



Appeal Decision

Site visit made on 8 January 2020

by Tobias Gethin BA (Hons), MSc, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 29 January 2020

Appeal Ref: APP/U1105/W/19/3233336

South Lodge, St John's Road, Bystock, Exmouth, Devon EX8 5EG

- 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 Roger Rudkin against the decision of East Devon District Council.
 - The application Ref 18/2151/FUL, dated 12 September 2018, was refused by notice dated 18 January 2019.
 - The development proposed is for the erection of a 2 bedroom bungalow.
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Decision

1. The appeal is dismissed.

Main Issue

2. The main issue is whether the proposed development would be in an appropriate location, with particular regard to the character and appearance of the surrounding area and preserved trees.

Reasons

3. Formed from the garden of South Lodge, the appeal site runs along St John's Road. Amongst other aspects, it contains some outbuildings, various shrubs, and trees, including a substantial, preserved oak tree which dominates much of the site and is visually prominent in the surrounding area. Although there is a fence running along the northern boundary, the site reads from the public realm as connected to the wooded land to the north due to its open and verdant character and the proximity of the preserved trees of Bystock Wood, some of which partly overhang the site. The site's appearance and its location on the edge of the built environment mean that it relates to its undeveloped rural surroundings rather than the built-up suburban environment, which involves a range of properties set in varying sized plots. The site's verdant and landscaped quality and the various preserved trees contribute to the locality's character and appearance, and from the surrounding area – including from St John's Road and the junction with Dinan Way – the site and adjoining woodland appear as a natural barrier to continued suburbanisation of the countryside.
4. Strategies 6 and 7 of the East Devon Local Plan 2013 to 2031 (EDLP) set out the Council's approach to development within the district. Under Strategy 6, development within the defined Built-Up Area Boundaries (BUAB) is generally supported. Strategy 7 defines the countryside as all parts of the plan area that are outside the BUAB and site-specific allocations. It restricts development to: that which is in accordance with a specific Local or Neighbourhood Plan policy that explicitly permits such development; and where it would not harm the

- distinctive qualities within which it is located, including in relation to patterns of settlement and important natural features which contribute to the local landscape character.
5. My attention has been drawn to the Officer Report associated with the planning permission for an ancillary building on the site (Ref 14/1000/FUL) which states that the site is within the BUAB. Be that as it may, the evidence before me indicates that while the existing dwelling known as South Lodge is within the Exmouth development boundary, the BUAB as defined by the EDLP cuts across its garden and, although adjacent to it, the site is outside the BUAB. It is therefore within the countryside as defined by the adopted development plan.
 6. As per the site and tree protection plans, the dwelling would be positioned outside of the root protection areas and crown spread of retained trees, including preserved trees. However, a significant proportion of the garden area would be within and close to the crown spread of trees, and the new dwelling would have trees on three sides. Irrespective of whether or not the garden and dwelling would be directly beneath tree canopy, the proposed development would therefore be dominated by trees. Despite the arboricultural impact assessment proposing a canopy and height reduction of the trees on the south eastern boundary, the dwelling – including its living room – and much of the garden would also be significantly shaded and receive limited natural light. Areas beneath and near tree canopy would also be subject to, for example, leaf fall and tree debris.
 7. These aspects would limit the quality of the living environment of the proposed development. Although the oak is a mature specimen and is unlikely to grow much more, the height and crown spread of the four preserved trees to the north of the proposed dwelling indicate that these could also grow further. Without intervention, their effect on the living conditions of the proposed development would therefore increase.
 8. Consequently, it appears inevitable that future occupiers of the proposed development would seek to prune or even fell some of the trees at some future point in order to maintain or improve their living conditions. It seems to me that the Council would struggle to justify refusing such requests.
 9. Significant pruning and/or felling of the preserved trees would reduce substantially their positive contribution to the locality and would result in significant harm to the character and appearance of the surrounding area. In coming to this view, I have taken account of the relatively large size of the proposed garden, that approximately 88 square metres of the garden would not be under the current tree canopy, and that future occupiers would be aware of the trees before purchasing the site.
 10. The opening up of the site along its southern boundary, including for the proposed vehicular access, would increase the visibility of the development in the locality. Unlike the previously proposed bungalow which was dismissed at appeal (Ref APP/U1105/A/03/1133149), the proposed dwelling would be orientated to address the highway. The overall size of the site and dwelling would not be significantly different to the varying plots and relatively scattered development pattern in the locality, while the new dwelling would also sufficiently respect the design, position and proportions of South Lodge. However, the dominating presence of the trees would mean that the proposed dwelling would appear hemmed in and enclosed. Rather than appearing as a

natural 'rounding off', the development would, given the site's appearance and location, extend built form and be experienced as an incursion into the countryside through encroaching suburbanisation. It would also erode the area's verdant and spacious character and appearance. Consequently, it would be read as an incongruous and harmful addition. The presence of nearby residential development does not lead me to a different conclusion.

