
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: 4 January 2017

Appeal Ref: APP/U1105/W/16/3155797

Land adjoining Catalpa, Bendarroch Road, West Hill, Devon EX11 1JX

- 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 R Melhuish against the decision of East Devon District Council.
 - The application Ref 15/2907/FUL, dated 23 December 2015, was refused by notice dated 22 June 2016.
 - The development proposed is described on the application form as the 'construction of detached house with new vehicular access to the host dwelling, Catalpa'.
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Decision

1. The appeal is allowed and planning permission is granted for the construction of a detached house with new vehicular access to the host dwelling, Catalpa at land adjoining Catalpa, Bendarroch Road, West Hill, Devon EX11 1JX in accordance with the terms of the application Ref 15/2907/FUL, dated 23 December 2015, subject to the schedule of conditions in this decision.

Procedural Matters

2. Notwithstanding the incorrect reference to a plan supporting application Ref 15/2907/FUL given by the Council at appeal, I have determined the proposal including with reference to a plan entitled 15056-01 Rev B which was before the Council in determining the application. This plan does not include a detached garage as was illustrated on the former iteration of the plan entitled 15056-01 Rev A, and hence this does not form part of the proposal before me.
3. The Council's Community Infrastructure Levy (CIL) charging schedule became effective from 1 September 2016 after their decision on the application. I have considered this subsequently with reference to a copy of a unilateral undertaking before me associated with the proposal (the 'undertaking').

Main Issues

4. The main issues are the effects of the proposal on the character and appearance of the area and in relation to the wellbeing of nearby trees.
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Reasons

Character and appearance

5. Catalpa is a detached dwelling of modern appearance, which I understand results from its recent renovation following permission Ref 13/0036/FUL. The proposal is to demolish an existing detached garage and to subdivide the western side garden of the property in order to provide for a plot which would host a new dwelling.¹ The appeal site falls at a north-westerly reach of the settlement of West Hill, at the very edge of the settlement boundary thereof set within the former East Devon Local Plan 2006 (the 'former plan').
6. Strategy 27 'Development at the Small Towns and Larger Villages' of the Council's Local Plan 2013-2031 adopted on 28 January 2016 (the 'Local Plan') identifies various settlements, including that of West Hill, which 'offer a range of accessible services and facilities to meet many of the everyday needs of local residents...'. The Local Plan further sets out that built-up area boundaries will be established via the emerging East Devon Villages Development Plan Document (the 'DPD').
7. The DPD continues to include the appeal site within the built-up area boundary for West Hill, however has not reached a stage of preparation such that it can be afforded substantial weight. Nevertheless, given this context the Council do not appear to object to the principle of development in this location.
8. There is no strong consistency in the design, scale or arrangement of nearby properties. Whilst properties around the fringes of West Hill tend to be comparatively large detached dwelling set in generous plots, those along Bendarroch Road and Courtfield Close to the east of the appeal site are variously detached and semi-detached properties of more modest scale set within less spacious plots. There is an eclectic variety in the form of properties nearby ranging from comparatively modern two-storey properties to understated single-storey dwellings, with dwellings of more detailed traditional appearance also present.
9. Nearby properties are typically set back significantly from carriageways, commonly with substantial boundary features demarcating plot boundaries (chiefly hedges and mature trees). These features, alongside the varied arrangement of properties, lends the area a semi-rural character consistent with the setting of West Hill within a landscape of irregular fields cut by traditional hedgerows with patches of dense woodland.
10. A private farm access bounded on both sides by hedgerows and mature trees runs alongside the western boundary of the appeal site, which in my view serves to visually demarcate the extent of the built form of West Hill in this location. There are nevertheless a number of properties nearby the appeal site

¹ Whilst I understand that the former garden of Catalpa has previously been subdivided to enable the creation of a dwelling to the east named Maggie Tosh, I have determined the proposal before me on its particular merits.

and accesses to these properties from Bendarroch Road. Although the topography of the land rises moderately from the appeal site towards the west, views of the wider countryside in this direction from nearby the appeal site are largely screened by the hedgerows and trees described above.

