The Planning Inspectorate

Appeal Decision

Site visit made on 13 August 2024

by B Astley-Serougi BA(Hons) LLM MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11 October 2024

Appeal Ref: APP/B3438/W/24/3340771
Land adjacent The Bungalow, High Street, Kingsley, Staffordshire

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) ("the Act") against a refusal to grant planning permission.
- The appeal is made by Mr John Matthews against the decision of Staffordshire Moorlands District Council.
- The application Ref is SMD/2023/0325.
- The development proposed is erection of one dwelling.

Decision

1. The appeal is allowed and planning permission is granted for the erection of one dwelling at Land adjacent The Bungalow, High Street, Kingsley in accordance with the terms of the application, Ref SMD/2023/0325, and the plans submitted with it, subject to the conditions in the attached schedule.

Applications for costs

2. An application for costs was made by Mr J Matthews against Staffordshire Moorlands District Council. This application is subject to a separate decision.

Preliminary Matters

3. 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.

Main Issues

4. The main issues are:

    - The effect of the development on the living conditions of neighbouring occupants with particular regard to privacy and outlook.
    - The effect of the proposed development on the health of nearby occupants.
    - The effect of the proposed development on the setting of nearby listed buildings.

Reasons

Living Conditions

5. The appeal site is located in an established residential area of Kingsley and is significantly set back from High Street. The site is located to the rear of 40 High Street (No 40) and is accessed by a shared driveway. The area in close proximity to the appeal site consists of a mix of terraced, semi-detached and detached properties.

6. The appeal site is situated on a higher land level opposite the rear elevation of No 40 which has a rear conservatory. The appellant has ensured that there are no windows directly opposite the conservatory and rear elevation of No 40. There are two windows on the first floor serving a landing and lounge on the front elevation as well as a ground floor window serving the master bedroom. These are of an adequate distance from the rear elevation of No 40 and will face the shared driveway. Consequently, while oblique view toward No 40 would be possible, the windows will not significantly harm the living conditions of the occupants in relation to privacy.

7. The Council assert that the windows described in paragraph 6 would still be viewed from the conservatory of No 40 and that the possibility of an obscure glazed window for the bathroom window at first floor would still have an adverse impact upon the privacy of the residents. Whilst I have identified the possibility of oblique views, an obscure glazed window serving the bathroom on the first floor (which can be secured by condition) in conjunction with the stepped back design of the bathroom element from No 40 adequately addresses privacy concerns. Furthermore, the relocated windows serving bedrooms 2,3 and 4 would face the rear garden of No 44. The distance between the garden and the proposed development is not unreasonable and therefore these windows would provide satisfactory privacy for the residents of No 44.

8. The distance between the proposed development and the rear conservatory at No 40 is not unreasonable. The conservatory is set down from the existing ground level and in conjunction with an existing small fence resulting in approximately half the height of the conservatory windows being covered. Consequently, due to the distance of the appeal scheme and the existing built form, I do not find there to be an unacceptable impact upon the outlook for the residents of No 40 and neighbouring properties.

9. In summary, I find that the proposed dwelling would not harm the living conditions of neighbouring residents in regard to privacy or outlook subject to appropriate conditions. Therefore, the development complies with Policy DC1 of the Staffordshire Moorlands Local Plan which seeks, amongst other things, to ensure developments do not have an adverse impact upon the living conditions of neighbouring residents. Additionally, the appeal scheme accords with the aim of the National Planning Policy Framework December 2023 (the Framework) in achieving well designed places and affective use of land.

Effect of the proposed development on the health of nearby occupants

10. I have carefully considered the reasons why neighbouring residents have objected to the proposed development. A member of the family at No 40 has a health condition which they fear could be negatively affected by the close proximity of the proposed development and result in an adverse impact upon their quality of life.

Additionally, should the scheme proceed, unobstructed access to the property for the family member is essential in ensuring that there would be no negative impact upon their care plan. Therefore, there is the potential for my decision to affect a person with a protected characteristic.

