
Appeal Decision

Site visit made on 19 December 2016

by JP Roberts BSc(Hons), LLB(Hons), MRTPI

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

Decision date: 7 March 2017

Appeal Ref: APP/Y1110/W/16/3156966

East Yard, Ide Lane, Poccombe Bridge, Exeter EX2 9SW

- 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 Mrs Lesley Creed against the decision of Exeter City Council.
 - The application Ref 16/0707/03, dated 23 June 2016, was refused by notice dated 2 August 2016.
 - The development proposed is described as "erection of a storage building on the site of an existing structure removed".
-

Decision

1. The appeal is dismissed.

Procedural matter

2. The development had already been constructed at the time of making the application and so I shall treat the proposal as one made under s.73A of the Act, for development already carried out.

Main Issues

3. The main issues are:
 - i) the effect of the proposal on the character and appearance of the surrounding area, which lies within the Alphin Brook Conservation Area, and
 - ii) the effect of the proposal on flood risk.

Reasons

4. The site lies in a commercial yard in the shadow of an elevated part of the A30 dual carriageway to the south and bordered by the Alphin Brook to the north. The building subject of the application is one of a number of buildings and structures on the site, which include a large range of L-shaped buildings in commercial use, a residential building, several caravans and a polythene covered greenhouse. The use made of the site is not entirely clear, but a vehicle recovery business is one of the elements which was apparent at the site visit.
 5. The site has a somewhat opaque planning history, which includes enforcement action. A certificate of lawfulness for storage appears to have been issued in 2013 by Teignbridge District Council for the use of buildings for storage purposes. The plan attached to the certificate uses an old
-

Ordnance Survey map base that is difficult to reconcile with the current topography or application plans, and does not show the buildings to which the certificated use applies. However, the application it appears to include land within both the area administered by Teignbridge District Council and that administered by Exeter City Council, on either side of the A30. It is not for me in a Section 78 appeal to determine whether or not the certificate of lawfulness is valid in respect of this appeal site. Regardless of this, it does not authorise the erection of new buildings.

6. The Council concedes that some buildings on the wider site may have become lawful through the passage of time, although it does not specify which ones. The Council has issued two enforcement notices relating to the site. The one directed at the residential use of the site was quashed on appeal for technical reasons in September 2016. The other, directed at the building subject of the appeal, was not itself the subject of an appeal and came into effect in July 2016. However, the Council, for reasons which are not entirely clear to me, withdrew the notice. The Council says that it will review the enforcement position after this appeal, and thus buildings and uses on the site may still be liable to enforcement action.
7. It would appear that none of the buildings on the site have been erected with the benefit of planning permission, and I cannot be certain which may be lawful through the passage of time. The appellant claims that the current appeal building replaced one which previously stood on the approximate position of the appeal building. Notwithstanding the Council's concerns about the accuracy of this submission, the removal of any former building means that the opportunity to establish its lawfulness was lost. I therefore consider that there is no fallback position on which the appellant can rely.
8. The site lies on the edge of the Alphinbrook Conservation Area. Most of the land on this fringe forms a green valley bottom which has a strongly rural flavour, consisting of fields in agricultural use bounded by hedges and trees. Clearly the A30 viaduct has a marked impact on the setting of the conservation area when seen from the built-up, higher land to the east. Even so, the valley floor and northern hillslope rising from the Alphin Brook are relatively unspoilt and provide an attractive setting to the built-up part of the conservation area, and which provides links with the historic agricultural identity of the area.
9. The Council's Conservation Area Appraisal and Management Plan identifies the Alphin Brook Valley and the associated ridge at Hambeer Lane to the north-east of the site as a key characteristic defining the topography of the area. Despite an error in the key to Plan 3, it is clear that the appraisal identifies those buildings that were on part of the appeal site in 2009 as being amongst those that do not make a positive contribution to the area.
10. The appeal building is a tall, wooden, barn-like building, finished in a dark green colour. It is located at the base of an embankment to the A30 dual carriageway, which is planted with a thick belt of deciduous trees. Whilst views of the site from public places are fairly limited, the building can clearly be seen from places along Doctor's Lane to the north of the appeal site which runs along the opposite side of the Alphin Brook valley bottom. It would also be visible from private properties higher up the valley slope. The taller height of the building in comparison with others on the appeal site makes it stand out, being more readily seen over intervening hedges. In my view, it does not have

the appearance of a typical agricultural building, which tend to be more functional in appearance. Whilst not prominent, it consolidates the existing cluster of buildings on the site and detracts from the otherwise undeveloped and rural appearance of this part of the conservation area.

