

## Appeal Decision

Site visit made on 14 August 2024

**by E Pickernell BSc MSC MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 17 September 2024**

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**Appeal Ref: APP/J3720/W/24/3337541**

**Welfare Centre, Craven Lane, Southam, Warwickshire CV47 1PG**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 (as amended) for the development of land without complying with conditions subject to which a previous planning permission was granted.
  - The appeal is made by Mr Dhaliwal against the decision of Stratford-on-Avon District Council.
  - The application Ref is 23/01266/VARY.
  - The application sought planning permission for demolition of Billet Hut (Class D1) and the proposed erection of a detached dwelling (Class C3) without complying with a condition attached to planning permission Ref 23/00593/FUL, dated 26 April 2023.
  - 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 – 01910-05 PL-1, 1910-05 PL-3 Rev I, 1910-05 PL-4 Rev I, 1910-05 PL-5 Rev H. 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 allowed and planning permission is granted for demolition of Billet Hut (Class D1) and the proposed erection of a detached dwelling (Class C3) at Welfare Centre, Craven Lane, Southam, Warwickshire CV47 1PG in accordance with the application Ref 23/01266/VARY, without compliance with condition number 2 previously imposed on planning permission Ref 23/00593/FUL dated 26 April 2023 and subject to the conditions listed in the attached schedule.

### Preliminary Matters

2. In determining this appeal, I have had due regard to the Public Sector Equality Duty (PSED) contained in Section 149 of the Equality Act 2010, which sets out the need to eliminate unlawful discrimination, harassment, and victimisation, and to advance equality of opportunity and foster good relations between people who share a protected characteristic and people who do not share it. From the

evidence, my decision has the potential to affect persons with a protected characteristic for the purposes of the PSED.

### **Background and Main Issue**

3. The application subject to this appeal is made under Section 73 of the Town and Country Planning Act 1990 (the planning Act) for minor material amendments. The appellant seeks to build a dwelling of a revised but not substantially different design to that approved. The appeal seeks the variation of condition 2 to specify the plans that reflect the amended design.
4. The refusal reason given on the decision notice states that "*the development represents poor design and overdevelopment of the site*". The statement of case clarifies that concerns in relation to poor design and overdevelopment are a consequence of the cumulative concerns regarding the effect of the proposal on the occupiers of neighbouring properties and the provision of garden space.
5. Therefore, the main issues are:
  - the effect of the proposed design amendments on the living conditions of the occupants of 1 Craven Lane with particular reference to sunlight and 11 Craven Lane with particular reference to privacy; and
  - whether the proposal, as amended, would provide acceptable living conditions for future occupants with regard to the provision of private amenity space.

### **Reasons**

#### *Living conditions – occupiers of neighbouring properties*

6. The proposed design amendments would involve an increase in the eaves height of the approved dwelling. The rooflights on the front roof slope and the dormer windows within the rear roof slope would be replaced by first floor casement windows. An additional first floor window is also proposed in the southeast facing elevation of the building.

#### 1 Craven Lane (No.1)

7. The dwelling would be located near to the shared side boundary with No.1, adjacent to the side garden associated with this property. Its side elevation would be visible from the garden space and from the side facing windows of No.1.
8. The overall size of the side wall of the dwelling would increase as a result of the proposed changes to the design. However, the increase would be minor in scale comprising a relatively slim additional wedge of brickwork to both sides of the ridge. Furthermore, because of its location to the northwest of No.1, bearing in mind the path of the sun across the sky, the proposed changes to the design of the dwelling would not result in significant additional overshadowing of the garden or side windows of No.1. The effect of the changes to the rear roof slope would also be partially off-set by the omission of the dormer windows. Consequently, the harm arising from overshadowing as a result of the proposed design amendments would not be significant.

### 11 Craven Lane (No.11)

9. Part F of the Stratford-on-Avon District Council Development Requirements Supplementary Planning Document (April 2019) (SPD) suggests that 13m should be the minimum front-to-front separation distance between windowed elevations of 1.5 or 2 storey dwellings. The SPD clarifies that separation distances are between habitable room windows.
10. As a result of the proposed amendments to the eaves, the separation distance between the proposed first floor bedroom window and the rooflights serving a bedroom at No.11 would be closer than with the approved scheme and would be in a vertical plane. The parties agree that this distance would fall slightly below 13m with the minimum separation distance, taken from the lower edge of the existing rooflights estimated by both parties as 12.9m.
11. However, the rooflights at No.11 are angled away from the appeal site and therefore parts of them would be in excess of 13m from the proposed bedroom window. Consequently, the shortfall compared to the suggested separation distances in the SPD would be minimal. Given the distance between the windows and the angled nature of the existing rooflights which would limit direct overlooking into the bedroom, the harm arising from loss of privacy as a result of the proposed design amendments would not be significant.

