The Planning Inspectorate

Appeal Decision

Site Visit made on 10 February 2021

by JP Sargent BA(Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 31 March 2021

Appeal Ref: APP/B3438/W/20/3262746
Greenacres, Ash Bank Road, Werrington ST9 0DT

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a grant, subject to conditions, of approval required under a development order.
- The appeal is made by Mr D Adams against the decision of Staffordshire Moorlands District Council.
- The application Ref SMD/2020/0232, dated 4 May 2020, was granted approval by notice dated 7 September 2020 subject to conditions.
- The development granted approval is approval of reserved matters relating to SMD/2019/0268 appearance, landscaping and scale.
- The conditions in dispute are Conditions 4 & 5, which state:
  - 4 *Notwithstanding the landscaping details shown on the approved Site Plan (2019-2390-13-A) the hedgerow that forms the front (northwestern) boundary with Ash Bank Road shall be retained and not removed or replaced for the lifetime of the development.*
  - 5 *Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015 (or any order revoking and re-enacting that order with or without modification) no development as specified in Part 1 Classes A-E shall be carried out without express planning permission first being obtained from the Local Planning Authority.*
- The reasons given for the conditions are:
  - 4 *In the interests of preserving an important landscape feature of the existing street scene in the interests of good design and to comply with policies DC1 and DC3 of the Staffordshire Moorlands Core Strategy (2014), the NPPF (2019) and policies DC1 and DC3 of the emerging Staffordshire Moorlands Local Plan.*
  - 5 *To enable the Local Planning Authority to control the development and so safeguard the character and visual amenities of the area and ensure adequate private open space is retained within the curtilage of the building.*

This decision is issued in accordance with Section 56(2) of the Planning and Compulsory Purchase Act 2004 (as amended) and supersedes the decision issued on 16 February 2021.

Decision

1. The appeal is allowed and approval Ref SMD/2020/0232 for the approval of reserved matters relating to SMD/2019/0268 appearance, landscaping and scale at Greenacres, Ash Bank Road, Werrington ST9 0DT, granted on 7 September 2020 by Staffordshire Moorlands District Council, is varied by deleting Conditions 4 and 5, and substituting Condition 4 with the following substitute condition:

   4) Prior to the construction of the boundary wall to the front (north western) boundary, details of its height, materials, coping and bonding shall be submitted to and approved in writing by the Local Planning Authority. The

wall shall then be constructed in accordance with the approved details only and retained in that form thereafter.

Procedural matters

2. Despite details on the application form, I understand Mr Adams is the appellant and have progressed the appeal accordingly. I have taken the description of the proposal from the Council's decision notice, mindful that outline permission SMD/2019/0268 was for the erection of a dwelling.

Main Issue

3. The main issues are, in relation to Condition 4, whether the removal of the hedgerow would unacceptably affect the character and appearance of the area and, concerning Condition 5, whether allowing 'permitted development' rights would have an unacceptable effect on the character and appearance of the area or the living conditions of future residents.

Reasons

Condition 4

4. This stretch of Ash Bank Road is lined by houses of a variety of designs and styles. Along the front boundary of the appeal site is an informal hedge on top of an earth embankment. The properties to either side have front treatments comprising ornamental hedging or walls of stone or brick (sometimes with planting behind) whilst there is an open car park further to the west. Across the road the dwellings tend to have low walls, hedges and/or fences marking their front boundaries. Within these boundary treatments are found gaps of a range of sizes to allow access to the plots.

5. In this suburban context I consider the hedge to the front of the appeal site does not comprise a visually important landscape feature, but rather sits as one frontage form amongst many. I have also been told of no other reason why the hedge might have an importance, with its biodiversity value being unspecified. The appellant proposes to erect a stone wall in its place, and that could well respect the locality appropriately and constitute 'good design'. However, in the interests of the appearance of the area, a substitute condition would be needed to agree its appearance and construction.

6. The Council suggested the wall should be erected before the house is first occupied but I see no reason for this to be incorporated into the substitute condition, and the wall could be built at any time. Indeed, even if the hedge were to be removed and the frontage kept open, I am not satisfied that would be harmful in this diverse street scene. Moreover, while the appellant suggests a hedge could be planted behind his proposed wall requiring its provision by condition is not necessary, as the wall would be of a suitable appearance and any such planting would be concealed to a great extent.

7. Accordingly, I conclude the removal of the hedgerow that forms the front (north western) boundary would not constitute the loss of an important landscape feature and would not detract unacceptably from the character and appearance of the area. As such it would not conflict with Policies DC1 and DC3 of the *Staffordshire Moorlands Local Plan* (2020) or the *National Planning Policy Framework*, which together seek to promote good design and respect local landscape character. I therefore conclude the disputed Condition 4 is not

necessary to make the development acceptable in planning terms. However, a substitute condition is needed to ensure any replacement walling is of a suitable design.

