

**Town and Country Planning Act, 1990**  
**Section 78**

**Statement by Staffordshire Moorlands District Council  
in respect of the appeal by  
Mr G Willard of WW Planning  
on behalf of Mr Ian Scarratt against the refusal of full planning permission for a  
detached dwelling at 'land opposite 1 Dorian Way' Endon**

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**1. Introduction**

- 1.1 This statement is made by Staffordshire Moorlands District Council in response to the appeal by Mr G Willard of WW Planning on behalf of Mr Ian Scarratt against the refusal of full planning permission for a detached dwelling at 'land opposite 1 Dorian Way' Endon. The planning application SMD/2022/0245 was received 13<sup>th</sup> May 2022 and made valid on the 4<sup>th</sup> October 2022. It was refused by delegated decision in a notice dated 22<sup>nd</sup> May 2024. Copy of the report and decision notice have been separately provided.
- 1.2 Full background and details of the original application SMD/2022/0245 subject of this appeal and the LPA's assessment can be found in the Delegated Decision Report previously supplied with the LPA's Questionnaire return in respect of this appeal. It is not proposed in this statement to repeat the contents of the delegated report and the main focus will be to respond to the appellant's submissions and re-emphasise and where necessary clarify or expand on the LPA's reasons for refusal. It is respectfully requested that the Inspector take into consideration the officer delegated report as an integral part of the LPA's case in this appeal.
- 1.3 There were five reasons for refusal set out in the decision notice which in summary were based on:
- i) Inadequacy of the site in terms of its size relative to constraints identified and attendant loss of beneficial site characteristics found to contribute positively to the overall appearance and public amenity of the location;
  - ii) Proximity to a designated main river water course with essential works proposed in the application within 8.0m of bank top;
  - iii) Implications for a public right of way and its users;
  - iv) Absence of any assessment of site ecology and potential impacts of the development, despite an evident range of beneficial ecological habitats being present including potentially for protected species;

- v) The adverse impacts identified are not outweighed by this single dwelling's contribution to housing supply and any self-build status notwithstanding a current housing undersupply in the District.

- 1.4 On a procedural point, the new December 2024 NPPF became current from the 12<sup>th</sup> December 2024 and all references in this statement will use the new version. There is no need now to rely on the ministerial statement of 30<sup>th</sup> July regarding housing supply as we now have the new NPPF.

## **2 Revisions and negotiations**

- 2.1 The appellant's statement opens by expressing in effect dismay that the LPA decision was ultimately one of refusal. The appellant has evidently felt that by responding to the LPA's requests they were establishing an expectation of success. The LPA for its part must always have in mind NPPF para 39 which says it should approach development in a positive and creative way; to work 'proactively' with applicants and seek to approve applications for sustainable development where possible.
- 2.2 The LPA case officer found immediate difficulties at the outset in November 2022. The site plan was submitted with no neighbouring land or property context and this issue was raised by the Highways Authority (HA) in their response. This problem was compounded by being unable to clearly match the site plan with the location plan. The Highways Authority noted that a two metre service strip within the adopted highway had been incorporated into the application site plan. On visiting the site the Highways Authority found railings erected along the kerb line enclosing the service strip and a street lamp. Inevitably the LPA needed to seek amended plans straight away.
- 2.3 The design agent had contacted the LPA in response to the HA comments and the case officer replied 15<sup>th</sup> Nov 2022 to say: "yes, if the applicant wishes to proceed, we shall need to have these various items addressed as raised by Highways in revised drawings etc." In a further e-mail of 17<sup>th</sup> Nov 2022 the LPA case officer commented about the proposal: "My initial reaction is that it may be found to be very cramped. We'll need to establish just where the path would run in relation to levels etc. We would be likely to need a measured site survey with levels... We need to be able to view the proposed site layout in relation to the surrounding properties – both Dorian Way and Station House... We don't seem to have a site as existing survey? I think this will be essential."
- 2.4 An extension of time (EOT) for decision to be issued 16<sup>th</sup> Dec 2022 was agreed but the design agent only provided revised plans and further comments 17<sup>th</sup> Dec 2022. Inevitably the Christmas / New Year break intervened and a new EOT of 9<sup>th</sup> Feb 2023 was agreed. With regards to the LPA request for site levels information the design agent commented (17.12.2022):  
"On one of your emails you have suggested a topographical survey to be carried out to determine the existing levels. Although the footpath levels won't really alter given the access onto the footpath at each end with remain, would you be happy to put this element on hold until you are happy with the

other concerns? I just wouldn't want the applicant to spend further on the survey should the scheme not be supported. They are happy to instruct the survey as long as we can agree on a proposal in principle on the other elements."

