



Appeal Decision

Site visit made on 30 January 2019

by **Benjamin Webb BA(Hons) MA MA MSc PGDip(UD) MRTPI IHBC**

an Inspector appointed by the Secretary of State

Decision date: 27th February 2019

Appeal Ref: APP/K1128/W/18/3212025

8 Perches Close, Membland, Newton Ferrers PL8 1HZ

- 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 Fleming against the decision of South Hams District Council.
 - The application Ref 0778/18/FUL, dated 5 March 2018, was refused by notice dated 26 July 2018.
 - The development proposed is described as a self build dwelling in amenity to north of 8 Perches Close.
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Decision

1. The appeal is allowed and planning permission is granted for a self build dwelling in amenity to north of 8 Perches Close, at 8 Perches Close, Membland, Newton Ferrers PL8 1HZ in accordance with the terms of the application, Ref 0778/18/FUL, dated 5 March 2018, subject to the conditions set out in the schedule at the end of this decision.

Procedural Matters

2. I have edited the description of development given on the planning application form omitting unnecessary reference to a previous planning application.

Main Issue

3. The main issues are:
 - the effect of the development on the character and appearance of the area with particular regard to protected trees; and
 - whether the site is a suitable location for residential development in respect of access to everyday local facilities, by a range of modes of transport

Reasons

Character and Appearance

4. Trees along the north boundary and adjacent to the site to the east are covered by a tree preservation order. The group of trees covered includes many large specimens which collectively make a positive contribution to the appearance of the area, providing a generally verdant character to the locality.
5. The development would not involve or require the felling of any protected trees. The appellant has submitted a tree report which includes an impact assessment, protection plan and method statement. I am satisfied that this

provides confirmation that the proposed building would avoid incursion upon any root protection areas (RPAs), that the driveway could be built without adverse effect on RPAs, and that construction works could be undertaken without harm. Development in accordance with the tree report can be subject to condition.

6. Given the location of the protected trees to the north/north-west of the proposed dwelling, they would have no significant effect on the levels of sunlight or daylight reaching the dwelling. Furthermore, no windows serving habitable rooms would face towards these trees. As such no obviously adverse effects on the internal living conditions of future occupants would arise which might generate demand to fell or heavily prune the trees.
7. The canopy of one of the protected trees would nonetheless apparently overhang a small part of the dwelling. Given scope for future growth this overhanging could increase. This may generate some demand for pruning, however it appears unlikely if this were to occur the extent of such works would have a significantly adverse visual effect on the group of which the tree forms part.
8. It is more generally clear that the design of the proposed dwelling seeks to achieve minimal intrusion within its setting, making such of design features such as a low profile, green roofing, and incorporating significant soft landscaping. In this context retained trees to the north are an important aspect of the site composition, and backdrop, and their intended long term retention can be reasonably assumed to have formed part of the overall site design.
9. My attention has been drawn to tree works consent 3952/17/TPO which permitted the felling of an ash and beech tree on the site subject to a replanting condition. The stumps of these 2 trees were visible during my visit. Replacement of the beech tree, which stood close to the north boundary, would not be prevented by the development. According to the appellant, this has in fact already occurred. Replacement of the ash tree, which stood closer to the centre of the site, would be more difficult given proximity to the proposed dwelling. The replanting condition however provides flexibility to adjust the specific location of a replacement. The development would not therefore prevent replanting, and I am satisfied that this is a matter that can be separately addressed between the Council and the appellant.
10. Interested parties have raised more general objections to the development on grounds that it would harm the character and appearance of the area. The Council does not appear to share these concerns. Given that the dwelling would be unobtrusively located within an existing housing development, within which views towards the development from outside the site would be very limited on account of the position, form and detailed design of the proposed building, I agree with the Council.
11. The site lies within the South Devon Area of Outstanding Natural Beauty (the AONB). I have had regard to the purposes of the AONB, and advice in paragraph 172 of the National Planning Policy Framework, which states that great weight should be given to conserving and enhancing landscape and scenic beauty within such areas. I consider that, in view of my findings above, the development would not harm the character or appearance of the landscape, or the scenic beauty of the countryside.

12. For the reasons outlined above I conclude that the development would not unacceptably harm the character and appearance of the area, or protected trees. As such the development would comply with Policy DP1 of the South Hams Local Development Framework Development Policies Development Plan Document 2010 (the DPD), which each requires development of high quality design which respects and responds to local character in terms of settlements and landscape, and Policy DP2 of the DPD, which requires development to conserve and enhance landscape character.