Condition 5

8. The disputed Condition 5 removes most of the 'permitted development' rights found under Part A of the *Town and Country Planning (General Permitted Development)(England) Order 2015* (the Order) that are normally available to enlarge, improve or otherwise alter a dwelling without the need for express planning permission from the Local Planning Authority. At some new dwellings such rights have been taken away by a condition imposed when they were originally granted planning permission, while, at others, the rights cannot be utilised because of the various conditions and constraints applied to each class of works. However, these rights generally exist to some extent at the vast majority of houses across the country, including many within the Green Belt, although they are rarely taken up to the full at any one property.

9. The *Planning Practice Guidance* states that '*conditions restricting the future use of permitted development rights … may not pass the test of reasonableness or necessity'*, while the Framework says conditions restricting national permitted development rights should not be used unless there is '*clear justification'*.

10. These rights often result in enlargements, improvements or alterations that have due regard to the character and appearance of an area or to living conditions. However, it is nonetheless possible for homeowners, in implementing these rights, to affect the character and appearance of the area or the living conditions of residents at the property in a way that the Local Planning Authority would not have found acceptable had a planning application been necessary. Therefore, I consider that imposing Condition 5 to protect the living conditions of future residents at this house or the character and visual amenity of the surrounding area, of themselves, do not constitute the '*clear justification*' referred to in the Framework.

11. I have not been told that this site lies in an area that has a special character or is subject to particular landscape protection. Indeed, whether looking from the front of the site or from the rear, there is great variety in the appearance of properties along this section of road. As such, the streetscape in general and the row on the south side in particular can cope with some further visual variation in built form that could result from the implementation of these rights.

12. The Council was concerned that the use of 'permitted development' rights could mean elements of the scheme would be reintroduced that had been deleted when the application was being considered. However, I am unaware as to what those elements actually were or the harm they would cause, and I have no basis to consider they would in fact be built. As a result, limited weight can be given to this concern. Therefore, in relation to safeguarding the character and visual amenity of the area I consider no '*clear justification'* has been offered to remove 'permitted development' rights at this property.

13. Turning to living conditions, although an irregular shape, I have not been told that the garden, as approved, is inadequate to serve this house. Its area would clearly be reduced by the construction of an incidental building or a rear extension, but that would always occur with the implementation of the relevant

classes of the Order. Moreover, there is no evidence as to whether such works would occur or, if they did, their size. As such, it has not been shown that reducing the area of the rear garden would offer a *'clear justification'* for taking these rights away.

14. Although not a reason for the condition, the Council has also expressed a concern about the potential loss of outlook that could occur. I accept that an incidental building in the back garden could well diminish the existing outlook from the main ground floor rear windows. It has not been shown though that any future occupier would in fact undertake such works. I also have no basis to consider such an issue, if it did occur, would be a greater problem here than at the many other properties where that particular class of the Order could be implemented. Therefore, I consider the possibility of reducing outlook is not a '*clear justification'* for removing such rights.

15. In coming to this view, I accept it is possible that implementing any 'permitted development' rights could be at odds with the advice in the document called *Space Between and Around Dwellings,* which the Council says is Supplementary Planning Guidance. This broadly seeks at least 6m between a principal window and a solid obstruction. It may well be appropriate to apply such guidance if assessing the layout of new houses when consideration is being given to what would definitely be built at the outset. However, given the permutations around the implementation of these rights, and whether or not a future occupier would utilise them in a way that conflicted with this guidance, I find the SPG does not clearly justify the imposition of the condition and their removal.

16. Accordingly, despite guidance in *Space Between and Around Dwellings*, I conclude it has not been shown that the effect of such works on the character and appearance of the area or the living conditions of residents provides a '*clear justification'* for the removal of 'permitted development' rights required by the Framework. As such removal of this condition would not be contrary to Policies DC1 or DC3 in the Local Plan, which in part concern the protection of amenity and the character of an area. Therefore, I conclude Condition 5 is not necessary to make the development acceptable in planning terms.

Conclusion

17. In the light of the above, and mindful that I am not creating a new approval but rather that my decision is to be read in tandem with the approval notice dated 7 September 2020, I conclude that the appeal should be allowed, and the reserved matters approval varied by the deletion of Condition 4 and Condition 5, and the substitution of Condition 4 with a new condition.

JP Sargent

INSPECTOR