Planning Inspectorate

Appeal Decision

Site visit made on 18 February 2025

by C Billings BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 7th March 2025

Appeal Ref: APP/B3438/W/24/3355480
Land opposite 1 Dorian Way, Endon, Staffordshire ST9 9EP

- 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 Mr Ian Scarratt against the decision of Staffordshire Moorlands District Council.
- The application Ref is SMD/2022/0245.
- The development proposed is detached new build bungalow and detached garage.

Decision

1. The appeal is dismissed.

Preliminary Matters

2. A revised version of the National Planning Policy Framework (the Framework) was published in December 2024 and so is a material consideration. The main parties had opportunity to comment on the updated Framework during the appeal process and I have had regard to any comments made in reaching my decision.

Main Issues

3. The main issues are the effect of the proposed development on:
    - the character and appearance of the surrounding area;
    - biodiversity;
    - flood risk; and,
    - the public footpath.

Reasons

Character and appearance

4. The appeal site lies between the road edge of Dorian Way on one side and Endon Brook on the other. Dorian Way is a cul-de-sac serving a small number of two-storey detached houses. The existing houses are of similar design and scale and are set back from the road edge with parking and gardens in front.

5. Part of the appeal site includes a length of a public footpath and the grassed riverbank area of Endon Brook to the side of where the new dwelling is proposed. There are some existing single storey timber sheds within the site, which back onto part of the existing riverbank area, visible from the footpath. There is also an existing substantial hedgerow within the site along much of the side along the riverbank, although along Dorian Way the site is fairly open, with railings along part of this boundary. Therefore, despite the sheds, the site generally provides an attractive open green aspect along the riverbank and makes a positive contribution to the character and appearance of the surrounding area.

6. The proposed dwelling would be 1.5 stories high with dormers in the roof. Due to the narrow width of the site where the new dwelling is proposed, there would be limited space in front of it, in terms of set back from the road edge in Dorian Way. Also, the rear elevation of the new dwelling would be close to the proposed boundary with the realigned footpath along the riverbank. As a result of the scale and position of the proposed dwelling, it would appear overly dominant within the street scene and from the adjacent footpath, reducing the open green aspect of the site and give the appearance of a cramped form of development. Additionally, due to its proposed position and lack of set back from the road edge, the proposal would not be in keeping with the prevailing character and appearance of existing dwellings within Dorian Way.

7. Although there are sheds and part of the site is used for parking and other purposes associated with the residential use of the dwelling opposite, this is not comparable to the use of the land and scale and built form of the proposed new dwelling. The existing sheds within the site, are low and of timber construction. Yet the proposed development would introduce a much taller building close to the public footpath along riverbank. Therefore, even though the sheds are visible from public vantage points, due to their scale and design, they do not appear overly dominant in the surrounding area.

8. While, as asserted by the appellant, the proposal would remove the unsightly sheds and there are dwellings elsewhere that are of different scale with different and small sites comparable to that proposed. The appeal proposal would not be in keeping with the form and character of its immediate surroundings and would add more substantial built form to an otherwise fairly green and open piece of land. Therefore, even though the proposal would meet the Council's space standards for new dwellings, it would appear unduly cramped and incongruous in the context of its setting and the surrounding area.

9. Notwithstanding that the existing footpath does not follow the definitive footpath route, I observed during my site visit that there is an existing hard-surfaced footpath in situ along the riverbank side of the appeal site. As indicated on the proposed plans, this is to be relocated further over toward the brook and sufficient space would be provided to realign the footpath within the appellant's land ownership. This would enable the provision and maintenance of a reasonable width of footway.

10. However, the proposed development would encroach further onto the riverbank area and a high close boarded boundary fence is proposed along one side of the footpath. Even though the fencing would replace in part, an existing tall hedge, the new fencing together with the proposed dwelling would, due to their height and position, harmfully reduce the open and green feel of along this part of the footpath. Furthermore, comparable to the existing tall hedges, the proposed fence would appear stark along the route of the footpath and diminish the existing relaxed green edge of the riverbank.

11. Although further along the footpath there are examples where it is more enclosed, with high close boarded fencing, this is where it deviates away from the brook and leads into a more built up housing area. Therefore, the context further along the footpath is different to that surrounding and within the appeal site, which is more open and greener.

