



Appeal Decision

Site visit made on 26 February 2024

by Ben Plenty BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18 March 2024

Appeal Ref: APP/Y3425/W/23/3331724

Land At Embry Avenue, Stafford ST16 3QF

- 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 St. Augustine's Court Investments Ltd. against the decision of Stafford Borough Council.
 - The application Ref 22/36317/FUL, dated 22 September 2022, was refused by notice dated 24 April 2023.
 - The development proposed is Erection of two two-bed semi-detached houses and two one-bed maisonettes with associated parking and amenity space.
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Decision

1. The appeal is allowed, and planning permission is granted for the erection of two two-bed semi-detached houses and two one-bed maisonettes with associated parking and amenity space at Land at Embry Avenue, Stafford ST16 3QF in accordance with the terms of the application, Ref 22/36317/FUL, and the plans submitted with it, subject to the conditions in the attached schedule.

Preliminary Matters

2. The site is located within the influence of the Cannock Chase Special Area of Conservation (SAC) which is a European Designated Site afforded protection under the Conservation of Habitats and Species Regulations 2017 as amended (the Habitat Regulations). Although not an issue raised by the Council in its decision, it is incumbent upon me as competent authority to consider whether the proposal would be likely to have a significant effect on the integrity of the SAC. As such, it is necessary to consider this matter as a main issue.
3. The Appellants have provided a financial contribution towards mitigating the effects of the proposal on the European Protected Site. A Unilateral Undertaking (UU), under Section 106 of the Town and Country Planning Act [1990], has been provided to secure a contribution towards mitigation of the identified adverse impact.
4. An amended plan¹ has been submitted in support of the appeal. This has altered the internal arrangement of plot 3 to switch the bathroom and bedroom 2. This change has not been subject to re-consultation during the Council's consideration of the planning application. Nonetheless, under the Holborn Studios Ltd² principles, I have considered whether the development is

¹ Drawing reference: HB-MA[20]0001 Rev P01

² Holborn Studios Ltd v The Council of the London Borough of Hackney [2017] EWHC 2823 (Admin)

so changed that to grant approval would deprive those who should have been consulted the opportunity of such consultation.

5. Despite the Council's view on this matter, I find that the internal change, including a further bedroom window looking to the rear of plot 3, would be minor and would not change the substance of the proposal. Furthermore, the proposal would have no material effect on surrounding neighbouring plots, partly due to the existence of the adjacent substation and the plot not being adjacent to the rear garden of No 7a. Consequently, my acceptance of the plan would not cause procedural unfairness to neighbouring occupiers who would have otherwise required re-consultation. As such, I have taken the revised plan into account in this appeal.

Main Issues

6. The main issues are:

- Whether the proposed development would affect the integrity of the Cannock Chase Special Area of Conservation (SAC),
- Whether the proposal would make suitable provision for parking, and
- The effect of the proposal on the living conditions of future occupiers with particular respect to privacy.

Reasons

Cannock Chase SAC

7. Policy N5 of the Plan for Stafford Borough [2014] (PSB) states that the highest level of protection will be given to European Sites, where development will only be permitted where either there are no adverse effects, or such effects can be mitigated. Furthermore, PSB policy N6 states that development within 15kms of the SAC, leading to a net increase in dwellings, shall provide necessary steps to avoid or mitigate any adverse effects which may include contributions to a range of measures. It states that these measures should be secured through a suitable mechanism (such as a Legal Agreement) to mitigate any adverse harmful effects.
8. The appeal site is located within the 15km Zone of Influence (ZOI) of the SAC, which is primarily allocated due to its heathland habitat. This is the largest in the Midlands and the habitat and dependent species are of very high nature conservation importance. It is incumbent upon me, in accordance with the Habitat Regulations as competent authority, to consider whether the proposal would be likely to have a significant effect on the integrity of the SAC through an Appropriate Assessment.
9. The Council has formed a partnership with other Council's within the vicinity of the SAC, known as the Cannock Chase SAC Partnership, to assess the impact of development upon the SAC. The evidence suggests, through the Council's Visitor Observation Study, that development within the ZOI would increase visitors to the SAC having a deleterious effect on its integrity. Recreational pressure, path creation and widening, erosion and nutrient enrichment create increasing detrimental effect on the heathland. The majority of visitors to the SAC are from within the 0-15km zone of influence surrounding the Cannock

Chase SAC. Natural England has confirmed, in standing advice, that any development within 15kms of the SAC would be likely to cause significant harm through increasing visitor numbers.

