



Appeal Decision

Site visit made on 19 March 2019

by Matthew Jones BA(Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21 August 2019

Appeal Ref: APP/U1105/W/18/3219001

88 Hulham Road, Exmouth EX8 3LB

- 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 and Mrs Wood against the decision of East Devon District Council.
 - The application Ref 18/2086/FUL, dated 6 September 2018, was refused by notice dated 13 November 2018.
 - The development proposed is the construction of a detached dwelling and the creation of a new vehicular access.
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Decision

1. The appeal is allowed and planning permission is granted for the construction of a detached dwelling and the creation of a new vehicular access at 88 Hulham Road, Exmouth EX8 3LB in accordance with the terms of the application Ref 18/2086/FUL dated 6 September 2018, subject to the conditions set out in the attached schedule.

Procedural Matters

2. I have used the description of the proposal from the decision notice and the appeal form as it accurately describes the proposed development.
3. In February 2019 the latest version of the National Planning Policy Framework (the Framework) was introduced. The revisions to the Framework are not directly relevant to the issues in this appeal. I have therefore used the latest version of the Framework in my assessment without prejudice to any party.
4. The site is located within the influence of the Exe Estuary SPA and Ramsar site and the East Devon Pebblebed Heaths SAC/SPA which are European Designated Sites afforded protection under the Conservation of Habitats and Species Regulations 2017 as amended (the Habitat Regulations). Although not an issue raised by the Council in its decision, it is incumbent upon me as competent authority to consider whether the proposal would be likely to have a significant effect on the integrity of the SPAs. As such, it is necessary to consider this matter as a main issue.

Main Issues

5. The main issues are the effect of the proposed development on:
 - the character and appearance of the area;
 - the living conditions of the occupiers of 5 Bapton Lane with reference to outlook; and,
 - the integrity of the Exe Estuary SPA and Ramsar site and the East Devon Pebblebed Heaths SAC/SPA.

Reasons

Character and appearance

6. The appeal site is the enclosed side garden of the two-storey semi-detached dwelling 88 Hulham Road, which occupies a corner plot at the junction with Bapton Lane. To the east is the bungalow 5 Bapton Lane. There is variety in the plot size, design and massing of dwellings along both streets, with bungalows and two storey houses interspersed with trees and boundary walls and hedges. Road junctions and gardens provide gaps between buildings.
7. As a side garden, the site contributes a degree of openness to the street scene. However, it is an innocuous space within the immediate context of No 88 and No 5 and it is well enclosed by its wall and hedge boundary. Given the circumstances, the sense of openness in this location is principally achieved by the road junction itself which affords extensive views to the east. As such, the site does not make a significant contribution to the character and appearance of the area.
8. The moderate height of the proposal would provide a visual transition from No 88 to No 5. Its appearance, with offset two storey bay windows and cantangas, would be compatible with surrounding architecture and provide a strong connection to the converging streets. It would adhere to both building lines and would, like its neighbours, be set back behind an enclosed front garden. That it would have no rear garden would not be readily appreciable from the public realm.
9. As such, the dwelling would not have a cramped or intrusive appearance nor appear unduly prominent within the street scene. The discrete location of the access off Bapton Lane would enable retention of the strong enclosure provided by the existing boundary treatment.
10. Consequently, I conclude that the proposed development would not have a harmful effect on the character and appearance of the area. The proposal would accord with Policies D1 and Strategy 6 of the East Devon Local Plan 2013-2031 (adopted 2016), which, amongst other things, require proposals to be compatible with the character of the site and its surroundings.

Living conditions

11. The west elevation of No 5 contains the flank wall of its garage and a glazed porch serving the back door into the kitchen. Outlook from this elevation is already restricted by the boundary fence, and I note from the evidence that the kitchen is served by a separate window within the rear elevation. The adjacent outside space is laid out as a path and flower bed and is not a location where I would envisage occupants gather for any notable period of time. Instead, I observed on site that No 5's main aspect is towards the larger garden area forward of its principal elevation. The effect on No 5 would be reduced by the hipped and stepped roof arrangement of the proposed dwelling.
12. As such, although there would be a degree of loss of outlook to occupants of No 5, the design of the proposal and the existing layout of No 5 lead me to conclude that the effect would be modest, and acceptable within this residential environment. Consequently, the proposal would not significantly adversely affect the living conditions of the occupants of 5 Bapton Lane, with reference to outlook. The proposal would accord with Policy D1 of the East Devon Local Plan

2013-2031 (adopted 2016) which, amongst other things, requires new development to adequately protect the amenity of occupiers of adjoining residential properties.