- 2.5 The LPA case officer replied 8<sup>th</sup> Feb 2023: "To be honest I don't see it as a goer. It's all much too cramped. I don't think it's worth me asking for more info as I don't think it wld change things – the space for the footpath just isn't there. The applicant cld withdraw or if they want their chance to appeal we can progress to the decision."
- 2.6 Responding further on the 9<sup>th</sup> Feb 2023 the case officer noted some space dimensions and added:  
"The planning assessment here will not be just about what is technically possible in physical space terms but the effect on the amenity of path users. I am concerned about yet more extension to the enclosing corridor.  
  
"I have concerns too about the physical space owing to the land forming a slope towards the brook. I would be concerned about there needing to be an engineered brook edge where at present it is semi natural. Related to this we have no ecology info – I will be duty bound to consider water voles etc and we would need a PEA to be submitted. As mentioned a while back we wld need accurate large scale topographical survey."
- 2.7 The design agent agreed 11<sup>th</sup> Feb 2023 to a new EOT of 28<sup>th</sup> Feb 2023 and asked "...what if the footpath was retained in its existing position and we took another look at the proposed house layout/footprint?" The case officer responded the same day to say: "If you believe the path could be retained without diversion then yes, that can be looked at". The case officer re-iterated: "My concern with the path is that it is already partly in a corridor – any extension or worsening of this effect needs to be avoided as it would unacceptably erode people's enjoyment of the path. There is also the practicality of securing the brook course embankment, the aesthetics of this and ecology impacts."
- 2.8 After a gap in contact when nothing further was received the appeal agent (WW Planning) became involved mid-April 2023. Following a preliminary discussion the appeal agent noted in an e-mail of 17<sup>th</sup> April 2023 that "before you could offer full officer support you would need to see sight of a biodiversity and ecology report along with landscape plan (including any engineering and levels change necessary)". EOTs were agreed to end of April, then end of May and revised plans were received 23<sup>rd</sup> May 2023 (site plan revision P.4). Further revisions and re-consultations followed. Some of the numbered revisions appear to have been purely internal to the appellant and their agents. In the later stages the proposal became further complicated by the requirements of a Cadent Intermediate Pressure Gas main adjacent the south end of the site. Whilst this was eventually resolved by further revision to the site position of the dwelling, the implications for the footpath and site ecology and proximity to a 'main river' remained outstanding.

- 2.9 Discussions with the LPA must necessarily take place on a ‘without prejudice’ basis. Again referring to NPPF 39, it would not be for the LPA to prevent new revisions being submitted if the applicant expressly seeks to do so as has been the case here. It cannot however be wholly surprising if issues raised by the LPA at the outset, and again in the course of the discussions as being potential and indeed likely impediments, should continue to feature in the end analysis and decision.

### 3. Planning status of the land

- 3.1 At appeal statement (AS) para 1.12 the appeal agent refers to the land as an “undeveloped and brown field” site; at 6.7 “existing surplus garden area; at 6.9 “existing developed site”; at 7.4 “now largely developed”; at 8.2 (5) “brownfield in nature and already developed”. Fig.1 below is a publicly available street view image of the land dated to August 2023. To characterise the site as ‘largely developed’ seems to the LPA a significant over-statement.



