



Appeal Decision

Site visit made on 3 February 2020

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

an Inspector appointed by the Secretary of State

Decision date: 25 February 2020

Appeal Ref: APP/Q1153/W/19/3240175

Town Living, Blenheim Lane, Exbourne EX20 3RX

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant permission in principle.
 - The appeal is made by Mr P O'Connor against the decision of West Devon Borough Council.
 - The application Ref 2505/19/PIP, dated 30 July 2019, was refused by notice dated 23 October 2019.
 - The development proposed is erection of up to 6 dwellings with on site parking, public open space provision and play area.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The application was for permission in principle (PiP). As set out within Article 5A.(2) of The Town and Country Planning (Permission in Principle) Order 2017 (as amended), and the Planning Practice Guidance, PiP is specifically intended to be used in relation to schemes of residential development. Non-residential development may also be permissible, but only as a secondary component. In this regard the development would involve a minimum of 3 and a maximum of 6 dwellings, alongside provision of commercial car parking, public open space, and a large 'domestic orchard'. I interpret the latter as meaning garden space. As currently presented, the balance would not clearly be in favour of residential development. I am however mindful of the requirement to specify the scale and use of any non-housing development permitted where granting permission in principle. I have therefore considered the appeal on the basis that such limitations would be applied.
3. The application was accompanied by a schematic plan showing the general layout of the proposed development. This was used by the Council to assess the proposal. The general distribution of uses between the western in eastern parts of the site appears likely to reflect that presented at Technical Details Consent (TDC) stage. However, aside from the points considered above, there is little evidence that the layout shown has been informed by significant constraints such as topography and the band of trees along the southern boundary of the site. Therefore, whilst I have also taken the schematic plan into account in my reasons below, I have done so on the basis that the layout would be subject to change.
4. An application for costs was made by Mr P O'Connor against West Devon Borough Council. This application is the subject of a separate Decision.

Main Issues

5. Assessment of an application for PiP is limited to matters relevant to the location, land use and amount of development proposed. In these regards the main issues are the:
 - whether the development would preserve or enhance the character or appearance of Exbourne Conservation Area (the Conservation Area), and preserve the settings of listed buildings;
 - the effect of the development on biodiversity;
 - the effect of the development on agricultural land; and
 - the effect of the development on the neighbourhood planning process.

Reasons

Heritage

6. The western part of the site is located within the Conservation Area, and the site as whole part of 2 parcels of land attached to Town Living, a Grade II listed building.
7. The significance of Town Living includes its seventeenth century origin, its past function as a farmhouse, which is clearly evidenced by the attached range of traditional agricultural buildings, and its distinctive construction from local materials, including cob and thatch.
8. Town Living retains a largely open setting to which each part of the site contributes. That to the west forms part of an orchard, whose long-established presence is evidenced by the wide distribution of veteran fruit trees within it. Orchards were a historically common feature of farmsteads in parts of the region, and despite differences in ground level, there is an obvious visual and spatial relationship between Town Living and the orchard. In this regard the orchard complements forms an important component of the setting of Town Living, making a positive contribution to the appreciation of its significance as a historic farmhouse.
9. The Conservation Area covers much of Exbourne. Its significance largely derived from the historic layout of buildings and spaces, with principal clusters occurring along High Street, Duck Lane and Blenheim Lane, where Town Living makes a notable visual contribution to the streetscene, and provides evidence of past activity. Though the orchard is not clearly visible from the street, the role it plays within the setting of Town Living, as too its intrinsic significance as a historic space, means that it nonetheless makes an important contribution to the character of the Conservation Area, and thus also to its significance.
10. The development would be mostly located on land occupied by the orchard. Though a small part of the orchard would be retained outside the site, and some trees within the site itself could perhaps be retained, the land uses proposed would otherwise be largely incompatible with its continued existence. In view of the contribution the orchard makes to setting of Town Living and the character of the Conservation Area, such loss would be harmful to the significance of each.

