The Planning Inspectorate

Appeal Decision

Site visit made on 22 April 2024

by M Clowes BA (Hons) MCD PG CERT (Arch Con) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 03 May 2024

Appeal Ref: APP/B3438/W/23/3334899
Land on NE side of Rivendell Lane, Leek ST13 5RH

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
- The appeal is made by Birchendel Holdings Ltd against the decision of Staffordshire Moorlands District Council.
- The application Ref is SMD/2023/0085.
- The development proposed is the erection of 1no. detached bungalow.

Decision

1. The appeal is allowed and planning permission is granted for the erection of 1no. detached bungalow at Land on NE side of Rivendell Lane, Leek ST13 5RH, in accordance with the terms of the application, Ref SMD/2023/0085, and the plans submitted with it, subject to the conditions in the attached schedule.

Procedural Matters

2. Interested parties have suggested that the submitted plans are inaccurate. The Council has confirmed within its officer report that the plans, so far as they relate to the appeal site, are accurate. In the absence of any substantive evidence to the contrary, I have no reason to take a different view. I have determined the appeal on the basis of the submitted plans.

Main Issue

3. The main issue in relation to this appeal is the effect of the proposal on the character and appearance of the area.

Reasons

4. The appeal site comprises a corner plot of vacant land within a residential area. There is a mixed character to the street scene with detached dwellings of various styles, forms and ages, unified by a relatively consistent material palette and the provision of front gardens with low boundary treatments, including hedging and soft landscaping. Together these features contribute to a verdant, spacious street scene. As an undeveloped parcel of land, contained behind a laurel hedge, albeit with temporary security fencing, the appeal site contributes positively to the character and appearance of the street scene.

5. The proposal seeks to erect a detached single storey dwelling orientated to face Rivendell Lane with vehicular access off Birchall Lane to the side. It is a revised scheme which seeks to address the previous concerns of the Council and an Inspector regarding the impact of the size, scale and form of a proposed dwelling on this elevated plot[1].

[1] Planning application reference numbers SMD/2018/0168 and SMD/2021/0145 refused by the Council and dismissed respectively on appeal, reference numbers APP/B3438/W/18/3210497 and APP/B3438/W/21/3284785.

6. Sited towards the rear of the appeal site, the proposed dwelling would have a relatively simple linear form, responding to the wide frontage facing Rivendell Lane. It would be reasonably consistent with the position of the dwellings on the eastern side of Rivendell Lane that are cut into the rising slope, albeit noting that some are of a larger scale with substantial basement garages[2]. As a single storey building, the ridge height of the roof would sit comfortably lower than the neighbouring dwelling of Haven View[3].

7. Whilst elevated 2m above Rivendell Lane and the properties opposite, the proposed dwelling would be sited a minimum of 11m from the front boundary[4]. Separation gaps would be maintained between the proposed dwelling and Haven View and Birchall Lane. This arrangement would help to mitigate the scale of development such that it would not protrude incongruously into the street scene. The proposed dwelling would appear to be set within spacious grounds, consistent with other properties nearby and the character of the area more widely, given that rear gardens are not visible.

8. The plans indicate the provision of a hedgerow at a higher level within the front garden which would help to soften views of the proposed dwelling and the vertical cut-away to the rear of the car parking area, particularly in those from the nearby junction. This would supplement the already mature laurel hedgerow to the front and side boundaries of the appeal site and could be added to, through the imposition of a further landscaping condition.

9. Views from within Birchall Lane would be very localised, restricted to those immediately adjacent the junction with Rivendell Lane due to the topography and existing boundary treatments including mature hedgerows. In views north along Rivendell Lane, the proposed dwelling would be seen in the context of the larger, taller dwelling of Haven View. In views south, the dwelling would be seen against the backdrop of Birchall House, Birchendell and Woodlands, substantial dwellings built in elevated positions on the hillside, particularly when the trees are not in leaf, as was the case at the time of my visit.

10. The proposed development would not adversely affect the character and appearance of the area. Accordingly, it would comply with Policies SS1, H1 and DC1 of the Staffordshire Moorlands Local Plan (SMLP) 2020, which seek amongst other things, that new development is of a high quality that respects the site and its surroundings through its scale, height, density and layout.