### Conclusion

12. I therefore conclude that the proposed design amendments would have an acceptable effect on the living conditions of the occupiers of No.1 in respect of sunlight and No.11 in respect of privacy. They would therefore accord with Policy CS.9 of the Stratford-on-Avon Core Strategy 2011 – 2031 (CS) insofar as it requires that occupants of neighbouring buildings will be protected from, amongst other things, unacceptable loss of daylight and privacy and unacceptable surroundings.

### *Living conditions – future occupiers*

13. Whilst the size of the proposed garden would not change as a result of the amendments, the previous proposal indicated the provision of 2 bedrooms and a study at first floor. The revised designs include the reconfiguration of the first-floor accommodation in order to provide 3 bedrooms. Therefore, the amendments would result in the increased occupancy of the dwelling.
14. Part D of the SPD suggests that a three-bedroom house should be provided with 50 sqm of garden area. The parties hold opposing views as to whether the proposed amenity space would meet these requirements. The Council estimate that the size of the rear garden, excluding any areas to the side or front of the property, would be around 43 sqm. However, the SPD refers to rear or side gardens and I therefore see no reason why the side area should be discounted in this context. The side garden, whilst narrow would be contiguous with the rear garden area, would be accessed via a side door and would be capable of use for a variety of purposes. In any event, the SPD confirms that the minimum garden areas stated therein are indicative and that proposals should take account of local context.
15. The appeal site is located centrally, in an area characterised by relatively dense development. I saw at my site visit that properties with little or no private

garden space are not uncommon in the locality. Even if the proposed garden area falls short of the recommendations of the SPD, it would be of sufficient size to enable the provision of a sitting out area, planting, room to dry clothes and storage. It would therefore be capable of meeting the needs of future residents, thereby making acceptable provision in respect of garden space.

16. I conclude that the proposal, as amended, would provide acceptable living conditions for future occupants with regard to the provision of garden space. It would therefore accord with Policy CS.9 of the CS insofar as it requires that proposals ensure a good standard of space and amenity for occupiers.

## **Other Matters**

17. The appeal site is located within the Southam Conservation Area (CA). I therefore have a duty under Section 72 (1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the Act), to pay special attention to the desirability of preserving or enhancing the character or appearance of the CA. The CA includes the historic core of Southam including the High Street, Market Hill and roads leading from this area, including Craven Lane. It derives its significance from its historic street pattern, many historic buildings and open spaces. Craven Lane comprises primarily modern properties and although the existing building at the site is older and apparently was used as a billet hut in the first World War, it does not contribute positively to the character and appearance of the CA. Its demolition would not result in harm to the character or appearance of the CA. The proposed dwelling would be appropriate in scale and design to its context. Therefore, bearing in mind the extent, nature and location of the proposed development the character and appearance of the CA as a whole would be preserved.
18. A Grade II listed building (LB), Craven Arms Hotel is located near to the site. Mindful of the statutory duty set out in s66(1) of the Act I have had special regard to the desirability of preserving its setting. The LB fronts Market Hill and derives its significance from its prominent position in the town centre, and its architecture including its distinctive quoins, windows, dormers and carriage arch. There is a limited degree of visibility between the appeal site and the LB and in my judgement the appeal proposal would preserve the setting of the LB, the significance of which would not be harmed.
19. The lack of harm in respect of the character and appearance of the CA and the setting of the LB are neutral factors in the appeal.
20. I note that interested parties consider that the revised designs should be the subject of a fresh planning application. However, the proposed variation of a condition would not cause conflict with the original description of development and falls within the scope of s73 of the Planning Act. Therefore, I have dealt with the appeal on this basis.
21. The Council did not refuse the application on the basis of harm to the outlook from neighbouring properties. Whilst the proposed design amendments would increase the bulk of the building compared to the approved scheme, the overall height, width, and depth of the building would be unchanged. The increase in the bulk would be modest and partially offset by the omission of the rear dormer windows which would reduce the mass of the rear roof slope. Consequently, the proposal would not result in an overbearing structure. Given

the distance between the appeal site and other nearby properties, I am satisfied that the proposed amendments would not result in significant harm to the living conditions of their occupants.

22. The proposal would include an additional window on the southeast elevation which would face the side elevation of No.1. However, the window would serve a bathroom and a condition could be imposed requiring the window to be glazed with obscure glass and fitted with a restrictive opening mechanism. Subject to such a condition I am satisfied that the proposed design amendments would not result in a loss of privacy for the occupiers of No.1.
23. I acknowledge that persons with disabilities reside at No.1. Disability is a protected characteristic for the purposes of the PSED. The ground floor windows in the side elevation of No.1 serve the rooms in which they spend the majority of their time. However, I have found that the proposed design amendments would not result in significant harm to the living conditions of the occupiers of this property. Therefore, allowing the appeal would not conflict with the aims of the PSED.
24. There is significant planning history in Craven Lane including a previous appeal<sup>1</sup> for a dwelling at the appeal site which was dismissed. However, the previous proposal was for a three-storey dwelling, positioned further forward within the plot. This would have had a different effect on the neighbouring properties and therefore the appeal scheme before me is materially different to that considered under the previous appeal. The earlier appeal<sup>2</sup> related to a scheme for two dwellings which was dismissed due the effect of the proposal on highway safety. This is not comparable to the appeal which is before me.
25. I acknowledge the concerns about the loss of the existing building, however this appeal relates solely to the design amendments proposed through the variation of condition 2. Furthermore, I note the comments in relation to the ownership of the site, however this is a private matter which is not within my jurisdiction.

