
Appeal Decision

Site visit made on 15 April 2019

by Roy Curnow MA BSC(Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17th July 2019

Appeal Ref: APP/U1105/W/19/3221035

Garages 1-7, Raddenstile Lane, Exmouth EX8 2JH

- 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 A Newton against the decision of East Devon District Council.
 - The application Ref 18/2514/FUL, dated 1 November 2018, was refused by notice dated 8 January 2019.
 - The development proposed is the conversion and extension of garages to create one dwelling.
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Decision

1. The appeal is dismissed.

Main Issue

2. The main issues in this appeal are the effect of the development on:
 - (i) the ecology of the following protected habitats: Exe Estuary Special Protection Area (SPA) and the East Devon Pebblebed Heaths, a SPA and a Special Area of Conservation (SAC); and
 - (ii) the living conditions of the occupants of the Castle Park, having particular regard to outlook.

Reasons

Ecology

3. The site lies in close proximity to two European Sites of Nature Importance – the Exe Estuary SPA and the East Devon Pebblebed Heaths SPA and SAC. They are subject to protection under the Conservation of Habitats and Species Regulations 2010 ('the Regulations'). Its Regulation 61(5) imposes a duty on me, as the 'competent authority', to consider whether any proposal may have a significant effect on such areas, either alone or in combination with other plans and projects.
4. Amongst its terms, Strategy 47 of the EDLP sets out that development proposals that would cause a direct or indirect adverse effect upon internationally and nationally designated sites will not be permitted unless prevention, mitigation and compensation measures are provided.
5. I have been provided with a supplementary planning document¹ ('SPD') and associated documentation by the Council, which shows that the site lies within an area where development proposals would have an indirect adverse effect

¹ South-east Devon European Site Mitigation Strategy, April 2014

upon the ecology of both the Exe Estuary and East Devon Pebblebed Heaths. The documents set out the importance of these areas, the adverse effects that developments can have on them and a strategy to mitigate these adverse effects.

6. Amongst the latter is the requirement for developers to make contributions to the Council. These can be used for the provision of Suitable Alternative Greenspaces, to attract people away from the heathlands, or to provide management measures to mitigate the effects of people visiting the SPAs.
7. In this case, both main parties agree that the proposed development would have an indirect adverse effect upon both the Exe Estuary and Pebblebed Heaths. They further agree that a contribution, in accordance with EDLP Strategy 47, to be used to mitigate the effects of visitors to the two areas would be necessary. To this end, the appellant has undertaken, pursuant to the terms of S111 of the Local Government Act 1972, to pay the Council a sum of £201.61. The Council agreed that this would provide appropriate mitigation, in accordance with its adopted strategy.
8. Following this, Natural England ('NE') was consulted in accordance with Regulation 63 (3) of the Habitats Regulations 2017. It was asked for its views on the Council's overall strategy and its approach to this application.
9. In response, NE said that the SPD, on which the Council's approach is based, has been very successful. It concurred with the Council's conclusions that the proposed dwelling would have adverse effects on the SPAs, and that a financial contribution would overcome this.
10. It went on to draw attention to a meeting in July 2017 of the South East Devon Habitat Regulations Executive Committee ('SEDHREC'), at which the Council was represented. Amongst other things, a report was put to this committee setting out a shortfall in terms of mitigating financial contributions. It proposed that non-infrastructure contributions raised from planning approvals that affect the Exe Estuary and Pebblebed Heaths should be revised to £409, with additional mitigating payment raised from the Community Infrastructure Levy on the new dwelling.
11. The report to the SEDHREC set out that initial assumptions on the amount of houses making a full financial contribution to the delivery of the Strategy were incorrect. It stated that "to meet our legal obligations it is imperative that new per dwelling contributions based on re-validation of income, cost and expenditure are implemented by each of the partner authorities". The legal duties under the Conservation of Habitats and Species Regulations 2010 that I refer to above, were reported to the SEDHREC. In the report, NE "strongly advised that the committee endorse the proposed recommendations in order that the funding shortfall can be rectified as quickly as possible".
12. However, on this issue, the Minutes show that the SEDHREC resolved that the work on the proposed revisions "be noted" and that the significant deviations from the original assumptions that had been revealed from the work undertaken were acknowledged by the Executive Committee.
13. NE noted that the Council had not revised its charges, following the SEDHREC meeting, and raised a concern that "the contributions may be insufficient to fund all the necessary mitigation both on and off-site to enable a competent

