
Appeal Decision

Site visit made on 1 February 2017

by Andy Harwood CMS MSc MRTPI

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

Decision date: 22 February 2017

Appeal Ref: APP/U1105/W/16/3163298

21 Stoneborough Lane, Budleigh Salterton, Devon EX9 6JA

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr John Brett against the decision of East Devon District Council.
 - The application Ref 16/0074/FUL, dated 5 January 2016, was refused by notice dated 22 July 2016.
 - The development proposed is a "proposed dwelling to the rear of 21 Stoneborough Lane, Budleigh Salterton".
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Decision

1. The appeal is allowed and planning permission is granted for proposed dwelling at 21 Stoneborough Lane, Budleigh Salterton, Devon EX9 6JA in accordance with the terms of the application, Ref 16/0074/FUL, dated 5 January 2016, subject to the schedule of conditions below:

Preliminary Matters

2. A planning obligation under section 106 of the act has been submitted with the planning application in order to secure a financial contribution towards habitat mitigation. However, since the Council made its decision, a Community Infrastructure Charging Schedule became effective which would secure the necessary financial contributions. The planning obligation is no longer necessary to address the concerns and I will not take it into account.
3. The appellant refers to amendments that were made to the proposal following submission of the planning application. I will consider this appeal on the basis of the plans referenced on the Council's decision notice.

Main Issues

4. The main issues are:-
 - the effect of the proposed dwelling upon the character and appearance of the area;
 - the effect of the proposal upon the living conditions of the occupiers of adjoining dwellings with respect to privacy;
 - the effect of the proposal upon vehicle parking and highway safety; and
 - whether satisfactory living conditions would be provided for the proposed occupants of the new dwelling.
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Reasons

Character and appearance

5. The appeal site is within a residential area to the eastern side of Budleigh Salterton. The area includes detached and semi-detached dwellings spaciouly laid out with landscaped gardens softening the built environment. The site would be accessed from Swains Road which includes some modern dwellings and older properties. The Council refers to No 2 and 4 Swains Road as being typical of the dwellings in the area. These semi-detached dwellings are similar to others on that side of the road but do not typify the area overall. There is substantial variety to the appearance of the dwellings nearby in terms of widths, detailed features, range of roof types and the external materials used.
6. Swains Road slopes up substantially from Stoneborough Lane. The site includes a driveway and a large double garage on a levelled area at the end of the garden of No 21. The proposal would involve the subdivision of the garden. The widths of these plots would not be out of proportion with those nearby although would not be as deep as some.
7. The proposed 2 storey dwelling would have a simple traditional appearance with a ridged gable roof with a small front gable over the larger first floor window. The design would include a chimney and small lean-to front porch. This design approach would not look out of place amongst the variety of dwelling styles nearby. A parking area is proposed to the side next to No 2 Swains Road. No 2 is also off-set from that mutual boundary. There would be a good amount of space between these dwellings. A good size front garden would also be provided and the position of the dwelling a little further forward than some of the nearby dwellings would not be noticeable. The dwelling would conform with the spaciousness of the street-scene along Swains Road. The space to the rear boundary is more limited and although that would be noticeable from gardens of surrounding properties, this would not lead to a cramped appearance.
8. The proposal would respect the key characteristics and special qualities of the area. In relation to the first main issue, the proposed dwelling would not have a harmful effect upon the character and appearance of the area. This would comply with policy D1 of the East Devon Local Plan¹ (LP). In these respects, the proposal would constitute a good design, as required by paragraph 56 of the National Planning Policy Framework (the Framework).

Living conditions – neighbouring occupiers

9. The proposal would involve the digging in of the dwelling below the floor level of the existing garage. The dwelling would still be in a raised position due to the natural slope down to the rear of Nos 21 and 23 Stoneborough Lane. At the moment, occupants of those dwellings do not enjoy complete privacy. As well as a degree of overlooking from neighbouring properties as one would expect in a residential area, I could see across into the rear garden of No 21 over the timber fence from the footpath alongside Swains Road. The vegetation in the rear garden of No 23 provides more privacy within that garden. However I had a clear view towards the first floor windows in the rear of No 21 and No 23 from Swains Road. I could also clearly see towards the

¹ East Devon Local Plan, 2013-2031 - adopted 28 January 2016

rear windows of No 21 at closer quarters from the higher terrace of the garden of No 23.