Location and Transport

13. Policy CS1 of the South Hams Local Development Framework Core Strategy 2006 (the CS), sets out the Council's settlement strategy, which directs development to locations identified on the basis of settlement boundaries. Policy DP15 of the DPD further restricts the types of development which may take place within 'countryside' locations lying outside these boundaries. Policy N3P-1 of the Newton and Noss Neighbourhood Plan 2017-2034, 2018 (NP) carries forward the established settlement boundaries of Newton Ferres and Noss Mayo with minor modifications, and in substance largely corresponds with Policy DP15. The development type and location proposed would be inconsistent with the criteria set out in these policies. The Council's more particular concern is however that the location of the development would cause future occupants to rely on transport by private motor vehicles to access employment and services, leading to environmental harm.
14. I note the Council's reference to policies within the emerging South West Devon Joint Local Plan 2014-2034 (the JLP). This is now at an advanced stage in preparation and so carries moderate weight. The Policies quoted by the Council have however been subject to modification. I also note that the JLP does not define settlement boundaries, and that a more flexible approach to development within rural areas is presented than that within either the DPD, CS or NP. In particular, Policy TTV1 indicates that development in smaller villages, hamlets and the countryside will be permitted if it can be demonstrated to support the principles of sustainable development and sustainable communities. This is indeed reflective of advice within the National Planning Policy Framework (the Framework) which identifies a range of relevant considerations with regard to rural housing.
15. In this context paragraph 78 of the Framework states that housing should be located where it will enhance or maintain the vitality of rural communities, particularly where development in one village may support services in a village nearby. Paragraph 102 of the Framework further states that opportunities to maximise sustainable transport solutions will vary between urban and rural areas, and this should be taken into account in decision-making.
16. In terms of location, the proposed dwelling would be sited within an existing housing estate which forms an identifiable part of the developed area of Membland. Services in Newton Ferres and Noss Mayo are small in number and scale, but given their proximity to Membland they would see likely use by future occupants of the proposed development. This could help to sustain these services, benefitting the broader rural community.
17. The Council accepts that the site is located close to bus stops with a daily service connecting Membland to larger settlements including Newton Ferres and Noss Mayo. Whilst the service is quoted as running only thrice daily, this is

not an unreasonable level of service for a rural location. I see no reason to consider that the bus service could not therefore be utilised by future occupants of the development to access employment and services. Use of the bus could itself help to support continued operation of the service, which would be generally beneficial to the rural community.

18. There is disagreement between the parties over whether or not future occupants could safely walk the relatively short distance along the road to Newton Ferres and Noss Mayo. Whilst this journey appears to offer some hazards to the pedestrian, I can accept that it is likely that existing residents do already occasionally undertake the walk. Furthermore, future occupants would be able to cycle the route. Though part of the return leg would be uphill, this would be unlikely to present a significant challenge to either a regular walker or cyclist.
19. In the event that private motor vehicles were in fact to be used to access services and employment in Newton Ferres and Noss Mayo, the environmental effects of the journey would be very modest on account of the short distance involved. It is furthermore reasonable to consider that onward journeys from Newton Ferres and Noss Mayo to larger settlements, would be no more likely to arise than had the development in fact been located within one of these settlements.
20. Exercising my duty under section 38(6) of the Planning and Compulsory Purchase Act 2004 as amended, and taking into account paragraph 213 of the Framework which states that due weight should be given to existing policies depending on their degree of consistency with the Framework, I conclude that whilst the development would be in conflict with Policy CS1 of the CS, DPD15 of the DPD and Policy N3P-1 of the NP, which restrict development outside settlement boundaries, it would help to support local vitality and have access to sustainable transport solutions, consistent with advice in the Framework. I further note that this would not conflict with emerging policies within the JLP. Consequently, I conclude that the location is appropriate and would result in no unacceptable harm to the environment as a result of travel.

Other Matters

21. Interested parties draw attention to the presence of listed buildings within the settlement, and voice concerns that their settings would be harmed. The Council does not share these concerns. Given that no listed buildings are located adjacent to the site, and that the proposed building would be only partially visible from the road to the north, I agree with the Council.
22. Interested parties claim that future occupants would have insufficient outdoor space and a poor-quality outlook, and that the development would overbear the existing dwelling. Again the Council does not share these concerns. Given that a reasonably large outdoor space would be attached to the proposed dwelling, that the principal windows have been designed to take advantage of available views, and the dwelling has been designed to have a low profile cut into the slope to the north of the existing dwelling, I again agree with the Council.
23. The appellant alleges that the Council handled its processing of the planning application badly and that this provided a poor level of service. Whilst the

appellant requests that this matter be investigated, these matters fall outside the scope of this appeal.

