved matters shall include a final survey report for bats, amphibians and nesting birds. This shall fully detail the results of an appropriate level of additional survey effort and any mitigation/compensation measures. Any approved mitigation or compensation measures shall thereafter be carried out in full and retained in accordance with the approved details.

- 8) The dwelling hereby permitted shall not be occupied until 3 bins for the purposes of refuse, recycling and green waste have been provided for each of the approved dwellings, in accordance with the Council's bin specification.
- 9) No dwelling that has a downpipe within the development hereby permitted shall be occupied or used until it has been provided with a minimum 190 litre capacity water butt fitted with a child-proof lid and connected to the downpipe.
- 10) The dwellings hereby permitted shall not be occupied until electric vehicle charging points (EVCP'S) at a minimum 7kW have been provided, with 1 EVCP per dwelling with a garage or driveway. Thereafter, upon completion, the charging points shall be retained and maintained in perpetuity, unless the Local Planning Authority gives prior written approval to any variation.