



Appeal Decision

Site visit made on 28 June 2023

by S Brook BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24th October 2023

Appeal Ref: APP/C3240/W/22/3312235

Little Acorns, 2A New Road, Ironbridge, Telford TF8 7AS

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (the Act) against a failure to give notice within the prescribed period of a decision on an application for planning permission.
 - The appeal is made by Mr & Mrs Blackhurst against Telford and Wrekin Council.
 - The application Ref TWC/2021/0985, is dated 24 September 2021.
 - The development proposed is described as 'Restoration of front boundary stone wall and removal of modern steel railings (retrospective); reinstating of missing brick wall and restoration of existing brick wall; installation of new gated pedestrian access; improvement of sloped garden landscaping; repair of chimney and replacement of pots; replacement of four windows and one door to front elevation; replacement of two flat dormer roofs; repainting of house exterior'.
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Decision

1. The appeal is dismissed and planning permission for restoration of front boundary stone wall and removal of modern steel railings (retrospective); reinstating of missing brick wall and restoration of existing brick wall; installation of new gated pedestrian access; improvement of sloped garden landscaping; repair of chimney and replacement of pots; replacement of four windows and one door to front elevation; replacement of two flat dormer roofs; repainting of house exterior, is refused.

Procedural Matters

2. Information provided by the appellant indicates that plan D6R1 was submitted to the Council at the time of validation and prior to publicity and consultation. As such, I have taken this plan into account as part of my decision as doing so, would not prejudice any parties. In any event, this drawing provides 1:20 scaled drawings of window and door details and so it does not amend the appeal scheme.
3. A set of revised plans were provided to the Council prior to submission of the appeal. These plans indicate rebuilding of an additional length of retaining wall to the front of the dwelling. The Council has confirmed that these plans have not been subject to re-consultation. I have not considered them as part of this decision, because to do so would deprive those who should have been consulted, with an opportunity to comment.
4. The appellants' Statement of Case highlights that further works are now necessary to address instability at the site, for example the demolition and replacement of a conservatory. However, I can only consider the proposals before me.

Background and Main Issue

5. The appeal is made against a failure of the Council to give notice of its decision on the planning application within the prescribed period. As such, there is no decision notice. However, the Council's appeal statement sets out that, subject to a number of conditions, the Council would be content with planning permission being granted for the proposed development.
6. Based on the submitted evidence and following an assessment of the proposed development during my site visit, I find no reason to disagree with the Council that the principle of the development is acceptable. However, I must consider whether the suggested planning conditions meet the policy tests set out within paragraph 56 of the National Planning Policy Framework (NPPF). In doing so, I have had regard to the views of the appellants on any pre-commencement conditions suggested by the local planning authority. Section 100ZA(5) of the Act makes clear that such conditions should not be imposed without the appellants' prior written authority.
7. As such, I consider the main issue to be whether planning conditions can be imposed to make the development acceptable.

Reasons

8. The conditions suggested by the Council include a standard time limit for commencement and specification of the approved plans. These would be necessary to provide certainty and could be imposed without the written agreement of the appellants. Scaled drawings of windows and doors have been provided and the appellants have confirmed no change to the existing canopy, and so a condition in this respect is not necessary.
9. The other conditions put forward by the Council are all pre-commencement conditions, requiring the submission of information in relation to details and samples of external materials and finishes, a ground investigation report and the full structural calculations and design for the retaining wall, and a Site Environmental Management Plan (SEMP).
10. The appellants have confirmed in writing that they are agreeable to the imposition of a pre-commencement condition to secure details and samples of external materials and finishes. However, those conditions relating to ground investigation and the full structural calculations and design for the retaining wall, and a SEMP are not agreed. The appellants state that the suggested condition for a ground investigation report is too generalised, and it should be the appointed structural engineer who determines the extent of ground investigation necessary, not the Council. Further, the requirement for a SEMP is considered to go beyond the limited means of a householder to be able to coordinate and facilitate.
11. Policies BE1 and BE9 of the Telford and Wrekin Local Plan 2011-2031, January 2018 (LP) require, amongst other things, that new development provides a secure environment that is safe, demonstrates that sufficient investigation has been undertaken to ascertain the type and extent of any land stability issues, that structural integrity will not be compromised by slope instability, and that development can tolerate the ground conditions by special design.
12. The main parties are in dispute as to whether LP Policy BE9 is applicable to the appeal scheme, which is a householder development, and additionally, the

appellants are critical of the evidence relied on by the Council in its application of this policy. The supporting text to LP Policy BE9 does state that exceptions to application of the policy include 'householder development (for example, an extension to a dwelling)'. Nevertheless, a stability report prepared by Sladen Associates, dated May 2022, has been provided for the appeal scheme, which is a material consideration. This report concludes that the risk of overall slope instability affecting the proposed replacement wall is considered to be very low. However, it recommends that the design of the retaining wall should be undertaken by a suitably qualified structural engineer, based on appropriate intrusive investigation of local near surface ground conditions.

