
Appeal Decision

Site visit made on 21 November 2016

by Thomas Bristow BA MSc MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 16 December 2016

Appeal Ref: APP/U1105/W/16/3156902

11 Silver Street, Ottery St Mary, Devon EX11 1DB

- 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 Ashcom Developments Ltd against the decision of East Devon District Council.
 - The application Ref 16/0205/FUL, dated 26 January 2016, was refused by notice dated 5 August 2016.
 - The development proposed is the construction of a dwelling in rear garden.
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Decision

1. The appeal is allowed and planning permission is granted for the construction of a dwelling in the rear garden of No 11 Silver Street, Ottery St Mary, Devon EX11 1DB, in accordance with the terms of the application Ref 16/0205/FUL, dated 26 January 2016, subject to the schedule of conditions in this decision.

Application for Costs

2. An application for costs was made by Ashcom Developments Ltd against East Devon District Council, which is the subject of a separate decision.

Procedural Matters

3. I have used the description of development in the banner heading above as was given in the Council's decision notice. This is preferential to that used in the original application form as it is more succinct, including by the omission of reference to a former withdrawn planning application.
4. This appeal is in respect of the Council's refusal of planning application Ref 16/0205/FUL, and does not relate to Listed Building Consent which is a separate regime.¹
5. Certain details of the proposal were amended during the course of the Council's determination of the application, chiefly in relation to building levels and external materials. I have therefore determined this appeal based on the scheme that was before the Council in reaching a decision.²

¹ Notwithstanding that consent was granted under Ref 16/0206/LBC for development at the appeal site.

² Being plans entitled 14.60.SP 10B, 14.60 P22A, 14.60 P20B, 14.60 P21 C, 14.60 P23, and untitled visualisations.

Main Issue

6. The reason for refusal given within the Council's decision notice related to the effect of the proposal on the character and appearance of the surrounding area. The Council have elaborated upon this reason at appeal in citing that in their view the proposal would also adversely affect the living conditions of those making use of nearby properties. Therefore on the basis of the information before me the main issues in this appeal are:
 - 1) the effect of the proposal on the character and appearance of the area, with particular reference to the Ottery St Mary Conservation Area and to the setting of nearby Listed Buildings, and
 - 2) the effect of the proposal on the living conditions of those making use of No 9 Silver Street and of No 3 Hind Street.

Reasons

Character and appearance

7. The appeal site is a modest parcel of land to the rear of No 11 which falls both within the built up area of Ottery St Mary and its defined town centre shopping area established via the East Devon Local Plan 2013 to 2031 adopted on 28 January 2016 (the 'Local Plan'). I understand that this land was formerly used in connection with the now-ceased commercial use of No 11, however is not presently part of the garden of any nearby dwelling. No 11 is a grand Grade II Listed Building which is being converted into a number of residential units.
8. Largely covered by gravel and hardcore, the appeal site is apparently currently put to no active use. Vehicular access is to the side of No 11 and by a number of dwellings which I understand have been relatively recently converted from former warehouses. To the north there is a brick wall with a wide central opening allowing for vehicular access.³ The land immediately to the north hosts an electricity sub-station, utilitarian garages, and was at the time of my site visit used as a parking area.
9. The appeal site is surrounded by various substantial historic properties within the Conservation Area, many of which are Listed Buildings. Given the concentration of Listed Buildings nearby, including the Grade 1 Listed St Mary's Church to the north, the surrounding area is clearly an important and sensitive historic part of Ottery St Mary.
10. To the south and west the appeal site is bounded by traditional stone walls of substantial construction and height. These serve a retaining function given that the ground level of the appeal site is significantly higher than that of neighbouring land in these directions. This arrangement reflects the stepped topography of land in the area, which falls significantly from St Mary's Church towards Hind Street to the south.

³ Being of a latter construction than the other boundary walls of the appeal site, and in poor condition, the Council do not appear to object to the modification of this wall subject to its replacement in replica.

