The Planning Inspectorate

Appeal Decision

Site visit made on 20 December 2017

by Mike Worden BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 16th January 2018

Appeal Ref: APP/B3438/W/17/3183984
Deepdale, Birchall Lane, Leek, ST13 5RA

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
- The appeal is made by Mr and Mrs P. Champ against the decision of Staffordshire Moorlands District Council.
- The application Ref SMD/2017/0130, dated 1 March 2017, was refused by notice dated 14 August 2017.
- The development proposed is the erection of one detached dwelling in outline with details of access and layout.

Decision

1. The appeal is allowed and planning permission is granted for one detached dwelling in outline with details of access and layout at Deepdale, Birchall Lane, Leek ST13 5RA in accordance with the terms of the application, Ref SMD/2017/0130, dated 1 March 2017, subject to the conditions on the attached schedule.

Main Issues

2. The main issues are the effect of the proposed development on:

    - the character and appearance of the area; and,
    - the living conditions of the occupants of Deepdale with regard to the residual provision of outdoor amenity space

Procedural Matters

3. The application was made in outline with all matters reserved apart from access and layout.

4. The development proposed was changed between the submission of the application and its determination by the Council. The description of the proposed development as set out on the application form, was for the erection of two detached dwellings. The amendment had the effect of removing one of the proposed dwellings from the application. I have therefore amended the description of the proposed development to more closely reflect that set out on the appellant's appeal form and the decision notice. I consider that the description: *erection of one detached dwelling in outline with details of access and layout*, more closely describes what is proposed.

Reasons

Character and appearance

5. The appeal site is part of the garden of a large detached house called Deepdale which is situated at the end of a private road, Birchall Lane. The surrounding area is residential and is characterised by mainly detached properties standing in their own grounds. Some of these plots have been subdivided over the years and there is a variety of ages, styles and sizes of the dwellings in the area. The Birchall Lane area lies on a hill which rises from Cheddleton Road but the appeal site itself lies in a dip between Deepdale and Birchall Wood. The difference in land levels between Deepdale and the part of the appeal site where the house is proposed to be built is significant, around 8m.

6. The proposed house would be located on this lower garden area and would be accessed by a new driveway from Birchall Lane, which would cut through the existing upper garden of Deepdale and curve round the existing house and down the steep bank to the lower garden.

7. The proposed dwelling would not be visible from Birchall Lane or from most of the other houses along it, with the exception of Deepdale and its neighbouring property, Oakhurst. Depending upon the eventual design of the house it may be visible from a public footpath which runs to the south of the appeal site, close to Sheephouse Farm. However this would be some distance away.

8. From my site visit I could see that a number of the traditional housing plots in the Birchall Lane area have been subdivided. The proposed detached dwelling would sit in a plot which would not be dissimilar in size to some of the properties in the vicinity. I consider therefore that it would not be out of keeping with the character of the Birchall Lane area. Some of the representations have expressed concern about the cumulative impact on character of recent and future proposals for housing in the Birchall Lane area. I recognise that there has been change in the area over time. However, I have considered this proposal on the character of the area as it exists at the present time, on its merits and on the evidence before me.

9. The new access track to the site would involve considerable excavation and re-modelling in order to access the lower part of the site. I have had regard to the section plan provided within the appellant's statement of case which shows, indicatively, the level of re-profiling which would be likely. The access track generally would follow the fall of the land, although drop deeper in parts. This track would not be generally visible to the existing houses and would be screened to the open land to the south by the retained boundary hedge. The top of the access track would sit between the existing accesses to Deepdale and its neighbour San Miguel and would not appear out of place or incongruous.

10. For these reasons, I conclude that the proposed development would not be harmful to the character and appearance of the area and would accord with Policy SS1 of the *A Local Plan for the future of Staffordshire Moorlands - Core Strategy Development Plan Document* (the Core Strategy), which sets down general development principles. It would also accord with Policy SS5a of the Core Strategy which sets out the spatial strategy for the Leek area, and Policy DC1 of the Core Strategy which sets out design considerations for all new development. I do not find that the proposed development would be of poor

design such that it should be refused in accordance with paragraph 64 of the National Planning Policy Framework (the Framework). Appearance and scale are matters which would be reserved for subsequent approval in any case.

Amenity space

11. Deepdale currently has an upper garden and a lower garden, separated by a steep vegetated bank. The proposed access track would involve the loss of some of the upper garden and the proposed development would involve the loss, to Deepdale, of a considerable proportion, but not all, of the lower garden. Part of the vegetated bank would also remain within the garden of Deepdale. Some of the front garden area, the driveway to the front of Deepdale and the hard surfaced area between the existing house and garage, would remain.

12. I have not been provided with any information or measurements of the private amenity area which would remain, nor any policy requirements for such space. It seems to me however, that the residual space overall would not be dissimilar in size to some of the properties nearby.

13. For the reasons above I consider that the proposed development would not be harmful to the living conditions of the occupants of Deepdale with regard to the levels and nature of the residual amenity space and would accord with Policy DC1 of the Core Strategy.