12. Having regard to the above, the proposal would have a harmful effect on the character and appearance of the surrounding area, including the adjacent footpath. Therefore, the proposal would conflict with Policies SS1, SS8, H1 and DC1 of the Staffordshire Moorlands Local Plan (September 2020) (SMLP), which amongst other things, require development to maintain and respect the character of an area. Also, Policy DC1 of the SMLP requires development to be designed to respect the site and its surroundings and promote a positive sense of place.

13. While Policy SS2 of the SMLP is referred to in the reason for refusal, as this relates to settlement hierarchy, rather than character and appearance, it is not directly of relevance to this main issue.

Biodiversity

14. Even though the appeal site may not have any ecological or landscape designations, it is close to a natural watercourse, where there is potential for Water Voles on or adjacent to the site, which could be affected by the proposed development. The Water Vole is a priority species in the UK Biodiversity Framework and a protected species under the Wildlife and Countryside Act 1981 (as amended). Paragraph 99 of Circular 06/05: Biodiversity and Geological Conservation sets out that the presence or otherwise of protected species and the extent that they may be affected by the proposed development, needs to be established before the planning permission is granted, otherwise all relevant material considerations may not have been addressed in making the decision.

15. As no ecological surveys have been carried out to assess the likely impact on the habitats or the protected species directly, it is not possible to determine that the proposal would not have a harmful impact on protected species or their habitats, including the brook, in this instance.

16. An existing hedge and trees would be removed from the site and works are proposed along the riverbank, which has potential to impact on existing biodiversity interests. Although it is proposed to provide some biodiversity enhancements, including natural wildflower planting and management thereafter of such, no substantive evidence has been provided to demonstrate there would be no harm caused to biodiversity interests in such regard or what biodiversity net gain value the development would provide. While a condition may be acceptable to secure landscaping and biodiversity enhancement measures, this would not overcome the concerns in regard to protected species and their habitats and impact on other potential biodiversity interests within and adjacent to the site.

17. In view of the above, the proposal would have a harmful effect on biodiversity, in conflict with Policies NE1, DC1 and NE2 of the SMLP, which amongst other matters, respectively require that biodiversity is conserved and enhanced, promotes the maintenance, enhancement and re-creation of biodiversity and that, healthy trees and hedgerows are retained and integrated within a proposed development.

Flood Risk

18. The proposed development would involve some works within the riverbank area of Endon Brook, including realignment of the footpath, fencing and parts of the new dwelling. Such works may include the need to change the levels of the land, including where the embankment slopes down to the brook.

19. The Environment Agency (the EA) set out that new development-built structures and storage of materials should ordinarily be set at least 8 metres of the top of the bank of a Main River, to help improve flood flow and conveyance and in the interest of biodiversity. While the EA raise no objection to the proposal, it sets out that permits may be necessary with regard to flood risk activity.

20. The proposed plans show that an access would be provided to the riverbank, but parts of the proposed development would be within the 8 metres zone of the watercourse. The Flood Risk Assessment (FRA) by Paul Hands Consulting Ltd sets out that the proposed dwelling would be in Flood Zone 1, and that the proposed development is not at significant flood risk subject to flood mitigation measures. However, the FRA also indicates that part of the appeal site is within Flood Zone 3 and it does not include specific details of the works that would be carried out within the higher risk flood area of the appeal site. Therefore, it is not demonstrated whether or not such works would harmfully affect the function and management of the existing watercourse.

21. Notwithstanding the width and level of the watercourse at the time of my site visit, the riverbank slopes down to the brook and no topographical survey has been submitted, nor substantive details provided in respect of the degree of land levelling that may be required thereto in respect of the proposed footpath and other works along the riverbank. Therefore, in view of the evidence before me and the proximity of the proposed works to the watercourse, it is unclear whether or not the proposed development would cause detriment to future flood risk.

22. Having regard to the above, it is not demonstrated that the proposal would not have a harmful effect on flood risk. Accordingly, it would be in conflict with Policy SS1 of the SMLP, which, amongst other matters, supports development which secures high quality, sustainable environments, efficient and effective use of resources and contributes effectively to tackling climate change.