11. A replacement orchard on the eastern portion of the site has been proposed, however this would lack the historic value of the existing orchard. It would also be located outside the Conservation Area, and outside the immediate setting of Town Living. As such it could not be considered to mitigate the harm that would be caused by loss of most of the existing orchard.
12. The Council's officer report additionally raises concerns in relation to the settings of the Church of St Mary, a Grade II* listed building whose churchyard contains a number of Grade II listed tombs, and 1 and 2 High Street, a Grade II listed building.
13. The church is of high historic and architectural importance, and prominently positioned within the townscape. It is located towards the north of the site, and it is variably visible from within it. However, the site otherwise has no direct visual or spatial relationship with either the church or its churchyard, and no evidence of any historic connection has been provided. The site does not therefore make any obvious contribution to the significance of the church or the churchyard. For this reason, and given the scope of design matters yet to be fixed, I see little reason why the location, land uses or amount of development proposed should cause any harm to their settings.
14. Nos 1 and 2 form a pair of cottages the significance of which includes their late seventeenth/early eighteenth century date, and use of vernacular materials. The plot within which Nos 1 and 2 stands adjoins the far western edge of the site, and the back of the building is visible from within this location. However, the site makes no obvious contribution to the significance of the building, the external aspects of which are principally appreciable from High Street. Indeed, the rear elevation of the building is largely obscured by a 2-storey flat roofed extension. Again therefore, I see no reason why the location, land uses or amount of development proposed should cause any harm to the setting of Nos 1 and 2.
15. Nonetheless, I find that the development would not preserve the setting of Town Living, nor preserve or enhance the character of the Conservation Area. With regard to paragraph 196 of the National Planning Policy Framework (the Framework), I find that the development would cause less than substantial harm to the significance of both these heritage assets.
16. Having regard to the considerable importance and weight to be given to the statutory objectives of preserving of the settings of listed buildings, and preserving or enhancing conservation areas, I attach considerable importance and weight to the harm that would arise. The scheme would provide public open space, up to 6 dwellings in a sustainable location, and would generate a small boost to the economy during construction, and as a result of on-going use of local services by future occupants. However, the level of such benefits would be small, and would be insufficient to outweigh the harm identified. Paragraph 196 of the Framework therefore provides a clear reason for refusal of permission.
17. For the reasons outlined above I conclude that the proposed location and land uses would fail to preserve or enhance the character or appearance of the Conservation Area, and would fail to preserve the setting of Town Living. The development would therefore conflict with Policy DEV21 of the Plymouth and South West Devon Joint Local Plan 2014-2034, 2019 (the JLP) which states that development proposals will need to sustain the local character and

distinctiveness of the area by conserving and where appropriate enhancing its historic environment; Policy DEV20 of the JLP, insofar as the proposal has not had proper regard to the pattern of local development in terms of its historic value; Policy SPT2 of the JLP, insofar as it would not protect and enhance the historic environment; and the Framework, which seeks to conserve heritage assets.

Biodiversity

18. Section 40 of the Natural Environment and Rural Communities Act 2006 (as amended) (NERC Act) requires decision-makers to have regard to the conservation of biodiversity when carrying out their normal functions. Sections 41 and 42 of the NERC Act require the publication of lists of habitats and species which are of principal importance for the conservation of biodiversity in England and Wales; the priority habitats and species identified under UKBAP. 'Orchards' are featured on the list.
19. No ecological evaluation of the orchard has been undertaken. It is not therefore possible to fully ascertain its current biodiversity value based on the evidence set before me. In this regard Circular 06/2005 makes clear that surveys should be undertaken before planning permission is granted. Though the grant of PiP would not have the same effect as a grant of planning permission, it is nonetheless similarly necessary to understand the likely impact on biodiversity at an early stage in order to establish the acceptability of a scheme in principle.
20. The orchard on site does not contain a large number of veteran trees, therefore its biodiversity value is less than might otherwise be the case. Clearly however an orchard must be maintained, and such maintenance includes planting replacement trees. Without such maintenance the biodiversity value of an orchard would ultimately be lost as the orchard would cease to exist. As such, the fact that many of the trees in the orchard are relatively young does not fundamentally diminish the biodiversity value of the orchard taken as a whole.
21. As noted above, depending on the layout of the development, some trees could perhaps be retained. However, most would be lost. I appreciate that a replanted orchard is proposed. However, a new orchard on a site with no history of use as an orchard, and containing no veteran trees, would not have the same biodiversity value as the existing orchard. I see no realistic prospect that veteran trees could be successfully transplanted. Based on the evidence available therefore the proposed location and land use would cause ecological harm without any clear or convincing means of this being mitigated.
22. For the reasons outlined above I conclude that the proposed location and land use would be likely to have an unacceptably adverse effect on biodiversity. It would therefore conflict with Policy DEV6 of the JLP, which supports the protection, conservation, enhancement and restoration of biodiversity; and Policy SPT2 of the JLP, insofar as it would not protect and enhance the natural environment.