- authority to be confident that the recreational disturbance through increased housing provision will not adversely affect the integrity of the European sites”.
14. Commenting on the NE response, the Council said that each of the partner authorities was responsible for setting their own charges, and that it had determined that the non-infrastructure payment of £201.61 was appropriate.
 15. In my role as the competent authority I attach great weight to the evidence put forward by NE and the comments it has made. These show that the contribution that would be secured through the S111 undertaking would be insufficient to mitigate the significant adverse effects that would arise from the proposed development.
 16. For the above reasons, I find that the proposal would result in adverse effects to two European Sites of Nature Importance and that these would not be mitigated by the sum that the appellant has agreed to pay. Therefore, the scheme would be contrary to Strategy 47 of the EDLP.

Living Conditions

17. The appeal site comprises garages running the full length of two sides of a courtyard accessed from Raddenstile Lane, as well as part of its third side. It shares this side with a dwelling. The two full lengths of the site back onto a large detached property, 'Castle Park'. This has been divided into flats, with its grounds having been similarly sub-divided to form amenity areas to serve these flats.
18. There are two loosely connected, but distinctly separate, amenity areas abutting the appeal site. These appeared to serve the flat nearest the appeal site. The smaller of the two, which is adjacent to the southwestern wall of the appeal site, is a yard area of limited width. It is not only enclosed by the high boundary wall, but also by the high wall of a garage at Castle Park and a two-storey element of that property. As a result, the yard receives relatively limited sunlight and has a very limited outlook.
19. Raising the wall that abuts this yard in the manner that is proposed would be apparent to its users. However, given that the wall already dominates this area, the present degree of enclosure in the yard and its relatively limited amenity value this would not result in significant harm to its users. Furthermore, at most, only a small portion of the pitched roof on this element would be seen from this yard. The dwelling would not appear as a dominant or overbearing feature when seen from there.
20. The area of garden to which it is connected is far larger. It has a much more open outlook, only being enclosed to any degree by the appeal site's western boundary wall. It is relatively open on its other sides. As a result, it appeared to offer a far better standard of amenity to its users than the yard does. The limited increase in the height of the wall that is proposed, would not have a significant effect on the users of this garden area. The dwelling's roof would be more apparent from here. However, as it would pitch away from the boundary, this would have little effect on the garden's users.
21. The nearest flat has an obscure glazed window that appeared to serve a bathroom facing the wall onto the yard. Otherwise, its windows are set at an angle to the boundary walls. As such, the proposed development would only

have a very limited effect on the outlook from these and it would not appear as an overbearing or over-dominant feature when seen from them.

22. For the above reasons, my finding on this issue is that the proposed dwelling would not have a significant adverse effect on the outlook enjoyed by the occupants and users of the flats and gardens of Castle Park. As such, the proposed development would accord with those elements of Policy D1 of the East Devon Local Plan 2013 to 2031 ('EDLP') that seek to protect the living conditions of occupants of neighbouring properties.

Other Matters

23. The site lies in a sustainable and accessible location close to the town centre. I have taken this into account in my deliberations, as I have the comment made by Exmouth Town Council, the lack of architectural merit in the existing garages and that no objection was raised to the design of the proposed dwelling. However, none of these are sufficient to outweigh the harm that I have identified.

Conclusions

24. I find that there would be no significant harm to the living conditions of the occupants of Castle Park. However, neither this nor the positive aspects of the other matters that I have referred to outweigh the harm that I have identified with regards to the two European Sites of Nature Importance.
25. For the above reasons, and having taken all other matters into account, I find that the appeal should be dismissed.

Roy Curnow

INSPECTOR