23. Although, in respect of this main issue, there would be no direct conflict with Policies SS2, SS8, NE1, DC1 and H1 of the SMLP which respectively relate to settlement hierarchy, larger village areas strategy, biodiversity and geological resources, design considerations, and new housing development type.

Public footpath

24. It is proposed to realign the existing footpath further over toward the brook and an existing lamppost along it nearby is to be retained. The realigned footpath would be of a similar width and remain within the area of the riverbank. Therefore, it is adequately demonstrated that the proposal would still provide an accessible pedestrian route in terms of its position and function compared to the existing footpath.

25. However, the proposed development would reduce the total width of the open area between the brook and built development. The proposed dwelling and fencing around it would introduce taller structures and greater built form close to and along the footpath. This would narrow the overall open aspect of the area along the riverbank and create a greater sense of enclosure along this part of the footway. This would provide a reduced sense of security to those using the footpath.

26. There are existing tall hedges along much of one side of the footpath, close to where the dwelling is proposed. Also, further along the footpath it is narrower and

more enclosed leading through to a built up housing area. However, from my site observations walking the route, the more open aspect of the footpath where the appeal site is, provides a welcome feel leading out from the narrower parts of the route and a greater sense of security.

27. Even though, there is an existing lamppost, potential light leakage from nearby dwellings and the new dwelling beyond the fencing could aid security to the footpath. This would not enhance natural surveillance of the footpath, as there would be an intervening tall fence. Based on the evidence, including my site observations, the combination of the reduced width of the space together with the height and position of the proposed fencing and dwelling, this would harmfully diminish the sense of security of those using the footpath. The absence of significant local objection to the changes proposed to the footpath would not outweigh such concerns.

28. In view of the above, the proposal would conflict with Policies SS1 and DC1 of the SMLP, which amongst other matters, require development to be well-designed, attractive and provide safe public and private environments.

29. Although in respect of this main issue, there would be no direct conflict with Policies SS2, SS8, H1 and NE1, which respectively relate to settlement hierarchy, larger village area strategy, housing development needs and type, and biodiversity and geological resources.

Other Matters

30. The proposal would provide an additional house in an area where there is a demonstrated housing shortfall and provide other benefits with regard to the construction and occupation of the dwelling. Albeit in respect of one additional dwelling the benefits would not be significant.

31. While the appellant asserts the dwelling would provide a self-build retirement bungalow for them, no mechanism is proposed or in place to ensure that this would be the case. Therefore, I only give limited weight to such consideration.

32. There is dispute between the main parties about the lawful use of the appeal site. As asserted by the appellant the site was acquired at the same time as the house and has apparently been used as garden since such time. The lawfulness or otherwise of the site is not a matter for me to consider in this appeal. However, even if the site has been used as residential garden associated with the house opposite, the glossary of the Framework excludes land in built-up areas such as residential gardens from the definition of previously developed land.

33. While there are policies within the local plan which the proposal would adhere to and there may not have been a significant number of objections raised from interested parties, these matters together with the conduct of the Council during the application process do not affect my findings in relation to the merits of the case in respect of the main issues.

Planning Balance

34. In regard to the main issues, the proposal would conflict with policies contained with the SMLP in regard to character and appearance, biodiversity, and the effect on the footpath. Therefore, in such regard the proposal conflicts with the development plan as a whole.

35. The Council cannot demonstrate a 5 year housing land supply. In such circumstances paragraph 11d) and footnote 8 of the Framework establishes the policies which are most important for determining the application are out-of-date. Consequently, the presumption of sustainable development applies, unless the application of policies in the Framework that protect areas or assets of particular importance provides a clear reason for refusing the development, or any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against policies in the Framework taken as a whole.

36. The Council's provisionally calculated housing land supply position is 3.51 years post December 2024. This is below the Government's expectations and therefore, the provision of an additional dwelling would make a positive contribution towards meeting the Council's shortfall. Although given the small scale nature of the proposed development, the benefits would be limited.

37. Consequently, the adverse impacts of the proposal on the character and appearance of the surrounding area, flood risk, footpath security and biodiversity interests would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole. As a result, the presumption in favour of sustainable development does not apply.

Conclusion

38. The proposal would conflict with the development plan as a whole and there are no other considerations, including the provisions of the Framework, which outweigh this finding. Accordingly, the appeal should not succeed.

C Billings

INSPECTOR