11. I do not have sufficient evidence before me to demonstrate that the concerns of interested parties with regard to quality of life and the use of the conservatory could not be managed in ways other than requiring a higher standard of living conditions than would otherwise be deemed appropriate. There is limited substantive evidence before me to suggest that the neighbouring resident's right of access would be compromised during the construction phase and as a consequence result in an adverse impact upon the family member's care plan. Therefore, given the limited evidence before me, I attach limited weight to these considerations.

12. I have considered the possible effect of the proposed dwelling upon the family member's quality of life as required by the Public Sector Equality Duty (PSED) as set out under s149 of the Equality Act 2010. On balance, having regard to my assessment above, there is no over-riding reason to dismiss the appeal before me. Thus, I conclude that it is proportionate and necessary to allow the appeal.

Setting of Listed Building

13. Section 66 (1) of the Act requires that, in considering whether to grant planning permission for development which affects a listed building or its setting, special regard must be given to the desirability of preserving the building, or its setting, or any features of special architectural or historic interest which it possesses.

14. The appeal scheme is in the setting of the Grade II listed Wesleyan Chapel (44 High Street, Kingsley). Due to the intervening buildings, the proposed dwelling would preserve the setting of the listed building. The Conservation Officer for Staffordshire Moorlands District Council raises no objection to the appeal scheme and deems that the listed building and the streetscape are not compromised. I find no reason to disagree with the Council's conclusion on this matter.

Other Matters

15. Other objections to the development have been made by interested parties. These include concerns about the effect of the development on the living conditions of neighbouring residents with regard to privacy and outlook, which I have already dealt with. There is insufficient evidence before me to demonstrate that the appeal scheme would result in harm to highway safety and the manoeuvring of vehicles and there is no objection from Staffordshire County Council Highways.

16. The Council have not refused the appeal scheme on the grounds of an adverse impact upon nearby historical buildings, the public footpath (footpath 8) or the character and appearance of the proposed development. Regarding footpath 8, Staffordshire County Council Public Rights of Way have no objections to the development and do not consider the footpath to be directly affected. I therefore find no reason to disagree with the Council's conclusions on these matters. Furthermore, given the lack of harm I have identified above, there is insufficient evidence before me to demonstrate that the appeal scheme should be a bungalow.

17. Additionally, concerns regarding the modification of the access to the site and the possible impact upon the buildings that border the access have been raised. There is limited substantive evidence before me to suggest that the proposed

development would result in damage to other buildings. Nonetheless, this would be a civil matter.

18. Interested parties have raised concerns in regard to a perception that the appellant has selectively quoted from the previous Inspector's appeal decision. I have determined the appeal on the evidence before me and have been provided with the full appeal decision.

19. The Council has stated that they are unable to demonstrate a 5-year housing land supply which they are expected to deliver in line with the revised Framework (December 2023). Whilst the proposal would only deliver one unit this would nonetheless be valuable in boosting the housing stock in circumstances where there is a shortfall.

Final Balance

20. For the reasons set out above, I find that the appeal scheme would not result in harm to the living conditions of neighbouring residents in relation to privacy and outlook. Nevertheless, as identified above, against the appeal is the impact upon the health of a neighbouring resident and their quality of life. Having regard for the PSED I find that the development would not advance its aims.

21. The impact on the living conditions with regard to privacy and outlook of the occupiers at No 40 would not be significantly harmed by the appeal scheme, especially considering the placement of the windows. Additionally, there is no evidence that access rights will be compromised during the construction phase of the development.

22. Moreover, the proposal would deliver an additional housing unit in a district that is falling below the level of housing supply required by national policy. One unit would make a modest but useful contribution as indicated by paragraph 70 of the Framework. Moreover, great weight should be given to the benefits of using suitable sites within existing settlements for homes. The proposed unit is located within a sustainable area of a settlement identified as a larger village in the adopted Staffordshire Moorlands Local Plan 2020 and is supported by national policy.

23. When assessed against the policies of the Framework taken as a whole, the limited adverse impact on the health of a family member at No 40 does not significantly and demonstrably outweigh the benefits of an additional home in a suitable location. Consequently, the presumption in favour of sustainable development applies and this indicates that permission should be granted.