10. The Cannock Chase SAC Partnership has agreed a series of mitigation and avoidance measures with Natural England. These are referred to as Strategic Access Management and Monitoring Measures (SAMMM). Based on the submitted evidence I find that the proposal, individually and in combination with other development, would be likely to have an adverse effect on the integrity of the SAC. Under the Habitat Regulations, such impact would need to be avoided and mitigated through a package of suitable measures as detailed in the SAMMM. The Council has produced Planning Guidance [2023] to explain the approach to mitigating the impact of new development on the SAC. The approach agreed through the SAMMM is to require a mitigation payment per net residential dwelling from all new development within the 0-15km 'zone of payment'.
11. The Habitat Regulations require me to consider whether compliance with conditions or other restrictions, such as a planning obligation, would enable it to be ascertained that the proposal would not adversely affect the integrity of the SAC. The Council has identified that, in agreement with standing advice of Natural England, that subject to a contribution of £329.83 per dwelling being provided towards mitigation measures, the integrity of the SAC would not be affected.
12. The submitted UU provides for a sum to be paid to the Council should the appeal be allowed. This commits the Appellant, under schedule One, to make the required contribution to the Council prior to the commencement of development. This is a signed and executable document and would suitably secure the required mitigation to my satisfaction. This sum accords with the value of contribution as identified by the Council as necessary to be proportionate and suitable for the scale of proposed development to contribute towards the SAMMM.
13. For the reason given above, due to the provision of suitable mitigation, I conclude through an Appropriate Assessment that the proposed development would not have a significant effect, either alone or in combination with other development, upon the integrity of the Cannock Chase SAC. Accordingly, the proposal would accord with PSB policies N5 and N6, the Cannock Chase SAC Guidance [2023] and the National Planning Policy Framework (the Framework). These seek, among other matters, for development to be resisted if it would lead to an adverse effect upon the integrity of the SAC.

Parking provision

14. Embry Avenue is a short cul-de-sac with two rows of terraced houses facing across a narrow roadway. Houses here have narrow front gardens and most do not have on plot parking. As a result, the road accommodates the majority of parking requirement for residents and visitors. At the end of the road is a turning head that would be directly in front of the proposed development and four on plot parking spaces. The scheme provides for 2 two-bed dwellings and 2 one bed maisonette.
15. PSB Policy T2 requires parking and manoeuvring facilities for development to make adequate provision for parking in accordance with appendix B. This

appendix explains that parking should be provided at a rate of two spaces for up to a 3 bed detached or semi-detached dwelling and one space per 4 units for visitors. Dwellings that are not detached or semi-detached, with up to 2 bedrooms, should provide two spaces per dwelling, with one space per 4 units for visitors. The Council has determined that for the proposal this creates a demand for six spaces.

16. However, the policy also states that parking provision will be assessed on a flexible site-by-site basis depending on the provision of public transport and access to local services. The policy sets out criteria for where reduced parking provision would be considered. This takes into consideration accessibility, contents of any Travel Plan, traffic generation, and access to public car parking.
17. The site is within a residential area close to the town centre. The Appellant explains that the site is around 1.3km from the town centre and Douglas Road includes the frequent 11/11A bus route into town. The site is also around 300 metres from shops and 700 metres from a primary school. As such, it is within walking distance of neighbourhood services, education and employment opportunities.
18. The Appellant has demonstrated, using Census data, that car ownership in the area is relatively low. This shows that over a third of households do not own a car or van and around half only own one vehicle. During my site visit, I noted that Embry Avenue was occupied by only three cars and retained substantial on-street parking capacity. Although providing only a snap-shot in time, and despite expecting parking demand to be higher in evenings and weekends, the evidence suggests that on street parking would be available to visitors of the proposed development if required. Accordingly, based on the car ownership locally, the type of accommodation proposed and the availability of sustainable travel options, a minor reduction of the parking requirements of appendix B would be acceptable.
19. Although the Highway Authority considers that the proposal may result in parking within the turning head, such parking would block access to the proposed parking spaces. Accordingly, the proposal would be more likely to ensure that the turning head is kept free of parked cars, improving its functionality and the safety of motorists entering Embry Avenue. Furthermore, the Council is concerned that the proposal does not demonstrate how users of the southern-most parking space would access the space. However, the submitted tracking plan demonstrates how a vehicle would be able to exit the parking bay without crossing third party land. Consequently, I am satisfied that motorists would be able to reverse out of the space onto the highway without causing undue hazard on the highway. It has therefore been unnecessary for me to consider the merits of the Appellant's alternative car parking plan.
20. Consequently, the proposed development would make adequate provision for off-street parking and improve the safe manoeuvrability of vehicles in the highway. Accordingly, the proposal would comply with PSB policy T2. This seeks development to, among other matters, ensure adequate parking is provided in compliance with parking standards and with regard to the site's relative accessibility.

Living conditions

21. The proposal includes four dwellings, arranged in two groups, one being perpendicular to the other. As such, units 3 and 4 would have a front elevation that looks onto the side of the maisonette of plots 1 and 2. The garden of plot 2 is to its side and alongside the frontages of plots 3 and 4.
22. A fence is proposed to the front and side of this garden to afford a reasonable degree of privacy, preventing overlooking from ground floor living windows of plots 3 and especially plot 4. First floor windows would consist of bathrooms only, which could be obscurely glazed to secure intervisible privacy. As a result, the garden of plot 2 would not be materially overlooked providing a reasonable level of privacy for future occupiers of this unit.
23. Accordingly, the proposal would accord with PSB policy NI and the Design Supplementary Planning Document [2018]. These require development to, *inter alia*, ensure that the design and layout of a scheme take account of the amenity of adjacent residential areas and achieve adequate levels of privacy.