11. As such the appeal site and its surroundings reflect characteristic features of the Conservation Area: fine classical buildings fronting carriageways with generally more modest buildings of utilitarian form within rear gardens which in turn fall at different ground levels and are demarcated by substantial walls. Such characteristics, alongside the limited plots of certain properties, narrow carriageways, and the presence of mature trees result in a close-knit built environment and an enclosed character to the area commensurate with its historic origins.
12. Strategy 6 'Development within Built-up Area Boundaries' of the Local Plan accords in principle support to housing development thus located, and strategy 24 'Development at Ottery St Mary' similarly sets out that 'the viability of the town centre will be enhanced through additional housing development'. However both strategy 48 'Local Distinctiveness in the Built Environment' and policy D1 'Design and Local Distinctiveness' of the Local Plan seek to ensure that all development integrates appropriately with its surrounding context.
13. Policies EN9 'Development Affecting a Designated Heritage Asset' and EN10 'Conservation Areas' of the Local Plan reflect the provisions of Sections 66(1) and 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 as amended, which are in brief that special consideration is given to the desirability of preserving Listed Buildings and their setting and to preserving or enhancing the character or appearance of Conservation Areas. Likewise the National Planning Policy Framework (the 'Framework') sets out that great weight should be given to the conservation of designated heritage assets, including Conservation Areas.
14. The proposal is to erect a modest split-level dwelling which would be set primarily on a ground level approximately 400 millimetres lower than that of the appeal site at present.⁴ The lower storey of the property would be a basement level such that the dwelling would appear in height essentially as single storey above ground.⁵
15. The dwelling would be of limited height and scale and understated contemporary form and design with mono-pitched roof slopes. A modern palette of external materials would be used including a seamed metal roof. The northern boundary wall of the plot would be replaced and reconstructed, a terrace created, and boundary planting established.
16. The proposal would clearly be a modern addition within an essentially historic environment. However, as set out above, the surrounding area is characterised by a close-knit pattern of development. Extensions and outbuildings, often of varied utilitarian form, to the rear of properties which face carriageways are commonplace. Many properties benefit from limited outside space. As such the scale, plot size and relationship of the proposed dwelling to the surrounding built environment would not be out-of-keeping with the wider area.
17. The form and materials proposed would be inconsistent with the prevailing historic vernacular. However there are few, if any, public vantage points from

⁴ As set out in the appellant's Statement of Significance, prepared by Simon Spencer MCIAT, Ref 14.60, dated original 13 April 2016, revised 24 May 2016.

⁵ I address the structural considerations relevant to this approach subsequently.

which the proposal would be visible as a consequence of the enclosed character of the area, the presence of substantial boundary walls and trees, and as a result of the screening resulting from properties nearby themselves.⁶ The visual appearance of the property would be further reduced by the reduction in ground level proposed, which would increase the screening afforded by boundary walls, its modest height, and as it would be viewed in conjunction with utilitarian buildings to the rear of properties such as the electricity sub-station and garages to the north.

18. There may be partial views of the proposed dwelling from the car park of the superstore located to the west. However it appeared to me that such views would be from a significant distance,⁷ largely obscured by intervening walls and trees, and essentially confined to a small element of the property and its roof. Whilst there would be views of the proposed dwelling from within nearby properties and their gardens, from these vantage points the dwelling would not appear incongruous given the existing comparatively dense pattern of development of the area.
19. For the above reasons the proposal would be a barely perceptible element of the Conservation Area and would thereby preserve its character and appearance. Whilst the setting of Listed Buildings is not confined to visual considerations alone,⁸ it appears that, as with the adjoining land to the north, the appeal site is and has previously been used for functional purposes. Consequently there is nothing in the evidence before me to indicate that it presently has anything other than a neutral contribution to the setting of nearby Listed Buildings. Therefore development here would preserve the setting of nearby Listed Buildings visually and have no unacceptable effect in respect of an understanding of their historic origins or significance.
20. I therefore conclude that the proposal would not have an unacceptable effect on the character and appearance of the area with particular reference to the Ottery St Mary Conservation Area (the 'Conservation Area') and nearby Listed Buildings. Consequently, and by virtue of bringing forward a dwelling in an appropriate location, the proposal complies with the relevant provisions of strategies 6, 24 and 48 of the Local Plan, policies D1, EN9 and EN10 thereof, and with relevant elements of the Framework.