Special Protection Areas

13. In 2018 the Court of Justice of the European Union held that the decision maker, when considering the effect that a proposal may have on a European Site, must consider mitigation within the Framework of an Appropriate Assessment (AA) rather than at screening stage¹. This is a responsibility that now falls to me as the competent authority.
14. The site is within the influence of the Exe Estuary SPA and Ramsar site and the East Devon Pebblebed Heaths SAC/SPA (the SPAs). The Exe Estuary qualifies as it supports overwintering populations of Avocet and Slavonian Grebe, regularly occurring migratory species and as a site supporting an internationally important assemblage of birds. The Pebblebed Heaths is a SAC primarily because of its north Atlantic wet heaths with cross-leaved heath, European dry heaths and the populations of southern damselfly. It qualifies as a SPA as the area regularly supports 2.4% of the UK population of breeding nightjar and 8% of the UK population of breeding Dartford warbler.
15. The SPAs are an important recreational and economic resource. They are well frequented by the public and it is likely that occupants of the proposed development would visit them. In this regard, the evidence before me is clear that the proposal, particularly when combined with other development in the area, would have a significant effect on these habitat designations through increased disturbance through recreational activity.
16. As part of my assessment I must consider if this could be mitigated. In order to achieve mitigation, the main parties have agreed payment of a calculated financial sum using an adopted formula to be put towards an identified range of infrastructure and non-infrastructure projects which are candidates to benefit, with the exact project identified prior to commencement. The parties seek to secure the mitigation through the Community Infrastructure Levy (CIL) and by way of a S111 Agreement². Although a S111 Agreement does not bind the land or obligate the Council, the Council has supplied a recent committee report which evidences that the agreements are successfully attributing money to necessary mitigation projects³. Natural England (NE) is content with the adopted strategy and that the identified projects are proportionate and are being delivered. There is no evidence before me to suggest I should reach a contrary conclusion.
17. The actual amount of money is calculated by a formula pursuant to the Council's South-East Devon European Sites Mitigation Strategy (2014). However, although NE has raised no objection in consultation in respect of this appeal, the Council has brought to my attention a recent appeal decision where NE have identified that the calculated sum is insufficient to mitigate the harm to the SPAs. In its report to the July 2017 meeting of the South East Devon Habitat Regulations Executive Committee⁴ NE set out that initial assumptions on the amount of houses making a full financial contribution to the delivery of

¹ People over Wind and Sweetman v Coillte Teoranta ECLI:EU:C:2018:244

² Pursuant to the Local Government Act 1972

³ The report considered by the South and East Devon Habitat Regulations Executive Committee on 29 April 2019

⁴ Appeal ref: 3221035

the Strategy were too low, and strongly advised that the committee endorse its recommendations to increase the amount in order that the funding shortfall can be rectified as soon as possible. NE's specialist evidence in this respect attracts significant weight.

18. Although the Council has not yet done so, as an interim arrangement it has continued to take the total contribution amount, making up the shortfall in the non-infrastructure element through an additional CIL payment. In its evidence the Council has clarified that this does not mean that CIL monies are being spent on non-infrastructure mitigation measures, which would be in breach of the CIL Regulations, but that the Council is spending more on the mitigation measures that constitute infrastructure and less on the non-mitigation measures until the formula is rebased. Given the comprehensive timeline of the mitigation strategy and the evidence of its successful delivery to date, coupled with the Council's agenda for the rebasing of the figures, I am satisfied that this is a temporary and minor imbalance which does affect the long-term deliverability or integrity of the strategy.
19. As such, I am satisfied, on the basis of the specific evidence before me, that the S111 Agreement is a sufficient mechanism to enable the delivery of proportionate and relevant mitigation pursuant to the Council's adopted, and NE endorsed, strategy. I therefore find within my Appropriate Assessment that, with the provided mitigation, the proposal would not result in a significant harmful effect to the SPAs.

Other Matters

20. I note that the distance of the access from the road junction complies with the Council's safety standards and I am satisfied that, due to this distance, the use of the access would not hinder the safety of vehicle or pedestrian movements at the junction. Although in the 1990s the Council deemed it necessary to required onsite turning at a nearby property, I have considered this proposal on its own merits against the requirements of current policy and I am satisfied that onsite turning is not essential.

Conditions and Conclusion

21. The Council has not suggested any conditions in the event I am minded to allow the appeal. However, in addition to the standard time condition, I have imposed a plans condition in the interests of certainty. I note the highway officer's comments regarding cycle storage, and this can be provided within a condition, as suggested by the appellant. There is also need for a landscaping condition to ensure that the scheme assimilates into its environment. However, as the maintenance requirements for the cycle storage and the landscaping would not be entirely the same, it would be more accurate and appropriate to address these matters in individual conditions.
22. On this basis, and taking into account all matters raised, the appeal should succeed.

Matthew Jones

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: J 429 / 01a, J 429 / 02, J 429 / 03a, J 429 / 04, J 429 / 05.
- 3) Prior to development above slab level, details of all proposed landscaping shall have been submitted to and approved in writing by the Local Planning Authority. All planting, seeding or turfing comprised within the approved scheme shall be carried out in the first planting season following the completion or occupation of the development, whichever is sooner, and any trees or plants which within a period of 5 years die, are removed or become seriously damaged or diseased shall be replaced in the next available planting season with others of a similar size and the same species.
- 4) Prior to development above slab level, details of the secure cycle storage shall have been submitted to and approved in writing by the Local Planning Authority. The cycle storage shall be installed prior to occupation of the dwelling in accordance with the approved details and retained as approved throughout the lifetime of the development.