## **Conditions**

26. Planning Practice Guidance 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.
27. A condition relating to the commencement of development is necessary because development has not yet started. Condition 2 specifies the approved plans in the interests of certainty. I have adjusted the wording of condition 3 in order to ensure that the southeast facing window is obscurely glazed and fitted with a restricted opening mechanism in the interests of the privacy of the occupiers of the neighbouring property. The wording of Condition 12 in respect of sustainability measures has been slightly adjusted for clarity.
28. The remainder of the conditions are not in dispute, and it is not necessary for me to change these beyond minor changes for clarity and consistency. The Council suggested a revision to the wording of the materials condition to reflect the fact that details have been agreed with the Council. However, I have

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<sup>1</sup> APP/J3720/W/22/3292107

<sup>2</sup> APP/J3720/W/20/3260901

imposed the condition in its original form to allow the appellant the flexibility to seek to use alternative materials if necessary.

### **Conclusion**

29. For the reasons given above I conclude that the appeal should succeed. I will grant a new planning permission without the disputed condition but substituting with a condition stating the revised drawings, adjusting the condition relating to obscure glazing and restating those undisputed conditions that are still subsisting and capable of taking effect.

*E Pickernell*

INSPECTOR

### **Schedule of Conditions**

- 1) The development to which this permission relates must be commenced not later than the expiration of three years from 26th April 2023.
- 2) The development hereby approved shall be carried out in accordance with the following plans and drawings:  
1910-05 PL-1  
1910-05 PL-3 Rev J  
1910-05 PL-4 Rev K  
1910-05 PL-5 Rev K  
The development shall also be carried out in accordance with the Heritage Planning Design and Access Statement Rev D unless otherwise required by conditions attached to this permission.
- 3) Prior to the first occupation of the dwelling hereby permitted, the windows on the northwest and southeast side facing elevations of that dwelling shall be fitted with obscure glazing (minimum of Level 3 obscure glass). In addition, the southeast facing window shall be fitted with a restricted opening mechanism, the details of which shall first have been submitted to and approved in writing by the Local Planning Authority. The approved measures and obscure glazing shall be permanently retained in that condition thereafter.
- 4) Prior to the commencement of development hereby permitted a schedule of materials to include samples (where necessary) and trade descriptions of the external facing and roofing materials to be used in the construction of the development shall be submitted to and approved in writing by the Local Planning Authority. Development shall be carried out in accordance with the approved materials.
- 5) Prior to the occupation of the dwelling hereby permitted a scheme for the hard and soft landscaping shall be submitted to and approved in writing by the Local Planning Authority.



The approved scheme shall be carried out and completed prior to the first occupation of the development hereby permitted.

- 6) Notwithstanding the details shown on the approved plans, details of the shed shall be submitted and approved in writing prior to its erection on site.
- 7) Notwithstanding the provisions of Article 3, Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (or any Order revoking or re-enacting that Order with or without modification), no development covered by Part 1 Class A, B and E of Schedule 2 shall be erected, constructed or carried out without the express grant of planning permission.
- 8) The access to the site for vehicles shall not be used unless a public highway footway crossing has been laid out and constructed in accordance with the standard specification of the Highway Authority.
- 9) The access to the site for vehicles shall not be used in connection with the development hereby permitted until it has been surfaced with a bound material for a distance of 8.0 metres as measured from the near edge of the public highway carriageway.
- 10) The gradient of the access for vehicles to the site shall not be steeper than 1 in 15 for a distance of 7.5 metres, as measured from the near edge of the public highway carriageway.
- 11) There shall be no gates or any other means of enclosure erected on the front boundary of the application site.
- 12) Prior to first occupation of the development hereby permitted, the sustainability measures set out within the supporting 'Climate Change Checklist' submitted to the LPA with the application (reference: 23/00593/FUL), shall be incorporated into the design of the development and/or site layout as relevant. Thereafter, the approved sustainability measures shall be retained and maintained.
- 13) 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.
- 14) The dwelling hereby permitted shall not be occupied until 3 bins for the purposes of refuse, recycling and green waste have been provided in accordance with the Council's bin specifications. Any siting of domestic refuse bins shall be at the rear of the building or within any suitably screened area for bin storage. Details of any proposed bin store to be erected or constructed shall be submitted to and approved in writing by the Local Planning Authority prior to erection or construction.
- 15) The dwelling hereby permitted shall not be occupied until it has been provided with a connection to facilitate superfast Broadband connectivity.

### **End of Schedule**