Living conditions

21. Criterion 2.e) of policy D1 of the Local Plan establishes that proposals must not adversely affect the amenity of occupants of adjacent properties. Likewise the Framework sets out that planning should always seek to secure a good standard of amenity for all existing and future occupants of buildings.
22. No 9 Silver Street hosts the Seasons Tea Rooms, and I understand that the garden thereof is used on occasion by customers. This garden is, however, very narrow, modest, and appears to contain several outbuildings. It is at a substantially lower ground level than that of the appeal site and enclosed by a

⁶ Paragraph 7.13 of the Council's appeal statement confirms that the proposal would be 'largely out of sight from public view'.

⁷ The Council's officer report indicates that the car park falls approximately 70 metres distant from the appeal site.

⁸ As affirmed by the Historic England document The Setting of Heritage Assets: Historic Environment Good Practice Advice in Planning: 3.

retaining wall bounding the appeal site to the north and to the south by elements of No 7 Silver Street which extend deep into its rear plot and are substantial in scale. Outlook from No 9 and its garden is consequently highly limited at present.

23. If any views of the dwelling proposed were to exist from the garden of No 9 they would inevitably be partial and limited to the uppermost elements thereof such that the proposal would have no significant adverse effect in respect of privacy. Given that the appeal site falls to the north, and on account of the existing sense of enclosure within the rear garden of No 9, the proposal would not in my view result in detrimental overshadowing or an overbearing presence here.
24. No 3 Hind Street, a residential property, benefits from a comparatively spacious rear garden which shares a common boundary with the western boundary of the appeal site along a retaining wall. This garden is set at a substantially lower level than that of the appeal site, and as a consequence views of the dwelling proposed from it would be partial and not substantially different in respect of a sense of enclosure than that which presently results from the existing retaining walls bounding the garden.
25. Falling to the north-east of the rear garden of No 3 and being of modest height the proposal is unlikely to result in significant overshadowing here. A condition could moreover be imposed requiring that any windows in the western elevation of the property are obscured glazed and non-opening to suitably mitigate the effect of the proposal in respect of privacy with regard to No 3.
26. For the above reasons, I therefore conclude that the proposal would not have an unacceptable effect on the living conditions of those making use of No 9 Silver Street or of No 3 Hind Street, and consequently that there is no conflict here with the relevant provisions of policy D1 of the Local Plan or with relevant elements of the Framework.

Other Matters

27. There is a signed copy of an undated unilateral undertaking related to the proposal before me (the 'undertaking'). This contains an obligation related to the payment of a sum to mitigate the environmental effects of the proposal given the proximity of the appeal site to the Exe Estuary and Pebblebed Heaths Special Protection Areas.⁹
28. However following the Council's adoption of a Community Infrastructure Levy ('CIL') charging schedule which became effective from 1 September 2016, the Council have clarified at appeal that they are satisfied that the CIL contribution that the development would make would adequately mitigate the effects of the development in this respect. I have no reason to arrive at a different assessment, particularly as environmental mitigation is specified within the Council's list of projects to be funded by CIL receipts prepared under Regulation 123 of the Community Infrastructure Levy Regulations 2012 as

⁹ Whilst the undertaking also originally contained obligations related to affordable housing provision and an open space contribution, these have subsequently been struck through as they are no longer required in this context following changes to the Planning Practice Guidance (the 'Guidance'), Reference ID: 23b-031-20161116.

amended. Consequently I have disregarded the undertaking in determining the appeal as it ceases to be necessary to make the development acceptable in planning terms.

29. I have taken account of the concerns of those nearby regarding the effect of the proposal on the structural condition of the boundary walls given their existing condition. However subject to an appropriate condition pursuant to the findings within the appellant's document entitled Boundary walls inspection, there is no robust evidence before me to indicate that the proposal would undermine the integrity of boundary walls.¹⁰
30. I have considered the concerns raised by the Parish Council and those nearby regarding the potential effects of the proposal in respect of traffic generation and safety, its relationship to other development nearby, and the motivation for proposing the development. However these matters do not form part of the Council's case at appeal and there is no evidence before me to indicate that adverse effects would arise in these respects. Consequently neither these matters, nor any others, are sufficient to outweigh my findings in respect of the main issues in this case.