24. The Council has submitted a copy of the Plymouth, South Hams & West Devon Local Planning Authorities' 2018, 5 Year Housing Land Supply Position Statement December 2018, which provides evidence that the Council has a 5-year supply of deliverable housing sites. However, this has little bearing on the main issues of the appeal and has not therefore affected my decision.

Conditions

25. In addition to standard conditions which provide a timescale for the commencement of the development, and specify the approved plans for sake of certainty, the Council has recommended a number of additional conditions. I have considered these in the light of the advice contained within the Planning Practice Guidance (PPG), and impose conditions accordingly, improving precision where necessary in accordance with the advice in the PPG.
26. The Council has requested a condition requiring submission of a tree protection plan and arboricultural method statement, and a second condition restricting changes to ground levels within RPAs. These are however provided or covered within the tree report submitted by the appellant. In order to ensure that retained trees on or adjacent to the site are not harmed by the development I shall therefore impose a condition requiring that the development is carried out strictly in accordance with the tree report.
27. The Council has requested details concerning the disposal of sewage. I have imposed a more concisely worded condition which requires these details to be agreed in the interests of the environment and ensuring that the site is fit for habitation.
28. The Council has requested submission of a detailed landscaping scheme. However, landscaping plans have been submitted by the appellant. The provision of landscaping in accordance with these plans is therefore appropriate, and will ensure that the development successfully blends in to its setting, including in relation to the existing dwelling. I see no necessity to require that this scheme is maintained for a period of 5 years however given that it principally relates to what will be a private garden within which effective prohibition of change would be unreasonable.
29. The Council has requested a condition restricting occupancy of the dwelling. This is to meet the requirements of Policy N3P-12 of the NP which seeks to restrict second homes and holiday homes. The proposed wording of the condition is unreasonably restrictive as it would only allow the building to be occupied by persons for whom it is their only or principal home. In practice this would prevent the occupants from inviting guests and could create difficulties with regard to other members of the household. I have therefore reworded the condition to provide greater clarity and flexibility, whilst incorporating a reasonable mechanism by which the Council can monitor compliance. There is no necessity to specifically refer to either holiday letting accommodation or to second homes within the condition as each would be effectively prevented.
30. The Council has indicated a desire to restrict future alterations which might be undertaken to the dwelling including the addition of extensions, additions to the roof, and provision of buildings or structures within the curtilage. The PPG

however advises that conditions restricting the future use of permitted development rights will rarely pass the test of necessity and should only be used in exceptional circumstances. In this case the Council's reasons, which are to ensure adequate space around the building and to prevent overdevelopment of the site, do not evidence the existence of any exceptional circumstances, or indeed explain why control of these matters above and beyond that provided by the General Permitted Development Order 2015 (as amended) is necessary. I have not therefore imposed the condition.

Conclusion

31. For the reasons set out above I conclude that the appeal should be allowed.

Benjamin Webb

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) Unless modified by the conditions below, the development hereby permitted shall be carried out in accordance with the following approved plans: 2017-39-PL-001, 2017-39-PL-0002, 2017-39-PL-004, 2017-39-PL-005, 2017-39-PL-006, 2017-39-PL-007 and 2017-39-PL-008.
- 3) The development hereby permitted must be carried out strictly in accordance with the details contained within the Dart Tree Consultancy report reference: TPP-PER-18, dated 26 February 2018.
- 4) Construction of the dwelling hereby permitted shall not commence until full details of the proposed means of foul drainage disposal have been submitted to and approved in writing by the Local Planning Authority. The approved drainage works shall then be completed prior to the first occupation of the dwelling.
- 5) The soft landscaping scheme shown on plans LS_001, LS_002 and LS_003 shall be implemented by the end of the first planting season following first occupation of the dwelling hereby permitted.
- 6) The dwelling hereby permitted shall not be occupied other than by:
 - i. a person or persons as their principal home;
 - ii. persons living as part of a single household with such a person or persons;
 - iii. persons who were living as part of a single household with such a person or persons who have since died;
 - iv. non-paying guests of any of the persons listed in (i) – (iii).

The occupant(s) shall at any time supply to the Local Planning Authority such information as the Authority may reasonably require in order to determine that this condition is being complied with, within one month of the Local Planning Authority's written request to do so.