Other Matters

11. Although previous proposals have been refused or dismissed at appeal, the proposed scheme is materially different to those that have gone before. The Council's recent approval marks a new position in the planning history of the appeal site where the principle of a dwelling on this site has been accepted[5]. Given the appellant's clear intention to build a dwelling in this location, it represents a fallback position with a realistic prospect of implementation.

12. There are only minimal differences between the proposed and approved schemes. Whilst the proposed dwelling would be positioned 0.6m above that of the approved scheme, there would be only a negligible difference in the ridge height. A greater set back from Rivendell Road than the approved scheme would also assist in reducing its prominence.

[2] Shadow Lawns and White Lodge.
[3] As shown in the plans and elevations drawing reference 1797-02.
[4] As set out at paragraph 5.9 of the Council's statement of case.
[5] Planning application reference number SMD/2023/0454.

13. Although the approved scheme includes a landscaped bund to the front corner of the appeal site, it would not provide a significantly greater level of screening to the development than that shown on the submitted drawings[6]. As the fallback position would not be significantly different to the proposal before me and with which I have found would not be harmful to the character and appearance of the area, it does not affect my findings. The appellant would have the choice of which permission they wish to implement.

14. The Council did not refuse the application on the grounds that the proposal would be harmful to neighbouring amenity or highway safety. Notwithstanding the higher ground level, the proposed dwelling would maintain a considerable distance between neighbouring dwellings, particularly that of Links View opposite. Despite the difference in land levels, the slightly offset orientation, the intervening front gardens and presence of Rivendell Lane would ensure sufficient privacy is maintained.

15. Whilst Birchall Lane narrows beyond Rivendell Lane, it is a no-through road serving a small number of dwellings. Its relatively straight alignment allows good visibility in both directions and the presence of accesses alert drivers to the potential for emerging vehicles. The proposed development would not therefore give rise to an unacceptable impact upon highway safety or severe residual cumulative impacts on the road network. I further note that the Highway Authority has not objected to the scheme on the grounds of an adverse effect on highway safety or car parking.

16. Non-compliance with conditions relating to previous permissions is not a basis for withholding planning permission that would be in accordance with the development plan. In this case, the granting of planning permission would supersede any previous requirements for the landscaping of the appeal site. Nonetheless, any such permission would be subject to new conditions including those relating to landscape enhancement. Any future non-compliance with conditions would be a matter for the Council.

17. Disruption and disturbance during the construction phase is a temporary situation that would not justify withholding planning permission. Planning permission does not override matters of ownership. Legal rights of access are a private civil matter.

Conditions

18. The Council's suggested conditions have been considered and the wording varied where necessary, to ensure precision and compliance with the Planning Practice Guide and paragraph 56 of the Framework. Along with the standard time limit, conditions are imposed to require the submission of materials and a landscaping scheme in the interests of consistency of appearance and to list the plans in the interest of certainty. Conditions relating to the hours of construction and demolition activity, importation of material, unexpected contamination and the burning of waste are reasonable, necessary and relevant to the development permitted to ensure that the living conditions of neighbouring residents and the environment are protected.

19. No objections have been raised by the appellant to the Council's recommended conditions. This includes the suggested prior to commencement condition for the provision of tree and hedgerow protection measures[7]. This condition is

[6] Plans and Elevations Drawing Number 1797-02.
[7] As set out in the Council's email dated 1 May 2024.

necessary to ensure that the verdant character and appearance of the area is not adversely affected by the proposed development.

Conclusion

20. For the reasons given, there are no conflicts with the development plan when taken as a whole. The appeal is allowed.

M Clowes

INSPECTOR

********** Schedule of Conditions **********

1. The development hereby permitted shall begin not later than 3 years from the date of this decision.

2. The development hereby permitted shall be carried out in accordance with the following approved drawings;
   - Location plan
   - Plans and Elevations drawing number 1797-02
   - Site sections drawing number 1797-03.

