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## Appeal Decision

Site visit made on 12 August 2019

**by M Harris BSc (Hons) MA MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 13 September 2019**

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**Appeal Ref: APP/Y1138/W/19/3230772**

**Cepheus, Popes Lane, Lapford, Devon EX17 6PW**

- 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 Murphy against the decision of Mid Devon District Council.
  - The application Ref 18/01272/FULL, dated 2 August 2018, was refused by notice dated 27 February 2019.
  - The development proposed is described as 'Regularization to permit the dwelling in the new location, and balcony amendment'.
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### Decision

1. The appeal is allowed and planning permission is granted for the erection of a dwelling following Planning Permission 16/00413/FUL at Cepheus, Popes Lane, Lapford, Devon EX17 6PW in accordance with the terms of the application, Ref 18/01272/FULL, dated 2 August 2018, and the plans submitted with it, subject to the following condition:

1. Unless within 3 months of the date of this decision a scheme for:

- i. The installation of obscure glazing to the window on the southern elevation serving bedroom 1 from the base of the window to a point 1.7 metres from the finished floor level and for this window to be non-opening;
- ii. Fencing on the southern boundary as per the submitted plans; and
- iii. A landscaping scheme for the front garden to provide space for car parking and manoeuvring to allow vehicles to leave the site in a forward gear,

is submitted in writing to the local planning authority for approval, and unless the approved scheme is implemented within 3 months of the local planning authority's approval, the occupation of the dwelling shall cease and all equipment and materials brought onto the land for the purposes of such use shall be removed until such time as a scheme is approved and implemented.

If no schemes in accordance with this condition are approved within 6 months of the date of this decision, the occupation of the dwelling shall cease and all equipment and materials brought onto the land for the purposes of such use shall be removed until such time as a scheme approved by the local planning authority is implemented.

Upon implementation of the approved schemes specified in this condition, they shall thereafter remain in use. In the event of a legal challenge to this decision, or to a decision made pursuant to the procedure set out in this condition, the operation of the time limits specified in this condition will be suspended until that legal challenge has been finally determined.

### **Procedural Matter**

2. The site address on the application form relied on easting and northings only. The Council decision notice is more accurate and therefore the banner and my formal decision reflects this with the addition of the postcode included on the appeal form.
3. The description of development differs between the application form and Council decision notice. The description used on the appeal form and within the Statement of Case reflects the Council's notice and in my judgement is a clearer description of the development for which permission is sought; the formal decision reflects this position.

### **Main Issues**

4. The main issues are:
  - i. The effect of the proposal on the character and appearance of the area by virtue of scale and massing; and
  - ii. whether the proposal is overbearing and overlooks neighbouring properties to the extent that it would be harmful to the living conditions of the occupiers.

#### *Character and appearance*

5. The site is situated on Popes Lane, bounded by residential properties: Valley View to the north, a mid 20<sup>th</sup> century building of render and tile roof construction; the stone built former Lapford Youth Club, which is being converted to a residential dwelling, to the south; and Popes Well House, a modern new build dwelling, sits to the east.
6. Whilst the former Youth Club fronts Popes Lane, Valley View is set at 90 degrees to the road with the front elevation facing south and parking to the front. Popes Well House is orientated in the same way as Valley View, again with parking to the front of the property. The positioning of these buildings reflects the local topography, which rises gently from south to north up Popes Lane but falls steeply from east to west. The effect of this and the positioning of these dwellings is that the pattern of development within the immediate surroundings of the site is irregular with no specific building line. Furthermore, the varied style of buildings means that there is no one unifying feature which defines the local character and appearance.
7. The evidence before me indicates that the detailed design of the dwelling has not significantly changed between the original approval and the building now present on site. The most significant change is that the building now sits higher, due to being positioned further up the slope than previously approved, together with being closer to the road. There have been minor changes to the positioning of windows between the previously approved plans and the dwelling as built. Whilst the dwelling that has been constructed was not specifically

designed for the precise siting, it retains the same design essence as that originally approved. Furthermore, it is similar in style to Popes Well House and as such cannot reasonably be viewed as being out of keeping with the appearance of other buildings in the immediate vicinity.

8. Whilst Cepheus now sits closer to the road and at a higher point on the site, in my judgement, the scale and massing of the building does not differ from other properties in the immediate vicinity and it responds to the topography of the site. Further, I consider that the dwelling being sited closer to the road is a positive change as it provides a degree of unification, creating a stronger building line/frontage to the road which is more reflective of the local grain of relatively shallow front garden/parking areas.
9. For these reasons, I do not find harm to the character and appearance of the area by virtue of scale and massing and the dwelling as built is not contrary to Policy COR2 of the Mid Devon Core Strategy 2026 (adopted July 2007) insofar as it seeks to sustain local distinctiveness and the quality and character of Mid Devon nor Policies DM2 (a, ei, eii) regarding site characteristics and detailed architectural design or DM14 (a) of the Mid Devon Local Plan Part 3 Development Management Policies (adopted October 2013) (Local Plan) in relation to development considering the local context.
10. I find no conflict with the National Planning Policy Framework paragraphs 127 and 130 as the dwelling does not represent poor design which is out of context with its surroundings.