Conditions

24. The Council have provided a list of suggested planning conditions, which I have considered against the National Planning Policy Framework (December 2023), and advice contained in the Planning Practice Guidance. I have amended the wording of suggested conditions for clarity and to ensure accordance with the tests set out in paragraph 57 of the Framework.

25. In addition to the standard time limit condition (1), I have attached a condition specifying the approved plans to provide certainty (2). A condition regarding the submission of samples of external materials to be used in the development has been imposed (3). This is necessary to ensure a high level of design and the

assimilation of the development within the locality. Additionally, I have attached two conditions restricting permitted development rights so as to safeguard the living conditions of neighbouring residents in the future (4) and (5). A condition requiring the submission of finished floor levels is necessary to ensure a high level of design (6). Furthermore, I have attached a condition with regard to the submission of details in relation to boundary wall treatments (7). This is required to ensure the development is of a high level of design.

26. A condition requiring the development to be constructed in accordance with the approved Construction Management Plan is necessary to ensure the living conditions of neighbouring occupants are not adversely impacted (8). In addition, I have included a condition in relation to the possible contamination on the site and the consequent remediation work (9). This is necessary to ensure the site is developed appropriately for its intended use. Additionally, a condition relating to the implementation, management and maintenance of a sustainable drainage system has been attached (10). This is necessary to ensure the control of surface water run-off from the site and mitigate against flooding. Moreover, I have imposed a condition regarding the submission of drainage plans for the disposal of foul water flows to prevent and minimise the risk of pollution (11). I have also included a condition regarding a surface water outfall in order to prevent surface water flowing onto the highway (12).

27. I have also attached a condition regarding the importing of subsoil and topsoil onto the site (13). This is necessary to protect human health as well as the wider environment. A lighting condition has been attached to ensure that the appeal scheme will not adversely impact neighbouring residents with regard to excess illuminance (14). In order to ensure no adverse impact in terms of highway safety I have attached a condition relating to the provision of parking and turning areas (15) as well as the widening of the access drive (16).

28. A condition regarding the soft landscaping is required to ensure a pleasant character and appearance to the development (17). The provision of bat, bird and insect boxes is conditioned to ensure the enhancement of biodiversity on the appeal site (18). I have also included a condition with regard to waste material. This is necessary to ensure that risk to human health and the wider environment are prevented and managed (19). Finally, I have imposed a condition requiring the obscure glazing of the bathroom window on the first-floor dormer window to ensure and maintain privacy (20).

29. The Council suggested a condition regarding the joinery of all external windows and walls. However, I consider condition 3 regarding the submission of samples of external materials to be sufficient and therefore a specific condition regarding the joinery is not necessary or proportionate.

Conclusion

30. For the reasons given above the appeal should be allowed.

B Astley-Serougi

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 drawing nos 144-1 Rev C (proposed elevations and floor plans), 144-2 Rev B (proposed site layout), 144-3 Rev A (location and block plan) and 167a-1 (proposed parking and vehicle turning layout).

3) No development above ground level shall take place until details / samples of the materials to be used in the construction of the external surfaces of the development hereby permitted have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details / samples.

4) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that Order with or without modification), no development permitted by virtue of Classes A, AA, B, C, D and E of Part 1 and/or Classes A and C of Part 2 of Schedule 2 to the Order shall be undertaken without express planning permission first being obtained by the Local Planning Authority.

5) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that Order with or without modification), no windows, doors or other openings other than those expressly authorised by this permission shall be constructed.

6) No development shall take place until full details of the finished levels, above ordnance datum, of the ground floor of the proposed building, in relation to existing ground levels have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved levels.

7) Prior to the occupation of the development hereby permitted details of the positions, height, design, materials and type of boundary treatment to be erected shall be submitted to and approved by the local planning authority. The boundary treatment shall be completed in accordance with the approved details before the building is occupied.

8) All works shall be carried out in accordance with the approved details set out in the Construction Management Plan. Any alteration to this Plan shall be approved in writing by the Local Planning Authority prior to commencement of the alteration.