Conclusion

31. For the above reasons, and having taken into account all other matters raised, I conclude that the proposal accords with the development plan taken as a whole and with the approach in the Framework. Accordingly I allow the appeal.

Conditions

32. It is necessary to impose a condition requiring compliance with the relevant plans for the avoidance of doubt and in the interests of proper planning. It is also necessary to require via condition that agreed external materials are used in construction in order to ensure that the proposal integrates appropriately with the character of its surroundings, and for the same reason I have imposed a condition requiring that an agreed landscaping scheme is implemented.
33. Any works related to the development have the potential to affect valuable archaeological remains which may be present on site given the historic nature of the surrounding area. Consequently I have imposed a condition requiring that development proceeds in accordance with an agreed programme of archaeological work. Given the close-knit nature of the surrounding built environment and the potential for additional development related to the proposed dwelling to adversely affect the character of the area or the living conditions of those nearby, it is also necessary to withdraw certain permitted development rights via condition.
34. In order to safeguard the integrity of the retaining walls bounding the appeal site it is further necessary to require via condition that development proceeds in line with an associated method statement, which must necessarily have been agreed with the Council before any works are undertaken as any work may potentially affect these walls. In order to safeguard the privacy of the

¹⁰ Boundary walls inspection- Coles, Ottery St Mary, prepared by Will Gannon & Smith Ltd, consulting structural and civil engineers, Ref MSP/3178, dated 25 July 2016.

occupants of No 3 Hind Street I have also imposed the condition proposed by the Council which requires that the windows within the western elevation of the dwelling hereby permitted are obscure-glazed and non-opening.

35. In imposing conditions I have had regard to the tests within the Framework, the Guidance and relevant statute,¹¹ and have accordingly amended the wording of certain conditions proposed by the Council without altering their aim.

Thomas Bristow

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 the following plans supporting application Ref 16/0205/FUL: 14.60.SP 10B, 14.60 P22A, 14.60 P20B, 14.60 P21C, 14.60 P23.
- 3) No works other than site preparation and groundworks related to the development hereby permitted shall take place until a schedule of the external materials and finishes to be used in the construction of the dwelling hereby permitted has been agreed in writing by the local planning authority. Development shall be carried out in accordance with the schedule thus agreed.
- 4) A landscaping scheme shall be carried out in the first planting season after the commencement of the development hereby permitted in line with details previously agreed in writing by the local planning authority (which shall include details of the planting of trees, hedges, shrubs, herbaceous plants, areas to be grassed, proposed walls, fences and other boundary treatments). The landscaping scheme thus agreed and carried out shall be maintained for a period of 5 years thereafter, and any trees or other plants which die during this period shall be replaced during the next planting season with specimens of the same size and species.
- 5) No works related to the development hereby permitted shall take place until a programme of archaeological work has been agreed in writing by the local planning authority. Development shall be carried out in accordance with the programme thus agreed.
- 6) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking, re-enacting or modifying that Order), no enlargement of, improvement or other alteration of, or the provision of any buildings incidental to, or gates, fences,

¹¹ Including paragraph 206 of the Framework, Guidance Reference ID: 21a-004-20140306 and Article 35(1)(a) of the Town and Country Planning (Development Management Procedure) (England) Order 2015.

walls etc. related to, the dwelling hereby permitted shall be created or installed.

- 7) No works related to the development hereby permitted shall take place until a method statement for the retention and protection of the existing walls along the western and southern boundaries of the site has been agreed in writing by the local planning authority (which shall include a timetable of protection measures and measures to be implemented in the event of any structural failure of either wall resulting from carrying out the development hereby permitted). Development shall be undertaken in accordance with the method statement thus agreed.
- 8) All windows within the western elevation of the dwelling hereby permitted shall be obscure glazed and non-opening, installed as such before the dwelling is first occupied, and thereafter retained as such in perpetuity.