
Appeal Decision

Site visit made on 18 April 2017

by Colin Cresswell BSc (Hons) MA MBA MRTPI

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

Decision date: 17 May 2016

Appeal Ref: APP/Y1138/W/17/3166458

**Land at Grid Reference 302666 114116, Turnpike, Sampford Peverell
EX16 7TA**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Mr John Cooney against the decision of Mid Devon District Council.
 - The application Ref 16/01526/FULL, dated 29th September 2016, was refused by notice dated 21 November 2016.
 - The application sought planning permission for erection of 4 dwellings with garages and alterations to access (revised scheme) without complying with a condition attached to planning permission Ref 16/00995/FULL, dated 24 August 2016.
 - The condition in dispute is No 2 which states that:
"The development hereby permitted shall be carried out in accordance with the approved plans listed in the schedule on the decision notice".
 - The reason given for the condition is:
"For the avoidance of doubt and in the interests of proper planning".
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The existing planning permission (16/00995/FULL) allows four single storey dwellings on the site. However, the appellant wishes to vary condition No 2 in order to enable the construction of 2 two storey dwellings and 2 single storey dwellings. The two storey dwellings would be situated on Plots 3 and 4 and alternative plans have been provided showing the proposed design of these houses. According to the National Planning Practice Guidance, a condition that modifies a development in such a way as to make it substantially different from that set out in the application should not be used. It seems to me that the extent of the changes being proposed by the appellant are very substantial and would normally need to be pursued through a fresh planning application rather than a variation of the existing plans. However, in this case the Council have carried out the same consultation process as they would have done if a fresh application had been submitted. For this reason, I consider that no party would be prejudiced by my determination of the appeal proposal.
 3. Revised drawings for the Plot 4 dwelling were submitted during the appeal process (2206-PL-02J, 2206-PL-10D and 2206-PL11E). These show the first
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floor window in the north elevation omitted, the balcony omitted and the door opening in the west elevation serving Bedroom 1 amended to a window. As the revised drawings were submitted during the final comments stages of the appeal, other parties have been given little opportunity to comment on them. Nonetheless, the new drawings introduce relatively minor changes and only aim to address some of the privacy concerns raised by neighbouring residents. For these reasons, I consider that no party's interests would be compromised by me determining the appeal on the basis of the revised drawings.

Main Issues

4. The main issues in this case are:

- the effect of the proposal on the living conditions of surrounding occupiers having particular regard to privacy and outlook.
- the effect of the proposal on the character and appearance of the area.

Reasons

Living conditions

5. The front elevations of the proposed two storey dwellings on Plots 3 and 4 would directly face the rear elevations of No's 14 and 15 Pullet. Due to the presence of boundary vegetation, there would be limited opportunities for any mutual overlooking between opposing ground floor windows. However, there would be a clearer line of sight between the first floor windows in the proposed dwellings and the rear elevations of No's 14 and 15. Occupiers of the new dwellings would be able to look out of these first floor windows at opposing first floor windows in No's 14 and 15, which would be at a similar height.
6. Despite this, the separation distances between the opposing properties would be relatively substantial. Indeed, the appellant indicates that the distance between the proposed dwellings and the main elevations of No's 14 and 15 would be in excess of 30 metres. Although future occupiers of the proposed dwellings could look towards No's 14 and 15, the extent to which it would be possible to see inside the private living space of these properties would be somewhat limited by the level of separation.
7. Whilst the proposed first floor windows would also overlook the rear gardens of No's 14 and 15, they would nonetheless be relatively well set back from the boundaries of these gardens. I also note that the main sitting and dining areas of the new dwellings would be located on the ground floors. The first floor windows facing No's 14 and 15 would serve bedrooms and landings which are less likely to be in constant use during the day. Hence, the extent to which overlooking would take place from these windows is unlikely to seriously undermine the privacy of neighbouring occupiers.
8. Furthermore, I am mindful that such physical relationships between properties are not particularly unusual in built up areas. Indeed, I have been referred to numerous supplementary planning documents from local authorities elsewhere in the country which support closer window to window separation distances than the appeal proposal. I have also been referred to planning permissions¹ elsewhere in Mid Devon where separation distances of less than 30 metres