11. The supporting text in EDLP paragraph 6.22 sets out, amongst other things, that "[i]n a number of cases Built-up Area Boundaries cut across the rear gardens of properties, rather than following defined garden areas or property boundaries...to ensure that inappropriate 'backland' development does not occur". With the site fronting the highway and being to the side of South Lodge, the appeal proposal cannot reasonably be described as backland development per se. However, the supporting text in paragraph 6.22 refers to urban sprawl on the edge of settlements and I have found that the development would harm the character and appearance of the surrounding area including through suburbanisation of the countryside.
12. The site is not within a designated area, the Council has not alleged that the development would conflict with any Exmouth Neighbourhood Plan (ENP) policies, and ENP Policy H1 sets out a presumption in favour of accessible and adaptable homes. It has been put to me that the Council is also reliant on windfall development but that the EDLP is silent on such development in Exmouth. Although the appeal proposal would constitute windfall development and provide an adaptable home, the site is outside the BUAB of Exmouth. Accordingly, the appeal proposal would extend development beyond the defined development boundary and into the countryside.
13. Strategy 7 is clear that such development will only be permitted where it is in accordance with a specific Local or Neighbourhood Plan policy that explicitly permits such development. However, I have little substantive evidence of a policy in either the EDLP or ENP that explicitly permits the appeal proposal. I have found that the development would also harm the character and appearance of the surrounding area. The development would therefore conflict with the spatial approach set out in Strategy 7 and its requirement for development to avoid, amongst other aspects, harming the distinctive qualities within which it is located.
14. For the above reasons, I conclude that the proposed development would not be in an appropriate location, with particular regard to the harm it would cause to the character and appearance of the surrounding area including in relation to preserved trees. I therefore find that it conflicts with EDLP Strategies 6 and 7 and Policies D1, D2 and D3. Amongst other aspects, these set out the Council's spatial approach to development, and require development to: respect the key characteristics and special qualities of the area; deliver a harmonious and sustainable relationship between structures and trees; incorporate features of landscape value; and avoid harming trees worthy of retention. The proposal would also be inconsistent with the provisions in the National Planning Policy Framework (Framework) in relation to achieving well-designed places and conserving and enhancing the natural environment.

Other matters

15. A Unilateral Undertaking has been submitted with the appeal in relation to the potential effect of the development on the Exe Estuary and Pebble Beds Special

Protection Area. It provides a financial contribution towards habitat mitigation. However, as I am dismissing the appeal for other reasons, I am not pursuing this matter further because it could not lead me to a different decision.

Planning Balance

16. I have found that the development would not be in an appropriate location and would harm the character and appearance of the surrounding area, including with regard to preserved trees. This indicates that the development cannot reasonably be described as making efficient use of land.
17. The appeal proposal would provide a new adaptable dwelling, which is needed and would support a balanced housing stock for a range of age groups. The provision of adaptable housing for older people is supported by a range of organisations and publications, including for example in Planning Practice Guidance and the Local Government Association's publication 'Housing our Ageing Population'. However, despite the EDLP pre-dating the latest Framework, I have little evidence which indicates that the EDLP is out of date or that the proposed development is required to meet the district's identified housing needs. With the development also only providing a single dwelling, its benefits, including in relation to employment and housing mix and supply, would be limited.
18. The proposed development would have access to local services and facilities and would be accessible by public transport and walking. The local highway authority did not object. There is no longer a right of way through the site and there would be sufficient separation between South Lodge and the proposed bungalow. The Council has not raised concerns about potential effects on the historic environment or the living conditions of existing and new residents in terms of privacy and overlooking. Appropriate management of surface water could also be dealt with by condition.
19. Be that as it may, these matters do not indicate that the appeal proposal is acceptable, and its limited benefits do not provide justification for development that conflicts with the development plan.

Conclusion

20. For the above reasons, the appeal is dismissed.

Tobias Gethin

INSPECTOR