11. The front of the plot of Catalpa is bounded by a bank, some low-level planting and a mature Scots Pine. Notwithstanding these features, from the west the appeal site is clearly viewed in conjunction with Catalpa and other dwellings fronting Bendarroch Road. Whilst there are presently views of the wider countryside from Bendarroch Road through the appeal site to the north, such views are fleeting and partial.
12. Strategy 6 'Development within Built-Up Area Boundaries' of the Local Plan, which is generally supportive of development in built-up areas, sets out that such development must be compatible with the character of the site and its surroundings. Strategy 48 'Local Distinctiveness in the Built Environment' and policy D1 'Design and Local Distinctiveness' of the Local Plan similarly require that all development integrates appropriately with its surroundings. Likewise the National Planning Policy Framework (the 'Framework') sets out that planning should always seek to secure high quality design and that it is appropriate to seek to reinforce local distinctiveness.
13. It is not disputed that the separation distance between the proposed dwelling and Catalpa would be less than that which is currently present between Catalpa and its neighbour Maggie Tosh, or indeed less than that which is currently present between various other properties nearby. However I have explained above that the pattern of properties in the surrounding area is varied and that other properties nearby, particular semi-detached properties along Bendarroch Road and Courtfield Close, are set in close proximity to one another. As such, and given the mixture of scale and design of properties nearby, the proposal would not in my view be incongruous in respect of its scale, design, or relationship to neighbouring properties.
14. I appreciate that the proposal would to some extent reduce the semi-rural character of the area both by virtue of impeding views of the distant countryside to the north and indeed by providing for access by way of removing part of the front boundary bank of the property. However the views that would be impeded are limited, as set out above, and the proposal would not erode what appears to be the natural boundary to the built form of West Hill in this area being the access which abuts the appeal site to the west. The reduction of the natural bank bounding the plot associated with Catalpa would be partial rather than complete, and the effect thereof could be further reduced by sensitive landscaping secured via condition. The new access proposed would furthermore be viewed in conjunction with a number of vehicular accesses nearby, and consequently would not unacceptably impact upon the character of the area.²
15. For the above reasons I therefore conclude that the proposal would not have an unacceptable effect on the character and appearance of the area, and

² I deal with the effect of the proposal on trees subsequently.

accordingly that the proposal does not conflict with the relevant provisions of strategy 6, strategy 48 and policy D1 of the Local Plan, nor with relevant elements of the Framework.

Wellbeing of trees

16. Policy D3 'Trees and Development Sites' of the Local Plan establishes that permission will be granted only where there is appropriate tree retention in conjunction with the development proposed, and that the Council will seek to ensure that there is no net loss in the quality of trees resulting from development. Strategy 46 'Landscape Conservation and Enhancement and AONBs' of the Local Plan further sets out that all development should conserve the natural character of the area.
17. Section 197 of the Town and Country Planning Act 1990 as amended similarly places upon me a duty to ensure that in granting planning permission adequate provision is made, by the imposition of conditions, for the preservation or planting of trees.
18. The access proposed with Bendarroch Road would transgress the root protection area of a mature Scots Pine identified as T1 within the appellant's Arboricultural Report (the 'Report'),³ which is stated to have been prepared in line with the approach in British Standard 5837:2012, Trees in relation to design, demolition and construction – Recommendations.⁴ For the reasons given above this tree clearly contributes to the semi-rural character of the area and reflects the well wooded nature of its environs.
19. Whilst the Council accept the methodology of the Report they disagree with its overall conclusion, which is that the 'proposed development is considered to be sustainable'. It is clearly, however, the intention that tree T1 is retained; there is no evidence before me that a Tree Preservation Order is currently in place or that T1 is subject to any other specific protection that would prevent its pruning, management or felling without specific consent irrespective of the outcome of this appeal.
20. The Report further recommends that various measures are undertaken to safeguard the wellbeing of T1 during construction, including arboricultural supervision of building works, which could be secured via condition. I would also note that Scots Pine trees are reasonably tolerant of root loss.⁵
21. For these reasons I therefore conclude that, subject to an appropriate condition, the development proposed would not have an unacceptable effect on the wellbeing of trees and consequently that the proposal does not conflict with the relevant provisions of policy D3 or strategy 46 of the Local Plan.

³ Prepared by Advanced Arboriculture, reference TH/X1325/0116, dated 9 February 2016.

⁴ Whilst I note the concerns raised by those nearby regarding the potential effect of the proposal on other trees nearby, the dispute before me in this respect relates solely to the effect of the proposal on tree T1, and there is nothing in the evidence before me to indicate that other trees would be adversely affected by the proposal.

⁵ Matheny, N., and Clark, J. R. (1998) Trees and Development: a Technical Guide to Preservation of Trees During Land Development, International Society of Arboriculture.