Agricultural land

23. As outlined above, the site consists of land attached to a farmhouse. The appellant however states that the site is not used as agricultural land. The orchard nonetheless remains, and though the field within which the eastern portion of the site appears to be very mildly domesticated, in neither case has

any evidence been provided that their lawful use has changed, or that there is any reason why more active agricultural management could not resume.

24. Amongst other things, Policy TTV26 of the JLP seeks to secure development which avoids the use of best and most versatile agricultural land. The site consists of Grade 2 agricultural land. This is defined as land of very good quality on which a wide range of agricultural and horticultural crops can usually be grown. None of the proposed uses would be agricultural, as even though a replacement orchard is proposed, this would be accommodated within either domestic or public open space. Development in the location proposed for the land uses specified would therefore result in the loss of best and most versatile agricultural land.
25. The Council states that almost all the land around the village is classified as Grade 2. Whilst this implies that use of some such land might be required in order to accommodate new development in the future, I have insufficient information to be certain of this. Good quality agricultural land is clearly plentiful within the immediate locality, but this does not have any particular bearing on its value considered on an intrinsic, Borough-wide or national basis. In this regard as Grade 2 agricultural land is in limited supply across the Borough as a whole, its scarcity increases the harm that would be caused by its loss.
26. For the reasons outlined above I conclude that the location and land uses proposed would have an adverse effect on agricultural land. It would therefore conflict with Policy TTV26 of the LP, as outlined above.

Neighbourhood planning

27. Policy TTV25 of the JLP sets out the Council's support for preparation of neighbourhood plans as a means of identifying housing and other development sites in 'sustainable villages', such as Exbourne. The Exbourne Neighbourhood Plan (the NP) is however currently at an early stage and a full draft has yet to be produced. In the absence of a plan, Policy TTV25 of the JLP does not rule out the possibility of development taking place, instead deferring consideration to other policies. It is therefore both possible and appropriate to reach a determination based on the individual merits of a scheme in the absence of a plan.
28. Paragraph 50 of the Framework otherwise states that refusal of planning permission on grounds of prematurity will seldom be justified before the end of the local planning authority publicity period on the draft plan. I see no reason why this should not equally apply with regard to PiP. This stage in the plan-making process will clearly not be reached for quite some time. Furthermore, having regard to the relatively small scale of the development, were permission to be granted it is unlikely that this would undermine the plan-making process in a significant way.
29. For the reasons outlined above I conclude that the location, land use and amount of development proposed would not have an unacceptably adverse effect on the neighbourhood planning process, and would not conflict with Policy TTV25 of the JLP, as considered above, given that the NP has yet to be produced.

Other Matters

30. The appellant both states that the Council lacks a 5-year supply of deliverable housing sites (5YHLS), and concedes that the position has changed post adoption of the JLP. Indeed, whether or not the Council previously lacked a 5YHLS, its current position is measured on the basis of the JLP area as a whole within which there is no shortfall. The 'tilted balance' set out with paragraph 11 of the Framework would not in any case apply given the clear for refusal of permission on grounds of heritage impact. The development would otherwise provide up to 6 dwellings, though perhaps as few as 3. The contribution made to local housing supply would therefore be limited, and the limited nature of the benefit would not justify the harm that the use would cause in the location proposed.
31. The appellant states that the site is located within the village settlement boundary. However, no JLP policies have been cited which make reference to such boundaries. Though it appears that settlement boundaries may nonetheless be employed in the context of neighbourhood plans, as noted above, none currently exists in Exbourne. The proposed location cannot therefore be justified on this basis.
32. Support for the provision of public open space has been voiced by interested parties, and it is advanced as one of the main benefits of the scheme. The fact that the site has a pronounced slope would however severely limit its practicality use for play, as too would any retention of existing orchard planting. Whilst possible provision of a community orchard has also be suggested, sloping ground would additionally limit accessibility, as too would the distance from the street frontage. All else aside, in my view it is doubtful whether the site location is in fact well suited to either use. In each regard the benefits of these uses must also be set against the harm they would potentially cause as part of the development as a whole, and in this regard any benefits would not outweigh the harm that would be caused.
33. It is suggested by the appellant and interested parties that the development would provide affordable housing that could be occupied by villagers. However, there is no certainty of this. This does not therefore lend any weight in favour of the proposed land use or location.

Conclusion

34. Whilst the granting permission would not undermine the neighbourhood planning process, the location and land uses proposed would cause unacceptable harm to heritage assets and ecology. Therefore, for the reasons set out above, I conclude that the appeal should be dismissed.

Benjamin Webb

INSPECTOR