10. The windows within the ground floor of the proposed dwelling would be set back away from the rear and side boundaries. The fence on the eastern boundary would prevent overlooking from ground floor windows towards the rear garden of No 23. The proposed fence between the site and garden of No 21 would be set below the floor level of the proposed dwelling due to the natural slope. However any views from the lounge and garden of the dwelling towards the first floor windows in the rear of No 21 would not be at a close or intimate range. Views would be interrupted to a degree by the fence and would be no worse than currently occur from public places and adjoining property.
11. Overlooking towards the adjoining dwellings from first floor windows would be prevented by requiring obscure glazing and that could be secured by a planning condition. These high windows may give a slightly increased sense of being overlooked. Given that this would be at a substantial distance from the most sensitive parts of the nearest dwellings I do not consider that this would be a harmful impact.
12. Overlooking from the front and side of the dwelling towards the dwellings opposite and adjoining the site within Swains Road would be at a reasonable distance. Those parts of the nearby properties are also largely visible from the road and existing dwellings. The proposal would not cause an unreasonable loss of privacy for existing residents of Swains Road.
13. In relation to this main issue, the proposal would not have a harmful effect upon the living conditions of the nearby occupiers with respect to privacy. This would comply with LP policy D1 and the requirement within the Framework to secure a good standard of amenity for all occupants of land and buildings.

Highway safety

14. The appeal site is within an area that includes unrestricted on-road parking. Anecdotal references are made within correspondence from objectors to parking problems in the area. I have not been provided with any parking surveys or other evidence to show the scale of any problems.
15. The proposed dwelling would include 2 off street parking spaces but none would be provided for the existing dwelling. This is likely to lead to some additional parking nearby. Stoneborough Lane is narrow immediately in front of the site. Parking there could block the road and most reasonable drivers would choose not to park their vehicles in that position. If parking did occur in that location, it would be inconvenient for road users but not unsafe. Swains Road is wider and I saw for myself that safe on-street parking occurs there already. There were some spaces available at the time of my visit. Although that is only a snap-shot in time I have no evidence to indicate that additional on-street parking from 1 dwelling would cause particular dangers.
16. The site is uphill from the main centre of Budleigh Salterton but is not very far from services and facilities. The topography of the area may make walking and cycling to the centre of the settlement a challenge for some people and the proposal is likely to lead to some additional vehicle use. As a guide LP policy TC9 normally requires at least 2 car parking spaces per home with 2 or more bedrooms. In addition, 1 bicycle space should be provided and although not

explicitly shown, that would be achievable within the proposed and remaining existing dwelling. I have no details of public transport services but the site is reasonably accessible to the town and there would not be complete reliance on private vehicle use.

17. Paragraph 39 of the Framework has been updated by a Written Ministerial Statement on 25 March 2015. This clarifies that local planning authorities should only impose local parking standards where there is clear and compelling justification that it is necessary to manage their local road network. I do not have such evidence to lead me to a view that the small additional amount of parking for 1 dwelling would lead directly to parking problems in the area close to the appeal site.
18. In relation to this main issue, based upon what I saw at my site visit and the submitted evidence, the proposed parking arrangements would not lead to unsafe highway conditions. There would be a very limited degree of conflict with LP TCP9 due to the lack of parking for the existing dwelling at No 21 Stoneborough Lane. However, I have not been provided with clear and compelling evidence to indicate that its requirements should be imposed rigidly.