Other Matters

24. Interested parties have raised concerns that the proposal would result in an over intensification of the plot. However, the scheme meets Nationally Described Space Standards and would have gardens of sufficient size to enable occupiers to enjoy a good standard of outside living space. The scheme would not appear contrived or congested on site and follows the established pattern of development formed by existing built form both in front and behind the site. This would therefore complement the local streetscene and provide a visual terminus to the street.
25. The site is an area of rough grass, largely on a gradient and may have been accessed in the past by the public for recreation. However, due to its gradient it has limited use for local occupiers and as it is in private ownership the site could be secured with fencing preventing public access. I therefore concur with the Council that the scheme would not result in the loss of public open space.
26. Some local residents have raised concerns that the scheme would result in overlooking. However, windows proposed close to boundaries serve non-habitable rooms and the rear facing bathroom and kitchen windows of plot 2 could be obscurely glazed to prevent overlooking. Other first floor windows, such as the bedroom windows of plots 3 and 4, would be a considerable distance from adjacent neighbouring dwellings preventing material overlooking.
27. It is recognised that the site is small, and the proposal may generate some construction disturbance to local residents due to noise and general disturbance. However, the scheme is for only 4 properties and has space within it to accommodate materials and construction vehicles without overspilling onto the highway. Furthermore, any disturbance would be largely limited to daytime only and would be for a temporary duration.

Conditions

28. I have considered the use of conditions in line with the guidance set out in the Government's Planning Practice Guidance (PPG). I shall take the Council's suggested conditions into consideration and impose these with some amendments and adjustments for clarity.

29. I have imposed the standard conditions with respect to timeframe and approved plans as advised by the PPG for clarity and certainty [conditions 1 and 2]. Conditions are necessary with respect to the provision of planting, materials and bin storage areas in the interests of the character and appearance of the area [4, 7 and 8].
30. The implementation of the approved parking areas and cycle storage areas are required by condition to ensure that the proposed scheme functions well [3 and 5]. It is also necessary for a condition to be imposed to require the biodiversity measures are implemented to enhance the ecological value of the site in accordance with PSB policy N4 [6]. Further a condition is necessary to require bathroom windows are obscurely glazed in the interests of the living conditions of neighbouring and future occupiers [9].

Conclusion

31. The proposal would accord with the development plan, when taken as a whole, and there are no material considerations that indicate the appeal should be determined other than in accordance with the development plan. As such, the appeal is allowed, and planning permission granted subject to the attached conditions.

32. *Ben Plenty*

INSPECTOR

Schedule of conditions

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans:
Site Location and Block Plan - Drawing No. WHB-SA[20]0001 P00,
Site Plan As Proposed - Drawing No. WHB-SA[20]0005 P01,
Cycle Storage - Drawing No. WHB-SA[20]0008 P00,
Site Section As Proposed - Drawing No. WHB-SA[20]0007 P00,
Plots 1&2 – Elevations As Proposed - Drawing No. WHB-MA[20]0002 P00,
Plots 3&4 – Elevations As Proposed - Drawing No. WHB-MA[20]0003 P00,
Plots 1-4 Floor Plans As Proposed - Drawing No. WHB-MA[20]0001 P01.
- 3) The parking areas, shown on the approved layout plan, shall be provided and available for use prior to the occupation of any dwelling. The parking areas shall be retained and maintained in perpetuity.
- 4) Prior to above ground construction, details of all the developments external finishing materials shall be submitted to and approved in writing by the Local Planning Authority and shall thereafter be constructed in accordance with those approved details.
- 5) Prior to the development being brought into use the cycle storage detailed on the submitted plans WHB-SA[20]0005 P01 and WHB-SA[20]0008 P00 shall be fully implemented and thereafter retained.
- 6) Prior to the development being brought into use, the recommendations for biodiversity enhancement detailed within the Preliminary Ecological Appraisal (June 2022) shall be fully implemented and thereafter retained.
- 7) Prior to first occupation, the hard and soft landscaping detailed shall be submitted to and approved in writing by the Local Planning Authority, and shall be fully implement within six months of first occupation, and any plants or trees that are removed or die or become seriously damaged or diseased within a period of five 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 consent to any variation.
- 8) Prior to first occupation, full details of means of enclosure and bin storage shall be submitted to and approved in writing by the Local Planning Authority, and thereafter fully implemented in accordance with those approved details.
- 9) Notwithstanding the plans hereby approved, all bathroom windows (to Pilkington level 3 or equivalent) and the kitchen window of plot 2, shall be obscure glazed prior to first occupation and maintained as such thereafter.

End of conditions