#### *Living conditions*

11. As a result of the dwelling being built forward of the approved position, the interaction with the Youth Club building has changed. Although I do not have the detailed layout of the Youth Club conversion before me, the question is whether the positioning is such that there would be an unacceptable impact on the living conditions of the future occupants of the Youth Club dwelling (once completed).
12. The front elevation of the Youth Club and Cepheus are now broadly in line and as a result there is no longer any potential for overlooking of the rear elevation of the Youth Club from the front windows of Cepheus. However, the revised position does lead to new potential interactions from the southern elevation of Cepheus, specifically from windows serving the kitchen and bedroom 1 and doors from the lower ground dining area to the terrace.
13. The evidence before me indicates that during the determination of the application, the design was amended to remove a balcony, and a ground floor dining room window was changed to a high level. In doing so, the potential for overlooking of the Youth Club has been partially reduced. However, the potential does remain in respect of the window to bedroom 1 and, whilst less significant due to the proposed boundary treatment, in respect of the doors serving the lower ground floor dining area.
14. The plans indicate that the southern boundary between the plots will be built up from the ground level of the Youth Club plot to meet the ground level of Cepheus from which point a 1800mm high timber fence will be constructed. This will limit the potential overlooking from the lower ground floor terrace resulting in an acceptable outcome.

15. With regard to the window to bedroom 1, and notwithstanding the absence of detailed plans for the Youth Club, the position of this window is such that it is likely that there will be a risk of overlooking of the rear garden of the Youth Club on completion of the conversion. The Council have suggested that a condition should be applied to any grant of planning permission to install a non-opening window with obscure glass to a height of 1.7 metres from the floor level of the bedroom. In my judgement this is an acceptable solution to reduce the potential for any loss of privacy whilst not detrimentally impacting upon outlook from the bedroom itself.
16. The Council have also proposed that a condition should be applied to secure the installation on the southern elevation of a 1.5 metre high privacy screen, shown on the submitted drawings. Having reviewed the evidence, my understanding is that this screen was associated with the balcony that was previously proposed. As this has now been removed and the kitchen window on this elevation amended to be high level only, in my judgement the installation of a privacy screen is unnecessary.
17. The issue of scale and massing has been considered in respect of the effect on the character and appearance of the local area. However, the Council also identifies concern in this regard in respect of neighbouring residential amenity. With specific regard to neighbouring dwellings, and in particular the proposed Youth Club dwelling, I consider that as built, Cepheus is not overbearing and, as discussed above, the revised siting has benefits in respect of aligning the front elevations with each other.
18. Considering the above, I conclude that the proposal is not overbearing and does not overlook neighbouring properties to the extent that there would be harm to the living conditions of the occupiers. Any new potential for overlooking can be mitigated by planning conditions. For this reason there is no conflict with Policy DM2 of the Local Plan insofar as it seeks to protect against adverse impacts on the occupiers of neighbouring properties.

### **Other Matters**

19. There was no highway objection to the application and highways safety was not a reason for refusing the application. Despite this, the Parish Council have commented on the access and raised concerns in respect of manoeuvring vehicles. The evidence indicates that details of a turning circle have been agreed, however this is not clear from the plans before me.
20. I recognise the issues raised by the Parish Council as, whilst Popes Lane is a dead end, it is narrow and serves a number of dwellings together with a veterinary practice meaning that manoeuvring could be challenging. Despite this, any concerns can be allayed through a planning condition requiring a landscape scheme which includes for a parking area with manoeuvring space to allow vehicles to leave the site in a forward gear.

### **Conditions**

21. To manage the potential overlooking of the Youth Club dwelling, I agree with the Council that it is necessary to control the type of window on the southern elevation serving bedroom 1 for the reasons set out above. In the interests of privacy, as outlined above, it is also necessary for the proposed boundary treatment on the southern elevation to be installed as shown on the plans. I

have also included a condition relating to a landscaping/parking scheme as set out above.

22. The purpose of condition 1 is to require the appellant to comply with a strict timetable for dealing with the details set out in sub-sections i), ii) and iii) all of which need to be addressed, as set out above, in order to make the development acceptable.
23. The condition is drafted in this form because, unlike an application for planning permission for development yet to commence, in the case of a retrospective grant of permission it is not possible to use a negatively worded condition precedent to secure the subsequent approval and implementation of the outstanding detailed matter because the development has already taken place. The purpose and effect of the condition is therefore to ensure that the use of the site authorised by the grant of planning permission may only continue if the appellant complies with each one of a series of requirements. The appellant has confirmed their acceptance of the condition.

### **Conclusion**

24. I have concluded that the dwelling as constructed would not have an unacceptable impact on the character and appearance of the local area and that, with the conditions set out, there would be no loss of privacy by virtue of potential overlooking of the Youth Club dwelling. For these reasons, and with regard to all other relevant matters, the appeal is allowed.

*M Harris*

INSPECTOR