Fig.1 view north into Dorian Way from close to junction with Station Road, 2023

- 3.2 For a definition of brown-field land the NPPF glossary refers readers to Previously Developed Land (PDL). In order to qualify under the definition for PDL the site must be “land which has been lawfully developed and is or was occupied by a permanent structure and any fixed surface infrastructure associated with it, including the curtilage of the developed land (although it should not be assumed that the whole of the curtilage should be developed).” In built-up areas (which the LPA would aver is the case for this site as it is within the development boundary of a larger village) the definition of PDL “excludes... land in built up areas such as residential gardens, parks, recreation grounds and allotments”. The phrase “such as...” is notable and the LPA would suggest this land is now at least somewhat ‘allotment-like’.

- 3.3 Moreover, at (AS) 2.1 the site is described as having been used as garden land and for residential purposes since acquisition in May 1988. This is at variance however with the LPA's findings with regard to the site history. As referred to in the officer decision report (Description of site) the appellant became the title holder at 19<sup>th</sup> November 1993 (under title reference SF331615). The appellant's home at 1 Dorian Way meanwhile is held under a separate title (SF250889) gained five years earlier at 7<sup>th</sup> July 1988.
- 3.4 Fig. 2 below is the earliest publicly available aerial photograph dated to 2003 with the footpath route prominently visible on a gently curving north – south line. There also appears to be a clearing, possibly a vehicle pull-in, about opposite the drive entrance to 1 Dorian Way. The turning head for Dorian Way is also identifiable about opposite the entrance to 2 Dorian Way.



Fig. 2 – aerial view 2003

- 3.5 Fig.3 below is a publicly available street view image dated July 2009 looking towards the site along a similar line to the view in Fig. 1. The street lamp is present (centre right) but as yet there are no railings. Further images show the railings were not present in 2011 (see Fig 4 below) but the LPA finds they had appeared by August 2012. The footpath is signposted centre right in Fig. 4.



Fig. 3 – July 2009



Fig.4 – image capture dated April 2011

- 3.6 The relevance of the above background is to dispel first of all the suggestion of the land having been occupied as part and parcel with the appellant's dwelling since 1988. Title to the appeal land was not acquired until five years later in 1993. For much of the time since, at least up until 2012, the land has been unenclosed and in the main un-developed. By 2003 there appears though (Fig.2) to have been a small-scale vehicle pull-in formed directly opposite the drive entrance to 1 Dorian Way. The enclosing railings to the road edge along Dorian Way were not present until 2012. Up to this time the land was open to the road. The minor storage sheds present today have appeared incrementally since 2012.
- 3.7 The LPA identifies three counts on which recent past changes to parts of the land should have been subject to obtaining planning permission – for which there is no record. Firstly, the railings: as a fence more than 1.0m high against the road edge these would not have been permitted development and would have required planning permission. The Highways Authority adds that in any event the railings have encroached into the public highway service strip by 2.0m. Secondly, even without the erection of buildings, the adopted use of the land for parking and storage (in the parts where this has occurred) will at some point in time have reached a scale likely to have required planning permission due to being a material change of use made manifest in the altered appearance, nature and character of the land. Finally, the erection of buildings and associated land use as now seen amount to a third form of development that has again not been authorised on the land. In other words, in the LPA's assessment for the purposes of this appeal, development to date has not been shown to have been lawfully carried out. This would make the land inadmissible as Previously Developed Land.
- 3.8 Allowing vegetation, including possibly ornamental shrubs and trees to grow on the land and informally to care for the grassland and shrubs which may have taken place to varying degrees at different times, does not amount to development and will not have established a change of use.

#### **4. Main river**

- 4.1 The EA is clear that they expect planning permission to be obtained. They spell out that new development-built structures and/or storage of materials should ordinarily be set at least 8 metres from the top of bank of a Main River. They say this is to assist in operational management and maintenance, to help improve flood flow and conveyance, and in the interest of biodiversity.
- 4.2 Notwithstanding that the water course at this site location is of modest scale the LPA is concerned that the development would necessitate work including elements of the dwelling itself within the 8metre zone. More particularly, at or within 5m of the water edge, work would be required to form the re-positioned footpath line. The land varies in how it dips towards the water course. No topographic site survey has been submitted and the degree of land levelling and possible revetment work has not been determined. The potential impacts on ecology (see below) have also not been determined. At the very least it is

clearly good practice to respect the 8m stand-off. Particularly given the uncertainties of ecology and path provision the LPA concludes that the balance of uncertainty weighs against the proposal in this case.