¹ Council references: 14/02099/ARM, 14/01923/FULL, 14/00820/MFUL, 16/00547/FUL, 16/01501/FULL and 15/00650/MARM.

have been deemed acceptable by the Council. In this particular case, the Council point to the sheer number of first floor windows which would face towards Paullet and the 'front-to-back' orientation of the development. However, I have found above that this would not undermine the privacy of neighbouring occupiers in No's 14 and 15 to a harmful extent.

9. The Council also argue that the proposal would appear overbearing when seen from the rear of No's 14 and 15. In this regard, I recognise that the proposed first floors would extend along much of the plot widths and there would only be a small gap between the Plot 3 and Plot 4 dwellings resulting in a limited viewing corridor. However, even taking account of the topography of the site, the proposed dwellings would be of a similar height to No's 14 and 15. They would also be relatively well set back from both the rear gardens and windows of No's 14 and 15 such that an acceptably open outlook would be maintained.
10. Turning to the effect of the proposal on Plots 1 and 2, I note that the proposed dwelling on Plots 3 would occupy a more elevated part of the site. Combined with the increase in ridge height, this property would clearly appear much taller than the single storey dwellings proposed for Plots 1 and 2. This would have a limited effect on the outlook from the Plot 2 dwelling as it would face away from Plot 3. However, the side elevation of Plot 3 dwelling would be clearly seen from the frontage of the proposed Plot 1 dwelling. Yet despite this, an acceptable outlook would be maintained from within the Plot 1 dwelling as the Plot 3 dwelling would be offset to one side. The main outlook would be towards the more open front gardens and parking areas of Plots 3 and 4.
11. The north west boundary of the appeal site abuts the rear gardens of a group of dwellings situated in Higher Town. Due to the way in which these dwellings are divided, the garden of No 44 Higher Town is accessed by a pathway which leads away from the house between the gardens of adjacent properties. As a consequence of this, the garden of No 44 is relatively narrow with large parts of the useable space being in proximity to the appeal site. Indeed, during my site visit, I noted that the part of the garden closet to the boundary of the appeal site is currently used as an area for sitting outside.
12. The side elevation of the new dwelling proposed for Plot 4 would be positioned close to the north west boundary of the appeal site. Although this two storey dwelling would occupy a similar footprint to the approved bungalow, it would nonetheless represent a substantially taller and bulkier development. Due to the proximity of the side elevation to the site boundary, it would loom large over the garden of No 44, even taking into account the difference in ground levels between the appeal site and Higher Town.
13. The impact of the Plot 4 dwelling would be somewhat exacerbated by the relatively narrow proportions of this neighbouring garden, which is orientated so that the main outlook is towards the appeal site. Whilst the side elevation would not run across the entire width of the garden, it would nonetheless occupy a significant proportion of it. The dwelling would be taller than the existing outbuilding within the neighbouring garden and would present a substantial mass of built development which would be seen at close quarters from much of the private amenity space associated with No 44. The overall effect would be an overbearing presence within the garden which would contribute to a sense of enclosure.

14. Furthermore, the south west elevation of the Plot 4 dwelling would feature a sizeable floor to ceiling first floor window which would serve a master bedroom. Despite the orientation of this window, parts of the No 44 garden would be visible from inside the bedroom from oblique angles. This would not be fully screened by any boundary vegetation. The window would also overlook the far end of the garden area associated with No 42 Higher Town. Although there is presently a conifer tree along the boundary which would help to screen the development, views out of the bedroom towards this garden are less oblique and would potentially facilitate more direct overlooking. I am also mindful that this tree could potentially be removed in the future.
15. I recognise that only some parts of the gardens would be subject to potential overlooking and the master bedroom of the Plot 4 dwelling is unlikely to be occupied during all times of the day. However, the impact would be somewhat intensified by the very close proximity of the window to the site boundaries and the extent of the floor to ceiling glazing. Overall, the proposed Plot 4 dwelling would harm the privacy of gardens of No's 42 and 44 Higher Town as well as having a harmful effect on the outlook from the garden of No 44. The various examples of previous planning decisions that I have been referred to do not lend support to the proposal in these particular respects.
16. Even though I have found that the proposed development would be acceptable in terms of its relationship with No's 14 and 15 Pullet and the proposed dwellings on Plots 1 and 2, I have nonetheless established that it would have an unacceptable relationship with the gardens of No's 42 and 44 Higher Town. As such, I therefore conclude on this issue that the proposed development would have a harmful effect on the living conditions of surrounding occupiers. There would be conflict with Policy DM2 of the Mid Devon Local Plan Part 3 (the Local Plan) and in particular its objective of protecting the privacy and amenity of proposed or neighbouring properties.