13. On this basis, I am satisfied that a condition requiring a ground investigation report and the full structural calculations and design for the retaining wall is necessary to ensure compliance with LP Policies BE1 and BE9, as well as NPPF Paragraph 183, which states that decisions should ensure that a site is suitable for its proposed use, taking account of ground conditions and any risks arising from land instability, informed by adequate site investigation and prepared by a competent person. I am also satisfied that this information is required before development commences as it is integral to the safe construction of the replacement retaining wall.
14. Whilst I note concerns that the suggested condition by the Council is too generalised, I do not consider that amending to 'local near surface ground investigation' would make it any more precise. Further, whilst I would expect the appointed structural engineer to advise on the physical extent of the ground investigation work, the condition is necessary to satisfy LP Policies BE1 and BE9. Therefore, the appropriate determining Authority to confirm compliance with these policies is the Council, in the first instance. I understand that the appellants have concerns in this regard. However, should they be dissatisfied with this process, there are existing means by which to address this. Notably, there is a right of appeal where an application to discharge a condition is refused or is not determined within the statutory timescale.
15. LP Policy C3 requires that all developments should provide mitigation for site specific highway issues, whilst LP Policies BE1 and BE2, amongst other things, seek to ensure that new development does not result in adverse environmental impacts such as noise and dust.
16. With regards to the requirement for a SEMP, I accept that this is a relatively small development. Nevertheless, the appeal site is constrained by level changes, the limited width of the adjacent highway, which also lacks pedestrian facilities, and the proximity of neighbouring residential properties. As such, a SEMP is necessary and reasonable in this instance, to effectively manage the construction phase of the proposed development from the outset, so as to avoid site specific highway safety issues and minimise adverse impacts of noise and dust. This would ensure compliance with LP Policies C3, BE1 and BE2 as well as NPPF Paragraph 174 which seeks to prevent new development from contributing to unacceptable levels of soil, air, water or noise pollution. As it relates to the construction phase, this information would be required before development commenced.
17. I am therefore satisfied that these two conditions meet the policy tests and cannot be imposed other than as pre-commencement conditions. They are so fundamental to the proposed development that I am unable to allow the appeal

without them. The suggested pre-commencement conditions cannot be imposed without the agreement of the appellants', and this has not been provided. Therefore, in relation to the main issue, I am unable to impose planning conditions that would make the development acceptable. Without such conditions, the development would not comply with LP Policies C3, BE1, BE2 and BE9, or the requirements of the NPPF, the purposes of which have been set out above.

Other Matters

18. The appeal site is situated on rising land, which overlooks the Wharfage and River Severn below. The area is characterised by the steep sided gorge, which contains traditional commercial and residential buildings and structures set either side of the river and extending upwards, interspersed with mature trees and vegetation. Due to the topography, retaining walls are a notable feature of the built form. These traditional buildings and their arrangement along the river, highlight the industrial heritage of the area, which is designated as the Severn Gorge Conservation Area (CA) and the UNESCO World Heritage Site of Ironbridge Gorge (WHS). A number of buildings close to the appeal site are also listed.
19. Little Acorns is a 20th century dwelling, the style of which does not reflect the local vernacular. However, what remains of the front retaining wall is traditional in terms of its design and materials. Having considered the detailed alterations to the dwelling itself, they are sympathetic to the style of the property and would have a neutral impact on the wider area. The proposed works to the property frontage, most notably the retaining wall would reflect the traditional style of retaining walls in the immediate area in design and materials, preserve the character of the CA and the setting of those nearby listed buildings. The Council's Conservation Officer considers a minor enhancement would result from the new windows and doors and I have no reason to disagree.
20. Further, given the relatively small scale and minor nature of the proposed works in the context of the WHS, I have no reason to consider that the proposal would harm its outstanding universal value.
21. The appellants have expressed concerns relating to the stability of the retaining wall to the south and downhill of New Road, said to be the responsibility of the Council, and the potential for this to influence the construction and future stability of the appeal scheme or vice versa. However, I must consider the proposal before me, based on the information available at this time, and I note that in reaching the recommendations therein, the stability report prepared by Sladen Associates has had regard to the downhill retaining wall.
22. I have been provided with background information relating to consideration of the retaining wall as a dangerous structure. Reference has also been made to a number of other matters, including, ongoing legal proceedings relating to land stability, who is responsible for the costs of maintaining structures and undertaking investigations, a lack of Council budgeting for maintenance of its retaining structures, difficulties associated with the Council's requirement for a Stability Declaration Form, the withholding of information relating to land stability, delays during the application process and a lack of communication. However, it is not necessary for me to comment on any of these matters as part of this decision, as they do not alter my findings on the main issue.

23. I have been referred to the grant of planning permission for a new dwelling at land east of Loadcroft, and it is questioned whether in that case, the Council followed the advice contained within the stability report prepared for the scheme. I have not been provided with the full details of that development in order to fully establish any relevance to the appeal scheme. Nevertheless, I must consider the proposal and evidence before me, and I have given careful consideration to the stability report prepared specifically for this scheme.
24. There is local support for the proposed development, and I appreciate the benefits of securing a replacement retaining wall at this location in a timely manner. These include reducing the risk of further movement or damage to the property itself or the area which would include the highway, limiting further risks to habitation of the property or loss of a family home, limiting risks to the well-being and safety of the community, and improving the visual appearance of the property which forms part of the CA and WHS and is therefore an important tourist attraction as well as being of historic value.
25. I also note that the proposal would improve energy efficiency at this property and waste would be minimised through the re-use of original building materials. Proposed landscaping would address the existing slope of exposed clay which could pose an additional landslip risk, as well as introducing greenery into the landscape. However, given the circumstances set out above, these matters do not alter my conclusions on the main issue.
26. Given the Council's responsibility for the downhill retaining wall, for reasons of impartiality and fairness, I am asked to consider whether it is possible to exclude Telford & Wrekin Council from further involvement in the determination of the proposal, specifically the stipulation of, and the discharging of conditions. I am also asked to consider a longer time period for the commencement of development. Given my decision in relation to the main issue, it has not been necessary for me to consider these matters further.

Conclusion

27. For the reasons given above, the appeal scheme would conflict with the development plan when taken as a whole, and there are no other material considerations, including the minor enhancement to the CA, worthy of sufficient weight that would indicate a decision other than in accordance with it. I conclude that the appeal should be dismissed and planning permission refused.

S Brook

INSPECTOR