## **5. Footpath**

- 5.1 The appellant statement refers to their appendix plan at 7.9 to assert “as a point of fact that the pathway does not follow the route shown on the definitive footpath map”. The appellant’s plan appears to the LPA to be the County Council’s digital rendition of their Definitive Map of Public Rights of Way. However, it is the latter which is the definitive legal authority (not the digitised version) but these maps are produced at 1:10,000 scale where 1mm on the map represents 10m on the ground. At this site 10m is about the distance between the current footpath and Dorian Way. Moreover, any reliance on the digitised version should be exercised with caution as aberrations do arise in switching from hand drawn maps to digital versions. The LPA finds it improbable in the extreme that the path through the application site is not the definitive route. This is partly because older OS maps pre-dating the Definitive Map have always shown a physical representation of a path on this route line but also because the route is tarmac surfaced and has street lights. In the unlikely event it should be shown not to be the line of path 74, the route is now so long established and well defined on the ground, that it would be fully capable of being claimed as a public right of way and it is important that the planning decision takes this into account.

## **6. Ecology**

- 6.1 The LPA has a duty under the Natural Environment and Rural Communities Act 2006 (section 40) that in the exercise of their functions (including in planning decisions) they must seek to further the purpose of conserving biodiversity. A key purpose of this duty is to embed consideration of biodiversity as an integral part of the decision making process. (PPG Paragraph: 009 Reference ID: 8-009-20240214 refers.) Planning authorities need to consider the potential impacts of development on protected and priority species, and the scope to avoid or mitigate any impacts when considering [site allocations or] planning applications. (Paragraph: 016 Reference ID: 8-016-20190721.) An ecological survey will be necessary in advance of a planning application if the type and location of development could have a significant impact on biodiversity and existing information is lacking or inadequate... As with other supporting information, local planning authorities should require ecological surveys only where clearly justified. Assessments should be proportionate to the nature and scale of development proposed and the likely impact on biodiversity. (Paragraph: 018 Reference ID: 8-018-20240214.)
- 6.2 The LPA decision notice references Water Voles and this is a priority species in the UK Biodiversity Framework. The LPA case officer (who academically has an ecology background and is a member of the Institute of Ecology and Environmental Management) identifies the location as having potential to

support Water Voles. Water Voles are a protected species under the Wildlife and Countryside Act (1981). Water Voles are also listed as rare and most threatened species under Section 41 of the Natural Environment and Rural Communities Act (2006). The LPA must have regard for the conservation of Section 41 species as part of the planning decision. Natural England's 'standing advice' for water voles is a material planning consideration which the LPA must take into account when making planning decisions. As well as being an offence to kill or injure the animal itself it is also an offence to damage or destroy a structure or place used by Water Voles for shelter or protection, disturb them in a place used for shelter or protection or obstruct access to a place used by them for shelter or protection.