Character and appearance

17. The appeal site is situated on the edge of the village, immediately adjacent to the open countryside. It is accessed through a gap between existing dwellings in Pullet, which contains a mixture of modern style detached houses and bungalows. The rear gardens of older style properties in Higher Town run along the north east boundary of the site. The Higher Town properties and their associated gardens are within the Sampford Peverell Conservation Area, together with a very small part of the appeal site.
18. The Council argue that the proposed two-storey dwellings would not create an attractive visual transition between the edge of the village and the open countryside. While the land to the immediate west of the appeal site has been identified as a potential housing allocation in the Local Plan Review 2013-2033 Proposed Submission document, this is not yet adopted policy and hence there can be no certainty that the land will necessarily be developed. Nonetheless, the principal of residential development on the appeal site has already been established by virtue of the existing permission. The visual transition between the village and the open countryside would not be substantially different as a result of two-storey houses being built on Plots 3 and 4 instead of bungalows. In either case, the site would assume residential characteristics. Furthermore, the overall density of the development would remain unaffected by the proposal and the dwellings would occupy similar footprints.

19. The significant qualities of the Conservation Area are mostly derived from its pattern of development and the quality of the historic buildings within it. Although the proposed dwellings on Plots 3 and 4 would be more visually prominent than the approved bungalows, they would have no greater effect on the appreciation of the historic buildings within Higher Town or the open spaces between them. Hence, the proposal would preserve the character and appearance of the Conservation Area.
20. Although the proposed houses would face the rear gardens of Paultet, a similar 'front to back' relationship is already established by the existing permission. Furthermore, the introduction of two-storey dwellings on Plots 3 and 4 would be generally consistent with the surrounding street scene insofar as Paultet also features a mix of houses and bungalows.
21. However, the proposed dwellings on Plots 3 and 4 would be substantially taller and bulkier than the bungalows proposed for Plots 1 and 2. The south east elevation of the Plot 3 dwelling would appear especially bulky in comparison to these bungalows due to the topography of the site and the height of the rear projection. Indeed, it would loom high above Plots 1 and 2 as illustrated in the site sections. As a result the side elevation of the Plot 3 dwelling would visually dominate these bungalows, creating a somewhat discordant street scene in a very prominent part of the site close to the entrance with Paultet. Whilst I have found elsewhere in my decision that the Plot 3 dwelling would maintain the outlook from these bungalows, it would nonetheless harm the character and appearance of the area. In reaching this decision, I am particularly mindful that the National Planning Policy Framework seeks to secure high quality design as one of its core principles.
22. I therefore conclude on this issue that the proposal would have a harmful effect on the character and appearance of the area. It would conflict with Policy DM2 of the Local Plan and Policy COR2 of the Mid Devon Core Strategy which aim to promote good design and protect local distinctiveness.

Other matters

23. The Officer Report refers to the need for financial contributions towards public open space and play areas. I understand that a signed unilateral undertaking was provided with the original application to help address this need. However, as I am dismissing this appeal for other reasons, I have not considered this matter any further.

Conclusion

24. For the above reasons and having regard to all other matters raised, the appeal should therefore be dismissed and condition 2 retained in its present form.

Colin Cresswell

INSPECTOR