Other Matters

22. The Council's officer report associated with the proposal sets out that at the time the application was made it complied with European habitats legislation on the basis that the associated undertaking made provision for environmental mitigation. However following the Council's adoption of a CIL charging Levy as set out above, the Council have clarified at appeal that they are satisfied that the contributions collected via CIL from the development will adequately mitigate effects in this respect in lieu of the undertaking. I have no reason to arrive at a different assessment here, 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 amended (the '123 List').
23. The undertaking also contains an obligation to make a payment related to open space provision in West Hill. The Planning Practice Guidance (the 'Guidance') has, however, been updated since the Council's decision notice in relation to the circumstances where infrastructure contributions may or may not be sought. Briefly stated, the Guidance establishes that tariff style planning obligations should not be sought from small scale development of 10 units or less.⁶ Indeed open space provision is also identified within the Council's 123 List referred to above. As such the obligation proposed within the undertaking related to open space provision is no longer required. Consequently I have disregarded the undertaking in determining the appeal as it ceases to be necessary to make the development acceptable in planning terms.
24. I have taken account of the representations from nearby residents including in respect of the effects of proposal on highway safety, flooding, ecology and to the living conditions of neighbouring occupants with particular reference to privacy. However these matters do not form part of the Council's case and there is nothing in the evidence before me to conclude that unacceptable effects would arise in these respects.
25. There is reference made in the information before me to an emerging Ottery St Mary neighbourhood plan and to the West Hill Village Design Statement. However the former appears to be at an early stage of preparation and no specific policies thereof have been brought to my attention of relevance to the development proposed. The latter is not part of the development plan and chiefly concerns matters of character and appearance which I have considered above. Consequently neither these matters, nor any others, are sufficient to outweigh or alter my conclusions in respect of the main issues in this case.

Conclusion

26. For the above reasons, and taking all other matters raised into account, the proposal accords with the development plan taken as a whole and with the approach in the Framework. I therefore conclude that the appeal should be allowed.

⁶ Guidance Reference ID: 23b-031-20161116.

Conditions

27. It is necessary to require via condition compliance with the relevant plans for the avoidance of doubt and in the interests of proper planning. I have also imposed a condition requiring that the external materials to be employed are agreed with the Council, as is a landscaping scheme, to ensure that the proposal integrates appropriately with the character and appearance of its surroundings.
28. Given the relatively close proximity of the proposed dwelling to Catalpa, and the position of the appeal site at the edge of the settlement, I agree with the Council that it is appropriate to withdraw certain permitted development rights to avoid adverse impacts that may arise from the use thereof. To ensure that vehicular movements associated with the dwelling proposed do not adversely affect the operation of Bendarroch Road, I have imposed a condition requiring that the access, turning space and parking provision proposed is provided and retained.
29. I further agree with the Council that in order to safeguard the wellbeing of nearby trees it is necessary to impose a condition requiring development to be undertaken in compliance with the arboricultural information supporting the application. As the Council has set out that the appeal site is not vulnerable to flooding within their officer report associated with the application, and as in any event relevant works must comply with Building Regulations Approved Document H, Drainage and Waste Disposal, it is unnecessary to impose a condition requiring that an agreed approach to surface water drainage is adhered to as the Council have proposed.
30. In imposing conditions I have had regard to the tests within the Framework, the Guidance and relevant statute,⁷ and have accordingly amended the wording of certain conditions proposed by the Council without altering their aim.

Thomas Bristow

INSPECTOR

⁷ 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.

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 15/2907/FUL: 15056-01 Rev B, 15056-02, and 15056-03.
- 3) No works other than site preparation and groundworks related to the development hereby permitted shall take place until the materials to be used in the construction of the external surfaces of the development hereby permitted have been agreed in writing by the local planning authority. Development shall be carried out in accordance with the materials 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) 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 development permitted via Schedule 2, part 1, Classes A, B, C, or D thereof shall be undertaken in relation to the dwelling hereby permitted.
- 6) The dwelling hereby permitted shall not be occupied until the access, turning space and parking provision shown on the approved plans have been provided. The access, turning space and parking provision shall thereafter be retained as such and kept available at all times for those purposes only.
- 7) The development hereby permitted shall be carried out in accordance with the Tree Survey, Arboricultural Method Statement and Tree Protection Plan supporting application Ref 15/2907/FUL prepared by Advanced Arboriculture, reference TH/X1325/0116, dated 9 February 2016.