Living conditions – prospective occupants

19. The garden of the proposed dwelling would be subject to some overlooking due to the proximity of other dwellings and due to the location of the main garden area where it would be seen from Swains Road. This garden would not be completely private but there would be a reasonable degree of seclusion. There may also be some overlooking from first floor windows within No 21 and also from No 23 into the windows at ground floor level of the proposed dwelling. This would not be to an intimate degree given the reasonable separation between the dwellings.
20. Proposed bedroom 2 would have an obscure glazed and fixed (below fan-light level) window to prevent overlooking of the adjoining properties and I agree that a condition to achieve this is necessary. This would allow for light to be received within that room but would not allow for any outlook. The absence of an external view would not make that an unpleasant room to use in my opinion and would not make the dwelling an objectionable place to live.
21. In relation to this main issue, satisfactory living conditions would be provided for the proposed occupants of the new dwelling. This would comply with LP policy D1 and the requirement within the Framework to secure a good standard of amenity for all occupants of land and buildings.

Conditions

22. I have imposed a condition specifying the relevant drawings as this provides certainty that the development will be implemented as proposed. Further details of external materials are required for agreement by the Council. It is necessary to ensure that the palette of materials nearby is complemented in the interests of the character and appearance of the area.
23. I agree with the Council that it is necessary to secure tree protection measures to make sure existing landscape features can be retained although it is not clear why inspections by an arboricultural supervisor would be necessary. The report referred to in the condition as submitted with the application is dated

April 2015 and it would be preferable to re-assess those matters as well as providing further details of new planting. I have attached a simplified condition requiring the submission of further details and another to secure implementation. The tree protection details will need to be complied with and retained during the course of development.

24. A condition is also necessary to secure the obscuration of the first floor windows within the south and east elevations to secure privacy for those adjoining residents, with fixed glazing below fan-light level. Further detail of the degree of obscurity of the glazing is necessary. The Council has suggested a condition to require that the roof lights should only serve the bedroom and not any space in the roof. I agree that this is necessary so that it would not be possible to look from the roof-space over the neighbouring gardens.
25. The Council has suggested that permitted development rights for the enlargement, improvement and other alterations of the dwelling as well as outbuildings should be removed. Advice in the Planning Practice Guidance is that such conditions should only be used in exceptional circumstances. The curtilage of the dwelling would provide limited space and part of the garden would be in public view which are not unusual circumstances in a residential area and do not justify removing the normal rights for garden structures. However, given the position of the dwelling where adjoining residents' privacy to the south and east could be affected by new windows or extensions, I agree that a more limited restriction of permitted development rights is necessary.

Conclusion

26. For the reasons given above and having regard to all other matters raised, I conclude that the appeal should be allowed.

A Harwood

INSPECTOR

Schedule of conditions:

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: '7132-03 rev E' planning drawing and '7132-04 rev C' site sections.
- 3) No development above foundation level shall commence until further details of the materials to be used in the construction of the external surfaces of the dwelling hereby permitted have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details prior to the occupation of the dwelling.
- 4) No development shall commence until there shall have been submitted to and approved in writing by the local planning authority a scheme of landscaping. The scheme shall include indications of all existing trees and hedgerows on the land, identify those to be retained and set out measures for their protection throughout the course of development.
- 5) All tree protection measures shall be implemented prior to works commencing on site and shall be retained until completion of the development. 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 buildings or the completion of the development, whichever is the sooner; 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.
- 6) No development above foundation level shall commence until further details of the type of obscure glazing of all windows on the south and east elevations at first floor level on the plans hereby permitted have been submitted to and approved in writing by the local planning authority. The dwelling shall be fitted with the agreed obscure glazing before the first floor accommodation is brought into use and shall be permanently fixed as non-openable below a minimum height of 1.75 metres above the level of the floor. The obscure glazing and opening limitations required by this condition shall be retained thereafter.
- 7) The roof lights on the east elevation hereby approved shall serve bedroom 2 only as shown on drawing number '7132-03 rev E' and shall at no time be used to serve any space within the roof of the dwelling.
- 8) 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/dormer windows other than those expressly authorised by this permission shall be constructed on the south and east elevations nor shall any enlargement, improvement or other alteration of the dwellinghouse or its roof be constructed.