3. All noisy activities shall be restricted to the following times of operations:
   08:00 - 18:00 hours Monday to Friday
   08:00 - 13:00 hours Saturday
   No working is permitted on Sundays or Bank Holidays.

   A noisy activity is defined as any activity including but not restricted to, building construction/demolition operations, refurbishing and landscaping which generates noise that is audible at the site boundary.

4. Prior to the commencement of development, including before any site clearance, stripping, site establishment and formation of new temporary or permanent access points or driveway, temporary protective fencing and advisory notices for the protection of the existing boundary hedgerows and trees shall be erected in accordance with guidance in British Standard 5837:2012 Trees in Relation to Design, Demolition and Construction – Recommendations, and shall be retained in position for the duration of the period that development takes place. Within the fenced areas there shall be no excavation, changes in ground levels, installation of underground services, provision of hard surfacing, passage of vehicles, storage of materials, equipment or site huts, tipping of chemicals, waste or cement, or lighting of fires.

5. Within one month of the commencement of development, including any demolition, site clearance, stripping or site establishment, a scheme of landscaping including measures to enhance biodiversity shall have been submitted for written approval by the Local Planning Authority. The scheme shall include full details of all new tree, shrub and hedge planting, giving specifications for species, positions, planting sizes and numbers/densities of all new planting, including plant protection from wild mammals along with details of all hard surfacing and boundary treatments to the site and details of the construction and vegetation of the retaining embankment along the north east edge of the site.

The approved landscaping scheme shall be fully implemented before the end of the first available planting season (November to February inclusive) prior to the first occupation of the approved dwelling. Any plants which die or are lost or otherwise fail to establish in the first five years following the completion of the planting shall be replaced in the next available planting season with plants of the form and size as originally planted. The planting shall thereafter be allowed to grow and be maintained for the lifetime of the development.

6. Notwithstanding the submitted drawings, prior to the construction of exterior walls above damp-proof course level details including types and colours (along with samples if requested) of all external facing walling and roofing materials, shall have been submitted to and approved in writing by the Local Planning Authority. The development shall thereafter be carried out in accordance with the approved details.

7. The development hereby permitted shall not be brought into use until:
   (i) the access to the site within the limits of the public highway has been completed;
   (ii) the access drive rear of the public highway has been surfaced in a bound and porous material for a minimum distance of 5m back from the site boundary in accordance with details to be first submitted to and approved in writing by the Local Planning Authority. The approved access shall thereafter be retained for the life of the development;
   (iii) the parking area has been provided in accordance with submitted Drawing Ref:1797-02 and the parking area shall thereafter be retained unobstructed as parking area for the life of the development;
   (iv) the visibility splay shown on Drawing Ref:1797-02 has been provided and the visibility splay shall thereafter be kept free of all obstructions to visibility over a height of 600 mm above the adjacent carriageway level.

8. No topsoil shall be imported to the site until and unless it has been tested for contamination and assessed for its suitability for the proposed development; a suitable methodology for testing this material shall be submitted to and agreed by the Local Planning Authority prior to the soils being imported onto site. The methodology shall include the sampling frequency, testing schedules, criteria against which the analytical results will be assessed (as determined by the risk assessment) and source material information. The analysis shall then be carried out and validation evidence submitted to and approved in writing to by the Local Planning Authority.

9. In the event that contamination is found at any time when carrying out the approved development it shall be reported in writing immediately to the Local Planning Authority. Development shall not continue further until an initial investigation and risk assessment has been completed in accordance with a scheme to be agreed by the Local Planning Authority to assess the nature and extent of any contamination on the site.

   If, following a site-based risk assessment potential risks to identified receptors are found, development shall not continue until a detailed remediation scheme to bring the site to a condition suitable for the intended use by removing unacceptable risks to human health, buildings and other

property, and the natural environment, has been submitted to and approved in writing by the Local Planning Authority.

Following completion of measures identified in the approved remediation scheme and prior to bringing the development into first use, a verification report that demonstrates the effectiveness of the remediation carried out shall be produced and shall be submitted to the Local Planning Authority for approval in writing.

10. Any waste material associated with the development hereby approved shall not be burnt on site but shall be kept securely for removal to prevent escape into the environment.