11. I have had regard to the arguments that it is no worse or is even better than the barn to the north of the appeal site. Whilst modern agricultural buildings tend to be functional in appearance, their presence is of necessity to serve the agricultural interests of the farm which they are intended to serve; both national and local policies recognise this essential purpose. Such necessity does not apply to the proposal, and no arguments have been made that a rural location is essential for the building and its use, which appears to be more domestic than commercial in nature.
12. I therefore find that the proposal would fail to preserve or enhance the character or appearance of the conservation area, and would conflict with saved LP Policy C1. However, that policy is not consistent with paragraphs 133 and 134 of the National Planning Policy Framework (the Framework), which requires the level of harm to be ascribed and, if appropriate to be balanced against public benefits. In this case the harm would be "less than substantial". In such cases it is necessary to balance the harm against public benefits, but there are none of any significance in this case.
13. The site also lies in a designated valley park which forms part of the landscape setting to the city, protected from development by saved Exeter City Council Local Plan First Review (LP) Policy LS1. The supporting text to the policy says that the land that defines the southern boundary of Alphington is modern arable farmland which rises up to the Markham Lane ridge, enhancing the setting of Alphington and of the City.
14. Besides protecting the city's landscape setting, the policy requires proposals to maintain local distinctiveness and character and be for specific purposes, none of which apply to the proposal. Whilst the limited extent to which the building can be seen from public places restricts the degree of harm caused by the building, I nevertheless consider that it detracts from the open and rural landscape character of the area, and conflicts with LP Policies LS1 and Objective 8 and Policy CS16 of the Exeter Core Strategy, both of which deal with landscape. It would also conflict with design policies GD1 of the LP and CS Policy CS17. I find no significant conflict with saved LP Policy L1, as the proposal does not materially affect the recreational potential of the area.
15. I therefore conclude on the main issue that the proposal would fail to preserve or enhance the character and appearance of the Alphin Brook Conservation Area and would be harmful to the wider landscape setting of the city. It would conflict with the development plan policies to which I have referred above, as well as with emerging Development Delivery Plan Policies DD25 and DD29, which respectively deal with locally distinctive plans and landscape setting areas, although these policies do not yet carry substantial weight. Nevertheless, they add to the weight of policies which militate against the proposal.

Flood Risk

16. The site lies in Flood Zone 3, arising from the closeness of the Alphin Brook which flows along the northern boundary of the site. I note that the site is said

by the appellant never to have flooded; however that does not necessarily establish that it is not at high risk of flooding. It is the Government's policy to keep development out of medium and high flood risk areas (Flood Zones 2 and 3). The Framework advocates the use of a sequential test, details of which are provided in the Planning Practice Guidance. Storage uses are classed as being "less vulnerable" and may be permitted in Flood Zone 3b, but not in Flood Zone 3a. I have not been told which classification applies to the appeal site, but I have not been provided with any information as to whether there are reasonably available sites appropriate for the proposed development in areas with a lower probability of flooding. Accordingly, the sequential test is not satisfied.

17. Moreover, the Planning Practice Guidance says that a site-specific flood risk assessment (FRA) is required for all proposals for new development (including minor development and change of use) in Flood Zones 2 and 3. No such assessment has been provided in this case. The appellant argues that the proposal would bring with it no greater flood risk than the previous structure on the site. However, as I have commented above, the previous building or structure did not have planning permission, and once it was demolished or removed, the fallback was removed, and cannot now be relied upon.
18. At a practical level, the building itself has a solid floor and to a small extent reduces the capacity of the land to accommodate flood waters. A FRA would be needed to establish the precise implications, but as it stands, I cannot be satisfied that the proposal would not increase flood risk, contrary to national policy and in conflict with saved LP Policy EN4 and emerging DDP Policy DD33, both of which deal with flood risk.

Other matters

19. I have had regard to letters of support from local people (and others who have not given an address or live some distance away). However, they are not sufficient to alter my conclusion.
20. I have also taken into account other developments of significance in the local area; however I have been provided with no background information about the planning circumstances which led to their approval, and thus I am unable to conclude that they lend significant weight to the proposal.
21. It is always the case that each planning application has to be decided on its own individual merits. If permission were to be granted in this case, I accept that it would make it difficult for the Council to control other similar development in areas with similar degrees of policy protection. However, this on its own is not a reason to dismiss the appeal, but reinforces my reasons for doing so.

Conclusion

22. I find that the proposal conflicts with the development plan as a whole, and for the reasons given above, I conclude that the appeal should be dismissed.

JP Roberts

INSPECTOR