Other matters

14. A considerable number of local residents have made representations in relation to the proposal. Many of these representations express concern about the suitability of Birchall Lane to serve the proposed development. Birchall Lane is a private/unadopted road and its maintenance is a private matter. The County Council's Highways Officer has not raised any objections to the proposed development on safety grounds and in any case I consider that a single dwelling would not add a significant level of traffic on to the lane. There would be some construction traffic associated with the proposed development, but this would again only relates to the construction of a single dwelling and its access road. A condition could be imposed to control hours of working to protect the amenity of residents on Birchall Lane.

15. Birchall Wood lies adjacent to the site and has potential ecological value. I consider that appropriate and necessary conditions could be imposed to safeguard ecological interest.

16. The Council cannot currently demonstrate a five year supply of deliverable housing land. The appellant states that the supply equates to around 1.99 years supply and this is not disputed by the Council. This weighs in favour of the proposal as does its location within the development boundary of Leek with access to a range of services and public transport.

Conditions

17. I have considered the conditions suggested by the Council in relation to the Planning Practice Guidance and the Framework. Where necessary, I have amended the suggested conditions in order to comply with the tests.

18. In addition to the standard conditions relating to the time period for the submission of reserved matters and implementation, there is a need for a

condition specifying the plans to which the permission relates, in the interests of clarity and certainty. There is also need for conditions relating to the hours of construction working, and the management of construction waste, in the interests of the amenity of neighbouring residents.

19. There is a need for a condition relating to surface water drainage in the interests of environmental protection, and conditions relating to the protection of the hedgerow along the southern boundary of the site, and the protection of trees on the site during construction, in the interests of the character and appearance of the area.

20. The proposed access road will require the remodelling of the land form and I agree with the Council's suggested condition that details of the land extraction and remodelling should be submitted to and approved in writing by the Council, in the interests of the appearance of the area.

21. The Council has suggested three conditions in the interests of protecting the ecological value of the area, particularly the adjacent woodland. I have decided to impose two of these, the ones which relate to the submission and approval of the details of works and boundary treatment to the eastern boundary which adjoins the woodland, and to the provision of external lighting.

22. However, having regard to the tests in the Framework, Planning Practice Guidance, and Circular 06/2005, I consider that a condition requiring the submission of an ecological survey relating to badgers would not be appropriate in this case. Paragraph 99 of Circular 06/2005 makes it clear that the requirement for an ecological survey should be only be the subject of a condition in exceptional circumstances and that if a survey was necessary it should have taken place before the grant of planning permission. In reaching this view I have also taken into account that the landowner and developer will be bound by the provisions of the Protection of Badgers Act 1992. I have also taken into account the Council's view that if such a condition was not to be imposed by me, it would not consider that the appeal should be resisted on ecological grounds.

23. I am not persuaded that there is a need for a condition, as suggested by the Council, requiring the removal of permitted development rights. Planning Practice Guidance makes it clear that such conditions would rarely pass the test of necessity and should only be used in exceptional circumstances. On the basis of the limited evidence before me on this matter, I do not consider such circumstances exist.

24. I also consider that there is insufficient evidence before me to justify that imposing conditions relating to contamination and the importation of top soil, are necessary to the granting of planning permission.

Conclusions

25. For the reasons given above, and having considered all matters raised, I conclude that the appeal should be allowed.

Mike Worden

INSPECTOR

SCHEDULE OF CONDITIONS

1) Details of the appearance, landscaping, and scale, (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development takes place and the development shall be carried out as approved.

2) Application for approval of the reserved matters shall be made to the local planning authority not later than 3 years from the date of this permission.

3) The development hereby permitted shall take place not later than 2 years from the date of approval of the last of the reserved matters to be approved.

4) The development hereby permitted shall be carried out in accordance with the following approved plan: Plot Layout Plan including Location Plan, 8453 ALO5 Revision D.

5) Demolition or construction works shall take place only between 08:00-18:00 hours Monday to Friday and 08:00-13:00 hours on Saturdays, and shall not take place at any time on Sundays or on Bank or Public Holidays.

6) Any waste material associated with the demolition or construction shall not be burnt on site but shall be kept securely for removal to prevent escape into the environment.

7) No building hereby permitted shall be occupied until surface water drainage works shall have been implemented in accordance with details that shall first have been submitted to and approved in writing by the local planning authority.

8) The existing hedgerow along the southern boundary of the site shall be permanently retained.

9) No site clearance, preparatory work or development shall take place until a scheme for the protection of the retained trees (the tree protection plan) and the appropriate working methods (the arboricultural method statement) in accordance with paragraphs 5.5 and 6.1 of British Standard BS 5837: Trees in relation to design, demolition and construction - Recommendations (or in an equivalent British Standard if replaced) shall have been submitted to and approved in writing by the local planning authority. The scheme for the protection of the retained trees shall be carried out as approved.

10) Details of any works to the eastern boundary of the site adjacent to the woodland including ground modelling/levelling/extraction and the erection of walls, fences and other structures shall be submitted to and approved by the Local Planning Authority before the works commence, and the works shall be undertaken in accordance with the approved details.

11) Details of land extraction and land remodelling and other works in connection with the access road shall be submitted and approved by the Local Planning Authority before works commence and the works shall be undertaken in exact accordance with the approved details.

12) No works shall commence until details of any external lighting including security lighting has been submitted and approved by the Local Planning Authority and the lighting shall be implemented in accordance with the approved details.