- 6.3 Natural England's standing advice for Water Voles says the LPA should ask for a survey if the habitat is suitable for water voles, for example, if there are any of the following: silty shore banks for burrowing or earth for digging; wide swathes of soft vegetation growing from the banks and in the water; slow-flowing water courses of varying depths places for water voles to escape from predators. To varying degrees the LPA considers all of these apply at this site. ([www.gov.uk/guidance/water-voles-advice-for-making-planning-decisions](http://www.gov.uk/guidance/water-voles-advice-for-making-planning-decisions)).
- 6.4 Local Plan Policy DC1 says that in particular new development should: (6) promote the maintenance, enhancement, restoration and re-creation of biodiversity and geological heritage, where appropriate. Policy NE1 is that "The biodiversity and geological resources of the District and neighbouring areas will be conserved and enhanced by positive management and strict control of development (and having regard to relevant ecological evidence) by: (8) Protecting and enhancing habitats and species of principal importance for the conservation of biodiversity as identified in legislation, and recognising and implementing appropriate measures, including landscape-scale conservation management, to take account of the fact that the distribution of habitats and species will be affected by climate change.
- 6.5 The LPA would have wished as a minimum to have received a 'preliminary ecological appraisal' (PEA) of the site and one carried out with particular attention to Water Voles by someone suitably competent in this species, its habits and requirements. In the process the PEA could be expected also to identify any other ecological considerations including for plant species. A PEA would be a proportionate and clearly justified requirement in this case. It may or may not have found specific issues with regard to Water Voles and may or may not have led to more specialised survey being required.
- 6.6 As noted at 2.6 and 2.7 above the request for PEA was made known to the design agent early in 2023 and as noted at 2.8 above the Appeal agent acknowledged this expectation in April that year. The matter should not have been a surprise to the appellant (AS 7.49). Contrary to the assertion at AS 7.48, a request for arboricultural information was made by the LPA pre-validation. However the design agent responded in an e-mail dated 7<sup>th</sup> June 2022 that "currently there are no trees on the site" and the point was not pursued further during the validation. If no information is provided at the outset by an applicant, any specific ecology issues are more likely only to be identified

in the course of the LPA assessment – as was the case here. The appeal asserts (AS 7.51) that the site has no known plant or animal species interest. In the absence of survey this may in a sense be true, at least for the appellant, but as the LPA has set out above the need for at least basic preliminary survey to substantiate matters is fully justified in this case.

- 6.7 The NPPF at para. 187 invokes that “...decisions should contribute to and enhance the natural and local environment by: [inter alia]
- d) minimising impacts on and providing net gains for biodiversity, including by establishing coherent ecological networks that are more resilient to current and future pressures and incorporating features which support priority or threatened species such as swifts, bats and hedgehogs;”
- 6.8 Whilst the appellant refers to a willingness to incorporate biodiversity measures it is essential to begin from a position of knowing the existing site values as some measures such as for example introducing ‘wild flowers’ can be counter-productive.

## **7. Other matters**

- 7.1 The appeal statement refers at 3.1 to this proposal being desired by the appellant for their ‘golden years’ as a home for (presumably) their retirement. This however must be regarded as personal circumstances for which the planning decision can give little or no weight. It is appropriate and indeed necessary however to recognise that the Council currently is unable to achieve the Government’s housing supply target for the District. The up-dated supply figure (post December 2024 NPPF) now shows a shortfall provisionally calculated to be 3.51 years. With reference to NPPF paragraph 11 (d) (ii) it is the LPA’s view (as with the original decision) that notwithstanding the housing shortfall, the adverse impacts of this proposal, as set out by the LPA in its original decision and further supported in this appeal statement, would significantly and demonstrably outweigh the benefits of this proposed single dwelling when assessed against the policies in the framework (NPPF) taken as a whole. These considerations are reflected in refusal reason 5.

## **8. Conclusion**

- 8.1 In this brief statement which, as noted at the beginning the LPA requests be read in conjunction with the delegated decision report previously supplied, the aim has been to respond to the appellant case by re-assertion of the refusal reasons as appropriate.
- 8.2 As with previous versions, the revised NPPF (2024) emphasises the importance to be attached to ‘achieving well-designed places’ which is the heading of chapter 12. Good design, including the spaces around built development, goes to the heart of the Government’s sustainable development aims, see NPPF 8 (b) and (c). The Council’s Design Policy DC1 firmly

establishes these matters in particular through subsections (1), (2) and (3) as policy commitments of the Council. NPPF chapter 12 references at 135 that decisions should ensure that developments “will function well and add to the overall quality of the area, not just for the short term but over the lifetime of the development”; are visually attractive including through good layout and appropriate and effective landscaping and result in safe environments. These policy expectations are further supported by the Council’s adopted Design Guide (2018) including at Chapter 4 ‘Access Space and External Works’.

- 8.3 Based on the above overall policy background and based on the reasoning and contents of the delegated officer report and the additional responses in this statement the inspector is respectfully asked to dismiss the appeal.

**Staffordshire Moorlands District Council**

30.12.2024