9) No development shall take place until an assessment of the risks posed by any ground contamination, carried out in accordance with British Standard BS 10175: Investigation of potentially contaminated sites - Code of Practice and the Environment Agency, Land Contamination Risk Management (LCRM) (or equivalent British Standard and Model Procedures if replaced), has been submitted to and approved in writing by the local planning authority. If any contamination is found, no development shall take place until:

   i) a report specifying the measures to be taken, including the timescale, to remediate the site to render it suitable for the development hereby

permitted has been submitted to and approved in writing by the local planning authority;

ii) the site has been remediated in accordance with the approved measures and timescale; and

iii) a verification report has been submitted to and approved in writing by the local planning authority.

If, during the course of development, any contamination is found which has not been previously identified, work shall be suspended until:

i) additional measures for the remediation of the site have been carried out in accordance with details that shall first have been submitted to and approved in writing by the local planning authority; and

ii) a verification report for all the remediation works has been submitted to and approved in writing by the local planning authority.

10) No development shall take place until a detailed surface water drainage scheme for the site, based on sustainable drainage principles and an assessment of the hydrological and hydrogeological context of the development, has been submitted to and approved in writing by the local planning authority.

The submitted details shall:

i) provide information about the design storm period and intensity, the method employed to delay and control the surface water discharged from the site and the measures taken to prevent pollution of the receiving groundwater and/or surface waters;

ii) include a timetable for its implementation; and,

iii) provide a management and maintenance plan for the lifetime of the development which shall include the arrangements for adoption by any public authority or statutory undertaker and any other arrangements to secure the operation of the scheme throughout its lifetime.

The development shall be carried out in accordance with the approved details. The sustainable drainage system shall be managed and maintained thereafter in accordance with the approved management and maintenance plan.

11) The development hereby permitted shall not commence until drainage plans for the disposal of foul water flows have been submitted to and approved by the Local Planning Authority, and the scheme shall be implemented in accordance with the approved details before the development is first brought into use.

12) The development hereby permitted shall not be brought into use until details of a surface water drainage interceptor, connected to a surface water outfall, located to prevent surface water flowing ultimately onto the highway, have been submitted to and approved in writing by the Local Planning Authority. The drainage works shall thereafter be constructed in accordance with the approved details prior to the development being first brought into use and retained for the lifetime of the development.

13) No subsoil and/or topsoil material shall be imported until 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 approved in writing by the Local Planning Authority prior to the soils being imported onto site. The developer shall subsequently test samples of any imported subsoil and/or topsoil material on the land and submit results to the local planning authority as required to verify that the imported soil is free from contamination in accordance with the approved scheme.

14) Details of any/all external lighting to be installed at the site shall be submitted to and approved in writing by the Local Planning Authority prior to their installation and the works shall be carried out in full accordance with the agreed details.

15) The development hereby permitted shall not be occupied until the vehicle parking spaces and turning areas have been provided in accordance with drawing no 144-2 Rev B. Thereafter those spaces and turning areas shall be retained unobstructed as parking and turning areas for the lifetime of the development.

16) The development hereby permitted shall not be brought into use until the access drive rear of the public highway has been widened to 4.2m and reconstructed in accordance with 144-2 Rev B.

17) All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding seasons following the occupation of the building; and any trees or plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species.

18) Prior to the first occupation of the development hereby approved, bat, bird and insect boxes details shall be submitted to and approved in writing by the Local Planning Authority. Details shall include the types of boxes to be used and the proposed locations within the site. The development shall then be carried out in full accordance with the approved details and completed prior to the first occupation of the development hereby approved.

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

20) The building hereby permitted shall not be occupied until the first-floor dormer window on the front elevation serving the W/C has been fitted with obscured glazing, and no part of that window that is less than 1.7 metres above the floor of the room in which it is installed shall be capable of being opened. Details of the type of obscured glazing shall be submitted to and approved in writing by the local planning authority before the window is installed and once installed the obscured glazing shall be retained thereafter.